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Criminal Justice Committee

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CRIMINAL JUSTICE COMMITTEE
30th 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)
*Ben Macpherson (Edinburgh Northern and Leith) (SNP)
*Pauline McNeill (Glasgow) (Lab)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Angela Constance (Cabinet Secretary for Justice and Home Affairs)

CLERK TO THE COMMITTEE

Stephen Imrie

LOCATION

The David Livingstone Room (CR6)

Scottish Parliament

Criminal Justice Committee

Wednesday 2 October 2024

[The Convener opened the meeting at 09:01]

Police (Ethics, Conduct and Scrutiny) (Scotland) Bill: Stage 2

The Convener (Audrey Nicoll): Good morning, and welcome to the 30th meeting in 2024 of the Criminal Justice Committee. We have no apologies.

Our main item of business is consideration of the Police (Ethics, Conduct and Scrutiny) (Scotland) Bill at stage 2. Members should refer to their copy of the bill, the marshalled list of amendments and the groupings.

I welcome Angela Constance, Cabinet Secretary for Justice and Home Affairs, and her officials. I remind the officials that they are here to assist the cabinet secretary during the stage 2 debate and are not permitted to participate in it. For that reason, members should not direct any questions to them.

Section 1—Meaning of "2006 Act" and "2012 Act"

Section 1 agreed to.

Section 2—Code of ethics

The Convener: The first group of amendments is on the code of ethics. Amendment 1, in the name of the cabinet secretary, is grouped with amendments 48, 2, 49, 3, 4 and 50.

The Cabinet Secretary for Justice and Home Affairs (Angela Constance): Good morning. I will first speak to amendments 1 and 2, which will add further sources that the chief constable must refer to when preparing the code. That follows evidence that was given to the committee and a committee recommendation.

The bill as drafted sets out sources of police ethics to which regard must be had in preparing the code, including the standards of professional behaviour, the constable's declaration, the policing principles, convention rights and any other human rights instruments that have been ratified by the United Kingdom. Those sources are to assist the chief constable in preparing the code.

The rights and obligations under the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024 are an important source, because they now have the same domestic status as rights under the European convention on human rights. I thank the Children and Young People's Commissioner Scotland for suggesting that we add that.

I am grateful to Amnesty International for its suggestion that Police Scotland's code of ethics should reflect the European code of police ethics. I believe that that will be a valuable source to consider when preparing the code of ethics, so my amendment 1 adds it to the list.

The UN code of conduct for law enforcement officials and the UN basic principles on the use of force and firearms by law enforcement officials are further worthy sources of police standards that will add value to Police Scotland's code of ethics. I urge the committee to support amendments 1 and 2.

Before I turn to Katy Clark's amendment 48, I will speak to amendment 3. The bill lists mandatory consultees that the chief constable must consult when drafting the code of ethics. Following evidence from human rights organisations, my amendment 3 will add to the list the Scottish Human Rights Commission and the Equality and Human Rights Commission. I agree with the evidence of Amnesty International that the mandatory consultees should include the Scottish Human Rights Commission. That commission will add value to and enhance the content of Police Scotland's code of ethics.

The Equality and Human Rights Commission told the committee about the positive impact of embedding the consideration of equality in the code of ethics. I believe that the commission will provide valuable advice as consultees and—importantly—could highlight where the code could better reflect the Equality Act 2010. That would strengthen the capacity for Police Scotland to deliver on its equality, diversity and inclusion and human rights aspirations.

Adding those bodies to the list will ensure that they comment on the code, and that is a stronger measure than using the 2010 act as a source, which is what Katy Clark's amendment 48 seeks to do. I now turn to that amendment.

The chief constable is already legally obliged to comply with her duties under the 2010 act, by virtue of the terms of that act. To add the 2010 act to the list of sources for the code would impose on her a lesser obligation than already exists and would create confusion and legal risk. I believe that my amendment 3 is stronger and would not interfere with the structure of the chief constable's duties under the 2010 act.

Katy Clark's amendment 49 is about the reporting obligation on the chief constable to make a statement if, following a periodic review of the

code, there are no changes to make. The amendment would require the chief constable to set out details of changes that were suggested but rejected during the review.

The bill already provides that the chief constable must lay a statement before the Parliament if she has concluded that there is no need to revise the code after a review has taken place. I understand the need to assure both officers and the public that the code is keeping pace with ethical standards, but I am concerned that amendment 49, as lodged, might have unexpected consequences, such as publishing comments or information—for example, from private individuals—that were not intended to be made public.

I would like to understand more about Katy Clark's intentions and purpose ahead of stage 3, to see whether we can find a way to meet her objectives while avoiding unintended consequences. I urge the committee not to support amendments 48 and 49.

Sharon Dowey's amendment 4 relates to whom the chief constable must consult and share a draft with when preparing the code. The list is set out in the bill and includes people and organisations with relevant knowledge or expertise, such as staff networks that represent particular minority groups.

I welcome amendment 4 in principle. It would require the chief constable, when preparing the code of ethics, to consult those who are

"representative of individuals who have made a complaint against the Police".

That would allow for people with direct experience of the complaints system to input into ethical policing. However, although I believe that the principles of amendment 4 would enhance the code, the wording does not make it clear that it is the voices of complainers as a group that must be heard, rather than those of individual complainers, which might make the measure ineffective or have unintended consequences, such as hampering preparation of the code. To ensure that the provision can be effective, I ask Sharon Dowey not to move amendment 4, and I commit to working with her to bring it back at stage 3.

Sharon Dowey's amendment 50 proposes to insert a new, free-standing section to place a duty on the chief constable to review—for consistency with the code of ethics—

"the policies, procedures and guidance that relate to discipline and conduct"

and to make any changes that are identified

"within one year of Royal Assent."

The duty on the chief constable is to prepare the code

"as soon as is reasonably practicable after section 2 of the ... Act ... comes into force."

Even once the duty commences, a great deal of work will be involved in preparing and consulting on the code, so it makes no sense to have a requirement to complete a review within a year of royal assent. That period could have ended before the code was published.

In addition, on-going work will lead to substantial change in the policies, procedures and guidance that relate to discipline and conduct. All the recommendations that Dame Elish Angiolini made in her independent review that do not require legislative change are in the process of being implemented, His Majesty's Inspectorate of Constabulary in Scotland's assurance review of conduct is on-going and there will be new conduct and vetting regulations, as well as all the other work that will have to be done as a result of the bill. A review that took place before those changes had been made would quickly become entirely redundant.

It is essential that the code of ethics does not become a disciplinary code by the back door, so no amendment should be worded in such a way that it risks conflating the code with the standards of professional behaviour. However, I agree that the discipline and conduct policies, procedures and guidance and the code should form a coherent body, so I am willing to work with Sharon Dowey ahead of stage 3 on the issue. I urge her not to move amendment 50 and, if she moves it, I urge the committee to vote against it.

I move amendment 1.

Katy Clark (West Scotland) (Lab): I will support the Government's and Sharon Dowey's amendments, if they are pressed to a vote. I do not intend to press my amendments 48 and 49 to a vote today, but I might bring them back in some form at stage 3, after further consideration and discussion.

As the cabinet secretary has said, amendment 48 seeks to include reference to the Equality Act 2010 in the bill. That act's requirements are important considerations in relation to the conduct of police officers. Amendment 48 has come about partly as a result of discussions with equality campaigners.

Section 2 of the bill relates to the principles, standards and legislation that the chief constable must have regard to in preparing the code. I note what the cabinet secretary said about a lesser right. I will look at the interrelationship of my amendment 48 with the cabinet secretary's amendments. However, as she is well aware, it would not be possible to dilute in any way the requirements of the Equality Act 2010 in the bill. I would be happy to work with her to see whether it

is possible to come up with a form of words that might be acceptable to all at stage 3.

Sharon Dowey (South Scotland) (Con): We intend to support the amendments in the group if they are pressed to a vote.

Amendment 4 seeks to add to the list of people who should be consulted on the preparation of the code of ethics; it provides that representatives of people who have made a complaint against Police Scotland should be consulted on the preparation of the code. The bill does not currently provide for people who represent individuals who have made a complaint against Police Scotland to be consulted.

When the new code of ethics is prepared, it will be important to take into account the views of people who have experience of the system. During evidence sessions, we heard directly from people with experience of the system about the difficulties that they had incurred. To get the best version of a new code, it would be beneficial for such views to be considered.

Amendment 50 seeks to add a new section to the bill relating to the consequences of a new code of ethics for the police's policies, procedures and guidance. It would require the chief constable to undertake a review of Police Scotland's policies, procedures and guidance and to consider what changes were needed because of the new code of ethics. Furthermore, it would require that any changes that were identified under the proposed new section should be implemented within a year of the bill receiving royal assent. I had intended the proposed timescale to be realistic, and I appreciate from what the cabinet secretary has said that a one-year period would not be realistic.

The new code of ethics must be reflected in Police Scotland's disciplinary policies and procedures. The new section that amendment 50 seeks to insert would ensure that the chief constable revisited Police Scotland's policies and procedures to reflect the changes. That would address the concern that has been raised that the code of ethics will be symbolic and will have no effect. I am pleased that the cabinet secretary has shown support in principle for my amendments and has agreed to work with me on them ahead of stage 3. For that reason, I will not move them today.

09:15

Pauline McNeill (Glasgow) (Lab): I seek clarification on the cabinet secretary's position on Katy Clark's amendments. The Government's amendment 1 seeks to adopt, for example, the European code of police ethics and the UN code of conduct for law enforcement officials. We have had no discussion as to what that means, so it would be useful to get some indication of what those codes cover.

The cabinet secretary used the phrase "lesser obligation" when discussing amendment 48. I am unsure whether that means that the bill's provisions are much wider in scope in relation to equality and other issues or whether her point is to do with the relationship between the provisions and the Equality Act 2010.

The Government seems very positive about Sharon Dowey's amendment 4. I ask Sharon Dowey to make clear whether her intention is that the chief constable should consult organisations on behalf of individuals. Is that what the amendment seeks to do?

Sharon Dowey: No—the position is as the cabinet secretary said. It is not about consulting every person who has had a complaint in the police system but about taking a group of those people, so that their voices can be heard. We heard evidence on that in the committee. Amendment 4 would ensure that a selection of people were consulted and that we heard their voices in the production of the code of conduct.

Pauline McNeill: Right. I know that that will be for discussion between you and the cabinet secretary but, when the revised amendment is being framed, I would like it to be clear about how the chief constable will select those individuals. Let me put it this way—some individuals are more vocal than others and some have louder voices through representatives than others.

The proposal is good, because it is important to consult those who have complained. I note that amendment 4 refers to individuals who have "made a complaint"; it does not say whether the complaint has been successful. If we are going to do something on the issue, I would like to understand a bit more of the detail before stage 3.

In principle, I am very supportive of amendment 4, but it is important to clarify how the chief constable would go about the consultation.

The Convener: I will bring in the cabinet secretary, and Sharon Dowey can come back in if she wants to add anything.

Angela Constance: I reiterate that I am more than happy to work with Katy Clark and Sharon Dowey in advance of stage 3.

On the concerns about the phrase "lesser obligation", the code must be compliant with the Equality Act 2010. However, amendment 48, which seeks to add that legislation as a source for the code's preparation, would mean that the code needed to only "have regard to" the 2010 act, which would impose a lesser obligation than is already implied. I am happy to continue to discuss matters with members.

As for Ms Dowey's and Ms McNeill's points on consultation, it is crucial that there is clarity for the chief constable when it comes to consulting individuals or bodies that are able to represent people who have had direct experience of the complaints process, for example. The issue is how that can be done in a way that taps into a breadth and depth of experience, such as that of victim support organisations and perhaps others, but does not place an unworkable condition on the chief constable to consult every individual who has ever had an experience or who has ever represented someone who has had a very difficult experience. I am positive that we can work our way through those issues.

The European code of police ethics covers, for example, the rights of suspects, of witnesses and of victims; it places wider obligations on policing bodies and covers a range of other matters. I would be happy to provide in writing further detail on the UN codes, the UN basic principles and the code of police ethics.

The Convener: As no other member wants to come in, do you want to add anything else in winding up?

Angela Constance: No, thank you. I think that I have done my winding up.

Amendment 1 agreed to.

Amendment 48 not moved.

Amendment 2 moved—[Angela Constance]—and agreed to.

Amendment 49 not moved.

Amendment 3 moved—[Angela Constance]—and agreed to.

Amendment 4 not moved.

Section 2, as amended, agreed to.

After section 2

Amendment 50 not moved.

Section 3—Duty of candour

The Convener: We move on to group 2, on duty on candour. Amendment 5, in the name of the cabinet secretary, is grouped with amendments 6 to 11.

Angela Constance: Amendments 5, 8 and 11 relate to the individual duty of candour inserted into the standards of professional behaviour and the organisational duty added to the policing principles. They follow the committee's recommendation and my commitment in the stage 1 debate to bring them forward.

Those amendments will ensure that there is no doubt that constables must be candid in all investigations, regardless of who they relate to, by making it clear that the duty of candour is required in all investigations, including into all constables, all police staff and all Scottish Police Authority staff.

I turn to my amendments 7 and 10. Concerns were raised in evidence sessions about the duty of candour potentially interfering with the privilege against self-incrimination. Police Scotland requested in written evidence that the bill be amended to specify that the duty of candour applies only where a constable has been confirmed as a witness. In other words, Police Scotland wanted comfort that the duty does not apply when a person is a suspect in a criminal case, where the right to silence and the privilege against self-incrimination are protected. The privilege against self-incrimination is understood to encompass the right to silence and applies only to criminal cases.

In considering the request, I have accepted the essence of what is being asked for. I have ensured that it is done in a way that excludes only those who have privilege against self-incrimination in criminal cases, rather than anyone who is confirmed as a witness in a civil or criminal matter, which is a much wider category. If we were to make the duty of candour applicable only to those who are labelled as a witness, it would afford the right to silence to anyone not labelled as a witness, which would be counterproductive to the purpose of section 3 of the bill, which is to ensure that all officers are candid. For example, if a constable has seen an incident involving a colleague that concerns him but has not been identified as a witness and may never even be asked about the incident, the duty of candour should apply to him to require him to speak up and disclose the relevant information about what he has seen.

The amendments spell out what is already the case—namely, that the duty of candour is not unqualified but is subject to the privilege against self-incrimination in criminal cases—and I hope that the committee will support them.

I am afraid that I cannot support Sharon Dowey's amendments 6 and 9, which propose adding to conduct regulations that the duty of candour

"does not apply to a constable who is suspected of having committed a criminal offence."

The amendments do not provide a direct link between the subject matter of the criminal offence and the subject matter of a situation that the constable is being asked about. For example, a constable could be asked whether they saw a colleague kick a witness, but the fact that they are suspected, separately and unconnectedly, of a

serious assault, would mean that they would not be subject to the duty of candour in relation to the unrelated matter. Although it could not reasonably be implied from the bill that the duty of candour is not qualified by the privilege against self-incrimination or the general protections of the law in that area, in order to ensure that there is no dubiety, my amendments 7 and 10 make that crystal clear in response to concerns that were raised in evidence at stage 1, particularly by Police Scotland.

I do not support Ms Dowey's amendments 6 and 9 because the essence of those amendments is accomplished by my amendments, which expressly state the legal position that the existing law already achieves. My amendments do so without disapplying the duty of candour to a whole category of constables in an entirely unprincipled way, as amendment 6 would do.

I ask members to support the amendments in my name and to oppose amendments 6 and 9.

I move amendment 5.

Sharon Dowey: Amendment 6 adds to the provisions that would introduce a duty of candour to the Police Service of Scotland (Senior Officers) (Conduct) Regulations 2013. The amendment stipulates that officers who are suspected of committing a criminal offence would no longer be required to follow the duty of candour, which would give them the same rights as civilians. During our evidence sessions, various bodies raised concerns that the duty of candour conflicted with the right against self-incrimination. Notably, in England and Wales, the duty applies only when an officer has been identified as a witness and not a suspect. My amendments 6 and 9 address those concerns.

However, we will support the cabinet secretary's amendments. The cabinet secretary has indicated that her amendments 7 and 10 address the intention behind my amendments, so we have the same aim. I do not intend to move amendments 6 and 9 at this stage.

Katy Clark: I support the Scottish Government's intention to attempt to strengthen and codify the duty of candour. The duty of candour for public officials is a live issue in all parts of the UK and in many different settings. Perhaps we know more about what the duty of candour might be in, for example, a health setting, where a lot of work has been done on the issue over many years.

It would be helpful for me and perhaps other members of the committee to get a better understanding of the Scottish Government's view on what the duty of candour will look like and whether, as a result of the bill, it will be different in the police setting, specifically for officers but also, in light of the evidence that we heard, for other staff, particularly civilian staff. I do not know whether the cabinet secretary will be able to say more about that, but it would be helpful to get more clarity from her before stage 3 so that we can better understand the issues.

Therefore, in relation to amendment 5, it would be helpful to understand the extent to which the Scottish Government believes that the bill will have an effect in relation to the duty of candour specifically for officers, and whether that will extend to anyone else. I would also like more information about the types of settings and scenarios in which the cabinet secretary believes that the bill will make a difference, or whether the provisions are simply a codification of the existing position.

The Convener: There was quite a lot in there. I will bring in Pauline McNeill, before the cabinet secretary responds.

09:30

Pauline McNeill: Thank you.

I am in the same position as Katy Clark, in that I think that the amendments in this group are really important, regardless of how they have been framed.

There are a couple of things on which I would like further clarification. Cabinet secretary, have you had any discussion with the Scottish Police Federation or other police organisations about the implications of the duty of candour being applied to off-duty officers? Katy Clark talked about various scenarios, and one of the difficulties with the bill lies in trying to apply its provisions to scenarios that we know very little about. One scenario that I can think of involves an off-duty officer who is out socialising and witnesses something. Does the duty of candour apply in that scenario? Are there any circumstances where it would not apply—for instance, if an officer is involved as a witness, which could compromise them in some other way—or is the duty absolute?

Secondly, in relation to the framing of the bill, I want to understand the language used in amendment 10, which says

"subject, in particular, to the reasonable assertion".

Perhaps the officials will need to help to answer that. Why is the amendment framed in that language, with the phrase "reasonable assertion"? Does that suggest that there are circumstances where the privilege against self-incrimination would not apply?

I have a third point of clarification to raise. Cases where a police officer has been confirmed as a witness illustrate an important aspect of the duty of candour versus the issue of self-

incrimination. Am I right in thinking that there is no requirement for the duty of candour to be applied until the point at which the officer concerned is confirmed as a witness and not a suspect? Would there be any scenarios in which that might change—where an officer might go from being a witness to being a suspect, but has already spoken without any privilege? I was wondering whether those things had been discussed when you framed the provisions.

The Convener: If no other members wish to come in, I will bring in the cabinet secretary to wind up.

Angela Constance: On the types of offences related to misusing public office, there is a live discussion across the UK right now, for various reasons that cut across the Hillsborough tragedy and, in health, the infected blood scandal. I will say a little bit more about that in speaking to later groupings but, in short, we are waiting to hear about more detailed proposals from the UK Government. We are alive to those matters and want to engage with them constructively.

The bill sets out what is meant by "candour". I remind colleagues that standards of professional behaviour apply to officers who are off duty, so the duty of candour also applies to officers when they are off duty. In health, the legislation is based more on a duty of candour on organisations, and not on individuals. Colleagues will recall that, in relation to the bill, we extensively debated the point that there is an individual duty of candour on constables because of the nature and importance of the role that they fulfil in our society.

I understand that there may be rules for individual doctors—for example, via their professional bodies. I am not in a position to talk in detail about that, but the duty of candour applies to constables only in legislation. The understanding is that it could be applied to staff via terms and conditions.

I am happy to write to the committee and Ms McNeill in more detail.

Pauline McNeill: There were quite a few points that you did not cover there. The one that I am keen to understand relates to the language around "reasonable assertion".

Angela Constance: There are complicated questions in relation to application and scope, so I will probably require a bit of consultation with legal officials and will come back to you in writing on what I have not answered.

On the phrase "reasonable assertion", the privilege against self-incrimination can be properly invoked only when the person is suspected of a criminal matter. It can be invoked only if warranted and not if the person is not actually suspected of a criminal matter.

We will follow that up.

Pauline McNeill: To be fair, I did not expect you to answer that. It is just that we are going to vote on the matter shortly, so I want to be sure about what "reasonable assertion" means.

Angela Constance: I do not have anything to add to or subtract from what I have said.

Amendment 5 agreed to.

Amendment 6 not moved.

Amendments 7 and 8 moved—[Angela Constance]—and agreed to.

Amendment 9 not moved.

Amendments 10 and 11 moved—[Angela Constance]—and agreed to.

Section 3, as amended, agreed to.

After section 3

The Convener: The next group is on the vetting of constables and police staff. Amendment 43, in the name of the cabinet secretary, is grouped with amendments 44 to 47.

Angela Constance: The amendments in group 3 respond directly to the recommendation that was made by His Majesty's Inspectorate of Constabulary in Scotland to ensure that there is a requirement for all constables and staff to obtain and maintain vetting, as well as to ensure the power to dismiss should they be unable to maintain vetting. The committee also recommended that and, during the stage 1 debate, I committed to lodge amendments on the issue.

The public rightly expect the police workforce to act with integrity and professionalism at all times. The amendments will ensure that all police constables and staff will have to go through a regime of on-going vetting that will continue throughout a person's professional life, rather than ending at recruitment. Currently, only constables and staff in specific roles undertake regular revetting.

Under the amendments, the chief constable must develop the necessary elements for a robust regime, including vetting periodically and where there is reason to revet, dismissal and entry on to the barred list as appropriate. By requiring a statutory vetting code of practice for constables and police staff, and a new regulatory regime for constables in particular, we can be confident that Police Scotland will have an effective scheme that requires constables and police staff to maintain vetting clearance. The amendments clarify that,

where clearance cannot be maintained, there is a route to dismissal.

I will take the amendments in turn. Amendment 43 introduces a new chapter on vetting into the Police and Fire Reform (Scotland) Act 2012, including a section 36C, which sets out what the vetting code of practice "must" include and what it "may" include. The code must include provision for on-going vetting of staff periodically and with reason, and for dismissal to follow where appropriate. Although the duty to prepare the code lies with the chief constable, there is a duty to "involve" the SPA in the preparation of the code, and the SPA "must" assist the chief constable in that regard. The code may also set out additional detail about on-going vetting, which will apply to both staff and constables, to encourage a coherent overall picture for all who are involved in the policing of Scotland.

Proposed new section 36D of the 2012 act sets out how the code will be prepared, including that it must be fully consulted on with His Majesty's Inspectorate of Constabulary in Scotland, staff associations, trade unions and minority staff networks before the code is published. Section 36D also requires the chief constable to review the code at least once every five years to ensure that it is current and up to date, and to revise it if necessary.

As the committee is aware, police staff are employees of the SPA, which is responsible for setting their terms. The chief constable has the power to dismiss staff under section 21(3) of the 2012 act, and dismissal for a failure of contractual vetting would be a potentially fair reason for dismissal in terms of general employment law. However, police staff are under the ultimate direction and control of the chief constable. With such a code of practice, she would be able to ensure that staff will undergo vetting periodically, can be revetted if a reason to do so arises, and can be dismissed for a failure of vetting where appropriate.

Amendment 44 introduces a regulation-making power, via a new section 50A of the 2012 act, to make similar provisions for constables as the code will make for staff. The Scottish ministers must lay regulations that provide for the vetting of police constables periodically and if a reason for a review is identified. Those regulations must also provide for the dismissal and demotion of constables where appropriate. A regulation-making power is required because police constables are office-holders, not employees, and their terms and conditions are set out in regulations.

Following the dismissal of a constable for being unable to maintain vetting, it is important that they are unable to gain employment in policing across Great Britain. Amendments 45 and 46 enable a police constable who is dismissed following a failure to maintain vetting to be added to the barred list. That enables other policing bodies to be made aware of the risk that is associated with the individual. The amendments make the treatment of a dismissal for vetting under the barred list equivalent to that of a dismissal for misconduct. That recognises that there is an equivalent need for others to be alerted to the risk that is posed by those who cannot maintain vetting clearance.

We expect legislation to be brought forward that will place police officers in England and Wales on the barred list there if they cannot maintain vetting, so amendments 45 and 46 will provide a consistent approach to vetting across Great Britain. I hope that members will agree that those amendments are pragmatic and right in principle, and I urge members to vote for them.

Amendment 47 updates the long title of the bill to ensure that it encompasses the new provisions for vetting, the need for which is reflective of the significance of the provision for a new vetting regime. The amendment does not affect the short title of the bill, which remains the Police (Ethics, Conduct and Scrutiny) Scotland Bill.

The amendments are an important addition to the bill and will provide the chief constable with the ability to have a robust vetting regime that will examine the on-going suitability of serving constables and police staff and dismiss those who might pose a risk to the police service. I hope that the committee will agree with and support the amendments.

I move amendment 43.

Russell Findlay (West Scotland) (Con): I am extremely concerned about these amendments. The bill was published on 6 June, and here we are, 12 weeks later, considering a load of amendments from the Scottish Government that fundamentally broaden the scope of the legislation.

09:45

These amendments were published only a week ago today, and the proposed changes are so broad that they have required the Government to change the introductory text of the bill. Based on the evidence that we have heard, these are not small, tinkering amendments.

This morning, I spoke with David Kennedy, the general secretary of the Scottish Police Federation, and he shares our concerns. He described the amendments as "deeply concerning and frankly dangerous", and he believes that they

"risk the creation of a fundamentally unfair system".

The amendments would allow the chief constable to dismiss an officer for failing vetting. On the face of it, that might sound reasonable, but there appears to be no definition of what that vetting would look like; that would be decided only by way of regulation after the legislation is passed.

The committee has not taken any evidence on these amendments, and there has been no consultation with any witnesses, including from the SPF. I know that the cabinet secretary said that the SPF would be consulted after the event, but there is no real requirement for its position to be heard. If we accepted the amendments, we would, therefore, in effect be giving the Government carte blanche to come up with a system that could be fundamentally unfair.

The SPF's other concern, which I share, is that vetting regulations that could lead to whistleblowers being targeted could be introduced by way of these amendments. Police officers, as whistleblowers, could have legitimate points to raise, and a decision could be taken to weaponise the regulations against them. I have seen that happen in the past with police officers, some of whom have given evidence to this committee. They had done nothing wrong, but having attempted to draw attention to wrongdoing, they felt the full force of the police regulations being used against them.

I urge the cabinet secretary, therefore, to press pause on these amendments today, and to give the committee and interested parties, including the SPF, time to submit a formal response to them. That would be sensible and reasonable, given that we have had just a week in which to consider them.

If the cabinet secretary insists on pressing the amendments today, I would urge all committee members to vote against them at this stage. That would allow us to revisit the proposals at stage 3 in a measured and sensible way.

Pauline McNeill: Like Russell Findlay, I have heard similar concerns.

Cabinet secretary, you opened by saying that the committee had asked for these changes, but that is not the case. The committee had asked that the chief constable be given a power to remove someone who was unable to maintain their vetting. However, what we have before us—I think—is a whole series of processes and procedures that you say the police inspectorate has asked for.

Our position is similar to what Russell Findlay set out; it is not that we would not support the changes had we had some discussion about them, or had the chance to talk to police officers—who are currently vetted, of course—who would be affected by them.

The issues that the committee drew out were twofold. First, we were quite clear on the barred list—we think that that is one of the most important things about the bill, so we totally agree on that. Secondly, we agree that the chief constable should have a power to dismiss someone who has not maintained their vetting.

In the amendments that we have before us, however, it looks like there is a completely new process in relation to vetting. In my view, it is unprecedented that ministers would, at stage 2, present a whole new process for the profession, on which—unless you are telling us otherwise, cabinet secretary—the SPF has not been consulted. On a point of principle, that is unacceptable to me.

Unless you can tell us that you have undertaken such consultation before stage 2, we will vote against the amendments today. I strongly urge the Government to withdraw the amendments and seek to discuss the proposed changes with those affected, and you can then come back to the committee and say that you are satisfied that you have undertaken a consultation process. We can then look at the proposals at stage 3. However, I feel very strongly that what we have before us is not what the committee asked for, and I do not think that it is fair to represent the committee's position as having asked for a complete review of the vetting of police—and of police staff, it seems.

I am interested to hear what the Government's response to that position is.

Katy Clark: I am very sympathetic to what the Scottish Government is trying to do. It is clear that we need to strengthen the vetting processes that existed historically in the police. The Sarah Everard case is perhaps the most high-profile case, but many cases have come to light where greater vetting would have led to different outcomes. In particular, the cabinet secretary is aware of the number of domestic abuse and rape allegations against serving police officers, both south of the border and, no doubt, in Scotland.

However, given what has been said and the fact that there does not seem to have been consultation with, for example, the Scottish Police Federation, I think that it would be helpful if we could come back to this issue at stage 3.

When we took evidence on the bill, one of the pieces of evidence that I most strongly welcomed was when we heard that the Scottish Government had put greater resource into vetting and that more staff had been employed to do that work. It is clear that a great deal of attention has already been given to ensuring that we have better vetting now and going forward. However, it would be helpful if we could ensure that this is done on a cross-party basis. Rather than deal with it in this

way at this stage, we could use the time between now and stage 3 to look at what the Scottish Government is proposing. That would give us the opportunity, for example, to speak with serving police officers and campaigners for better police accountability and better vetting of the police, and therefore to ensure that the Parliament can support the detail of the amendments.

Rona Mackay (Strathkelvin and Bearsden) (SNP): It is clear that vetting procedures need to be strengthened, and that is what the amendments are trying to do.

Going back to Russell Findlay's comments, I am a bit confused about the Scottish Police Federation's concerns; I did not take that part of it in. Why is the federation so against the amendments? A few times, you used the words "could" and "would", but we cannot address hypothetical situations.

Russell Findlay: One thing that I did not say, which the federation told me this morning, is that it supports legislation that ensures the integrity of its workforce. That is in its interests and in everybody's interests, but the legislation has to be fair. The amendments bring about a whole new ability for the chief constable to use vetting to arbitrarily dismiss officers who are deemed not to have passed that vetting, but it is only by way of regulation after the event that that will be properly defined.

Given that we have had three to four months of taking evidence on the bill and discussing it, this is extremely last minute. No interested party—not least the Scottish Police Federation or the Association of Scottish Police Superintendents—has had an opportunity to contribute to this part of the legislation, which has been introduced by way of amendments that were lodged only a week ago by the Scottish Government. It is sensible that we press pause.

We might all fundamentally agree that vetting needs to be improved and that there needs to be a mechanism whereby, if something arose through vetting, the police should have the ability to dismiss someone, but it all seems a bit slapdash and slightly irresponsible to do so on the basis of amendments that are a week old and which none of us have had any meaningful way of looking into.

The Convener: As no other members want to come in, I invite the cabinet secretary to wind up the debate.

Angela Constance: I will do my best to respond to all the points on details that members have raised this morning.

I will, of course, listen carefully to the on-going concerns of members and partners. I will not put a pause on matters, but that does not preclude listening and engagement in advance of stage 3.

I have endeavoured in good faith to respond to the committee's recommendation which, as I recall, was unanimous. I gave a commitment to Parliament at stage 1 to return to the matter, and I will return in a moment to the detail of why this approach was taken.

It is factual to state that His Majesty's Inspectorate of Constabulary made this recommendation after the bill was published. I appreciate that the bill was published some time ago, back in June, and stage 2 is the first opportunity that I have had to insert these amendments.

The amendments are crucial for many of the reasons that Ms Clark outlined. I appreciate that parliamentary timescales are often swift. We all, as individual parliamentarians, work on our own amendments and they are then shared with others in the week or the days prior to proceedings. I understand that, but some of the timescales are not within my gift.

On why there needs to be such detail, the recommendation was for a power to dismiss those who fail to maintain or obtain vetting. However, that requires the legislation to establish a regime of vetting—that is inescapable. I understand why people might question the length of the amendments and the scope and detail of the power. However, if we want to give a power to dismiss—a power that I would advocate is crucial—we need to establish the scope of the regime. I do not believe that there is any way around that.

I turn to some of the more detailed aspects. The definition will be in regulations, and it will be consulted on as required under the 2012 act. These provisions are being added after the introduction of the bill because of the concerns and recommendations that have been made. I do not need to rehearse those, because the committee sat through many weeks and months of evidence.

My officials have engaged not only with HMICS, Police Scotland and the Scottish Police Authority but with ASPS and the Scottish Police Federation. Although I will not pause today, I will nonetheless continue to work with—

Pauline McNeill: Could I ask a question? Is the vetting code of practice in the amendment a new vetting procedure? I am a wee bit confused about that. We have only just seen it, so I do not know what it is. It would be helpful to know.

Angela Constance: I appreciate that.

The short answer is that, as members will know, vetting currently happens. The HMICS assurance

review spoke highly of the progress that has been made on vetting and said that it is of a high quality. However, the provisions in the regulations are missing the power to dismiss. If we want to, as I believe the committee does, empower the chief constable to have that power to dismiss, that is what we must try to address.

Pauline McNeill: I want to be clear before the vote. This is not a new vetting procedure.

Angela Constance: It is new in regard to the power to dismiss. That is the bit that is missing.

Pauline McNeill: It seems to be an awful big amendment to do one thing.

Angela Constance: Sometimes amendments are small and sometimes they are large, but if it is of any interest, it will be the same as it is in England and Wales.

10:00

Russell Findlay: I do not doubt that the cabinet secretary is acting in good faith—not for a minute would I suggest otherwise—and I do have some sympathy with her position given that HMICS has come up with this reasonably late in the day. I have a couple of stage 2 amendments that are borne out of the representations of HMICS, but the difference is that they relate to existing procedures and structures, whereas a lot of what is proposed by these amendments on vetting will be done by way of regulation after the event, which is quite far reaching and significant.

I have genuinely seen enough cases of good police officers who have done nothing wrong and who have become whistleblowers under the legal definition of the word finding themselves subject to disciplinary proceedings that have, in some cases, destroyed their careers, health and finances. It would be irresponsible to push forward with these amendments without really knowing what their impact will be.

I have heard that the cabinet secretary does not want to press pause, but I think that it would be sensible to do so. We could look at the issue once we have had the benefit in the forthcoming weeks of the federation and others laying out in clear and articulate terms—rather than my trying to represent the position on the hoof with a week's notice—why they believe that it is of concern. At that point, the Government could lodge stage 3 amendments, in all likelihood with the support of all parties.

Angela Constance: We will do everything that we can to build consensus, but sometimes we must stick to our principles with a view to making progress. If we were to step back from what HMICS has recommended and the progress that the committee is looking for, that would be a step backwards, as opposed to a step forward.

It was very remiss of me, Mr Findlay, not to address the issue that you raised around whistleblowers. I agree that whistleblowers must be carefully protected, but the way to do so is by the application of whistleblowing protections, which sit elsewhere, and not by diluting vetting requirements.

I am happy to discuss more of that going forward, prior to stage 3.

Russell Findlay: In respect of whistleblowers, we have heard evidence from a lawyer who acts for a number of police officers, who says that, even now, with whistleblowing legislation being well established, in cases that she acts in, whistleblowers are not being treated as such and are not being given that protection. The legislation does address whistleblowers and helps to improve their rights, but there is a potential for the amendments to work against that or to change the whole dynamic.

I do not know whether the cabinet secretary does not want to press pause on a point of principle or whether there is some practical reason, but it seems entirely sensible to do so, given that we have had the amendments only for a week and we do not really know what they will do. There are genuine concerns, and there is the likelihood of cross-party consensus if we could just hold off for a short while. I again urge the cabinet secretary to reconsider.

Angela Constance: I appreciate that people have seen the amendments only for a week, but that is the nature of our parliamentary process. It will cause us all to have to work hard and be somewhat testing.

Russell Findlay: Will the cabinet secretary take an intervention?

Angela Constance: No. The purpose of stage 2 is to make progress prior to stage 3. Given the breadth and depth of the work, I think that leaving it all to stage 3 would be somewhat foolhardy and not common sense.

Ben Macpherson (Edinburgh Northern and Leith) (SNP): Some important points have been made there, and I wonder whether it would be helpful for colleagues around the table to have clarity with an undertaking to engage with members from across the parties and with the stakeholders, as you listed earlier. It would be helpful to have reassurance that there will be further engagement on these matters as appropriate ahead of stage 3.

Angela Constance: I think that, for the third time, I can give that assurance. I am delighted to do that. As always, my door is open.

Pauline McNeill: On a point of information, I am not trying to be difficult with the Government on this. Cabinet secretary, you have said that these are the timetables that we have to work to, and that is true, but, having dealt with quite a lot of legislation over the years, I know that it is not usual for the Government to introduce a substantial procedure at this stage. I know that you said that it was not a new procedure, but it looks to me as though it is, and I am going to be asked to vote on it in five minutes. I think that it is a new procedure, and we have not consulted on it, so it is not fair to represent the process of legislation in that way.

We are probably all dissatisfied with regard to how fast the process is. However, it is unusual for the Government to lob in an entirely new process at this stage. We are not really sure about the effect that it will have on people. You said that you consulted the federation, but the committee is confused, because we have been told that you have not done that. Therefore, it would be helpful if the Government would even concede that it is not normal to lodge a three-page amendment to a procedure when we have had no discussion of that amendment.

Angela Constance: I am not trying to be awkward or disrespectful. I am trying to acknowledge the frustrations. Officials have engaged with all the parties. I accept that there are always differences of opinion. We are in a process between stage 2 and stage 3. I am trying to make two points, the first of which is that I do not think that it is wise to leave all this to stage 3. In response to the committee, I gave an undertaking in good faith and made a commitment to Parliament. If the committee, which has followed the bill in great detail, is dissatisfied with this amendment at stage 2, I can only imagine that Parliament would be less than satisfied at this all coming forward at stage 3. I am not disputing that there will be work for us all to continue to pursue and engage in. However, His Majesty's Inspectorate of Constabulary in Scotland did the work and made a recommendation, which is, ultimately, what I am responding to.

The Convener: I do not want to curtail debate, but we have all made our points clear. Therefore, I ask the cabinet secretary whether she wants to wind up any further. If not, I will put the question.

Angela Constance: The only thing that I would add is that, in all sincerity, I will continue to engage with members and stakeholders at an early opportunity.

Russell Findlay: Could I make a quick point?

The Convener: I would like to move on.

The question is, that amendment 43 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

MacGregor, Fulton (Coatbridge and Chryston) (SNP)
Mackay, Rona (Strathkelvin and Bearsden) (SNP)
Macpherson, Ben (Edinburgh Northern and Leith) (SNP)
Nicoll, Audrey (Aberdeen South and North Kincardine) (SNP)

Against

Dowey, Sharon (South Scotland) (Con)
Findlay, Russell (West Scotland) (Con)

Abstentions

Clark, Katy (West Scotland) (Lab)
McNeill, Pauline (Glasgow) (Lab)

The Convener: The result of the division is: For 4, Against 2, Abstentions 2.

Amendment 43 agreed to.

Amendment 44 moved—[Angela Constance].

The Convener: The question is, that amendment 44 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

MacGregor, Fulton (Coatbridge and Chryston) (SNP)
Mackay, Rona (Strathkelvin and Bearsden) (SNP)
Macpherson, Ben (Edinburgh Northern and Leith) (SNP)
Nicoll, Audrey (Aberdeen South and North Kincardine) (SNP)

Against

Dowey, Sharon (South Scotland) (Con)
Findlay, Russell (West Scotland) (Con)

Abstentions

Clark, Katy (West Scotland) (Lab)
McNeill, Pauline (Glasgow) (Lab)

The Convener: The result of the division is: For 4, Against 2, Abstentions 2.

Amendment 44 agreed to.

Sections 4 and 5 agreed to.

Section 6—Procedures for misconduct: former constables

The Convener: The next group is on disciplinary and misconduct processes. Amendment 12, in the name of Sharon Dowey, is grouped with amendments 13, 51, 14, 52 to 56, 15, 58, 57 and 26 to 32.

Sharon Dowey: Amendment 12 seeks to define a time limit for misconduct proceedings being initiated against former constables. The amendment would mean that regulations would have to provide for a period after which the ability to take action against a former constable would cease to be available. The bill as drafted says only that such a time limit "may" be created. It is

essential that proceedings against a former constable cannot be initiated indefinitely. I recognise the importance of being able to conduct proceedings against someone who has ceased to be a constable and that the provisions deal with an important issue, but a particular period must be set in which such proceedings can be initiated.

My amendment 13 proposes that the specific time limit is set at 12 months. That seems reasonable and reflects the suggestions in the Scottish Government's policy memorandum.

Amendments 51, 14 and 52 set out criteria that would allow proceedings to commence outwith the time limit to ensure that proceedings could be initiated in appropriate circumstances. The criteria include a public interest test, circumstances in which the investigation leads to the person being placed on the barred list or the advisory list and circumstances in which the behaviour amounts to a criminal offence.

Amendment 13 is consequential to amendment 12 and would mean that a time "not exceeding one year" would be set in which proceedings against former constables could commence.

Amendment 51 relates to previous amendments. It would set a test for allowing proceedings to begin against someone more than a year after they had ceased to be a constable. The two criteria are a public interest test and if an officer, after being subject to an investigation, with unsatisfactory behaviour being proven, was put on the barred list or the advisory list. That would ensure that proceedings could, when appropriate, continue outside the set time period.

Like amendment 51, amendment 14 sets out a criterion that would allow proceedings to commence against someone who had ceased to be a constable. The criterion is that such proceedings would be in the public interest. The amendment would ensure that the proceedings could, when appropriate, continue outside the set time period.

Amendment 52 sets out a further exception to the time limit being followed for commencing proceedings against former constables. That exception is that, when the behaviour in question amounts to a criminal offence, proceedings can, when appropriate, continue outside the set time period.

Amendment 53 would add to the procedure for conducting misconduct proceedings against officers who left following allegations of misconduct. It seeks to ensure that a constable would be provided with notice that disciplinary proceedings against them would continue if they resigned during proceedings and that, if they did not engage, the proceedings would continue to a conclusion in their absence. The amendment addresses concerns about officers resigning and facing no investigation into their actions, so disciplinary proceedings would proceed and would come to a conclusion in their absence if they chose not to engage, although they would be kept informed of proceedings.

Amendment 54 relates to circumstances in which an officer was facing both disciplinary and criminal proceedings. First, it would mean that disciplinary proceedings could continue despite criminal proceedings also taking place. It would also mean that evidence and the outcome of the disciplinary proceedings would be kept private until the criminal proceedings had concluded. During our evidence, we heard criticism about delays to disciplinary processes. Amendment 54 seeks to tackle that problem. That would ensure that there were no unnecessary delays in conducting disciplinary proceedings and, subsequently, in dismissing an officer while criminal proceedings were on-going. The amendment would also mean that criminal proceedings were not impacted by the outcome of disciplinary procedures.

10:15

Fulton MacGregor (Coatbridge and Chryston) (SNP): Has Sharon Dowey looked into whether, if amendment 54 is pushed to a vote and agreed to, it would put criminal cases at risk?

Sharon Dowey: I am sure that that is an issue that the cabinet secretary will comment on, but we have heard that constables against whom there is irrefutable evidence that they are guilty of a criminal offence continue to get paid in the police force. That provides no justice for victims, and it represents a cost to the police. The bill says that disciplinary procedures "may" be postponed to allow the criminal case to go first, but it does not say that the criminal case must proceed first. We need the cabinet secretary to clarify that.

My proposal would result in a cost saving for the police force, because it could dismiss someone sooner. In addition, the fact that the outcome of the disciplinary process would be kept private and would not be disclosed to anyone would mean that it should not have an impact on the criminal case.

Rona Mackay: I am a bit concerned about amendment 52, which is linked to amendments 13 and 55. It appears to me that amendment 52 would provide an open-ended time period for misconduct proceedings. The time that is taken in misconduct proceedings is one of the major factors that we are trying to address in the bill. Would your proposal represent a risk in relation to the European convention on human rights? Would it have a disproportionate impact on more minor cases, such as those involving driving offences?

Fulton MacGregor mentioned the possible consequences for criminal cases. Have you thought about the fact that what you propose might hold everything up?

Sharon Dowey: Some of my amendments are probing amendments, and I would be happy to work with members to tighten them up.

In lodging my amendments, I have sought to address some of the many concerns that were raised in our evidence sessions. I want to tighten up the police's procedures to make sure that the bill addresses some of the concerns that were raised. When we asked victims and survivors whether the bill would fix the problems that they had encountered, they said that it would not. I would be more than happy to tighten up my amendments. I will listen to what the cabinet secretary has to say, but I am happy to speak to anybody in order to get my amendments pushed through at stage 3.

Amendment 55 seeks to add provisions on timescales in misconduct procedures. The amendment seeks to provide for regulations to be made that would include timescales for the completion of investigations into alleged unsatisfactory behaviour and the disciplinary process. During evidence sessions, we heard from people who had experienced the impact of delays in the complaints process. For example, we heard Stephanie Bonner's account of the delays that she faced, which were unacceptable. Amendment 55 would go to the root of the problem by ensuring that clear time limits were identified.

Amendment 15 seeks to add to the bill a section relating to a power of the chief constable to dismiss constables on conduct or behaviour grounds. It would give the chief constable the power to dismiss any constable whose conduct failed to meet certain behaviour standards or the code of ethics.

Amendment 15 seeks to address the significant concerns about delays in the process. If an officer's behaviour fulfils the criteria, the chief constable should be able to dismiss them without going through the process, where an outcome is inevitable. I mentioned the existence of irrefutable evidence.

Secondly, the amendment seeks to address the public concern about constables who have done significant wrongs but have been kept on, on full pay, while their case has been investigated. Recently, we heard about a constable who was arrested in August 2021 and who, despite being suspended, received full pay until he quit the force earlier this year. He was sentenced to prison for his conduct.

Amendment 58 is like amendment 15 in that it would give the chief constable the power to dismiss a constable for their behaviour. The amendment would give the chief constable the power to dismiss an officer with or without notice when the chief constable considers the officer's behaviour to be unacceptable. That relates to the officer's compliance with behaviour standards or the code of ethics. Similarly to amendment 15, amendment 58 addresses concerns about delays in process. Under the amendment, the chief constable would have to give written reasons for the dismissal and prepare and publish guidance on the use of the power.

Amendment 26 relates to the right of appeal to a police tribunal. The bill, as drafted, allows only a senior officer to do that. Amendment 26 would also allow constables to do so. Currently, the bill limits the right of appeal to senior officers. Any constable is allowed to appeal to a police tribunal against a decision to dismiss them or to demote them in rank. However, section 8 gives only senior officers the additional right to appeal against a decision to take disciplinary action short of dismissal or demotion due to their conduct. That right should be extended to all constables.

Amendment 27 has the same effect as amendment 26. Amendment 28 is consequential to amendments 26 and 27 and relates to the meaning of "a constable" in relation to the right to appeal at a tribunal. Amendment 29 has the same effect as amendment 28.

Amendment 30 concerns the circumstances in which a constable can be suspended from duty pending investigation. The amendment would mean that regulations for automatic suspension from the role of constable would apply only where the investigation relates to gross misconduct or a criminal offence or, in other words, an allegation that would lead to their dismissal. The amendment is needed to clarify in the legislation the reasons why automatic suspension can apply.

Amendment 31 deals with the notification to constables of misconduct proceedings against them. The amendment would require regulations to be made that would require constables to be notified as soon as an investigation into their standard of behaviour has commenced. The amendment would ensure that constables who are subject to misconduct proceedings are kept informed of the proceedings against them.

Amendment 32 concerns how disciplinary provisions relate to a constable during a criminal investigation. The amendment seeks to clarify that the procedures in the proposed new section apply to constables when they are subject to criminal investigations and proceedings. The amendment would ensure clarity.

Those amendments seek to address a number of concerns that were raised during evidence

sessions to do with officers resigning and no further action being taken; the lack of timescales for conducting and completing misconduct complaints and investigations; the chief constable's inability to dismiss a constable where there is irrefutable evidence of guilt; and constables being suspended without being informed of the reason why.

I am pleased that the cabinet secretary has indicated that the Government will support amendments 12 to 14, 18, 20 and 22 to 24. The Government has agreed to work on amendment 53 for stage 3, so I will not move it today. The Government has also indicated that it will support amendment 17 if amendment 21 is not moved, and I will not move amendment 21. My other amendments were lodged with the best intentions of improving the bill. I agree that some could be defined more for stage 3, and I look forward to hearing the cabinet secretary's comments on them.

I move amendment 12.

Pauline McNeill: My amendment 56 is a probing amendment. I want to set out what I am trying to achieve with it. To be clear, it is about cases involving non-criminal matters because, with criminal matters, there are not any timescales for prosecution. I admit that, when reading the policy memorandum and the bill, it is quite difficult to get your head round what applies to what, because the provisions do not apply evenly in relation to ranks or circumstances. Rona Mackay mentioned the issue of open-ended proceedings, and I am trying to get fairness in that respect.

The committee was absolutely at one that there should be a power to pursue police officers for serious misconduct after they leave the service, whether they retire or move on. The question remains whether there should be a timescale for the completion of that and whether that timescale should be in the bill.

Amendment 56 places in the bill the requirement that gross misconduct proceedings will commence within 12 months of the misconduct, and that such proceedings will be completed within 12 months of their commencement. That is modelled on parts of paragraph 74 of the policy memorandum, so it covers all serving and former "officers of any rank", and therefore all disciplinary proceedings.

On the period of 12 months unless the caveats apply, that is a matter of proportionality.

As the stage 1 report said,

"The Cabinet Secretary confirmed that the 12-month timescale 'is not a hard and fast statutory requirement'",

and that will be the case without amendment 56.

I admit that, up to the point when the cabinet secretary said that, we thought that it was a statutory requirement. There may be good reason not to have that in the bill, and I am willing to hear what the cabinet secretary has to say about that.

The stage 1 report noted the example—Sharon Dowey also referred to this case—of

"an officer who is probably three years into their suspension".

Police Scotland was frustrated that

"the case will be sitting somewhere in the criminal justice system"—[*Official Report*, *Criminal Justice Committee*, 22 May 2024; c 42.]

for up to three years.

As the stage 1 report also notes,

"David Kennedy, SPF, told the Committee that the conduct regulations enable hearings to take place within 35 days, and that this timescale could be met in circumstances where the person accepted there was misconduct on their part."

It is important to highlight cases where an officer accepts the misconduct proceedings. A case where there has been a drug test failure, for instance, seems to be a pretty obvious example of where we should not be waiting beyond the 35 days to take action against the officer concerned.

I feel that not having some indication of when the proceedings should be completed is unfair, both to the person who has been charged with the offence and to the victims, who are waiting to hear the outcome. We know that, in our criminal justice system, time delays are one of the biggest factors that let us down, so I thought it was worth discussing bringing in a new provision that we all support to provide clarity as to when proceedings should commence.

We should consider the case of a police officer who is charged with serious misconduct who has moved to another job but, within 12 months, finds themselves the subject of an allegation that they must defend. In the end, the allegation may not have been proven in the first place, and having an open-ended procedure seems to be contrary to human rights. I was just wanting to probe and discuss that.

Russell Findlay: My colleague Sharon Dowey has asked me to point out that the Government supports three of her amendments in this group. In the earlier part of her speaking notes she identified eight. I do not want to spoil any future revelations, but five of them are in the next group. I say that for the record, so that there is no confusion. The three of her amendments in this group that are being supported by the Government are amendments 12, 13 and 14, and I am speaking to amendment 57, in my name.

Amendment 57 would give the power to the chief constable to dismiss an officer whose conduct is considered to amount to gross misconduct, even when there are on-going criminal proceedings against that officer. It is important that the chief constable is able to do so where it is irrefutable that the officer should be sacked—if they have acted in a way that is inarguably incompatible with continued employment.

As we all know, especially on this committee, criminal proceedings can move very slowly, and there is no reason why an individual should not be dismissed, as in most workplaces, while there are separate and parallel criminal proceedings that will play out in due course. It seems sensible to introduce such a provision, which would prevent the very low number of guilty police officers from exploiting the system by remaining on full pay for prolonged periods when the evidence against them would result in instant dismissal in any other circumstances.

Rona Mackay: I know exactly what Russell Findlay is trying to do and the reasons behind it, and I am sympathetic to that, but I am a bit concerned. What if that officer turns out to be innocent? Would they have a right of appeal?

10:30

Russell Findlay: I have dealt with cases in the past where there was sufficient evidence and a civil standard of proof of wrongdoing. I will give you an example. There was one police officer who was suspected of taking part in armed robberies with known criminals, going into the homes of elderly people, targeting them, tying them up, robbing them, and using police radios and fake police warrants. It was an extraordinary set of circumstances. That individual was charged with a criminal offence, and it went to the Crown, but nothing came of it.

The suspicion from some of the victims was that the embarrassment of what had transpired—that a serving officer could do that with police apparatus—was a factor in it not proceeding to court and in not having anyone criminally convicted.

Eventually, and ultimately, after many years of that officer being in receipt of full pay, he was finally dismissed on the basis of the evidence, under the civil standard of proof, being more than sufficient to rightly say that he could no longer be a police officer.

That is an extreme case, but if a police officer did something in the workplace or related to their conduct at work that was black-and-white wrong, and would result in dismissal in any other workplace, that should be allowed to happen. I do not think that it would pre-empt or prejudice any criminal proceedings, which would be wholly separate, so I think that it would still be the right thing to do.

Angela Constance: This is the largest of the groups of amendments, so I will take some time to set out my position on the 19 amendments. I will start with those amendments that I support.

I support Sharon Dowey's amendments 12 and 14, as they would put into the bill what was intended to be done in regulations on applying misconduct procedures to former constables—namely, requiring a time limit and the inclusion of a public interest test in the criteria for disapplying the time limit.

Although I cannot support amendment 13—which sets out a time limit of one year—because of a defect in the drafting, I agree in principle with the time limit of one year. I therefore ask Ms Dowey not to move the amendment, and I will work with her on an amendment for stage 3.

Likewise, amendment 53 would put in the bill a requirement to give notice to a constable, which was intended anyway, but it needs to be reworded to avoid giving constables the wrong impression that, if they engage, proceedings will not continue. I will work with Ms Dowey on an amendment on that subject for stage 3.

I cannot support amendment 51. It is an alternative to amendment 14, which I support, but its effect is quite different. It would disapply the time limit in a blanket fashion that would not allow the merits of the case to be considered. There is also a fundamental misunderstanding in relation to the barred and advisory lists. A person can be added to the barred list only if they are dismissed, and it is not possible to say whether someone will be dismissed until the proceedings have concluded and mitigation has been heard. Also, no finding would ever result in someone being placed on an advisory list, which is a holding list. I therefore strongly oppose amendment 51.

Amendment 52, like amendment 51, would disapply the time limit in a blanket fashion, without consideration of the individual merits—in this case, whether the allegation was of potentially criminal behaviour. The proportionality of disciplinary proceedings indefinitely being left hanging over a constable accused of a very minor offence, even if it was never prosecuted, would also be questionable, so there would be a real risk if the provision was included in the bill.

Amendment 54 would require disciplinary proceedings to continue despite there being on-going criminal proceedings. The amendment is highly problematic in the sense that it could jeopardise criminal proceedings because it would require conduct proceedings to continue while

criminal proceedings were on-going, regardless of the prejudice that that could cause to the criminal case and of any risk to witnesses that might be involved, for example.

Ultimately, if criminal cases were prejudiced to such an extent that the proceedings were dismissed, convictions could not be secured in serious cases. In cases involving sexual offences or physical violence, for example, that could present a real public safety concern. Although the misconduct proceedings might have been able to be completed, they could, at most, result only in a person no longer working in policing. The proceedings could not require the person to be monitored as a sex offender, nor could they require imprisonment of the person if they posed a severe risk to the public.

Amendment 32, which is related to amendment 54, contains an avoidance-of-doubt provision that misconduct procedures

"may apply to a constable during any period where criminal ... proceedings are ongoing".

However, the situation is already clear in the conduct regulations, so there is no doubt to be avoided.

Misconduct proceedings can lawfully continue while a criminal investigation is on-going, but they are often paused until after the criminal case is heard, so as not to jeopardise criminal proceedings. That can be for many reasons, not least the fact that witnesses, including the constable, come to the criminal proceedings having already had a rehearsal in the misconduct proceedings, which can seriously undermine the integrity of the oral evidence in the criminal trial. A ban on evidence or outcomes of the disciplinary proceedings being published fails to appreciate the problem that would be presented by misconduct proceedings progressing to a full hearing in advance of the criminal trial.

There can be no blanket rules that would allow misconduct proceedings to continue regardless of the risk of injustice or the risk that the criminal proceedings would be jeopardised. As I outlined, there is a very real risk to the public in jeopardising criminal trials. There are, however, possible solutions to be explored in further dialogue between Police Scotland and the Crown Office and Procurator Fiscal Service, and we are pursuing those solutions. The Government's view is that there is no place for primary legislation in this space because of the risk that it would be counterproductive. The situation that we face in Scotland in that regard is very similar to the situation south of the border.

On amendment 55, I have listened to, and am grateful for, the evidence that the committee took from individuals who testified that investigations take far too long. I know well that the time that can be taken to reach a conclusion has a detrimental effect on everyone who is involved. However, investigations can vary widely in their complexity, and it is not realistic to put a time limit on them.

The amendment sets out no consequences for a failure to meet the timescales, which could lead to the interpretation that proceedings must be discontinued if the timescales are not met. That could lead to serious conduct issues being disregarded, which would pose a risk to members of the public and fellow officers and would undermine much of the work in respect of the bill. I appreciate that Ms Dowey and Ms McNeill are seeking to resolve issues and explore matters.

Pauline McNeill's amendment 56, like Ms Dowey's amendment 55, seeks to set down time limits for the completion of misconduct proceedings. As I said, such proceedings can be complex and need to be considered case by case. Again, the amendment as drafted does not set out the consequences if the timescales are breached, which presents a risk that misconduct proceedings would collapse. I say respectfully to the members that amendments 55 and 56 have plainly not, from the Government's perspective, been thought through to the appropriate conclusions, although I appreciate that they were lodged for probing purposes, as the members have said.

Pauline McNeill: I acknowledge that. I thought that you could draft something that would allow for an extension of that. It is really about the principle of not having a completely open-ended investigation. Something should go in the bill that tries to ensure fairness. Without revision, an investigation could just run on for years and years, as some have done.

Angela Constance: Ms Dowey's amendments 12 and 14 go some way towards doing that. In an ideal world, you would want to set out a hard-and-fast requirement to achieve the complete resolution that you seek, but, as you acknowledge, setting that out in legislation is really difficult to do.

I remind members that amendments 12 and 14 would put in the bill what would otherwise have been in regulations—namely, they require there to be a time limit and that the inclusion of a public interest test in the criteria for the time limit be disapplied if that is appropriate. I have yet to be convinced or see workings that would convince me that we could go further than that at this time.

Amendments 15, 57 and 58 would introduce an unqualified power enabling the chief constable to dismiss a constable if the chief constable considered that the constable had unacceptably failed to adhere to the standards of professional behaviour or to the code of ethics. As such, those amendments must be resisted. Fundamentally,

such a power is deeply unfair and would be highly vulnerable to challenge. It would allow the chief constable to remove a constable's ability to earn a living without a fair process, without recourse to a legally constituted court or tribunal, and without notice. There is no equivalent provision across the UK in any profession or office, and it would be unprecedented in any modern rights-compliant legal system. As the member acknowledged, there has not been any consultation on, or evidence provided on, that specific proposal, so I put it to the committee that there is absolutely no foundation for this substantial change to the bill.

My officials are in discussions with the Scottish police consultative forum on the conduct regulations and are considering ways in which misconduct hearings can be progressed more quickly, which will likely include a fast-track process for the dismissal of a constable in certain defined circumstances. However, that would still provide the constable with a right to be heard, a right to appeal and a right to have representation, as is the case with the accelerated misconduct hearing process in England and Wales.

Amendments 26 to 29 would fundamentally change the policy intention behind this section of the bill, which is about senior officers. Again, I say to the committee that the amendments should be resisted.

The reason that section 8 applies only to the dozen or so existing senior officers is that the intention is that their cases will be heard by an independent panel. Widening out access to a full re-hearing before the Police Appeals Tribunal for the many thousands of constables for all sanctions, no matter how minor, would have very serious implications for the functioning of the PAT. It would also be entirely unjustified as a matter of principle. There are sufficient appeals mechanisms in place to allow constables to appeal all disciplinary actions, and it is excessive that a constable should, for example, be able to appeal a written warning at a complete re-hearing before the PAT.

I oppose amendment 30 because I believe that suspension should be considered on a case-by-case basis and that there should be no avenue for automatic suspension of constables, which amendment 30 would allow by implication. I know that Police Scotland takes its responsibilities on suspension seriously. Conduct regulations currently limit the ability to suspend a constable to situations in which they might prejudice a misconduct or criminal investigation or in which it is in the public interest to do so. The amendment assumes the existence of an automatic suspension and, by implication, permits it. That would be quite a startling departure, and it would be strenuously opposed by stakeholders.

10:45

Amendment 31 would insert a requirement for constables to be notified as soon as an investigation into their misconduct had been commenced. What Sharon Dowey is proposing is already provided for in the regulations and would not add anything other than possible confusion, given the lack of clarity in the drafting as to what is meant by the words "investigation commenced". I have concerns about providing notice prior to an investigator being appointed, because, at the early stage, there may be a risk of prejudicing the investigation if the subject is informed before evidence is secured.

I ask that amendments 12 and 14 be supported, for the reasons that I have set out. I ask Sharon Dowey not to press amendments 13 and 53, and I ask the committee to oppose all the other amendments in the group.

The Convener: I call Sharon Dowey to wind up and to press or withdraw amendment 12.

Sharon Dowey: In the interest of speed, I will just say that I will reflect on the cabinet secretary's comments and consider whether I can work on any of my amendments in order to bring them back with more clarity at stage 3. I take on board all the cabinet secretary's points, and I do not have any further comments.

The Convener: Would you like to press amendment 12?

Sharon Dowey: Yes.

Amendment 12 agreed to.

Amendments 13 and 51 not moved.

Amendment 14 moved—[Sharon Dowey]—and agreed to.

Amendments 52 and 53 not moved.

Section 6, as amended, agreed to.

After section 6

Amendments 54 to 56, 15 and 58 not moved.

The Convener: I call amendment 57, in the name of Russell Findlay. Do you wish to move amendment 57?

Russell Findlay: Convener, I do not know that I had the opportunity to respond to the cabinet secretary's points. I thought that I had attempted to do so—

The Convener: The debate has finished, so it is a question of moving or not moving the amendment now.

Amendment 57 not moved.

Section 7—Scottish police advisory list and Scottish police barred list

Amendment 45 moved—[Angela Constance]—and agreed to.

Amendment 46 moved—[Angela Constance].

The Convener: The question is, that amendment 46 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

MacGregor, Fulton (Coatbridge and Chryston) (SNP)
Mackay, Rona (Strathkelvin and Bearsden) (SNP)
Macpherson, Ben (Edinburgh Northern and Leith) (SNP)
Nicoll, Audrey (Aberdeen South and North Kincardine) (SNP)

Against

Dowey, Sharon (South Scotland) (Con)
Findlay, Russell (West Scotland) (Con)

Abstentions

Clark, Katy (West Scotland) (Lab)
McNeill, Pauline (Glasgow) (Lab)

The Convener: The result of the division is: For 4, Against 2, Abstentions 2.

Amendment 46 agreed to.

The Convener: Before we move to consideration of amendments relating to the advisory and barred lists, I propose that we take a comfort break of around 10 to 15 minutes.

10:51

Meeting suspended.

11:07

On resuming—

The Convener: The next group is on advisory and barred lists. Amendment 16, in the name of Sharon Dowey, is grouped with amendments 17 to 19, 59 and 20 to 25.

Sharon Dowey: Amendment 16 relates to the creation and publication of an advisory list. The bill, as drafted, indicates that both the advisory list and the barred list will be made public. My amendment seeks to ensure that the advisory list is not published. Although I appreciate that there is an argument for allowing the public to know who is on the barred list and on the advisory list, I do not believe that the advisory list should be made public.

I believe that it is important to take direction from England and Wales, which already have barred and advisory lists in place, and I note that it is the Scottish Government's intention to follow the model that exists elsewhere in the UK. The procedure in England and Wales is to not publish the advisory list.

Amendment 17 concerns people and groups who should consult the barred list before employing someone, including the Scottish Police Authority and the Police Service of Scotland. Where the information shared in the barred list is more crucial to those bodies, the amendment would ensure that they consider it. The bill as introduced leaves it to Scottish ministers, through secondary legislation, to decide who must consult the lists. I believe that it would be prudent to have a short list of people and groups who must consult the information on the barred list, where that would be most relevant to them.

Amendment 18 would add a further requirement to the advisory and barred lists. It would introduce a requirement on Scottish ministers to give notice to

"a person who is to be entered in or removed from, the advisory list or the barred list."

That would ensure that people who are placed on those lists are kept informed about that.

Amendment 19 would add further points about the advisory and barred lists. It would allow people to ask for

"a review of the decision to enter them in to the advisory list or the barred list."

The person would also be required to engage with the disciplinary process to be able to ask for a review. It is important that people who have actively participated in disciplinary proceedings are given the right to review the conclusion.

The rest of the amendments in the group are consequential. I will mention them again, but I am pleased that the cabinet secretary has indicated that the Government will support amendments 18, 20 and 22 to 24, and that it will support amendment 17 if amendment 21 is not moved. I will not move amendment 21 and I look forward to the cabinet secretary's comments.

I move amendment 16.

The Convener: As no other members want to come in, I invite the cabinet secretary to respond.

Angela Constance: I am pleased that some of the amendments in the group about the publishing and protection of the advisory and barred lists set out what the Scottish Government intended to do in regulations. I confirm to the committee that, as narrated by Ms Dowey, I support amendments 18, 20 and 22 to 24.

Amendment 17 sets out that the Scottish Police Authority, HMICS, Police Scotland and the Police Investigations and Review Commissioner are required to

"consult the advisory list and barred list before employing or otherwise appointing a person".

I can only support that as long as the power to add to those lists is not removed by amendment 21. I oppose amendment 21 because it would remove the flexibility of being able to add further organisations to those lists as appropriate. Therefore, I urge members to vote against amendment 21 if it is moved and pressed, although I appreciate Ms Dowey's early indication that she does not intend to do that.

I oppose amendment 16, which would do two things in the bill, rather than through a regulation-making power. First, it prohibits the SPA from publishing the advisory list. Secondly, it sets out that the SPA

"must take steps to ensure that information ... which is included in the advisory list is not made publicly available."

The Scottish Government's intention has never been to require the publication of the advisory list, and those in charge of the list would need to have the proper data protection measures in place to comply with current and future data protection law. I cannot support amendment 16 because it is not clear what steps the SPA would be required to take or what is meant by "publicly available". Amendments 22 and 23, which I support, prevent the publication of information on the advisory and barred lists and achieve the same aim in a more cohesive way. I urge the committee to reject amendment 16.

I also oppose amendments 19 and 59 and I urge the committee to reject them. The bill sets out automatic conditions for entry on the advisory list or the barred list. Allegations of gross misconduct warrant being included in the advisory list, and a finding of gross misconduct warrants being included in the barred list. As there is not a decision to place a person on the barred or advisory lists that can be reviewed, I oppose amendment 19, which provides for a right of review of a decision to place a person on one of the lists.

Where amendment 19 is even more problematic is in qualifying the right to a review by reference to the person's engagement with disciplinary proceedings. Amendment 59 makes the same qualification in respect of disciplinary proceedings that

"have not concluded when the person ceases to be a constable".

Both amendments would require legislation to set out a test as to what constitutes engagement with disciplinary proceedings, which would be extremely difficult to achieve without leaving the provision open to abuse. As the committee will note, the test is not set out in the amendments and therefore needs to be thought through. I urge members to oppose amendments 19 and 59.

The Convener: I call Sharon Dowey to wind up and to press or withdraw amendment 16.

Sharon Dowey: I thank the cabinet secretary for her comments. I am still hopeful that some of the amendments could be brought back at stage 3 if we do a bit more work on them. As I said, the amendments were lodged with the intention of trying to improve the bill.

I will not press amendment 16.

Amendment 16, by agreement, withdrawn.

11:15

Amendments 17 and 18 moved—[Sharon Dowey]—and agreed to.

Amendments 19 and 59 not moved.

Amendment 59 not moved.

Amendment 20 moved—[Sharon Dowey]—and agreed to.

Amendment 21 not moved.

Amendments 22 to 24 moved—[Sharon Dowey]—and agreed to.

Amendment 25 not moved.

Section 7, as amended, agreed to.

Section 8—Procedures for misconduct: senior officers

Amendments 26 to 29 not moved.

Section 8 agreed to.

After section 8

Amendments 30 to 32 not moved.

The Convener: We move to the group on misconduct in public office. Amendment 60, in the name of Russell Findlay, is grouped with amendment 61.

Russell Findlay: Amendments 60 and 61 are connected. They seek to do something very similar but in different ways. I am keen to hear the cabinet secretary's response to why I think that they are necessary and to hear whether, if the amendments are not practical, there might be a way of achieving at a later stage a practical agreement on the issue that they address.

Amendment 60 has come about via representation from HMICS, which has already influenced some of today's proceedings. The amendment seeks to create an offence whereby an officer or member of police staff can face a charge of committing misconduct in public office.

That would bring Scotland into line with the rest of the United Kingdom; in other parts of the UK, officers can face the charge of committing misconduct in public office if they abuse their position, but that offence does not exist in legislation in Scotland.

Some examples have been cited of officers committing wrongdoing in England and Wales, one of which involved taking photographs of a murder victim and sharing them on WhatsApp groups. As it stands, it seems that legislation in Scotland would not allow for criminal prosecution for misconduct in public office in that example. Amendment 60 would plug a gap and bring consistency.

Amendment 61 is a gentler way of getting to that point. Instead of legislating for the offence, my amendment 61 would require ministers to publish a report on police misconduct in public office

"no later than one year after the date of Royal Assent".

The bill's team in Parliament were kind enough to advise me of amendment 60's potential legal difficulties and to suggest that amendment 61 might be a way in which the statutory offence could be introduced, after ministers have given consideration to introducing it and outlined the steps that they might take.

In an ideal world, amendment 60 would be the way to introduce an offence of misconduct in public office. However, amendment 61 might be a way for the Government at least to go away for a year after the legislation has been passed and consider whether the measure ought to be brought into play.

I move amendment 60.

Angela Constance: Issues in and around misconduct in public office are salient and of high interest. I have a high regard for the work of His Majesty's chief inspector of constabulary in Scotland and I take very seriously any and all recommendations that he makes. I have been looking into matters further, as I indicated in our earlier discussion. I am afraid that I cannot support either amendment, and I hope that, when I explain why, members will see the common sense in that at this time.

As Mr Findlay said, amendment 60 would require the introduction of a new law of misconduct in public office,

"where the person in public office is a constable or police staff",

and for that to be done within one year of the date of royal assent of the bill that we are discussing.

As I said, I am aware that His Majesty's chief inspector of constabulary in Scotland, Craig Naylor, called for the establishment of a misconduct in public office offence for police officers and staff who abuse their position, and that he did so in his recent annual report. Mr Naylor noted that officers south of the border can be charged at common law with committing misconduct in public office and said that there is no such offence in Scotland.

There is no legislation in England; such offences are dealt with on the basis of case law in England and Wales. The common-law offence in Scotland of wilful neglect of duty by a public official covers some of the same ground as the misconduct in public office offence in England and Wales does.

The offence south of the border that Mr Naylor referred to is not police specific. It is widely considered to be ill-defined and has been subject to criticism by the UK Government, the Court of Appeal and legal academics.

In 2012, the Law Commission for England and Wales undertook a project that culminated in the conclusion that two new statutory offences were merited to replace the common-law offence. That report was published in late 2020, but the then UK Government took no action. I note that Mr Findlay is demanding that the Scottish Government legislate on this new offence within one year, including carrying out all the consultation and engagement that would need to take place on a sensitive area, when the previous UK Government did not do that in four years in relation to its laws.

Russell Findlay: I understand the point that the cabinet secretary makes in respect of amendment 60, but would amendment 61 give the Scottish Government time to do that work properly?

Angela Constance: I will come on to talk about some of the broader reasons and the broader landscape in a way that I hope will be helpful.

I am aware that the new UK Government is considering a new offence, which will apply to all public officials. Members might wish to note that the Law Commission's recommendations include several categories in the list of public office holders, which go well beyond policing roles.

I will give a bit more detail. The UK Government is considering that the offence would apply not just to the police. It would include, but not be limited to, Crown servants, including ministers of the Crown; any person employed in the civil service of the Crown; any constable and any other person employed for the purposes of any police force; elected officials and their employees; and members of Parliament. The question that we could be challenged with is why we are starting with the police and not the politicians. Broad consideration is therefore being given to the matter at the UK level, and the Scottish Government will engage with that as appropriate.

If the offence was to be created under the bill, it would apply to constables only, which would result in piecemeal legal reform and would single the police out as the only public office holders that the provision should apply to, when a principled view would suggest that other holders of public office should be equally liable for misconduct. As I said, my officials will work with UK Government officials on the topic.

Amendment 61 would require the Scottish ministers to report on misconduct in public office within one year of royal assent, and particularly on whether there should be a statutory offence of misconduct in public office for the police and, if so, what steps would be taken to introduce it. In my view, that is not the way to make the legislation, because it could, in theory, cut across a whole range of public offices. The police might also rightly raise the question of why we were singling them out.

In all fairness, there is much to be done in this area, following a series of inquiries and reviews. However, the amendments are using a specific bill about the police to seek to enact piecemeal and knee-jerk change, rather than having a proper consultation and consideration and taking a mature and co-ordinated approach to law reform in this area for all public office holders. I therefore urge members to oppose Mr Findlay's amendments 60 and 61, but I appreciate his interest in the area, because I think that it is important for standards in public life.

Russell Findlay: The cabinet secretary made an appeal for common sense, which is good news, because I am big on common sense. I heard everything that she had to say. I was not aware that there is an offence of wilful neglect of duty by a public official in Scotland that is in some ways comparable.

In the spirit of common sense, therefore, I am minded not to press amendment 60 and not to move amendment 61. I would be interested to hear what HMICS might have to say about what we have put in the amendments and how the cabinet secretary has responded. That might give us scope to look at the issue again at stage 3.

Amendment 60 is clearly wholly impractical. Amendment 61 has its own issues, but at least it is food for thought and it gives us something to consider. The last thing that I want to do is create a two-tier process in which police officers are being held to a particular standard that we as politicians are not, so I will not be pressing the amendments.

Amendment 60, by agreement, withdrawn.

Amendment 61 not moved.

11:30

The Convener: The next group is on body-worn cameras. Amendment 62, in the name of Russell Findlay, is the only amendment in the group.

Russell Findlay: I understand that amendment 62 may potentially seem to be out of place in the bill, but we have been told by the Scottish Government, the SPA and Police Scotland that Scotland's police officers are finally about to start being required to wear body-worn cameras as standard. It has been a slow process, but the pilot scheme has begun. The last that we heard from the chief constable was that, while the roll-out had been delayed, it was—apparently—still going to happen.

The amendment's purpose relates to the understanding that, when body-worn cameras do become commonly used, they will in all likelihood have a significant impact on the matters that the bill deals with—namely, police misconduct and regulation. Amendment 62 would request that

"Ministers ... prepare and publish a report on the"

value of

"body-worn cameras in ... enforcing standards of"

constables' behaviour. For all that body-worn cameras will in the main—I imagine—be used in the pursuit of dealing with criminality by the public and as evidence in that regard, they may, in other cases, potentially be used to deal with police misbehaviour or other matters that relate to the bill.

Amendment 62 would ask the Government to publish a report within one year of the bill receiving royal assent or of the conclusion of Police Scotland's body-worn cameras pilot—whichever of those dates was the earliest.

It has been said that body-worn cameras

"will transform policing in Scotland".

My amendment seeks to future proof matters slightly in anticipation of body-worn cameras coming into use by legislating at least for assessing, in some way, how significant they may or may not be in respect of police misconduct cases.

I move amendment 62.

Rona Mackay: I agree with Russell Findlay that body-worn cameras will transform the police, and I fully support them. However, I do not think that this is the right bill for the amendment. The amendment would be entirely out of place in the bill, so I cannot support it. As I said, it is not that I do not support the use of such cameras, but the amendment has come completely out of the blue, and it should not be in this bill.

Russell Findlay: I have a funny feeling that the cabinet secretary is going to agree with you.

Angela Constance: I am quite confident that I will be able to agree, at least in part, with both Russell Findlay and Rona Mackay.

As I hope members are aware, I am very keen to see body-worn cameras rolled out to help to ensure that justice is served humanely and effectively for those who interact with the police and others. That is why I ensured that there was a budget settlement this year of £1.55 billion, which includes covering the costs of the roll-out of body-worn cameras. I am aware of the updates that the chief constable has given to the committee and the Scottish Police Authority on the roll-out. I think that we all agree on the importance of body-worn cameras and what they can help to deliver.

I will, of course, want to see an evidence-based assessment of the impact of body-worn cameras; I think that that is reasonable. However, placing such a requirement in the bill is not, in my view, how that should be done. It is for Police Scotland and the inspectorate body, HMICS, to assess and audit the effectiveness of body-worn cameras when the roll-out is complete. I will ask Police Scotland to report on the effectiveness of using body-worn cameras and discuss with HMICS what plans it has to provide additional scrutiny and independent oversight. I will write to Police Scotland and HMICS on the topic after the evidence session, and I urge the committee to oppose the amendments.

Russell Findlay: I share the cabinet secretary's view about the importance of body-worn cameras. It is worth repeating that Police Scotland, which is the second-largest force in the UK, is the only police force in the UK not to have them. Every one of the 40-plus other police forces has not only had them for many years but is on to second and, in some cases, third-generation technology. There has been a complete failing, in my view.

I agree that there will be a fundamental role for Police Scotland, the SPA and, indeed, HMICS in assessing body-worn cameras, as and when they are in use. On the basis of the reasons that have been given, I will seek to withdraw amendment 62.

Amendment 62, by agreement, withdrawn.

Sections 9 and 10 agreed to.

Section 11—Complaint handling reviews

The Convener: Group 8 is on procedures for complaints handling reviews and call-in. Amendment 33, in the name of Sharon Dowey, is grouped with amendments 63, 34 to 36, 64, 37 and 38.

Sharon Dowey: Amendment 33 concerns how a complainer is notified of the commissioner's decision to conduct a review. It seeks to ensure that, when the commissioner decides to conduct a review, the complainer is notified of that decision. The amendment is needed as the bill provides that the PIRC

"may carry out a complaint handling review of the Commissioner's own volition if ... it is in the public interest to do so."

Currently, they would do that only if asked by the public. The amendment will ensure that people who make complaints are kept up to date and informed about the progress of those complaints.

Amendment 36 concerns the information that the commissioner has access to during the investigation. It seeks to ensure that regulations will be made that will allow the commissioner to require a relevant person to provide documents that they believe will assist in the investigation of the complaint. That will ensure that the commissioner can gain access to and gather as much information as possible to allow them to progress the investigation. The main intention behind amendment 36 is to address the circumstance where the call-in complaint does not come from Police Scotland. It would allow the commissioner to gather anything that may be of use.

I am pleased that the cabinet secretary has indicated her support for my amendment 33. I look forward to hearing her comments on amendment 36.

I move amendment 33.

Katy Clark: My amendments in the group relate to the preparation of an equality impact assessment. Amendment 63 relates to complaints handling reviews and amendment 64 relates to the call-in of complaints. In both situations, the preparation of an equality impact assessment would be required. I look forward to hearing the cabinet secretary's response to the amendments.

Angela Constance: My amendments 34, 35, 37 and 38 respond directly to the committee's recommendation that the bill provides for a presumption that the PIRC will publish responses that are received from Police Scotland or the SPA unless there are exceptional circumstances. Section 11 allows the PIRC to carry out a complaints handling review in the absence of a request by the complainer or appropriate authority if that is in the public interest, and the provisions give the PIRC discretion to publish the responses from Police Scotland or the SPA to recommendations made by the PIRC as soon as is reasonably practicable.

Amendments 34 and 35 will provide greater transparency by replacing the PIRC's discretion to publish responses with a duty to publish, while ensuring that no information that would identify an

individual—other than the chief constable—or prejudice an on-going criminal investigation will be published and allowing the PIRC to withhold the whole or part of a response if it considers that it is in the public interest not to disclose it. There will therefore be a presumption that the PIRC will publish responses.

Similar provisions that give the PIRC discretion to publish responses from the appropriate authorities are contained in section 12, which will allow the PIRC in certain circumstances to take over consideration of or call in a complaint that is being dealt with by the chief constable or the SPA. For consistency and clarity, amendments 37 and 38 also provide for a presumption that the PIRC will publish responses that are received from the appropriate authorities to recommendations made by the PIRC in relation to the call-in of complaints. I ask members to vote for all my amendments in the group.

I turn to Sharon Dowey's amendment 33. I welcome and support the proposed new provision to place a duty on the PIRC to notify the relevant complainer of the decision to carry out a complaints handling review. It is reasonable that the complainer is alerted to any activity relating to their complaint. That will ensure a greater degree of transparency and reassurance in the complaints handling review process.

However, I cannot support Ms Dowey's amendment 36, which would place a requirement on persons to provide documentation to the commissioner when requested to assist the investigation of a complaint that the PIRC has called in. I am not aware that that matter has been raised by the committee previously, and the amendment is not necessary. Section 44 of the Police, Public Order and Criminal Justice (Scotland) Act 2006 already requires the chief constable and the SPA to provide information, documents and evidence that are requested by the PIRC and that are relevant to the PIRC's functions. Amendment 36 also begs many questions, including with regard to the identity of the persons, what they are required to do and the consequences of not doing it. For all those reasons, I ask the committee to oppose amendment 36.

I also cannot support Katy Clark's amendments 63 and 64, which would require responses by the SPA or the chief constable following a complaints handling review under section 11 or the call-in of a complaint under section 12 to include an equality impact assessment. An equality impact assessment requires a detailed examination of the impact on all nine of the protected characteristics under the Equality Act 2010 and therefore requires substantial time and effort. To require an equality impact assessment for every response to the 200 or so complaints handling reviews per year and any call-in of a complaint would be disproportionate, given that the SPA and the chief constable are already under a duty to adhere to existing laws including the Equality Act 2010. The approach that is set out in the amendments would cause much more time to be involved in complaints handling reviews and would have significant resourcing implications. The PIRC also thinks that an equality impact assessment is not necessary or appropriate all the time.

The Convener: As no other member wishes to comment on the group, I invite Sharon Dowey to wind up and press or withdraw amendment 33.

Sharon Dowey: I have no other comments to make. I press amendment 33.

Amendment 33 agreed to.

Amendment 63 not moved.

Amendments 34 and 35 moved—[Angela Constance]—and agreed to.

Section 11, as amended, agreed to.

Section 12—Call-in of relevant complaints

Amendments 36 and 64 not moved.

Amendments 37 and 38 moved—[Angela Constance]—and agreed to.

Section 12, as amended, agreed to.

Sections 13 and 14 agreed to.

Section 15—Review of, and recommendations about, practices and policies of the police

11:45

The Convener: The next group is on review of practices and procedures by the PIRC and the involvement of HMICS. Amendment 39, in the name of Sharon Dowey, is grouped with amendment 40.

Sharon Dowey: Amendment 39 concerns reviews that the commissioner can undertake into a practice or policy. It will ensure that, before commencing such a review, the commissioner has to consult HMICS. The intention of the amendment is to avoid the duplication of work and to ensure that bodies work co-operatively to streamline the complaints process.

Amendment 40 adds to amendment 39. It would require the commissioner to assist HMICS with any work that is related to such a review. The intention of the amendment is, again, to avoid duplication of work and ensure that bodies work co-operatively to streamline the complaints process. That is a role that sits with HMICS. The

cabinet secretary has indicated that she will support amendment 39. I ask her to consider working on amendment 40 to bring it back at stage 3. I look forward to her comments.

I move amendment 39.

Angela Constance: The committee's stage 1 report highlighted the proposal from HMICS for the PIRC to have the power to refer particular matters to HMICS in this area. I believe that Sharon Dowey's amendment 39 might assist in that by adding a specific duty on the PIRC to consult HMICS, which will provide a solid foundation to establish roles and working relations in relation to the PIRC's new role of carrying out reviews of practices or policies of the Scottish Police Authority, the chief constable or Police Scotland. The amendment will also allow an opportunity for both parties to consider who is most appropriate to carry out such a review. I am therefore supportive of amendment 39.

However, I am sorry to say that I cannot support Ms Dowey's amendment 40, which would add a requirement for the PIRC to assist HMICS with any work that is related to such a review. The amendment is unnecessary as there is existing legislation that requires the PIRC and HMICS to collaborate. Section 46 of the Police, Public Order and Criminal Justice (Scotland) Act 2006 already provides an information-sharing gateway to allow the PIRC to pass information to HMICS, should that be necessary to allow HMICS to carry out its work. Furthermore, under section 85 of the 2012 act, the PIRC and HMICS have a duty to co-operate and co-ordinate activity with each other to improve how they carry out their functions and to work together to prevent any unnecessary duplication, and a memorandum of understanding is in place to help to bring that into effect.

I am informed that the PIRC is not supportive of amendment 40, for the aforementioned reasons. I therefore urge the committee to oppose amendment 40.

The Convener: I invite Sharon Dowey to wind up and to press or withdraw amendment 39.

Sharon Dowey: Given the cabinet secretary's comments, I will not move amendment 40, but I press amendment 39.

Amendment 39 agreed to.

Amendment 40 not moved.

Section 15, as amended, agreed to.

Sections 16 and 17 agreed to.

After section 17

The Convener: Members will be glad to hear that we are moving on to our final group, which is on reports by the PIRC. Amendment 66, in the name of Russell Findlay, is grouped with amendment 67.

Russell Findlay: I think that this is the second-last group. I do not want to correct the convener, but I saw the clerks getting quite animated.

The Convener: That was my deliberate mistake.

Russell Findlay: Yes—you were just trying to get our hopes up.

The reason why we are here is that Dame Elish Angiolini—or Lady Elish Angiolini, as she is now known—produced a 488-page report, with 111 recommendations, that identified weaknesses in the police complaints and regulation system in Scotland. One of her fundamental asks was that the Police Investigation and Review Commissioner should be answerable and accountable to the Scottish Parliament and its committees and not to the Scottish ministers, as is currently the case. My party agrees with that recommendation and believes that it should be reflected in the bill.

From our various correspondence with the cabinet secretary, I understand that she does not support the recommendation on the basis that she believes—if I understand her correctly—that the PIRC can already be held to account through the Scottish ministers, who are ultimately accountable to the Parliament. However, in order to provide consistency with what Angiolini has called for, I think that we should make the situation quite clear by changing the dynamic so that the PIRC is directly answerable to the Parliament. That relates to amendment 66.

Amendment 67 attempts to do that in a slightly different way. As things stand—let me try to phrase this correctly—ministers have the option to require all PIRC reports to be laid before the Parliament. Amendment 67 would remove that discretion so that, rather than ministers having the option to choose whether a PIRC report was laid before the Parliament, they would be obligated to lay it before the Parliament. In many ways, that might achieve the same thing that would be achieved through amendment 66, but I am happy to hear the cabinet secretary's take on both amendments in the group.

I move amendment 66.

Angela Constance: I know that Mr Findlay has long-standing views on the matter. As we have heard, amendments 66 and 67 seek to amend the PIRC's reporting duty under the Police, Public Order and Criminal Justice (Scotland) Act 2006 so that reports go to the Scottish Parliament instead of the Scottish ministers. As members will recall, that specific issue was not raised in the committee's stage 1 report, but I acknowledge that

Mr Findlay has articulated his views on the matter on more than one occasion.

The Scottish ministers appoint the PIRC and, due to sponsorship and funding arrangements, it is for them, rather than the Scottish Parliament, to hold the PIRC to account. It is ministers who have the ability to consider the PIRC's reports. Furthermore, the Scottish ministers' reporting duty is just one of a number of established ways in which public bodies hold the PIRC to account. Members will know that the Lord Advocate has a role to play in respect of deaths in custody and allegations of criminal matters. The Scottish Parliament has a role to play, first through the Scottish ministers, who are ultimately accountable for the activities of the PIRC and their use of resources, and additionally in that the committee is able to call the PIRC to give evidence. There is also a role for the director of safer communities in the Scottish Government, who is responsible for the continuous assessment and appraisal of the commissioner's performance, and the Auditor General for Scotland has a role to play in relation to financial matters.

Amendment 67 would replace the discretion that the Scottish ministers currently have to lay and publish reports by the PIRC with a requirement to lay and publish every report that is submitted by the PIRC under section 43(5) of the Police, Public Order and Criminal Justice (Scotland) Act 2006 in every case. Making that a requirement would remove the flexibility to deal with exceptions and to safeguard against the possibility of sensitive information being published. It is important that the Scottish ministers retain that discretion, as the new powers that are set out in the bill may result in changes to the content of future reports.

The public-facing reports that the PIRC has submitted to the Scottish ministers to date are already publicly available through publication on the PIRC's website, so any person or body, including members of the Criminal Justice Committee and other MSPs, can review those reports if they choose to do so.

I say to the committee by way of general information that, in my formal response to the committee's stage 1 findings, I set out the issues regarding correspondence between my predecessor Keith Brown, when he was the Cabinet Secretary for Justice and Veterans, and the Presiding Officer in and around governance issues. Those matters were narrated to the committee at that point.

I ask the committee to oppose amendments 66 and 67.

The Convener: I invite Russell Findlay to wind up and to press or withdraw amendment 66.

Russell Findlay: Although I have withdrawn or not moved most of my amendments today, I am minded to put amendment 66 to a vote, if necessary. Angiolini made a large number of recommendations, most of which were non-legislative and, on the face of it, relatively minor, but her recommendation that the PIRC should be accountable to Parliament is fundamental to the job that she was tasked with—that of looking at the entire picture. She saw the current arrangement as a weakness.

It is worth putting on the record the fact that the PIRC would still be accountable to the Crown Office and Procurator Fiscal Service on criminal matters. My proposal relates entirely to operational matters relating to non-criminal issues. It simply seems like a bit of sensible housekeeping. I have not been persuaded by the arguments against what I propose. There are some practical issues, but they could readily be overcome if the Government was so minded. I will therefore put the matter to a vote.

The Convener: Do you wish to press amendment 66?

Russell Findlay: Yes.

The Convener: The question is, that amendment 66 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Clark, Katy (West Scotland) (Lab)
Dowey, Sharon (South Scotland) (Con)
Findlay, Russell (West Scotland) (Con)
McNeill, Pauline (Glasgow) (Lab)

Against

MacGregor, Fulton (Coatbridge and Chryston) (SNP)
Mackay, Rona (Strathkelvin and Bearsden) (SNP)
Macpherson, Ben (Edinburgh Northern and Leith) (SNP)
Nicoll, Audrey (Aberdeen South and North Kincardine) (SNP)

The Convener: The result of the division is: For 4, Against 4, Abstentions 0.

As there is an equality of votes for and against, I use my casting vote as convener to vote against the amendment.

Amendment 66 disagreed to.

Amendment 67 moved—[Russell Findlay].

The Convener: The question is, that amendment 67 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Clark, Katy (West Scotland) (Lab)
Dowey, Sharon (South Scotland) (Con)
Findlay, Russell (West Scotland) (Con)
McNeill, Pauline (Glasgow) (Lab)

Against

MacGregor, Fulton (Coatbridge and Chryston) (SNP)
Mackay, Rona (Strathkelvin and Bearsden) (SNP)
Macpherson, Ben (Edinburgh Northern and Leith) (SNP)
Nicoll, Audrey (Aberdeen South and North Kincardine) (SNP)

The Convener: The result of the division is: For 4, Against 4, Abstentions 0.

As there is an equality of votes for and against, I use my casting vote as convener to vote against the amendment.

Amendment 67 disagreed to.

12:00

The Convener: The next group, on fatal accident inquiries into police deaths, is the final group of amendments. Amendment 41, in the name of Sharon Dowey, is grouped with amendments 42 and 65.

Sharon Dowey: Amendment 41 would add a new section to the bill altering the Inquiries into Fatal Accidents and Sudden Deaths etc (Scotland) Act 2016. It would provide for a mandatory fatal accident inquiry to be undertaken if a constable "is suspected to have" died by suicide.

In England and Wales, there are statutory inquests. Although we do not have the same requirement in Scotland, the committee found out recently, in an evidence session, that "few" officer suicides have been subject to a fatal accident inquiry despite the fact that workplace-related issues were possibly relevant. Police Scotland has acknowledged that it is out of the organisation's control whether an FAI takes place in that context. Amendment 41 is needed to ensure that an FAI is always undertaken when a constable dies by suicide.

Amendment 42 would add a new section to the bill providing for a mandatory FAI to be undertaken if a constable has died by "suspected ... suicide". It would add to the provisions in amendment 41 by allowing for a mandatory FAI to be undertaken if the family of the deceased requests one.

The police go out every single day not knowing what they are going to face. They can be faced with circumstances that none of us would want to be involved in, whether it is the death of a child, a murder or a road traffic accident. They face a lot of traumatic situations. Bringing in a fatal accident inquiry if there is thought to be a constable suicide would mean that an inquiry could be undertaken to find out what has happened, which could prevent any further suicides from taking place.

I ask members to support amendments 41 and 42.

I move amendment 41.

The Convener: I call Russell Findlay to speak to amendment 65 and other amendments in the group.

Russell Findlay: I will speak to amendment 65, but I also note that I have formally supported amendment 41, which is where I will begin.

In the past couple of years, the committee has done some important work in respect of police officer suicides. When we first asked Police Scotland and the SPA about what had been a significant number of officers dying by suicide, it transpired that they did not even collect any data about it. I have been working with the families and friends of officers who have died, and they believe that the police complaints process to which those officers were subjected was a factor in the death of their loved ones.

For all that suicide is complex and those families were not assigning the complaints process as the sole reason for their loved ones' deaths, I was struck—as, I think, other committee members were—by the fact that, when we asked Police Scotland and the SPA about the matter, not only did they appear not to record such data, but there was also what seemed to me to be a fairly strange lack of curiosity. That might be due in part to the sensitivities around suicide, which is perfectly understandable. However, I could not avoid the suspicion that it was sometimes to do with the fact that there were sensitivities around the way in which the protracted nature of the complaints process, the lack of transparency and so on may have been a factor, which would have reflected badly on those organisations.

Amendment 41 seeks to make it a statutory obligation for the suspected suicide of a police officer to be subject to a fatal accident inquiry. The cabinet secretary may argue that that would impinge on the Crown Office's powers to decide when to instruct a fatal accident inquiry, but I would point to the fact that deaths in custody, of which there are far too many, are subject to statutory fatal accident inquiries—and rightly so—because they often yield important information about what has caused a death and how future deaths might be prevented. Police officers who die in these circumstances fully deserve a similar status and mechanism.

That speaks to a broader issue about sudden deaths in Scotland. Yes, the Crown Office investigates each and every one of them, but it is a private process. In England and Wales, there is

a public inquest system, which is often a lot more transparent. If FAIs are not instructed by the Crown Office in cases of police suicide or other sudden deaths, significant and important information never reaches the public domain.

Amendment 41 might not be as clean or as competent legally as it could be, but does the cabinet secretary have sympathy for the sentiment behind it? Is she willing to work with the member to get it into shape for stage 3 or to have some form of discussion to that effect?

Amendment 65 is less specific, as it does not relate entirely to suicide. I propose that any sudden death of a police officer should be subject to a fatal accident inquiry, for the same reasons that I have put forward on suicide. An officer might have died through an accident or for some other reason—perhaps even a health reason—that is related to their service, or while on duty.

It goes back to the perception of there being a two-tier system whereby the lives of police officers who have died are not subject, in the main, to fatal accident inquiries. None of the suicides that we know of have been subject to fatal accident inquiries, although there is a statutory requirement to hold an FAI in other cases, not least for deaths in custody.

It is an important issue to address, and I hope that we are able to find a way of putting things right collectively.

Angela Constance: I know that, collectively, the committee has taken a great interest in the mental health and wellbeing of serving police officers, including those who have tragically lost their lives to suicide. I am acutely conscious of the sensitivities around what we are about to discuss in relation to the amendments in this group.

Although Mr Findlay is correct in saying that I will touch on the Lord Advocate's powers, other aspects of policy drafting and practicalities need to be considered, too.

As we have heard, Sharon Dowey's amendments 41 and 42 and Russell Findlay's amendment 65 seek to insert an entirely new provision into the bill. That would significantly amend the Inquiries into Fatal Accidents and Sudden Deaths etc (Scotland) Act 2016 by adding to the list of mandatory inquiries under which the Lord Advocate must direct an investigation the death of a constable in certain circumstances. The matter was not raised in the committee's stage 1 report, but I pay tribute to the committee for its care for and attention to the mental health of police officers and their loved ones, who live with the loss of a family member who has completed suicide.

There are a number of difficulties with the amendments. They would force a mandatory fatal accident inquiry to go ahead in circumstances in which there was no obvious link to misconduct proceedings, which is not what the bill is about. Under the 2016 act, the Lord Advocate already has considerable flexibility to instruct a discretionary fatal accident inquiry when they consider that the death

"was sudden, suspicious or unexplained, or ... occurred in circumstances giving rise to serious public concern, and"

when they decide that

"it is in the public interest for an inquiry to be held into the circumstances of the death."

The decision whether to instruct a fatal accident inquiry is taken at the conclusion of a thorough investigation by the Crown Office and Procurator Fiscal Service, which is, of course, independent. As committee members will know, when the death appears to have been the result of suicide, that investigation will attempt to ascertain the reason or reasons for the deceased person's actions. When there is evidence that ties the death of a police officer to their work, that is already a factor that will form part of the Lord Advocate's consideration.

Amendments 41 and 42 make no distinction for cases in which the Crown's investigation found no link between the circumstances surrounding the misconduct proceedings and the decision of the deceased person, and nor do the amendments make any distinction for cases in which the misconduct proceedings may have been only one of a number of factors behind the person's actions. As Mr Findlay acknowledged, we must be sensitive to the multifactorial, complex and highly personal reasons for a person completing suicide.

Under amendment 41, a fatal accident inquiry would have to go ahead regardless of the support or otherwise of the family, including in circumstances in which that public forum would air extremely sensitive information that might be highly intrusive and traumatic for the constable's family or other persons. Even the requirement that the family of the person must request the inquiry—as would be the case under amendment 42—would not solve the issue. Problems would still exist around who could request the fatal accident inquiry, when and how they would have to request it, and what would happen if close family members had different opinions on whether an inquiry should proceed. Given that, the same sort of distressing information could be publicly aired without the support of all family members.

By contrast, the current processes allow flexibility and ensure that the views of the nearest relatives about the holding of a fatal accident inquiry are always established by the Crown Office and Procurator Fiscal Service and are a relevant

consideration in assessing whether it would be in the public interest for an inquiry to be held.

Amendment 65 would also cause issues because it is not limited to suicides. Many of the deaths that would be caught would, if accidental, be caught by the 2016 act anyway. If the intentional conduct of constables led to the death of a constable, that would be a highly relevant factor for the Lord Advocate to take into account when considering whether to order a discretionary fatal accident inquiry. The provision would therefore catch deaths that were caused by other constables' misconduct but also cases in which a constable's feelings about his own misconduct led to his death.

I therefore ask the committee to reject amendments 41, 42 and 65.

The Convener: I call Sharon Dowey to wind up and say whether she wishes to press or seek to withdraw amendment 41. [*Interruption*.]

Ms Dowey, will you press or seek to withdraw and wind up?

Russell Findlay: Will Sharon Dowey take an intervention?

Sharon Dowey: I will.

Russell Findlay: I apologise for that procedural hiccup.

I heard what the cabinet secretary said about the lack of discretion in respect of the Crown Office. However, there have been approximately 350 deaths in prisons in Scotland over the past decade and in none of those cases were the families' views a factor in whether there should be a fatal accident inquiry, because it is a statutory requirement.

Furthermore, in respect of the line of argument that the cabinet secretary put forward about the airing of sensitive information, my understanding is that a sheriff who presides over a fatal accident inquiry has mechanisms to put in place reporting restrictions in respect of any information that is deemed to be sensitive, so that it is not put in the public domain.

I understand the problem with amendment 41, because it does not differentiate between a tragic officer suicide, when misconduct has absolutely not been a factor, and cases in which misconduct might well have been a factor. It is a bit of a blunt instrument.

I wonder whether there might be a way of working with the Government to lodge an amendment whereby, if the Crown's initial investigation of the circumstances found that there was the possibility of police misconduct, or if regulation issues were perhaps a factor in the death, that would trigger the requirement for a fatal accident inquiry. There has been a failure of the SPA and Police Scotland to look properly at the circumstances of deaths that we know about. That would be a way of plugging that gap and righting that wrong.

12:15

I understand the problem with amendment 65, because it talks about a mandatory FAI for all deaths and does not differentiate deaths in which misconduct issues might have been a contributing factor. I would be happy not to move my amendments if my concerns could be addressed through a change to either amendment 65 or amendment 41 and an acceptable version of what I have proposed could be found that would seek to respectfully and sensitively address what I believe is a big gap in the current system. I am keen to hear the cabinet secretary's position.

Angela Constance: I am conscious, Ms Dowey, that I am about to ask to intervene on you to answer Mr Findlay's question, which is a bit odd.

I understand the issues and the care that members have taken in this area. For me, the bottom line is that there are various views about the scope of fatal accident inquiries. As a constituency MSP, I have looked closely at the matter, not in relation to police officers, but in respect of the complexities of deaths abroad. I have looked at the coroners' system in England and the differences there are not quite as stark in practice. Although the systems look a bit different on the surface, I think that neither system always delivers the outcomes that grieving families would wish for.

There are two issues. First—I do not want to sound clumsy or disrespectful—there is no short route to changing the process of fatal accident inquiries through the back door or through another bill. That would be a less than complete or satisfactory way to address matters, because the area would require much more in-depth consultation and scrutiny.

Tragedies happen in many professions—people who work in the health service take their lives. Certainly, I have known a number of social work colleagues who have taken their lives. Suicide stretches far and wide and it will have touched everyone in this room in some shape or form. We could get into unforeseen difficulties through the very understandable desire to address the issue that is related to serving police constables, which might create less than satisfactory outcomes because we are not looking at it in the context of a wider review of fatal accident inquiries. I am cognisant that many other professions stand in the line of duty and that the mental health of those

professionals also suffers. My view remains the same—the issue is much wider.

Irrespective of one's views on the merits or otherwise of the current legislation, what is suggested is a much bigger piece of work than can be done by trying to rectify matters by making amendments to a specific bill. I say that with respect. I am very conscious that this matter cuts to the core—it cuts deep—for many families.

The Convener: I call Sharon Dowey to wind up and to press or seek to withdraw amendment 41.

Sharon Dowey: I agree with Russell Findlay's comments, and I take on board all the cabinet secretary's comments. It is a very sensitive subject. Amendment 41 was a response to comments about the stress and anxiety that officers felt when they were going through the misconduct process, which could have been a contributing factor that led to suicide. That is why we were looking to amend the bill. I appreciate that it is a sensitive subject and that we need to consider lots of other issues. We will probably want to come back to discuss the matter.

However, given the cabinet secretary's comments, I will not press amendment 41.

Amendment 41, by agreement, withdrawn.

Amendments 42 and 65 not moved.

Sections 18 to 20 agreed to.

Long Title

Amendment 47 moved—[Angela Constance].

The Convener: The question is, that amendment 47 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

MacGregor, Fulton (Coatbridge and Chryston) (SNP)
Mackay, Rona (Strathkelvin and Bearsden) (SNP)
Macpherson, Ben (Edinburgh Northern and Leith) (SNP)
Nicoll, Audrey (Aberdeen South and North Kincardine) (SNP)

Against

Dowey, Sharon (South Scotland) (Con)
Findlay, Russell (West Scotland) (Con)

Abstentions

Clark, Katy (West Scotland) (Lab)
McNeill, Pauline (Glasgow) (Lab)

The Convener: The result of the division is: For 4, Against 2, Abstentions 2.

Amendment 47 agreed to.

Long title, as amended, agreed to.

The Convener: That ends stage 2 consideration of the bill. I thank the cabinet secretary and her officials for attending.

I have a couple of comments, before everybody dashes off. We will meet again on Wednesday 9 October, when we will consider two Scottish statutory instruments that extend temporary measures that were brought in during the Covid pandemic. We will also continue our pre-budget scrutiny.

I am sure that it has not passed anybody by that this is our colleague Russell Findlay's final meeting, following his appointment as leader of the Scottish Conservatives. I want to put that on record and to extend our thanks to him for his robust contribution over the past three and a half years. We will miss that, Russell, and we wish you well—I think—in your new role. Thanks very much for all your contributions.

Russell Findlay: Thank you very much. There is no cake, I see, but that is fine. [*Laughter.*]

I have learned a lot in this committee over the past three and a half years, and I am extremely grateful for the opportunity to work with you all. It just shows that we can forget party allegiances sometimes and work for the common good.

I cannot thank the committee without thanking the clerks, who, as we all know, run the show. Thank you very much.

The Convener: With that, I close the meeting.

Meeting closed at 12:24.

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