



**OFFICIAL REPORT**  
AITHISG OIFIGEIL

# Criminal Justice Committee

**Thursday 23 May 2024**

**Session 6**



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**CRIMINAL JUSTICE COMMITTEE**

**21<sup>st</sup> Meeting 2024, Session 6**

**CONVENER**

\*Audrey Nicoll (Aberdeen South and North Kincardine) (SNP)

**DEPUTY CONVENER**

\*Russell Findlay (West Scotland) (Con)

**COMMITTEE MEMBERS**

\*Katy Clark (West Scotland) (Lab)

\*Sharon Dowey (South Scotland) (Con)

\*Fulton MacGregor (Coatbridge and Chryston) (SNP)

\*Rona Mackay (Strathkelvin and Bearsden) (SNP)

\*Pauline McNeill (Glasgow) (Lab)

\*attended

**THE FOLLOWING ALSO PARTICIPATED:**

Craig Naylor (HM Inspectorate of Constabulary in Scotland)

**CLERK TO THE COMMITTEE**

Stephen Imrie

**LOCATION**

The Sir Alexander Fleming Room (CR3)



# Scottish Parliament

## Criminal Justice Committee

Thursday 23 May 2024

*[The Convener opened the meeting at 10:00]*

### Police (Ethics, Conduct and Scrutiny) (Scotland) Bill: Stage 1

**The Convener (Audrey Nicoll):** Good morning, and welcome to the 21st meeting of the Criminal Justice Committee in 2024. We have no apologies. Fulton MacGregor is joining us online.

Our business today is to continue our stage 1 evidence taking on the Police (Ethics, Conduct and Scrutiny) (Scotland) Bill. I welcome Craig Naylor, His Majesty's chief inspector of constabulary in Scotland, and thank him for agreeing to give evidence to the committee and for his written submission. I refer members to papers 1 and 2. I intend to allow up to 60 minutes for this evidence session.

I will open with a general question about culture. Lady Elish Angiolini's reports into the handling processes for complaints about the police were published in 2019 and 2020 and contain a number of recommendations to improve the culture in Police Scotland. You also reported on the findings of your inspection of the organisational culture in Police Scotland in December last year and I was interested to note a couple of your general findings, the first of which was:

"We found a consensus that the service is on a journey of change and improvement, heading in a more positive direction than previously, and that culture is dramatically different from the early days of Police Scotland."

I also noted a finding about leadership behaviour. You wrote:

"Police Scotland is planning and undertaking a number of initiatives to embed appropriate leadership behaviours, attitudes and values at all levels in the service."

I am interested to hear your opening thoughts about the impact of the implementation of the recommendations that have been made, specifically regarding improvements that have already been made and leadership. Does the extensive work that you have done suggest that Police Scotland has provided the required culture change?

**Craig Naylor (HM Inspectorate of Constabulary in Scotland):** Thank you for the opportunity to speak today.

Our inspection of the organisational culture is a snapshot in time. The majority of inspection work

started a year ago and we described, as you said, a journey of change over the past 11 years since the creation of the new service. To be honest, there was a real gap in the provision of leadership training and cultural change during the first five or six years and it was a very different organisation to the one that we see today.

I see that as positive. Since Iain Livingstone took over as chief constable, there has been a real drive for leadership training and an understanding of how people need to be dealt with. I know that you have heard evidence from a number of people about the policing together programme, which is a massive piece of work and a huge undertaking. It is designed to look at a range of things, from equality, diversity and inclusion to conduct, how people lead and how people should feel valued within the organisation.

That will take time to deliver, because it is starting from such a low base. For example, someone who was promoted to sergeant on day 1 of Police Scotland might now be a superintendent but probably had six or seven years with no leadership training, when they had to learn from their peers and supervisors. That is often not the best way to learn.

We made 11 recommendations back in December. Some of those are about work that was already in progress by Police Scotland at the time; some are things that we said should be accelerated or that the police should do more of; some are bolstered by the wellbeing inspection that we published this year and by the vetting inspection that we have also recently published.

We see those almost as a suite of inspections around not just how Police Scotland deals with its staff and officers but how dealing with the staff and officers impacts on the behaviours of those people when they are dealing with the public and delivering a service, so that they can improve the service that is delivered to the public of Scotland.

It is a work in progress. We would like to see some improvements in the pace, particularly on dealing with the recommendations about organisational culture. We work very closely with Police Scotland and we know that it is doing a lot, but we would like to see a bit more of a grip on that and a bit more of a push towards definitive action plans for what it is going to do and what the measures of success or the outcomes would look like.

**The Convener:** Thanks for that helpful scene setting. Are you confident that the code of ethics and the duty of candour, to take just two of the bill's provisions, will support some of the delivery of the work that you have comprehensively set out?

**Craig Naylor:** Yes, I am very encouraged by the bill and how it addresses the duty of candour in particular. With regard to the code of ethics, it is good to have what is expected of a police officer and of a member of police staff placed on a statutory footing so that there is no dubiety about that. The issue for me is how that is used in the conduct process at some point in the future. Whether that becomes regulation or whether it becomes practice within Police Scotland, I am not sure, but we will look to see how that progresses.

On the duty of candour, I am very aware of the case that really brought that into sharp focus. There is a real understanding across policing in Scotland that the majority of officers deliver a very high standard of policing. I have worked in both Scotland and England, and I am very proud that Police Scotland delivers to a very high standard. There are very few occasions when police officers or police staff do not provide a full written statement about the matters that they have dealt with.

However, there are occasions when there is confusion in a criminal matter as to the status of the individual, and I think that the bill covers that well in that, where it is clear that an individual is a witness in a criminal matter, there should be a duty of candour that means that they should provide a statement as soon as is reasonably practical to the Police Investigation and Review Commissioner, or whoever is doing the investigation. Therefore, to be really clear, we see that as a very strong piece of the proposed legislation.

However, we also see the need to have protections of people who are under criminal investigation as either suspects or accused persons—whether they are police officers, police staff or members of the public—and that standard should not be dropped for any person, no matter the role that they have. The legislation covers that well.

**The Convener:** In your thematic inspection of organisational culture, you stated:

“current Police Scotland reporting to the SPA Complaints and Conduct Committee provides limited assurance on the standards of integrity, ethics and values, with a primary focus on complaints and conduct.”

I am interested in your thoughts on what needs to be done to improve the oversight arrangements and practice in this area by the Scottish Police Authority.

**Craig Naylor:** We are due to publish a report on the SPA in the coming weeks, and that will describe a journey of improvement since 2019, which was the last time that we inspected it. Where we regularly see areas for improvement around scrutiny is with regard to that deep dive

into things that cross into other committee areas. It is a similar situation for this committee: you will be very focused on criminal justice but there will be matters in relation to mental health that come into your purview as well.

We are saying that there is often an acceptance that, when someone in a uniform with a lot of braid on their shoulders says something, it is believed—and that should be the case, but sometimes you need to ask that second question to get the detail of what they are telling you or what it means. Very often, when something is explained, it is not clear. Part of that comes down to the difficulties that Police Scotland has had with its Centurion system and the data that it can produce from that, particularly on diversity, and part of it is that people perceive complaints and conduct as a sort of secret area of business.

There should be safeguards and protections but, too often, people are not prepared to talk about the difficult questions. Bringing transparency and openness into public debate, SPA committees and other places will help to reassure the public that, when a complaint is made and an officer is found to have misconducted themselves, there are robust processes in place—and there are—and that those processes deliver outcomes most of the time, or a significant proportion of the time.

It is the rare occasions, on which you have heard evidence in the committee, that cause me concern. You may link those to the occasional lack of transparency. That is where the concern lies, for me.

**The Convener:** You have spoken about leadership and the work that is going on to develop that further. Do you think that leadership is an essential part of the overall progress being made, so that things are focused less on complaints and conduct and more on promoting integrity and a strong sense of values and ethics?

**Craig Naylor:** Absolutely. Police Scotland has said that it wants to be a learning organisation and that it wants to learn from the issues that are raised on quality of service. Many of the previous forces were very good at that, and they had good processes and practices in place. Much of that was diminished in the early years of Police Scotland, but it is now being reintroduced. The evidence that you heard yesterday from Deputy Chief Constable Speirs and Chief Superintendent Harrison discussed that and referred to how they tried to give corrective advice at the appropriate stage and to get local management to deal with things more effectively. It is a complex job, and the issues that are complained about are often not about people doing bad things; they are about people not being satisfied with the service that they have got, perhaps because they did not understand it, because it was not well explained to

them or because they did not understand what the outcome might be.

In the vast majority of cases, learning from those things is the place that Police Scotland needs to get to—and it is moving in that direction very well.

**The Convener:** Thank you for that. I will open up the questioning to other members.

**Russell Findlay (West Scotland) (Con):** Sections 2 and 3 of the bill relate to the code of ethics and the duty of candour. You are supportive of those for both police officers and staff. Does that include all staff?

**Craig Naylor:** It is an interesting debate. I have watched the committee's evidence sessions, and they have caused me to think. I see it as a privilege to have been a police officer, and I note that many of my friends and colleagues who were police staff also saw it as a privilege to work for policing. No matter where people work in the organisation, they have a significant responsibility to provide a service to the communities of Scotland. My personal view is that that should apply to everyone: every member of staff and police officer in Scotland should have that duty of candour, with the appropriate protections around criminal matters.

**Russell Findlay:** One of the reasons I ask is that one of the unions that represents non-police-officer staff says that the duty would potentially come with pay demands. Would that be a factor in reconsidering it?

**Craig Naylor:** It is a very interesting thought process that, to have pride and candour in their job, people would want more money. I would have a different view to Mr Malcolm on that. My view is that the vast majority of people who work for Police Scotland come to work every day to do a really good job. Mostly, they do that. To ask for more money to have a duty of candour rubs the wrong way for me, as a public servant.

**Russell Findlay:** Section 6 covers the ability to continue gross misconduct proceedings after someone has left the service. You are supportive of that. However, there is significant opposition to that from the representative bodies, which might be expected. Having presumably been aware of their evidence, can you address that and explain why, on balance, you think that that is the right thing?

**Craig Naylor:** Absolutely. It is only for gross misconduct; it is not for more minor matters that could be addressed by corrective advice or management advice.

I have worked in the professional standards area in Scotland and as a deputy chief constable in England, where there is the ability to continue

gross misconduct processes after people have left. The benefit is the ability to address the matters that have been raised, to understand what the gross misconduct is and to come to what would be a sanction, if the matter is proven. There is then the opportunity to put the individual on the barred list to prevent them from being a police officer or member of police staff in future, in any other organisation.

To fail to follow through creates risk. It provides people such as Wayne Couzens with the ability to move between different organisations when the heat becomes too much in their current organisation. That loophole needs to be sewn up very firmly.

10:15

I am firmly of the view that that will have a cost. I do not think that the cost can be estimated just now, although I think that Helen Harrison said yesterday that, last year, 19 cases went to gross misconduct proceedings and, in 16 of those cases, the person resigned before completion. In my view, those 16 cases would have to go to the gross misconduct panel to get an outcome regarding the barred list.

**Russell Findlay:** That makes sense.

The committee has taken evidence on the suicide of police officers, which is a very sensitive subject. The criminal allegations against the police division was able to tell us, when it gave evidence, that five officers took their own lives, four of whom were subject to non-criminal misconduct proceedings; one of them was accused of a criminal matter. The family and friends of some of those who have died have expressed concerns about not only the impact of the proceedings on those people as a potential contributory factor in what happened to them, but the subsequent lack of scrutiny of the circumstances of those cases.

They are absolutely tragic and suicide is complex, but are you satisfied that the bill will, in some way, address that apparent blind spot?

**Craig Naylor:** I am not sure what provision in the bill will address that. Police Scotland has been very alive to the matter—I do not think that it is perfect on that by any means, but what it has done in the past two or three years to support officers who are under investigation has made a step change in that space.

Those who take their own lives do so for many reasons. I was not aware that the number was five, but the stories of which I am aware are absolutely tragic, and I have been involved with these issues at previous stages of my career, too. Families are left bereft of someone whom they did not expect not to be there.

There is something to say about the care and welfare of officers. In the past year, we have spoken significantly about the wellbeing of officers and staff. There needs to be a better understanding of the needs of the individual. We cannot keep talking about 16,500 police officers—we need to talk about individuals, because that is where the impact lies.

**Russell Findlay:** Another issue that the bill seeks to address is protection for police whistleblowers. We have heard about horrific cases, and there have been cases reported in the public domain, of the service losing good officers and good officers losing their careers. That is a huge financial cost to the service, and it impacts on people's health and wellbeing.

Again, taking the bill in the round, is there enough in there that would protect those officers whose only wrongdoing appears to have been trying to make a valid complaint and blow the whistle from having their lives destroyed as a result? Does the bill partly fix that, or is it more about culture?

**Craig Naylor:** The bill partly fixes it, but I think that it could do more. In England and Wales, the named organisations for whistleblowing are the Independent Office for Police Conduct and the police and crime commissioners for each force area, or the mayors for the bigger authorities.

If I recall correctly, the bill proposes that the PIRC will become a designated body, which I think is correct. However, in my view, in order to provide parity with England and Wales, the Scottish Police Authority should also become such a body. To name the SPA in the bill would, to my mind, be sensible.

**Russell Findlay:** Sorry to interrupt—so that would be to give an officer more options.

**Craig Naylor:** Yes. In England and Wales, if an officer wishes to whistleblow, they can go to the IOPC, which is the English equivalent of the PIRC, or to their police and crime commissioner, which is the governance body for the local force.

It is not currently in the bill that the SPA, as an oversight body, would have that role. My view is that we need to give people more options. For any organisation, people will have views on how effective it is, and it is better to give more rather than fewer options.

**Russell Findlay:** So that might be a useful amendment, potentially.

**Craig Naylor:** Potentially, yes.

**Russell Findlay:** Section 10 of the bill allows police officers acting as members of the public to go to the PIRC, which is, again, something that you support.

**Craig Naylor:** Yes.

**Russell Findlay:** But we are talking about police officers who have cause to blow the whistle in relation to what is going on in the organisation.

**Craig Naylor:** Yes.

**Russell Findlay:** I have a final quick question if that is okay. In your supplementary submission to the committee, you support a move for the chief constable to be empowered to dismiss officers without a long drawn-out process. You also suggest that the Scottish Government is giving that consideration. Are you in communication with it about that?

**Craig Naylor:** Yes.

**Russell Findlay:** Is there any likely movement on the bill in that respect?

**Craig Naylor:** I suspect that you might have better intelligence on that than I do. Is it worth me explaining the purpose and my reasonings and rationale behind that? We are not talking about a blank canvas provision. There needs to be some process that allows the chief constable to dismiss people who cannot sustain their vetting. There needs to be some form of provision that allows the chief constable to have a process in place. If someone cannot sustain the very basic level of recruitment vetting and, after being given advice, support and help, they either refuse or are unable to do so, the chief constable should not have to bear the risk of that individual staying in the organisation.

We raised that in the vetting report that we published last year. We have raised it with the bill team for well over a year, since before the stage 1 process. We see it as absolutely fundamental to the safety and security of the organisation. We are talking about a very small number of issues. I know that Alan Speirs mentioned yesterday the data wash and a small number of vetting issues to be dealt with. Currently, the chief constable has no route to dismiss or get rid of someone who cannot sustain their vetting.

**Russell Findlay:** I should perhaps know this, or perhaps it was not asked of the police witnesses yesterday, but do the police support that?

**Craig Naylor:** As far as I am aware, yes.

**Russell Findlay:** So, watch this space.

**Craig Naylor:** Watch this space. We have had several meetings with the Scottish Government legal department, the bill team and others to explain our position and our understanding of what is happening in relation to the Home Office, and they have similar considerations on the issue. We are of the very strong view that this is about police officers and police staff, and about giving the chief



constable, after a due process, the ability to dismiss someone.

**Sharon Dowey (South Scotland) (Con):** Good morning. I turn to the response in your submission on section 15 of the bill—

“Review of, and recommendations about, practices and policies of the police”—

about proposals for the PIRC to review and make recommendations on the practices and policies of Police Scotland or the SPA in relation to a specific complaint or more generally. His Majesty’s Inspectorate of Constabulary in Scotland does not support that, but the PIRC seems to support it. Could you expand on that a wee bit? Do you have a good working relationship with the PIRC, and why do you not support that element of the bill?

**Craig Naylor:** We have a very good working relationship not just with the PIRC but with other inspectorate bodies in the justice space across Scotland. We meet regularly—in fact, we are meeting next week—to discuss practice and issues that are going on, and we often work together. Last year, we did a joint inspection with the prisons and prosecution inspectorates on diversion from prosecution. We have a very strong relationship that is built on personalities. We are all trying to do things to improve practice across Scotland to get better outcomes.

The issue we have with that section in the bill is that we are a small organisation. We are designed to inspect, scrutinise and compare against good practice what is going on within the Scottish Police Authority, SPA forensic services and Police Scotland. The PIRC is not designed in that way. It is designed to investigate complaints and to conduct complaints handling reviews.

Our view is that we, as the experts in the scrutiny of policies, procedures and practices, should be the ones to take forward an issue that we feel is about policy, process and how things are done, rather than about a complaint or a complaints handling review. In reality, this is an overlap of what is already in place in our legislation, which is the Police and Fire Reform (Scotland) Act 2012. If the personalities change and there is not such a good relationship, we could end up with a conflict between the two organisations that we are inspecting and not have clarity on whose responsibility it is to improve policing in Scotland. Does that make sense?

**Sharon Dowey:** It does. I take on board your point about not wanting an overlap. I think that, from the PIRC’s perspective, it was concerned that you did not have enough resources to complete the tasks that it was asking you to do. Could you give examples of where the PIRC has identified an issue with a practice or policy and passed it to you for investigation, and what the outcome was?

**Craig Naylor:** In the two years that I have been in post, the PIRC has not passed us anything to look at.

**Sharon Dowey:** In two years, has the PIRC ever given you any policies or procedures to investigate?

**Craig Naylor:** No. We are about to go into the consultation process for our next scrutiny plan, which is a three-year plan that will be published next April. We will consult the PIRC, the Crown Office and others about where they see a need for us to inspect.

A lot of the issues that we have inspected—including domestic violence, missing persons and mental health—come from understanding what they are saying about those issues. We are currently inspecting the handling of missing persons cases. In recent years, the PIRC has produced many reports about practice and policy on missing persons. Following consultation, we have identified that issue, but the PIRC has not passed us a task that says they want us to go and look at the issue.

The question I would also ask is whether the PIRC has that capability or has the resources to conduct reviews into policy and procedures when it is busier than ever.

**Sharon Dowey:** There might be a question about why it would think that you do not have enough resources when it has never asked you to look at any processes, but that is not a question for you.

Is your memorandum of understanding up to date? I ask because the date on the front of the most recent one that I can find is October 2017 and it was signed on the back on 11 January 2019, which is five years ago, but it is described as “biennial”, which means every two years. Does that also need to be updated?

**Craig Naylor:** I will look at that and get back to you, if that is okay.

**Sharon Dowey:** No problem.

Your letter to the committee states:

“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”

and that

“There is a general lack of pace applied to the investigation but probably more importantly the decision making around these cases.”

Does the bill do enough to rectify that?

**Craig Naylor:** The bill does not address the difficulty that we have, which is that when a criminal matter that is subject to a criminal

investigation is reported to CAAPD and the Crown Office and Procurator Fiscal Service, nothing else happens regarding conduct matters during that period.

When I was head of professional standards in Lothian and Borders Police, we had many conversations with the predecessor to CAAPD about trying to find ways to parallel track misconduct and criminal matters so that we could take action far earlier. We never resolved that and I do not think that the bill resolves it.

**Sharon Dowey:** We heard yesterday, and have heard in previous evidence, that secondary legislation is urgently needed to address some shortfalls. Do you think that that should be urgently looked at? Should it be written into the bill if it is to have any meaningful impact?

**Craig Naylor:** Some matters could be added to simplify the conduct regulations that are in place. I know that Alan Speirs spoke compellingly yesterday about his opinion that the regulations are no longer fit for purpose and I would not disagree with that.

There are things that could be done better. Having more straightforward timelines within legislation, including a fast-track process, will make a difference, but that still relies on having a Crown decision about whether there will be a prosecution, and then on the prosecution itself, so there are still blockages and delays. People do not want to wait three, four, five or six years for the outcome of a complaint that they have made.

**Sharon Dowey:** We heard that when a police officer is suspended for gross misconduct, you have to wait until the criminal case is concluded before you can dismiss them. Could that be addressed in the bill, or is that a bigger problem?

**Craig Naylor:** It is a bigger problem and is not one I am competent to answer on. That is a matter for the Lord Advocate and the Crown Office and Procurator Fiscal Service to consider.

**The Convener:** We move to questions from Rona Mackay and then Pauline McNeill.

**Rona Mackay (Strathkelvin and Bearsden) (SNP):** Good morning. Earlier you acknowledged that you had seen some of the distressing evidence that the committee heard from former police officers and from the public about the process that they had gone through. Does the bill do enough to address their concerns about delays, transparency and lack of communication, and to remove some of the complexity from the system?

10:30

You have said that it is quite a complex system. I do not know whether the bill will streamline it in any way. Do you think that it will?

**Craig Naylor:** I am not sure, to be honest. Elements of the bill, such as the greater focus on transparency, outcomes and communication, are positive, but I do not think that it will provide the speeding up that I would like to see.

**Rona Mackay:** Are you confident that communication, transparency and so on will be much better in future than they have been in the past few years?

**Craig Naylor:** The bill provides an opportunity for that to happen. The evidence given yesterday by DCC Speirs, which I saw, is that those aims will be taken forward. The police have already started publishing the outcomes of gross misconduct hearings. I am used to the system in England and Wales, where such hearings are held in public and the outcomes are published in the press.

**Rona Mackay:** Do you prefer that approach?

**Craig Naylor:** Absolutely. It is difficult and I know that the Scottish Police Federation has a very different view on it. My view is that this is about transparency and assurance for the communities that we serve that, when something goes wrong that meets the gross misconduct standard, action is not only taken but seen to be taken.

I will mention an interesting aspect. I thought that there would be huge queues of people waiting to get into my headquarters building to watch misconduct hearings. However, perhaps only two journalists—one from the Associated Press and one other—come to see them. The important point for me, however, is that the process is available to people: it is held in public and the outcome is then published in the local press.

**Rona Mackay:** Will the bill's proposals on ethics and the duty of candour really change the perceived culture, which the former and current chief constables have described as discriminatory, racist and misogynistic?

**Craig Naylor:** I see them as almost a thread within a bigger rope of on-going change, but a crucial thread. The duty of candour, and the expectation that officers meet the code of ethics every day of the week, must be made clear. They must be communicated regularly to police officers and staff across Scotland.

We have seen evidence of such high standards during exceptional times. For example, following the death of Her Majesty the Queen, the performance of Police Scotland—the ethics and the integrity that officers displayed—was

exceptional, and much different to what we saw elsewhere. For me, the question is how we can have everyone operating to such standards every day of the year. We cannot guarantee that 100 per cent, but we can encourage the high proportion of officers who do so just now by supporting whistleblowing and encouraging people to take action against behaviour that they see as being wrong. We should give them a code of ethics to rely upon and a duty of candour so that, when things are really difficult, they will know what they are entitled to do and what they are expected to do. To my mind, that will clarify many of the issues that officers have faced in recent years.

**Rona Mackay:** My final question in this area is probably a bit vague. Is there any key element that you think should be in the bill but is not? Are we missing anything?

**Craig Naylor:** One element is vetting, specifically the chief constable's ability to dismiss people who cannot sustain their vetting. We have talked about that consistently. One of the reasons why I was keen to speak to the committee today was to reinforce that point.

The other point is about continuing to pursue people for gross misconduct post their retirement or resignation. I am keen that that provision stays in the bill, because it would represent strong practice. However, we must then ensure that they go on to the vetting and barred lists.

**Pauline McNeill (Glasgow) (Lab):** Good morning. I want to explore the issue of pursuing police officers for gross misconduct within a period of 12 months after they have resigned.

In answer to one of my colleagues, you cited the case of Wayne Couzens. However, the issue with that case was that his previous conduct had not been picked up during the recruitment and vetting procedures, and that seems to be the major take-home message from such a case. That seems to indicate that having the 12-month period in that case would not have helped to resolve anything. I know that that was a very unusual and dreadful example but it is the one that you used.

**Craig Naylor:** Yes, absolutely. My understanding is that, when Wayne Couzens moved from the Civil Nuclear Constabulary to Kent Police, he was under investigation for indecent exposure and that criminal conduct was not pursued by his previous force. Had that investigation come up and been pursued, he would have been dismissed.

**Pauline McNeill:** It would have been pursued as a criminal matter.

**Craig Naylor:** Yes, it would have been pursued as a criminal matter, with a gross misconduct outcome. The fact that he managed to find a way

to avoid being fully investigated and held to account is a question for the police forces there. The policy issue for me is that, had he been held to account appropriately, he would not have gone on to the Metropolitan Police and we would not have seen the outcome that we saw at the end of the day. Something else might have happened.

The difficulty is that, if you do not feel that you have the teeth to pursue something, you do not pursue it. My view is that the police have an obligation to pursue criminal matters and, particularly in the case of a sexual crime, to get to an outcome that is as good as they can get for the victims, then to take action against individuals if they work for your organisation. It is a two-step process but the fact that there was a failure in that process should not disrupt what we are trying to do.

**Pauline McNeill:** You would agree that they should still make the distinction between criminal behaviour and gross misconduct, which might be something completely different.

**Craig Naylor:** Very often, criminal behaviour is gross misconduct. There is often no difference.

**Pauline McNeill:** But there is gross misconduct that is not criminal.

**Craig Naylor:** Yes, absolutely, but the fact that it is criminal does not mean that it is not gross misconduct.

**Pauline McNeill:** That is my point: there will be cases of gross misconduct that are not criminal and the intention is that there will be provision for former officers to be pursued for up to 12 months after leaving the police. An officer who is charged with gross misconduct might want to appeal the decision, and they have that right. I am interested in the timescales in relation to former officers and whether 12 months is fair, given that there would then be proceedings. I am not talking about criminal cases; I am talking about gross misconduct.

**Craig Naylor:** I am not particularly in favour of a 12-month limit. If, three years from now, something comes to light about someone who has grossly misconducted themselves in the workplace, is it fair that the victim who might have been too traumatised at the time to deal with some egregious behaviour does not get the opportunity to have it addressed because of an artificial time constraint? If something is reported and assessed as gross misconduct, it should be investigated and responded to proportionately. To my mind, there is no time limit on that, and that is different to what is proposed.

**Pauline McNeill:** What about fairness for the officer and their right to defend themselves?

**Craig Naylor:** Oh, absolutely.

**Pauline McNeill:** So you would have an open-ended time limit.

**Craig Naylor:** Having an open-ended time limit does not remove the person's opportunity to defend themselves.

**Pauline McNeill:** You do not think that there should be a time limit at all.

**Craig Naylor:** No.

**Pauline McNeill:** That is interesting.

**Craig Naylor:** Maybe I could draw a parallel with the inquiry into the post office that is going on just now. If there was a time limit on that, we would not have heard the evidence from Paula Vennells yesterday.

**Pauline McNeill:** But those are criminal cases.

**Craig Naylor:** Not yet. The allegations against Paula Vennells and others are not criminal allegations—it is a public inquiry. If there was a 12-month limit on gross misconduct, we would not have heard her evidence yesterday.

**Pauline McNeill:** Okay. I will ask you about the bits of the bill that you do not support. Is that because you think that it works better to have a joint role between the PIRC and HMICS?

**Craig Naylor:** Yes, absolutely.

**Pauline McNeill:** And you have the expertise.

**Craig Naylor:** We have the expertise. We worked very hard to get accreditation in the European Foundation for Quality Management, which is the business excellence model.

The PIRC is very good. As I said, we work very closely with Michelle Macleod and her team. We see them as exceptional in what they do. However, they have not developed capability in what we do. They have not had the need to develop that.

In reality, it is duplication. If the PIRC were to take that role on, it would need to grow and to have the resource to do it. If the PIRC gets this, it will have to increase. That increase will step into our territory, and we are better suited and better placed to deliver. If the bill is enacted as is, I would like to understand who will oversee both organisations and how they deliver those practices.

**The Convener:** There is a proposal in the bill about the PIRC calling in complaints in certain circumstances. In your submission, you are supportive of the PIRC having a statutory power to take over an investigation if that is deemed to be necessary. Will you outline your thinking behind that, including why you are supportive of it? We had strong evidence on that yesterday from the SPA.

**Craig Naylor:** We are talking about the very low number of cases that are significantly complex or significantly difficult to bring to an outcome, in relation to which greater transparency and greater external scrutiny would be of benefit to the outcome that is being delivered. I do not see the power being used terribly often, but it could be relied on by the SPA, the PIRC and Police Scotland to show transparency and improved outcomes for victims and people who make complaints. That, rather than anything else, is the primary driver.

**The Convener:** An issue that has been raised in evidence by some witnesses is the fact that quite a number of former police officers work in the PIRC. There are two views on that. One is that it brings experience and knowledge to the function of the PIRC. The other is that it perhaps involves a bit of a conflict. We have heard both sides of that argument. We know that former officers go on to lots of different roles. Do you have a particular view on that?

**Craig Naylor:** I have thought long and hard about it, and by no means do I have the perfect answer. I have worked under both the PIRC system and the IOPC system, and both have wrestled with the issue.

The IOPC has very much moved away from using retired officers to investigate, and I have had some real difficulties with the quality and standard of investigation and the presentation of evidence at court and in other places. To be honest, it is a troubled organisation. I will not go much further than that. We always had difficulties when I worked with it.

There are also difficulties with the PIRC. Information is coming out in public inquiries about deference being paid to senior officers during various investigations. I will not go into that, but there is an issue to do with conflicts of interest and declaring conflicts of interest, which you all do, and which we do as civil servants.

There is an issue about how the PIRC maintains a capable investigative process. It is very hard to get the investigative skill set without having come through the police or another investigative organisation such as the National Crime Agency. However, people who have worked together should be prevented from investigating one another. That is key. If I used to work with Jimmy and I am now investigating Jimmy, there is a conflict. Could something be built in about declaring conflicts and preventing people who have worked together, or for someone else, from being involved in such an investigation?

**The Convener:** I think that I am right in saying that the federation took the view that former

colleagues can be harder on others. Have you thought about that?

10:45

**Craig Naylor:** Yes, and I have been accused of it in the past. I do not think that that is often the case, but some people have the perception that former colleagues will give people an easier time, hide things or do things to prevent the process from being run as it should be. There needs to be a clear way of preventing that from happening, and of showing that prevention has occurred.

Generally, everyone I know in the PIRC—I have worked with the PIRC for a long time—is a good investigator and will do a good job. They are there not to penalise people on either side but to work to find the truth and to understand why something has happened. However, it is not an easy job. Having the skill set to run complex investigations involving things such as mobile telephony and data, of which there is now terabytes' worth, and the ability to be understood, examined, et cetera, is a massive undertaking. A brand-new graduate or school leaver cannot be dropped into a role of that sort and expected to be competent in a short time; it does not happen.

**The Convener:** One of the things that I am interested in—I sound like a broken record—is what it is that brings officers and staff into the complaints and conduct space in the first place. I am interested in what it is about their role, their environment or their circumstances that brings them into the process.

We took interesting evidence from Police Scotland yesterday, when its representatives spoke about their awareness that the circumstances and factors could potentially be shifting. Assault allegations are always going to be made against officers and potentially staff, but yesterday's witnesses spoke in an interesting way about some other issues, such as domestic abuse and the emergence of more sexualised behaviour by officers—a couple of examples spring to mind.

I am interested in what sits behind officers coming to the attention of complaints and conduct, and I am interested in whether you have come across the reasons for that. You have done so many inspections, including on mental health. Have you looked at that as part of your work?

**Craig Naylor:** I have. There are a number of different strands to that work, which I will try to pull out.

The majority of the complaints that are made about police officers and police staff in Scotland are about very low-level issues, when people are dissatisfied with the outcomes that they have received. The front-line resolution team, which

was talked about yesterday, is the one that deals with such complaints. It tries to do a couple of things. The first thing that it does is to say sorry to the person that they did not get the outcome that they wanted, and the second is explain why that was the case. Generally, there is a level of dissatisfaction, but it is a relatively low level of dissatisfaction. I sound as though I am dismissing it; I am not. That is people's experience of the police, and it should be better than that. However, of the 6,500 complaints that the police get a year, the majority will be in that space.

The reason for the decision is often easily explained and rationalised to the individual by someone who has looked at the case and at the entirety of the circumstances going back and explaining the law, the policy and the procedure, and giving a bit of an apology by saying, "We didn't do our best here, and we're really sorry about that." That applies to a big chunk—the vast majority—of the complaints that the front-line resolution team deals with.

Yesterday, there was a discussion about what the difference is between excessive force and assault. The big difference is that excessive force is not criminal; it might be a case of someone saying that their handcuffs were too tight. However, assault means that something deliberate has been done—there is mens rea. For example, someone has been pushed or thrown into a cage in the back of a van so hard that they banged their head. There is a nuance there, and it is a very difficult nuance to draw. A lot of work is done between the assessment unit and professional standards to understand the difference between incidents that have a criminal element and those that are non-criminal. Someone being dissatisfied that their cuffs were tight is not really an assault, whereas if someone has had their cuffs put on too tight and it is obvious that that is the case, then it is an assault.

Again, that represents quite a large volume of work, and I know that the PIRC is now seeing an awful lot more of that—as Alan Speirs said yesterday, the majority of those complaints now go to the PIRC for initial assessment. My understanding of Michelle Macleod's evidence was that the majority of the ones that it gets from Police Scotland are seen as involving excessive force, so they are not investigated as a criminal matter.

With regard to the really difficult areas, such as sexual behaviour and domestic abuse, about two years ago, we did an inspection of how Police Scotland responded to domestic abuse generally. It was fascinating. While Police Scotland is exceptional in how it deals with the high end of the market—the really long-term abusers who commit sexual crime against their partners and have

serially abused partners—it is less good with the first-time report, when a person comes forward and says, “I was beaten up last night,” or “I’ve had my phone taken off me,” or “My bank account has been seized by my partner.” It is not as good there as it wants to be, or as we would like it to be.

We will look at what transpires when officers or staff are found to carry out such behaviour. The timings are not yet defined, but I think that we will be involved in what is called domestic abuse phase 2 from the end of this year. We will look at how Police Scotland deals with those officers and staff who commit offences against individuals while they are serving members of staff or officers, and how it deals with staff or officers who are victims—those are two sides of a coin that is very difficult to deal with.

It is a complex area of business, but I know that Police Scotland is thinking hard about it and is trying to do better than it has done in the past to understand what a victim needs, both from an employer’s perspective and from a criminal justice perspective—sometimes, you have to divorce the two to give the person what they need.

With regard to the more sexualised behaviour, I know that the complexity of investigations that Police Scotland’s PSD does is growing. As Lady Elish Angiolini said last week, those matters are complex and it can take many months—if not years—to investigate such cases fully, to go through the data, to understand the evidence and to take the process forward to a criminal case or a gross misconduct case.

I suspect that the incidence of more sexualised behaviour is growing. I do not have the figures at my fingertips, but I see an organisation that has a real drive to address those issues and that is trying its best to reassure its staff and the public that it will address those matters effectively—although we hear of terrible cases, I think that Police Scotland is doing its best to be better at doing so.

**The Convener:** That is interesting, and it is good to hear that you have some work planned around domestic abuse later in the year.

Rona Mackay wants to ask a follow-up on that point.

**Rona Mackay:** It is exactly on that point. That was really interesting, Mr Naylor, but I wonder whether you could expand a wee bit on what you mean—what form that work will take, who will do it and that kind of thing.

**Craig Naylor:** Absolutely. Although we have not defined exactly which lead inspector will do it, we will be leading that work. A normal team of a lead inspector and probably three or four others will look at case examples. First, we will go into the

professional standards department and understand from it how many cases it has had referred to it about officers or staff who have committed domestic abuse, sexual crime or various other things, and then we will follow the evidence and see where it takes us. We will also look at the policies and practices and—probably most importantly—the outcomes of gross misconduct hearings or criminal matters that come from those issues.

**Rona Mackay:** Will that effect a culture change with regard to how domestic abuse allegations are dealt with and so on?

**Craig Naylor:** I do not know yet; we have not done the work to understand how they are currently being dealt with—it might be that Police Scotland is doing that very well. However, we will consider and triangulate the evidence, and we will listen to victims and to as many different support organisations as we can, whether that is Victim Support Scotland, Rape Crisis Scotland or others, as we have done with previous inspections, to understand what their perspective is.

The search for the truth in those areas is really important to us, and we triangulate everything that we do by gathering evidence from as many different sources as possible to understand it, based on the casework that we look at.

**Rona Mackay:** Okay. Is it planned that that will take place before the end of the year?

**Craig Naylor:** It is planned that it will start then. It will probably take eight or nine months to do, so I suspect that we will kick it off in November or December and that we will publish our report in August or September next year. That is where the plan currently sits.

**Sharon Dowey:** In your letter to the committee, you talk about a culture of “error terror”, which is the fear of being investigated for simply making a mistake. That is a part of the culture that needs to be changed within the force and that the bill is aimed at correcting. In one of your recent inspections of culture in Police Scotland, you found that

“financial and resource constraint was one of the primary factors”

preventing culture change. The financial memorandum’s estimate of the cost of the bill has already increased from £1.4 million to £5.8 million. Do you think that there will be a further significant rise in the estimated cost of the bill?

**Craig Naylor:** I do not know. Such financial memorandums are extremely difficult to write in the first instance. The policy intent is to change how police ethics, conduct and scrutiny are done, and the team that wrote those proposals was trying to look at the future and predict what those

changes will do. I think that the financial memorandum should be a living document and should be updated as bills come through and changes occur.

For me, there is a very simple factor, which came up during Police Scotland's evidence to the committee yesterday. It was pointed out that three gross misconduct hearings were taken to full conclusion and a further 16 were resigned prior to the completion of a gross misconduct process. Running a gross misconduct process is not cheap. Senior people, lawyers and various other people will be involved in that process, and if an additional 16 have to be done every year, and it is right to do an additional 16 every year, that will have a cost implication. Coming to an understanding of that and then extrapolating that to understand what it means for the public purse should be continued as the bill progresses.

**Sharon Dowey:** Do you think that the financial memorandum as it stands is realistic?

**Craig Naylor:** At £1.4 million or whatever—no.

**Sharon Dowey:** So you think that it will rise.

**Craig Naylor:** I am sure that it will.

**Sharon Dowey:** In the same inspection report, you noted that Police Scotland

“is now inhibited from operating effectively by the level of internal governance it is applying to compensate for a lack of individual accountability”.

Again, that needs to be corrected if we are to reach the aims of the bill that we want to reach. Do you think that that issue is addressed in the bill?

**Craig Naylor:** The governance that we are talking about in that space is around how the force is run and managed. I know that the new chief constable has done a lot of work and is in the process of trying to change the whole internal governance structure. We are very supportive of that, because, as we described in the inspection report, papers are being read at many different sub-committees before a senior committee eventually takes a decision on it, when, in reality, a decision could be taken at a much lower level and progress could be made much more quickly.

The chief constable is very aware of that, and she is working very hard to change it. I have spoken with the director of strategy and performance and various others about that process, and they will also do that. I am less sure that the bill has a role to play on that issue, which is about the good governance and management of the organisation.

**Sharon Dowey:** So that is a process within Police Scotland that needs to be fixed.

**Craig Naylor:** Yes, and it is being improved as we speak.

**Russell Findlay:** You spoke to Pauline McNeill about section 15 giving the PIRC the power to review Police Scotland and the SPA's work. You are opposed to that, but the PIRC is supportive of it. In its submission to us, it said:

“there have been occasions where at the conclusion of investigations, matters have been highlighted to HMICS for review, however, due to capacity, HMICS has not been in a position to undertake same.”

I do not think that that is a criticism; it is more the case that the PIRC believes that including it by giving it the proposed power will add capacity. Is that a compelling argument?

**Craig Naylor:** I do not want to fall out with Michelle Macleod in public; we have had conversations about this. As I have said, nothing has been highlighted to me in the past two years by the PIRC about that process.

For me, the issue with the PIRC having such a power is about who within its current structure has the skill set, the capability and—probably most importantly—the time to do such a review and base it on the evidential processes that we use, which are seen as good practice and which fit within the Crerar principles for good governance and scrutiny.

**Russell Findlay:** I wonder whether there is a belt-and-braces argument for it, as there is with your proposal about whistleblowers being able to go to the PIRC and the SPA. It would provide that option.

**Craig Naylor:** I see it slightly differently, because we are not looking for one organisation to take all the responsibility, as we do currently with the PIRC and whistleblowing. I think that it is important to give people—whether from a public or a police officer perspective—different avenues for that.

11:00

The difference between the PIRC and us is that there is already an established framework for who does scrutiny work on complaints and who does scrutiny work on policy, practices and efficiency in policing. I am not seeing a gap that needs to be filled. In fact, there will be an overlap and, if that overlap comes with an additional resource requirement, that will add to the cost in the financial memorandum, which Ms Dowey mentioned. I am seeing an unnecessary overlap.

**Russell Findlay:** The PIRC has said that it does not have the resources or the personnel for other proposals in the bill, so that is consistent with what you have said.

**The Convener:** We are coming up to the end of our time, but I have a final question that relates to the provision in the bill regarding hearings related to gross misconduct being held in public.

You have done a lot of work to look at mental health and wellbeing, not just with regard to the demand on police officers and staff from that growing area of operational delivery but with regard to their own health and wellbeing.

Should that provision be enacted, what needs to be put in place to make sure that the mental wellbeing of those involved is considered and prioritised? I am interested in your views on that.

**Craig Naylor:** That is a very good question. No matter how good the processes and practices are that we put in place, they will always test the individuals involved, whether they are the subject officers or those who are making the complaint against them.

The very minimum that we need is speedier justice, so that people do not have to wait for gross misconduct processes for years on end. The effect on their mental health, when they are waiting to know what they will face, is massive. I am supporting two colleagues from England and Wales just now who are going through that at a senior level. It is absolutely devastating.

Everyone who goes through that sort of process needs to have very strong support from their representative body, whether that is the federation, their union or the Association of Scottish Police Superintendents. They also need good support from the organisation. That might sound strange, when they are being investigated for gross misconduct, but the organisation has a duty of care to them as an employee or a police officer that they need to support. Whether that is occupational health support or employee assistance programmes, the support needs to be proactive, not reactive. What we have seen thus far has been a reactive approach—"If you're not feeling great, go and see this person"—rather than the point of contact in the organisation being tasked with being proactive about gaining support. Gaining peer support is also important.

It is difficult but, when you get to the final stages, you need to be really clear and have very good communication. That very good communication needs to include disclosure of documents at an appropriate stage so that you can prepare your defence. Timeliness is really important, so that when you understand what you are facing, you have the opportunity to gather—from the systems in the organisation—whatever material you need to provide that defence. That can be difficult if, for example, you are suspended.

**The Convener:** I have a final follow-up question. Notwithstanding the timescales that are

potentially involved where there is a criminal case followed by a misconduct process, do you think that the bill goes far enough to address the issue of timescales? That is quite a big question, but it comes up all the time, both generally in relation to complaints and conduct processes, and in the context of the bill.

**Craig Naylor:** I do not have an answer to that, and it is something that I have wrestled with. Last week, Lady Elish Angiolini addressed the committee on the complexity of the matters that are often under investigation. Putting a timescale on the processes becomes artificial, because we would lose the quality of the investigation and the capacity to deal with things effectively. However, what we are doing now is not sustainable.

I do not think that the bill is as tight on timescales as it could be, but I am not too concerned about that because of the complexity. If we lose the provision of fully run investigations that look at both the evidence against the individual and the evidence that supports the individual, we will not have justice. The issue for me is that, although justice delayed is often seen as justice denied, I would much rather see delayed justice that balances both sides than getting to a point too early, when we have seen only the prosecution side. I have often seen that happen in England and Wales.

**The Convener:** Thank you—that is very helpful.

It has been a really informative session, and I thank you for your time. We are a wee bit over time, so I will finish things there.

11:05

*Meeting continued in private until 11:11.*



This is the final edition of the *Official Report* of this meeting. It is part of the Scottish Parliament *Official Report* archive and has been sent for legal deposit.

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