| Police Scotland logo | Freedom of Information Response Our reference: FOI 23-1081  Responded to: 2 August 2023 |
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Your request for information is replicated below, together with our response.

Please accept our apologies for the delay in responding.

We have received an unprecedented volume of requests on the subject of police officer conduct and criminality and that has, unfortunately, impacted on our ability to meet the statutory timescales in some cases.

You may find the following information of interest when interpreting the response to your questions.

The formal disciplinary process for Police Officers is governed by [the Police Service of Scotland (Conduct) Regulations 2014](https://www.legislation.gov.uk/ssi/2014/68/contents/made).

The associated [Scottish Government Guidance Document](https://www.gov.scot/binaries/content/documents/govscot/publications/factsheet/2018/04/conduct-and-performance-procedures-police-guidance/documents/police-guidance-conduct-procedures/police-guidance-conduct-procedures/govscot%3Adocument/Police%2BService%2Bof%2BScotland%2B%2528conduct%2529%2Bregulations%2B2014.pdf) provides further information on the Conduct process and you should note that cases are categorised in line with our [Standards of Professional Behaviour](https://www.scotland.police.uk/about-us/who-we-are/our-standards-of-professional-behaviour/).

The Police Scotland [Complaints About the Police Standard Operating Procedure (SOP)](https://www.scotland.police.uk/spa-media/fifhh5vo/complaints-about-the-police-sop.pdf) outlines how we deal with complaints. Complaints are recorded in accordance with the categories listed at appendices G and H of that document.

You may also find the [Disciplinary SOP](https://www.scotland.police.uk/spa-media/kqeo5ogi/disciplinary-sop.docx) helpful in relation to explaining the disciplinary process relating to Police Staff.

Please note that the order of your questions has been amended for ease of response.

## Since the inception of Police Scotland how many Police officers have been convicted of a S38. Of that number how many have retained their employment and how many were dismissed?

## Since the inception of Police Scotland how many Police officers have been convicted of a S39. Of that number how many have retained their employment and how many were dismissed?

You clarified this as any on or off duty allegation of a crime in relation to sections 38 (threatening or abusive behaviour) or 39 (stalking) of the Criminal Justice and Licensing (Scotland) Act 2010 Act, herein referred to as CJ&L(S) Act 2010.

You further clarified that you were happy to receive data for the period April 2014 to date, acknowledging that the Police Scotland Professional Standards Database commenced on that date.

Please note, as detailed in the [CAP SOP](https://www.scotland.police.uk/spa-media/fifhh5vo/complaints-about-the-police-sop.pdf), all on duty allegations where there is a reasonable inference of criminality are reported to the Crown Office and Procurator Fiscal Service (COPFS) for independent assessment and to enable consideration of criminal proceedings to take place.

It should be noted that the Conduct Regulations apply only to serving Police officers, therefore, if an officer retires or resigns from service, Conduct proceedings immediately cease.

Where a serving officer has been convicted of contravention of section 38 of the CJ&L(S) Act 2010, the officer will be subject of the Conduct process which includes an assessment and an enquiry in terms of the Police Service of Scotland (Conduct) Regulations 2014 and assessed against the 10 Standards of Professional Behaviour.

The final determination of this will be proportionate to the specific circumstances that led to the conviction.

If the matter results in misconduct proceedings the circumstances are heard by an independent chair who decides on the outcome based on all the evidence available.

It is standard process that legal proceedings take precedence, therefore Conduct cases are routinely paused pending the outcome of legal proceedings.

As a result, the number of officers dismissed in relation to convictions for the above offences may be subject to change due to ongoing Conduct cases as at 14/07/2023.

For ease of reference, our response to both questions have been combined below, providing the relevant breakdown as requested.

Although conviction data is not routinely recorded on the Professional Standards Database, figures have been provided by extracting data within the following criteria and manually checking whether the allegations could have resulted in a charge for sections 38 or 39 of the CJ&L(S) Act 2010:

* Complaint cases received between 01/04/2014 and 25/05/2023 involving allegations categorised as ‘Other’, ‘Oppressive Conduct/Harassment’ or ‘Breach of peace’ which were sent to the Procurator Fiscal.
* Conduct cases received between 01/04/2014 and 25/05/2023 involving allegations categorised as ‘Other’ or ‘Breach of peace’ which were sent to the Procurator Fiscal.

Each subject officer linked to the allegations above was thereafter manually checked against the Criminal History System (CHS) to provide the following figures.

Please note that the following figures relate to officers found guilty at Court and the figures include both on and off duty offences.

A total of 29 Police officers were convicted in relation an offence under section 38 of the CJ&L(S) Act 2010. Of those, 20 officers are no longer in service and 9 remain in service, as at 14/07/2023.

One officer no longer in service was dismissed following a Misconduct Hearing and the remaining officers retired or resigned either prior to, or before the conclusion of, the misconduct process. Of the 9 remaining in service, 2 misconduct cases remain ongoing and the others have concluded with a determination in each case.

A total of 9 Police officers were convicted in relation an offence under section 39 of the CJ&L(S) Act 2010. Of those, 8 officers are no longer in service and 1 officer remains subject to an ongoing misconduct case, as at 14/07/2023.

The 8 officers no longer in service retired or resigned either prior to, or before the conclusion of, the misconduct process, therefore no formal dismissals took place (as they did not progress through the misconduct process).

It should be noted that an individual officer may have been convicted of both a section 38 and section 39 offence. Therefore, an individual officer may appear in both sets of figures provided above.

## Since the inception of Police Scotland how many members of police staff have been convicted of a S38. Of that number how many have retained their employment and how many were dismissed?

You clarified this as any on or off duty allegation of a crime in relation to section 38 of the CJ&L(S) Act 2010 - threatening or abusive behaviour.   
Since 1 April, 2014, a total of 3 members of police staff have been convicted - 1 was dismissed, 1 is pending a disciplinary hearing and 1 received a Final Warning following the disciplinary process.

## Since the inception of Police Scotland how many members of Police staff have been convicted of a [s39]. Of that number how many have retained their employment and how many were dismissed?

You clarified this as any on or off duty allegation of a crime in relation to section 39 of the CJ&L(S) Act 2010 - stalking.   
Since 1 April 2014, a total of 2 members of police staff have been convicted - 1 was dismissed and 1 resigned prior to a disciplinary hearing.

If you require any further assistance please contact us quoting the reference above.

You can request a review of this response within the next 40 working days by [email](mailto:foi@scotland.police.uk) or by letter (Information Management - FOI, Police Scotland, Clyde Gateway, 2 French Street, Dalmarnock, G40 4EH). Requests must include the reason for your dissatisfaction.

If you remain dissatisfied following our review response, you can appeal to the Office of the Scottish Information Commissioner (OSIC) within 6 months - [online](http://www.itspublicknowledge.info/Appeal), by [email](mailto:enquiries@itspublicknowledge.info) or by letter (OSIC, Kinburn Castle, Doubledykes Road, St Andrews, KY16 9DS).

Following an OSIC appeal, you can appeal to the Court of Session on a point of law only.

This response will be added to our [Disclosure Log](http://www.scotland.police.uk/access-to-information/freedom-of-information/disclosure-log) in seven days' time.

Every effort has been taken to ensure our response is as accessible as possible. If you require this response to be provided in an alternative format, please let us know.