



Mr Craig Naylor
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Audrey Nicoll MSP
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By email: justice.committee@parliament.scot
Cc: Angela Constance, Cabinet Secretary for Justice and Home Affairs;
Jo Farrell, Chief Constable, Police Scotland;
Michelle Macleod, Commissioner, PIRC;
Martyn Evans, Chair, Scottish Police Authority;
John Logue, Crown Agent, Crown Office and Procurator Fiscal Service.

9th May 2024

Dear Convenor

Police (Ethics, Conduct and Scrutiny) (Scotland) Bill Committee Scrutiny

I write in relation to the ongoing scrutiny being provided by your committee to the above Bill. Unfortunately, the only date (15 May 2024) offered to His Majesty's Inspectorate of Constabulary to provide evidence to your committee was provided at short notice, at a time of annual leave, significant other commitments, and ongoing inspection work. We would be very grateful to the committee if it could find to allow us to provide evidence and to be questioned by the members of the committee.

However, I wanted to make some points in relation to evidence provided by other witnesses to your committee. I am firmly of the view that vetting, complaint handling and conduct matters are a significant challenge to policing in Scotland and more widely across the United Kingdom in relation to assuring the public that those in the service are suitable to the role that they undertake. Police Scotland has worked hard to provide assurance and demonstrate that they undertake appropriate vetting, investigations and matters to address any misconduct.

Your committee has heard from those who have been subject to the process and their stories were harrowing to hear and undoubtedly caused stress and affected the wellbeing of the individuals. Each case on its merits requires to be understood but must also stand alongside the large number of other cases that are reported, assessed, investigated, and brought effectively to an outcome. Police officers and their police staff colleagues expect significant scrutiny of their actions and spend considerable energy on making good decisions that help keep people safe. The pertinent issues that we have understood from a number of inspections are as follows:



- It takes far too long for the Criminal Justice organisations to investigate criminal complaints or conduct matters leaving those who report them and those subject to investigation with unresolved matters for far too long.
- There is a general lack of pace applied to the investigation but probably more importantly the decision making around these cases. For example, an officer who is convicted at court can be served with pre-prepared misconduct immediately on conclusion of court proceedings. This allows for the process to be conducted expeditiously and certainly within a 35-day time limit as described to the committee by David Kennedy on the 8 May 2024.
- The fear of being investigated for simply making a mistake when undertaking your core role is very prevalent and is often described to HMICS as “error terror”. It is palpable that officers dealing with high-risk situations such as missing persons or mental health crises often overprotect the individual as they do not see the safety required being provided by partner agencies and fear that if an incident occurs after they have dealt with the individual that they will be the one subject to significant scrutiny and potentially misconduct proceedings.
- Lack of communication between the three parties involved (Police Scotland, PIRC and COPFS) leaves those who complain dissatisfied with the service they receive and often dissatisfied with the outcome. Greater levels of communication need to be developed based firmly on the needs of the victim and those under investigation.
- To provide the public with assurance that the process is robust, fair and delivers justice requires an opening up of the system to scrutiny and transparency. This can be brought through greater communication but probably through the publication of outcomes of investigations. To deliver this requires an element of bravery from the organisations involved but also an ambition to show the service in its true light as staffed by a highly skilled, motivated, and capable majority who do not want to work with those who commit criminal acts or otherwise misconduct themselves.

In wider terms you are aware that we undertook an inspection of the Police Scotland vetting system. Without rehearsing the recommendations and areas for improvement I feel it is imperative to advise the committee that we have sought and continue to seek answers around the provision of new powers for the Chief Constable to terminate the employment of officers or staff who are unable to sustain at least recruitment vetting standards. This capability is being considered by Scottish Government lawyers and it is our understanding that there may be consideration of additions to this bill to achieve this outcome. HMICS would welcome favourable consideration of enabling the Chief Constable to dismiss officers or staff who fail and do not remedy the vetting requirements through a robust but fair process. Failure to deliver this will embed officers and staff who cannot be deployed, cannot be trusted and who pose a risk to the public. We are aware that steps are being taken in the Home Office to provide such capability to chief constables in England and Wales.

The committee examined witnesses on their understanding of the financial implications of the new legislation. While I do not accept the premise that Scottish Government deliberately misled the committee or others with the financial memorandum, I am of the view that there has been insufficient consideration of the impact of the proposals and potential legislative requirements. In considering this I would draw attention to a number of areas that will impact upon public finance:

- The requirement to continue to progress conduct enquiries once individuals have resigned or retired is one that is strongly supported by HMICS. However, many of the current gross



misconduct processes terminate due to the individual leaving their role. To protect other policing organisations from officers moving to different forces, it is clear that continuing with gross misconduct processes to conclusion is necessary and thereafter for the individual to be placed on the barred list. This will significantly increase the number of cases being taken to hearings requiring the use of officers' time to present, hear and defend those individuals.

- The creation and administration of a barred and advisory list is a new endeavour in Scotland and will have financial implications to ensure that the data is kept securely, available to those who have a right to see it and to be subject to Data Protection safeguards.
- While I have no role in the oversight of PIRC or COPFS I remain concerned that there has been little estimation of the additional work required, the costs required of an independent board and the need for additional legal representation for the presentation of cases, police appeals tribunals or costs associated with chief officer hearings. As such I would suggest that there needs to be some revision to this memorandum to fully scope the additional costs now that there is a better understanding of the contents of the bill for all parties concerned.

In closing, we support elements of the bill and the policy ambitions behind it. The work done to address many of the recommendations made by Lady Angiolini have shown a drive and collaborative effort to ensure the best service possible in Scotland. Further work to enhance this bill is needed and I stand ready to assist the committee if a time slot becomes available.

Yours sincerely



Craig Naylor
HM Chief Inspector of Constabulary

