

## RESPONSE FORM

### PREPARATION OF THE TENTH PROGRAMME OF LAW REFORM

We hope that by using this form it will be easier for you to respond to the questions set out in the consultation paper. Respondents who wish to address only some of the questions may do so. The form reproduces the questions as set out in the paper and allows you to enter comments in a box after each one. At the end of the form, there is also space for any general comments you may have.

Please note that information about this consultation paper, including copies of responses, may be made available in terms of the Freedom of Information (Scotland) Act 2002. Any confidential response will be dealt with in accordance with the 2002 Act.

We may also (i) publish responses on our website (either in full or in some other way such as re-formatted or summarised); and (ii) attribute comments and publish a list of respondents' names.

In order to access any box for comments, press the shortcut key F11 and it will take you to the next box you wish to enter text into. If you are commenting on only one or two of the questions, continue using F11 until you arrive at the box you wish to access. To return to a previous box press Ctrl+Page Up or press Ctrl+Home to return to the beginning of the form.

Please save the completed response form to your own system as a Word document and send it as an email attachment to [info@scotlawcom.gsi.gov.uk](mailto:info@scotlawcom.gsi.gov.uk). Comments not on the response form may be submitted via said email address or by using the [general comments form](#) on our website. If you prefer you can send comments by post to the Scottish Law Commission, 140 Causewayside, Edinburgh EH9 1PR.

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# Questions

1. Do you have any suitable law reform projects to suggest?

## Comments on Question 1

Police Questioning pre charge

2. Do you have any project to suggest that would be suitable for the Commission Bill process in the Scottish Parliament; or, in relation to reserved matters, for the House of Lords procedure for Commission Bills?

## Comments on Question 2

Yes to ensure equality in investigations using the recommendations by the Lord Henrique's report as found on his investigations into the Met police. These recommendations should be in practice with all police forces within the whole of the UK – they are COMMON SENSE.

See below - ;

FASO Sec 128/16 dated 15.11.16 - Our Questions are; to Justice Committee Q&A with Bob Neill MP

Wed 16th Nov 2016 justicecom@parliament.uk FASO letter to Justice Committee.

House of Commons face book Q&A with Justice Committee Chair Bob Neill MP event.

Q1. In view of the recently published "Henrique's" report, when will you be authorising a Public Inquiry/investigation into that identified in Sir Richard Henrique's' report where the hundreds, possibly thousands of wrongful allegations of both current and Non Recent Abuse Cases (HSA) cases, lead to Miscarriage of Justices and are created by the malpractices of the police

Q2 Those arrested for particularly sexual matters that remain on bail or charged pending trial, (which has an indeterminate time scale,) are often vilified by the press and this has significant lifelong impact on the individual. Much debate has been had around anonymity; those that are acquitted or not charged often have no realistic legal remedy as the damage is done to careers (DBS)/life/reputation. Effectively, how does the balance of rights assist such individuals?

INDEPENDENT REVIEW OF THE MET POLICE SERVICE'S HANDLING OF NON-RECENT SEXUAL OFFENCE INVESTIGATIONS ALLEGED AGAINST PERSONS OF PUBLIC PROMINENCE

HENRIQUES REPORT (NOV 2016)

RECOMMENDATION 1.

Throughout both the investigative and the judicial process those who make complaints should be referred to as 'complainants' and not as 'victims' by the MPS

#### RECOMMENDATION 2

The Instruction to 'believe' a 'victim's account' should cease. It should be the duty of an officer interviewing a complainant to investigate the facts objectively and impartially and with an open mind from the outset of the investigation. At no stage must the officer show any form of disbelief and every effort must be made to facilitate the giving of a detailed account in a non-confrontational manner.

#### RECOMMENDATION 3

In future, the public should not be told that 'if you make a complaint we will treat it very seriously and investigate it thoroughly without fear or favour'.

#### RECOMMENDATION 4 (P28)

Investigators should be informed that false complaints are made from time to time and should not be regarded as a remote possibility. They may be, malicious, mistaken, designed to support others, financially motivated, or inexplicable. When considering non-recent allegations against prominent people they should give full consideration to all background information.

#### RECOMMENDATION 5 (page 29)

A check list of critical topics to be covered in the complainants statement should be made available to all investigators designed specifically for non-recent allegations against prominent people.

#### RECOMMENDATION 6 (page 30)

In cases involving prominent people, consideration should be given to inviting complainants to sign confidentiality agreements and witnesses to sign witness contract.

#### RECOMMENDATION 7 (page 31)

First responders should be able to inform complainants of the latest time that contact will be made with them. Such time scale should be variable and dependant on other commitments

#### RECOMMENDATION 8 (page 33)

Contacting a complaint, or potential complainant or witness by letter, in non-recent cases involving prominent persons, should only take place if a constable is satisfied that there is no risk of interception by another member of the same household.

#### RECOMMENDATION 9 (page 44)

DMC policy should be amended to avoid any details of age or geography being released to the public in relation to an arrest, search, interview, or bail of any suspect.

RECOMMENDATION 10 (p45)

A suspect should have the right to anonymity prior to arrest enforced by the statute and criminal sections.

RECOMMENDATION 11 (p46)

The exceptional circumstances in which suspects will be named or identified before charge should be clearly defined and included in MPS policy documents. In most cases qualifying for removal of anonymity there will be sufficient evidence to justify a charge.

RECOMMENDATION 12 (p49)

Every effort should be made to minimise leaks of information by examining the current systems and increasing sanctions.

RECOMMENDATION 13 (p53)

In non-recent cases particular consideration should be given to the necessity to arrest or re-arrest in accord with Code G and the guidance therein.

RECOMMENDATION 14 (P56)

A protocol for keeping suspects, who are in custody, informed of the progress of the investigation should be published

RECOMMENDATION 15 (p56)

At the commencement of an investigation a time limit should be fixed by a supervising officer and communicated to a suspect. Such time limit can be extended in appropriate circumstances.

RECOMMENDATION 16 (p56)

Consideration should be given, at the highest level, to the question of whether suspects should be informed of every allegation against them when one or more of those allegations has not been pursued. On balance, I agree with the present arrangements having regard to the duty to disclose in the event of a trial resulting.

RECOMMENDATION 17 (p61)

When a decision is made to take no further action on any complaint, but the investigation continues on others, the suspect, or his solicitor, must be informed at the earliest opportunity of any decision to discontinue in relation to any allegation communicated to them.

RECOMMENDATION 18 (p61)

At the conclusion of an investigation, when no further action is to be taken against a suspect, he should be supplied with a similar written document to that provided to the complainant coupled with an explanation of the circumstances in which an investigation may be

reopened.

RECOMMENDATION 19 (p61)

Before information is released to the media that no further action is to be taken against a suspect, police must ensure that the suspect has received the information.

RECOMMENDATION 20 (p62)

When announcing publicly that no further action will be taken, rather than stating that there was an insufficiency of evidence, an alternative, and arguably preferable reason, is that 'the case failed to meet the evidential test'

RECOMMENDATION 21 (P62)

When announcing publically that no further action will be taken, no details of the allegations not already published should be disclosed.

RECOMMENDATION 22 (p62)

In exceptional cases, and very rarely, consideration should be given to issuing a reasoned statement explaining why no further action has been taken.

RECOMMENDATION 23 (p64)

Consideration should be given at NPCC level to both of these concerns, it may be that some form of statutory control is needed to prevent investigative journalists intruding on investigations in circumstances such as these...(blacked out) ...to an endeavour to encourage witnesses to come forward and to given evidence in high profile cases some statutory control may be necessary to prevent 'door stepping' of witnesses.

RECOMMENDATION 24 (p65)

Senior Detectives should be reminded, or be made aware, of the full range of reviews that are available from the SCRG and should be encouraged to make use of them.

RECOMMENDATION 25 (p67)

In exceptional cases where suspects have been falsely accused of crime, they, and their families, should be treated the same as 'victims of crime' invariably are and should be offered support and liaison compatible with the gravity of the allegation made.

3. If suggesting a new project:-

- (a) Please provide us with information about the issues with the law that you have identified:

Very rarely are investigations carried out without bias therefore not being dealt with in judicial manner – hence the need for all the recommendations above – the added proviso is that it

be the process for all persons and not just the high profile persons.

(b) Please provide us with information about the impact this is having in practice:

1. Allows false accusers to be treated as victims from the start, and creating a bias in all areas.
2. people arrested in public without thought to the family and wider public who may then harass the family
3. On the assumption of guilt many sex cases go to court and given that the full facts are not highlighted, that 'the accuser' cannot be questioned on past history or many areas, they can use video link whilst the accused faces the judge and jury who need frontal access to aid their decision on who is telling the truth - this is a one sided trial which often means prison for the falsely accused and can be due to wrong initial assumptions by the jury – steeped in media hype. This is not British justice

(c) Please provide us with information about the potential benefits of law reform:

False accusers identified at an early stage, therefore justice is served, plus the identification of the false accusers to stand trial and get the same sentence as the accused person would have received for the crime. This leads to less accusations - Less people placed in prison and the break up of families and less mental health of families, and the accused.

### **General Comments**

The falsely accused of sex allegations once accused have an extraordinary harsh time of going through the justice system. We have many prisoners still maintaining innocence in prison which is no mean feat. Even if a case is dropped the DBS is marked so many have lost jobs, cannot work in their field of expertise and can lose families as social services will not allow them back home with children under 18 and vulnerable adults in the house. So punishing partners and children alike for the rest of their careers. It also affects their right to travel abroad. Whilst new immigrants are not DBS checked and can work in places the falsely accused have been denied.

FASO's helpline deal with this issues on a daily basis and have done so for the past 15 years. There is also a need to stop payments from the Criminal Injuries Compensation Authorities and replace it with health checks and support.

Thank you for taking the time to respond to this consultation paper. Your suggestions and comments are appreciated and will be taken into consideration when preparing our Tenth Programme of Law Reform.