



OFFICIAL REPORT
AITHISG OIFIGEIL

DRAFT

Criminal Justice Committee

Wednesday 15 January 2025

Session 6



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Pàrlamaid na h-Alba

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CRIMINAL JUSTICE COMMITTEE

2nd Meeting 2025, Session 6

CONVENER

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

DEPUTY CONVENER

*Liam Kerr (North East 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:

Phil Chapman (Police Investigations and Review Commissioner)

Michelle Macleod (Police Investigations and Review Commissioner)

Sharon Smit (Police Investigations and Review Commissioner)

CLERK TO THE COMMITTEE

Stephen Imrie

LOCATION

The David Livingstone Room (CR6)

Scottish Parliament Criminal Justice Committee

Wednesday 15 January 2025

[The Convener opened the meeting at 10:00]

Decision on Taking Business in Private

The Convener (Audrey Nicoll): Good morning, and welcome to the second meeting in 2025 of the Criminal Justice Committee. We have received no apologies from members. Fulton MacGregor joins us online.

The first item of business is a decision on whether to take item 3 in private. Do we agree to take that item in private?

Members *indicated agreement.*

Police Investigations and Review Commissioner Annual Report 2023-24

10:01

The Convener: The next item of business is to hear from the Police Investigations and Review Commissioner team on its work in the past year and its plans for the future. I am pleased to welcome to the committee Michelle Macleod, the commissioner; Sharon Smit, the accountable officer; and Phil Chapman, the director of operations. I refer members to papers 1 and 2. I intend to allow about 60 minutes for the session.

Before we move to questions, I ask the commissioner to make a short opening statement to highlight the main points from the annual report.

Michelle Macleod (Police Investigations and Review Commissioner): Thank you for the invitation to attend the meeting to provide an update on our 2023-24 annual report. In last year's report, we took the opportunity to highlight the 10-year anniversary of the PIRC's establishment in 2013. Over the 10 years, our aim has remained to secure public confidence in policing in Scotland, but our role has evolved and expanded and is destined to continue to do so with the future implementation of the Police (Ethics, Conduct and Scrutiny) (Scotland) Bill, which will extend our current powers and responsibilities, and as a result of the recent changes in the law arising from the appeal court judgments following the Lord Advocate's references number 1 of 2023 and numbers 2 and 3 of 2024. It is also likely that learning will arise from the outcome of the public inquiry into the death of Mr Bayoh.

The report highlights a statistical snapshot of our work last year. It details the substantial increase in our workload and the corresponding increased complexity of some of our investigation and complaint handling reviews; our revised strategic objectives; use of force investigations involving children and vulnerable people; transformational changes in technology, society and legislation over the past decade; improvements to our website; and, of course, a detailed breakdown of our accounts. One significant development last year was the expansion of our accommodation, which meets our increased storage requirements, provides additional meeting space and desk capacity and will, I hope, future proof the inevitable expansion of the PIRC to some extent.

Those are the main highlights from our report, and we are happy to take questions on any aspect of it.

The Convener: Thank you very much. One of the key things that you referenced in your opening remarks was the substantial increase in your workload, and you mentioned the complex and evolving nature of the type of investigations that you undertake. The report provides further detail on that.

I will pick out a couple of things. The examination of on-duty allegations of assault made against police officers remains one of your biggest areas of work, and the report highlights that the nature and type of referrals continue to evolve. For example, the report references referrals relating to the discharge of firearms by firearms officers during incidents involving XL bully dogs, so there are new and emerging types of activity. I am interested in hearing a wee bit more about what that looks like more broadly.

Michelle Macleod: As you have highlighted, following the recommendation from Dame Elish Angiolini's report, from October 2021, the PIRC took ownership of all allegations of breaches of articles 3 and 5 of the European convention on human rights, which are primarily assault cases. At that time, we undertook to assess and investigate all such referrals, which substantially increased the PIRC's workload. It has continued to increase since that date, so there has been a substantial change in the profile of our work following Dame Elish's recommendation.

In addition, we still have statutory responsibilities. The police have to refer certain types of action to us—for example, the use and discharge of Tasers and the presentation and discharge of firearms. As the convener alluded to, this year, we had two cases in which we investigated the shooting of XL bully dogs. Our work was assisted by the fact that the officers involved were armed and, therefore, had body-worn video footage, which made our assessment and investigation considerably more straightforward than they would have been had we not had that. We might come back to that issue later, but I hope that if, in the future, the roll-out of body-worn video is extended to all police officers involved in incidents—there has been a delay in that process—it will greatly assist the PIRC with our assessments and investigations. I hope, too, that it will allow us to take early decisions in some cases. For the incidents that I have mentioned, it was helpful to us that armed police officers were present.

We have seen an increase in the number of Crown Office and Procurator Fiscal Service referrals to us for death investigations. That has been a trend since I took up my appointment in 2019, and it continues to be so. Some investigations have involved several aspects of policing. For example, the tragic events in Skye

two years ago resulted in four Crown referrals to us on various aspects of the policing of that incident. That trend continues, so we have an increasing number of referrals from the Crown on a variety of circumstances involving police contact.

The Convener: I am sure that the benefits of body-worn video that you mentioned, and perhaps those of other digital transformation aspects, will come up in members' questions.

That brings me on to looking forward. During our scrutiny of the Police (Ethics, Conduct and Scrutiny) (Scotland) Bill, we discussed the PIRC's capacity, and we took evidence from you on that. What capacity and resourcing factors for the PIRC need to be considered for next year and beyond?

Michelle Macleod: Before I go on to resourcing, I highlight one recent change that will have a substantial impact on the PIRC's capacity. Following references from the Lord Advocate, recent appeal court decisions have changed the law on corroboration in Scotland. The principal change is that, if a complainer's account in the aftermath of an incident—one given as a reaction to the incident itself—is spoken to by a source other than the complainer, that can now be corroborative of the incident, the crime and the identity of the perpetrator.

I will give an example of how that might have an impact on the PIRC's work. If, in the course of being processed for an offence at a charge bar, someone makes an allegation of assault against an arresting officer who is present, and if the complainer advises the custody supervisor that they have been assaulted by that officer, and identifies them, that custody supervisor is now a source other than the complainer, who is capable of corroborating both what they have said and the identification of the officer. In the absence of any contradictory evidence—for example, from closed-circuit television footage—such a criminal complaint must now proceed to a full investigation, because there is a prima facie sufficiency of evidence.

That has major implications for the PIRC. Up to now, we have looked at such allegations to see whether there was a reasonable inference of criminality and whether the allegation had substance. If there was no source other than the complainer and no other mechanism of achieving the evidence, we could take the decision not to proceed to a full investigation. That is no longer the case. The only cases that will not now proceed to a full investigation are those for which there is incontrovertible evidence that what is alleged did not happen.

From the beginning of this year, our assessment process for undertaking investigations has changed, which will have a substantial impact on

the number of investigations that we will be required to undertake. We have alerted our sponsor team in the Scottish Government to the change in the law and to the impact on our organisation, including the Crown's expectation that we will report such cases to it. We have trailed the fact that that has resource implications for us. From the beginning of this year, we will monitor and keep a very close eye on that, and we will update the sponsor team on the implications for us.

The committee will have seen, in our annual report, our strategic priorities and timelines for investigations, which are pretty robust for the most serious events, such as deaths. However, if we do not receive the additional resource, the only lever that we have to deal with that is to extend the timelines for our investigations. We are in discussions about that and we will monitor the situation. In the near future, we will probably submit a business case for additional resource in order to cope with the increase in the number of investigations. Phil Chapman, do you wish to say anything more on that?

Phil Chapman (Police Investigations and Review Commissioner): No. I will just extend the view on the Lord Advocate's reference. About 25 per cent of our referrals come from the north of Scotland, we have almost the same from the east and the majority come from the west. Our conversion rate for cases that we take to full investigation, for allegations that relate to article 3 of the ECHR, is about 25 per cent, after the triage and assessment process that the commissioner spoke about.

We are looking at the demand analysis. Taking account of the impact of the Lord Advocate's reference and a substantial increase in the number of investigations, those 358 referrals will have an impact on travel, staff welfare and so on, because 25 per cent of those cases are highly likely to be in the north. Therefore, for us as an organisation, this is a fundamental change that will have a significant impact on us over the next number of months.

We will assess the situation towards April this year, which will give us three months of statistics. We obviously have statistics for the first three months of last year, so we will be able to work out what the conversion rate looks like, but the early indications are that there will be a significant uplift in the number of investigations for a team of 56 investigators.

The Convener: Thank you for that interesting update. While you were responding, I was wondering whether you have engaged with relevant partners on the change. You spoke about working on a business case and about engagement that is under way with the Scottish

Government, so it will be interesting to monitor how that progresses.

Liam Kerr (North East Scotland) (Con): Good morning. Michelle Macleod, on exactly that point, one of the first points in the foreword to your report notes that your

"workload has increased substantially over the past decade."

This afternoon, MSPs will consider the Police (Ethics, Conduct and Scrutiny) (Scotland) Bill, in which the PIRC features heavily and which will increase your responsibility. In order to help members with our deliberations, what impact do you project that the bill, if it is passed in its current form, will have on your already increased workload?

10:15

Michelle Macleod: In addition to the changes to the investigation route, the bill extends our powers and responsibilities. For example, it will open up the opportunity for both the reviews and the investigation teams to review policies and procedures in relation to certain aspects of policing. It covers calling in complaints—that is more about complaints than criminal allegations—so it is a different type of business from our investigative work.

Additional work is being proposed on carrying on investigations when officers retire, which will impact our workload. In my evidence on the bill, I highlighted that the number of cases that there will be is unquantifiable, so we do not know what the impact will be until we are doing them. There are quite a few cases that we have to stop investigating when the officer retires, so we know that a body of work that we do not currently do will suddenly be coming to us.

We will also be carrying out preliminary assessments in conduct areas for senior officers, but we already do that work, so it should not really affect our capacity in any way. However, there is the proposal that the PIRC should take a decision, having considered the public interest, on whether an investigation into conduct matters should continue after a period of time, and that would be new work.

When we gave evidence, we referred to the body of new work. We have produced preliminary costings and resources that, we believe, we would require in order to undertake that work, as set out in the bill's financial memorandum. However, as I pointed out when I was previously before the committee, some of the provisions are enabling provisions that are not detailed enough for us to be able to pinpoint what resources will be required. For certain aspects, we have put in a bid; for others, we have said that we will have to

ascertain the implications once the details of the enabling legislation have been confirmed.

Aside from the increasing number of investigations, that work will undoubtedly stretch our capacity, and, frankly, in many cases, we will not be able to undertake it without additional resource.

Liam Kerr: I would like to press you on the costings. Page 16 of your report details the finances, which are considerable and have increased by £500,000 in the past year. Staffing costs, which are clearly required based on what you have just said, make up 84 per cent of your spend. Can you tell the committee more about that?

I hear what you say about the financial memorandum and the difficulties of accurately making projections, but MSPs will have to consider such issues. What is the financial impact of the bill on the PIRC? The Scottish Government has had difficulty in making accurate projections in financial memoranda, so have the extra costs been sufficiently accounted for to give you comfort, particularly given Phil Chapman's comments about the changes to corroboration?

Michelle Macleod: The changes to corroboration have come about more recently and were subsequent to our submission on the costs of the bill.

We have clearly indicated that we are opposed to some parts of the bill—for example, the idea that the PIRC could have a role in presenting senior officer misconduct cases—because we do not think that such matters are for the PIRC, for reasons that are not just financial. On the financial side, we have made it clear that we do not currently have the skill set to do that role and would have to outsource the work to counsel, so we would be looking for the Scottish Government to resource that. We have bid for a stand-alone team to deal with the call-in of complaints and, depending on where the legislation goes, we would produce further costings to be able to do the work.

The bottom line is that we are currently pretty much at full capacity, and we now have to deal with the change to corroboration on top of the bill. Legislation is there for a purpose, and we are committed to trying to meet the intentions of the bill and of Dame Elish Angiolini's report, and to providing a public service. However, if we are not resourced, the amount of call-in of complaints, and the amount of reviews of policies and procedures, that we could undertake would, to be frank, be minimal. Without extra resourcing, the PIRC would be unable to do those things to the standard to which we—certainly I, and, I am sure, my colleagues—would like to do them.

When the bill's provisions are introduced, it will be a case of whether we have the resource, and the skill sets, to deal with them. If we do not, I am afraid that some of those measures will probably take some time to come to fruition. I am just being frank about the reality of the situation. As I said, with the increase in the number of cases coming from both Crown and police referrals, and with the change to corroboration, the investigation team is pretty much at full capacity.

As our report alludes to, we did a performance data review in 2022—it reported in 2023—in which we fixed our strategic objectives and timelines. We have been working to those and have, as you will see from the report, been meeting them successfully. My concern is that, with the changes coming in, if we do not have additional resource, we will no longer be able to do that.

As part of looking to the future—I know that the committee might be coming to that—we are undertaking a strategic review, which is being led by Mr Chapman. At this stage, it might be helpful for the committee to hear about the work that we are doing to look at the future challenges and pressures.

Liam Kerr: That really will be interesting. However, as colleagues will probably want to ask about the strategic review, I will back down on that, if that is okay.

I have one final question. Your report is very good, and I enjoyed looking through it. However, there is no doubt that what you and your colleagues have just said is concerning, because the Parliament has to be very careful about how it spends money. I did not immediately see, from the report, the horizon scanning on, for example, the Police (Ethics, Conduct and Scrutiny) (Scotland) Bill. Why not? That is a genuine question, because it seems to me that any reader would be helped by that.

Is there anything else that we need to be aware of—on legislation, for example—that is not in the report and could impact on your finances?

Michelle Macleod: I am not aware of anything with regard to legislation that will have a major impact on us, other than the bill to which we have referred.

Our report is from last year, and the bill is still going through the final stages of the process; implementation will, presumably, begin at some point this year, so it will feature heavily in the annual report for 2024-25. I assure you that there is horizon scanning and planning going on. There is a detailed look at the risk register at every senior management meeting and at our audit and accountability meetings. There has been an increase in workload—we are on an upward trajectory and have been ever since I have taken

up post, and there is no sign of that stopping, so we are clearly concerned about looking to the future and all the commitments that are coming our way.

Looking to the future, there are still areas in which the PIRC is not involved but probably should be. I think that we will see the situation evolving for at least another 10 years before the PIRC can really start to consolidate what it does in its day-to-day business. There is still quite a lot of growth and maturity ahead for the PIRC, but there is horizon scanning going on. The strategic review is where we currently have a lot going on with regard to taking a look at all the challenges and pressures, including the legislative aspects and the transformational changes such as digital body-worn cameras.

All those elements have been factored into the strategic review to give us not only a three-year strategic plan for next year, but more of an indication about our annual business plan for this year. There is a lot of work going on in that regard. As I said, Sharon Smit in particular has regular meetings with the Scottish Government on budget forecasting and highlighting issues and commitments.

A big commitment for us has also been the participation in the public inquiry into the Sheku Bayoh case, which was announced shortly after I took up post in 2019. We are still at the hearing stage of that. It has been a big commitment for us in resource and legal costs.

We have noticed that people are challenging the PIRC's decisions more often. They are seeking our information. People have realised that we hold a lot of information and more agencies are seeking information from us. In terms of our legal capacity, we are involved in a lot more areas than we were when I first started. That is another area of growth that we are featuring and factoring into the strategic review.

Liam Kerr: I understand and am grateful.

Rona Mackay (Strathkelvin and Bearsden) (SNP): Good morning, witnesses. Thank you for the detailed report that you produced. It is really interesting.

I will ask you about investigating the use of force on children and vulnerable people. Since October 2023, there have been six referrals relating to the use of pelargonic acid vanillylamide—PAVA—spray on children. In the four investigations that have been completed, the conclusion was that the discharge of PAVA was appropriate, proportionate, and necessary. Will you clarify what PAVA spray is, please?

Phil Chapman: It is the incapacitant spray that the police use.

Rona Mackay: I am sorry, I did not catch that.

Phil Chapman: It is an incapacitant spray.

Rona Mackay: Right.

Phil Chapman: Basically, it is like CS spray. It is called different things. In essence, it is part of the operational safety training—OST—equipment carried by officers. They can discharge a CS spray that momentarily incapacitates a subject to allow them to then deal with them.

Rona Mackay: It is similar to a Taser, then—or is it not?

Phil Chapman: It is used as a technique to gain control of a subject so, in that sense, yes, it is.

Rona Mackay: You investigated two Taser discharges on children. Both deployments were concluded to have been necessary and proportionate. Will you outline to us what criteria you used to say whether they were proportionate or appropriate?

Phil Chapman: The police have guidance and guidelines that we have to refer to. They are produced by the national police college, which provides the tutorials—the training and refresher training for the staff.

Much of the investigative material that we receive will be in witness statements and mobile phone footage. Everybody has a mobile phone now and, as soon as something happens, the recording goes on, so it is a rich source of information for us. We are now quickly able to get a first-hand account without involving people's perceptions and then consider the impacts.

The officers provide use-of-force forms. If they deploy PAVA or a firearm, they have to produce a use-of-force form.

Rona Mackay: Do they have to do that every time any spray or firearm has been used, regardless of whether there has been a referral or complaint to you?

Phil Chapman: Every time that there is a PAVA, Taser or firearms discharge, the police refer it to the PIRC. We then consider whether we require to do an investigation. This year, we purposefully looked at people with vulnerabilities, such as children and the elderly. There have been some high-profile cases around the world on which there has been public commentary, so the commissioner's view was that we would take those cases to full investigations and work through the process to sense check whether what the police were doing was necessary and proportionate.

Some of the cases that we refer to in the report made the Scottish media and there was a significant amount of commentary about them. We

worked through the investigations meticulously and benchmarked them against the training, the standard operating procedures for the police and the accounts of the witnesses or the victim—the individual who was the subject of the Taser or PAVA. We then have to come to a balanced judgment on whether it was lawful, proportionate and necessary. We do that against the guidelines that are produced and peer reviewed across United Kingdom policing.

Rona Mackay: Thank you. That is helpful. Are you able to give us an indication of the age range of the people involved? I am thinking about children in particular—those who are under 18.

Phil Chapman: The youngest was 11. He is the subject that is mentioned in the first of the Taser cases. The oldest that we looked at was 17 years of age. There was a wide range

10:30

Rona Mackay: That is helpful. I have one more question, regarding the complaint handling review. Fifty-seven per cent of complaints were found to have been reasonably handled by the police this year, compared to 74 per cent last year. Does anybody want to comment on that? Is that surprising? To the layman, it does not sound good, but is there a reason behind that?

Phil Chapman: There are two aspects to that. The number of complaints can go up and down. We receive 258 complaints or thereabouts. Police Scotland receives about 6,500 complaints in the first instance. Of those, about 1,300 will proceed to full investigation and a final letter will be produced and sent to the complainer.

We receive a very small proportion of those cases. Because of finite resources and the need to be proportionate, we use discretionary decisions where it is not proportionate for us to pursue a complaint. We focus on the cases where there are clearly issues with how the complaint was dealt with, where apologies have been given or where the crux of the complaint has been identified. The number that we deal with can go up and down. There is no science behind it.

Rona Mackay: Do you prioritise based on which cases you think would be most appropriate to investigate?

Phil Chapman: Yes.

Pauline McNeill (Glasgow) (Lab): Good morning. Liam Kerr asked questions about the budget. During the passage of the Police (Ethics, Conduct and Scrutiny) (Scotland) Bill you made clear your position on including the role of presenting cases against senior officers. Did you get a response from the Government after stage 1

and stage 2 about your concerns? We are voting on the bill today. Did you get any response?

Michelle Macleod: We have not had an official response to our concerns on that aspect of the bill.

We provided a response to your stage 1 report and we re-emphasised our concerns, which are not only about the financial aspect, but at the moment, we do not have the skill set to deal with such cases. As you may recall, my concern is that, if we carry out the preliminary assessment, do the investigation, make a decision on whether we feel that there is a case to answer on gross misconduct and present the case, there will be a lack of checks and balances in that system. We will almost be the judge and jury.

That was one of our concerns. In addition to that is the fact that, as I said, that role would involve a completely new skill set. Given the infrequency with which we look at such cases—and I hope that continues to be the case—it would not make sense for the PIRC to build up that expertise in house only for it to be used once every few years. I have made it clear to the Government that we would have to outsource that. For equality of arms, such cases are likely to require counsel, because the subject officer is likely to have counsel. If that role does come in, cases would have to be dealt with on a case-by-case basis, and we would have to seek resource for that. However, I do not think that responsibility for that sits with the PIRC. We are an investigative body, not a prosecuting body.

Pauline McNeill: You also outlined your additional responsibilities in relation to the new corroboration laws, which, of course, are the result of a court decision. Have there been any discussions with the Government on the implications of that? From what you described, there are going to be additional costs. In fact, we may not even know the impact of the new corroboration laws yet.

Michelle Macleod: The change in corroboration will not only affect the PIRC. Primarily, it will affect the Crown Office and Procurator Fiscal Service, because of cases that were heard before the full appeal overturned previous law on the use of distress and statements following an incident.

The appeals were related in particular to offences of a sexual nature, and the court was concerned primarily in that discussion. However, the implication is that the law applies to all cases—not just sexual offences—including, for our purposes, cases in which there are allegations of assault.

We have had discussions with the Crown and it has helpfully provided some initial guidance. We have drafted guidance for our investigators about the implications of those decisions. From my perspective, I was not aware of those cases until

the appeal happened. When the appeal decision was made, we did not realise that the implications went further than sexual offences until we got the judgments.

Pauline McNeill: You are not alone in that.

Michelle Macleod: We have had to take that on board quickly, get new guidance out and speak to our sponsor team about the implications. As Mr Chapman alluded to, we will compare the first three months of this year with the first three months of last year to get an indication of how many extra investigations that will lead us to do.

We still have to do a full investigation in relation to an allegation. Even if there is corroboration from the custody supervisor, for example, it will still be incumbent on us to do a full investigation. We will speak to witnesses who were there and look at consistencies and inconsistencies to see whether there are issues of credibility and reliability. The Crown will still expect us to do a full investigation, which is entirely appropriate. Because we have a prima facie sufficiency, we have to do a full investigation. That was unexpected, and we have had to take on board that development quickly and adapt our processes and procedures. It has implications for us, but I am aware that it also has implications for the wider justice system.

Pauline McNeill: Will that affect your targets for the handling of cases?

Michelle Macleod: It will undoubtedly affect our targets. As I have said, we are pretty much at full capacity. The teams have quite a heavy workload and that will increase by whatever percentage we will see in three months' time. That is only an initial indication. Without supplementing the teams and bringing in extra investigators, for example, the only lever that I have is to extend the times that we can take to do the investigations, because I have to have regard to the welfare of the staff, our professionalism and the quality of our work. We do not want to cut corners in investigations because we have so many more to report. They have to be done to a proper standard. The public have made serious allegations and subject officers are under scrutiny, so it has to be done to a professional standard.

Up to this point, I can say that we have had generally good feedback on the standard of our reports from the Crown Office, particularly the criminal allegations against the police division, which we report to. I would not like us to lose that in future.

Pauline McNeill: Finally, you mentioned the legal costs of the Sheku Bayoh case. Will you clarify for the committee whose legal costs you were referring to?

Michelle Macleod: I am primarily referring to counsel who are attending the inquiry on behalf of the PIRC. We have senior and junior counsel. Internally, my head of legal services is heavily involved.

Pauline McNeill: It is just PIRC officers.

Michelle Macleod: PIRC officers—the head of legal services and I—are the lawyers who have been primarily involved in the case internally, but we have costs for counsel who are attending the inquiry. We have had uplift from the Scottish Government for that cost throughout the inquiry.

Pauline McNeill: Thank you.

Katy Clark (West Scotland) (Lab): I appreciate that concerns about service are raised by the public in a number of ways, not always as a formal complaint and, as you said, not always with yourself. From casework from my constituents, it appears that there can be an inconsistency in the way that issues are dealt with, and that there are some specialist staff who are dealing with complaints at a more regional level in a way that shows a high level of training and a specialism in dealing with these kinds of matters. However, when it goes back to a local level, the standard sometimes seems different. Would you recognise that as a fair description? Is that something that you have looked at or have views on? How do we get consistency in how issues are dealt with?

Michelle Macleod: I assume that you are talking about how the police deal with complaints, both centrally and locally.

Katy Clark: Yes, I am.

Michelle Macleod: When did they go to dealing with complaints centrally, Phil?

Phil Chapman: In 2021.

Michelle Macleod: Yes—in 2021, the police changed their model to move to a central approach in dealing with complaints, rather than having local officers involved in them.

Katy Clark: I appreciate that, but does the process not still sometimes involve local officers to take forward whatever has come out of the complaint process?

Phil Chapman: On the learning that we share with Police Scotland, if a complaint relates to how an individual has spoken to someone, that learning goes to the professional standards department—the PSD—which will then share it with the divisional commander to deal with as a learning outcome for the individual officer.

Katy Clark: Yes, but that might often require action by the officer to engage with the constituent and the member of the public to resolve whatever the issue is. Is that fair to say?

Phil Chapman: Yes. Again, we keep our recommendation separate. We make a recommendation to the police about how the complaint has been dealt with, and it is then for the police to decide how they approach the remedial action that is required after that.

Katy Clark: So, you do not have any concerns about whether there is an inconsistency thereafter, and that is not something that you have looked at or have views on. Is that right?

Phil Chapman: Yes—

Katy Clark: I am thinking about specific cases that I have been involved with, and I am trying to understand whether there is a more general issue of inconsistency. Centralisation may mean that there are specialist staff who have very good skills in dealing with complaints, but are you concerned that they are not the only players in the process? Is that something that you have looked at or have views on?

Phil Chapman: The commissioner will give a recommendation to the police on how a complaint should be dealt with—for example, to reallocate it to a different officer, to carry out further diligent inquiry, and so on. The police are required to respond to the commissioner within two months to advise how that recommendation has been discharged. We have to take what we receive on face value.

Constituents have the ability to come back to us if they are still unhappy with how the police have resolved the issue. I would welcome them doing so, as we can then go back again to review the case and take forward our concerns.

Katy Clark: So, you would say that there is always the possibility of taking forward a more formal complaint.

From your experience of dealing with different complaints, do you think it is fair to say that there can be inconsistencies? With regard to the cases that you have looked at, do you have any concerns about how specific groups in the community experience their interactions with the police? For example, do you think that there is a social class issue? Is there anything that we need to be aware of?

Michelle Macleod: We can look only at how the police have handled a complaint if we receive an application for a complaint handling review. That could come from members of the public and various groups. We will particularly take cognisance of allegations that there was some form of discriminatory behaviour. We categorise our complaint handling reviews similarly to how we categorise our investigations: we have category As, which deal with more sensitive cases, higher-profile cases, death cases, allegations of

discrimination and so on. Such cases go through a more robust quality assurance process.

Katy Clark: My question is not really about process; it is about whether you have come to any conclusions? Have you got any concerns? For example, people in more deprived and poorer communities may get a different service from that which, say, a middle-class woman may get. Is that not something that you would consider?

Michelle Macleod: We do not have data on the numbers of CHR applications that would allow us to draw those inferences at this point in time. I am sorry.

Katy Clark: That is fine. Thank you very much.

10:45

The Convener: I will bring in Sharon Dowe in a moment, but I want to ask about the recruitment and retention information that is helpfully set out in your annual report. Of course, none of the work that you do could happen without the quality and experience of your staff body. I note that on page 31 of your report, you make reference to the fact that the budget is set each year by the Scottish Government, that you are under the same pressures with regard to things like public sector pay rises as other bodies are, and that you had to submit a business case to

“request additional funding for staff costs on a recurring basis and temporary funding for legal fees.”

Although the report says that you have a low staff turnover, which is really good, it also says that there will be retirements in the coming year. Can you say more about your priorities with regard to retaining an experienced and skilled staff body under the constraints that you face?

Michelle Macleod: I will ask Sharon Smit to respond to that question.

Sharon Smit (Police Investigations and Review Commissioner): We are pleased with the low level of staff turnover that we have, but you are right that we are reaching a point where staff will be looking to retire. A lot of staff give us notice of their intention to retire, which is helpful, but we have to be prepared for the fact that we might not always get the amount of notice that we would like.

We are doing several things. In terms of recruitment, when we do a recruitment campaign, we often put suitable candidates in a recruitment pool when we do not have a vacancy for them. That means that we keep in constant contact with them and make sure that they know that, for a period of 12 months, if a vacancy arises, we will be in touch to appoint them. We start the vetting process and do what we can so that when we are notified of a vacancy, we can move relatively

quickly. The vetting process takes time, which has previously resulted in a gap. We need to minimise that in order to keep on top of the workload, so having a recruitment pool is helpful.

In terms of retention, if someone is looking to retire, there is little that we can do to make them stay, but we want to make the PIRC a place where people want to remain working. We do a lot of work with staff on welfare and talk about things that make the whole experience better for them as employees. In addition to that, we are looking at succession planning to ensure that we are future proofed. We have a small number of people who might have key skills in a particular area that we cannot lose, so we are looking to do a succession planning exercise, which we will roll out to the senior team next month for approval. In that exercise, we will look at how we identify those skills. We have all the key skills in a skills matrix and a training co-ordinator who works very hard on training single points of contact in each area to make sure that we know what those key skills are. We aim to make sure that a number of people are trained or are ready to be trained in those areas, so that we do not lose those essential skills.

The Convener: Thank you. The issue of recruitment was considered during the passage of the Police (Ethics, Conduct and Scrutiny) (Scotland) Bill. Personally, I am quite relaxed about it. I think that there is a need for a proportion of PIRC staff to have a real understanding of processes and procedures within policing, but I acknowledge some of the concerns that were raised around that. Will that issue need to be reviewed or considered, or are you content with the approach as it is at the moment?

Michelle Macleod: Can I clarify that you are referring to the PIRC employing former police officers?

The Convener: That is correct.

Michelle Macleod: It might help if I give some context. As of 1 January 2025, we have 94 members of staff, with a breakdown of 43 male members of staff and 51 female members of staff. In 2013, 85 per cent of the staff in investigations were former police officers. That percentage has gradually been managed down through the recruitment of staff with other investigative backgrounds, such as military defence, and through our trainee recruitment programme.

As has been mentioned, we have 56 investigators, 34 of whom were former warranted police officers in policing, which represents 60.7 per cent of investigators. Because there are some warranted officers in areas other than the investigation team, that works out at about 38 per cent of the total PIRC staff.

I am aware of issues and concerns that have been raised. In my response to the stage 1 report, I provided a quite detailed submission in relation to my position on the recruitment of former police officers. I will highlight a couple of those points, if that is okay. It is our policy to diversify, and the Angiolini report acknowledged that it would take some years to do that. There should be people from different backgrounds in the PIRC to give it diversity and balance in carrying out investigations.

However, to be a credible and effective investigation body, we must have investigators with relevant policing experience, whether that is from policing or from other investigation bodies. Many stakeholders, including senior police officers, acknowledge that effectively holding policing to account requires employees who understand and have worked in the policing environment, including in specialist skill areas.

I would say that that is no different from any other professional body. For example, the Law Society of Scotland employs lawyers to look at the conduct and actions of lawyers and the General Medical Council employs doctors to look at whether the actions of doctors are negligent or competent. That applies to many professions, and that is appropriate.

Although that is necessary, I am aware of the perception and of the need for the public to be reassured that we undertake independent investigations. In that regard, we have robust policies and safeguards to ensure that no potential conflicts of interests arise from staff members' previous employment. We have a robust code of conduct that means that, if an investigator is asked to undertake an investigation and they know the officer who is subject to the investigation, a victim or a witness, they should immediately declare that and they will be withdrawn from the investigation. I think that that has happened four times while I have been in post. In those cases, that situation has been declared, the investigator has been removed from the investigation and they have had no access to the investigation.

Four is a low number, but that is not surprising, given that I have 34 investigators who are former police officers and we are holding to account 23,000 police officers. I am not very good at maths, but even I can tell that the probability is pretty low that an investigator will be investigating somebody whom they know. However, if that is the case, they must declare that and they will be taken off the investigation. Therefore, there should be no conflict of interests in any investigation.

With regard to the most serious and sensitive cases that we deal with—category A cases—there is a robust quality assurance process. I am the final person to sign those cases off, and I am

obviously independent of any policing body. In my submission to the committee, I have included a lot more detail, including the fact that His Majesty's Chief Inspector of Constabulary in Scotland is a senior police officer. That is presumably because he must have an awareness of how policing works in order to produce informed and credible reports. As I said, my submission contains more detail, but those are the highlights that I want to bring to the committee's attention.

The Convener: Thank you for those really well-made points.

Sharon Dowey (South Scotland) (Con): I think that a lot of my points have now been covered. I am looking at the recommendations in the report. Upon completion of investigations by the PIRC, the organisation regularly issues recommendations to the police to encourage change and improvements to practices. In 2023-24, the PIRC issued 265 recommendations and 92 individual or organisational learning points. Do you monitor the implementation of the recommendations and follow up non-compliance? If so, can you tell us more about how you do that?

Phil Chapman: I can answer that. Recommendations go to the police in relation to complaints handling reviews, which are for non-criminal complaints, and in relation to investigations that come from police referrals. Therefore, on both sides of the organisation, we put recommendations to the police, and they have two months to respond to us to say whether they have completed the recommendation.

As an innovation, starting last year, we have been invited to join the Scottish Police Authority's complaints and conduct committee, which sits quarterly and considers how the police deal with complaints in general. We provide the committee with a summary of the recommendations, including which recommendations have been discharged to the commissioner's acceptance and which are still outstanding.

However, although we will go back to the police and chase them up to ensure that they have discharged a recommendation, there is no statutory power for the commissioner to tell the chief constable to do something. That is addressed in part of the Police (Ethics, Conduct and Scrutiny) (Scotland) Bill. Just now, in the main, the police are very compliant and will discharge the recommendations, but if they are not complying, they will come back and tell us what the issue is. In general, that comes down to a bit of consultation and discussion, and we can work our way through that.

The next layer is the triple C—complaints and conduct committee—meeting, at which the committee chair holds the assistant chief

constable for professionalism to account in relation to any matters that we bring up around which we have concerns or issues.

Sharon Dowey: So, you feel that the police engage with you and are making progress.

Phil Chapman: Yes.

Sharon Dowey: That is good.

I want to ask about the referral categories. Can you tell me more about the A, B and C categories of complaint, and how you work out which category a complaint goes in? Earlier, you mentioned the change in the law on corroboration from the Lord Advocate. I have the impression that, in a charge bar, there may be a charge bar officer and another officer, and somebody might say, "I've got a complaint: I was handled too roughly there". There is no evidence of it, but because the other officer can now be used as corroboration, it becomes a complaint, even if there is no evidence of any harm being caused, or that anything has happened. How would that be categorised?

Michelle Macleod: Such an allegation would be categorised as a breach of article 3 of the European convention on human rights. In the main, at the charge bar, it is assault allegations that are made about officers with whom people have been interacting. That would fall under article 3—it is a criminal allegation of assault, so it would ultimately be reported to the Crown Office to make the final decision in the public interest, based on whether there is sufficient evidence and whether the Crown Office determines that, in the public interest, it merits criminal proceedings.

We are still getting our heads around the change in the law on corroboration. It gives much more credence to a person who has been subject to an assault, say, if they immediately make it clear to someone else within a very short period of time. Their reaction to the incident is now a significant piece of evidence that we have to take into account, and which is now deemed to corroborate the fact that an incident happened. If a person has told somebody, "It was this person here who did it", that also now corroborates the identification.

As I indicated earlier, that does not stop us having to do an investigation into an allegation. There may also be independent witnesses or mobile phone footage. We will take all that into account, and it may discount the allegation that the person made, or it may support it. We still have to do the investigation, but we are starting from a point at which there is now, prima facie sufficient evidence, whereas before the change, we were starting from a point at which we were looking for corroboration. We now have it pretty much straight away, in that scenario, and we then

look to see if the additional evidence supports the allegation or not.

Sharon Dowey: I come to my final question. We have heard that body-worn video, when it comes in, will be a game changer. I would expect that the police already have policies and procedures in place for its use, but I am not quite sure what those are or when body-worn video would or would not be operational. In the circumstances that I described, if it was operational, you would already have your evidence, as you could see if anything had happened. Have you been sighted on what the new policies and procedures are and whether they are being rolled out just now?

Michelle Macleod: That is very topical—I will let Mr Chapman say more about it.

Phil Chapman: We have invited ourselves into some of the conversations about body-worn video, because I suspect—this is not an overestimation—that it will be game changing for the PIRC.

Part of the issue that we are very keen to understand is when recording should start. When the device is operated and recording is started, there is a mechanism that records from 30 seconds before that point, and that recording becomes available to us.

11:00

The standard operating procedure was shared with the PIRC just before Christmas. This week, I responded with observations and issues for clarification. The head of professional standards has undertaken to come back to us in relation to those. As it is currently articulated, the moment to start recording is when police powers are used. We need clarity about what that will look like because, when an officer is deployed to an incident, the point at which they are allocated the inquiry would be an obvious one to start recording.

There will be issues about third-party collateral intrusion and so on, because body-worn video will record individuals. However, we should bear it in mind that safeguards are in place to delete any footage at the end of a 31-day period. We are keen to see exactly what that will look like for operational officers. When they police the night-time economy anywhere in Scotland of a Friday or Saturday night, for example, there is sometimes a lot of engagement to try to de-escalate situations that, ultimately, end up with officers having to use force. We would like to see exactly what happens in the lead-up to such situations, because when we get non-criminal complaints they are invariably about how people were spoken to and the manner of the engagement. It would be helpful for us to understand the stage at which officers turn on the body-worn video.

There has been consultation and discussion on the standard operating procedure, which is in the early stages. Police Scotland has a comprehensive view from the PIRC about how to take it forward.

Sharon Dowey: It is still in the early stages, then.

Phil Chapman: It is in draft format just now. It has been shared with us as part of the consultation. We do not have a timeline for when it will be produced or the training that will have to be rolled out thereafter.

Ben Macpherson (Edinburgh Northern and Leith) (SNP): I have a brief question. Mr Chapman, you mentioned that, of your casework, approximately 50 per cent comes from the west, 25 per cent from the north and 25 per cent from the east. I thought that that was interesting, given the population changes in Scotland and the places where the population is growing.

It provoked me to think about something that I have engaged with you on in the past. I appreciate your role in statute and in the timeline of a complaint. Will you be undertaking work in the period ahead—especially if the Parliament passes the Police (Ethics, Conduct and Scrutiny) (Scotland) Bill this afternoon and it is then implemented—to raise awareness of the PIRC further in the public domain so that people know that you are there and you are able to hear cases?

Having helped constituents through the PIRC submission process, I sometimes worry about how much public awareness there is that the PIRC is there and that you can consider people's cases.

Phil Chapman: We have to strike a fine balance. The organisation's mission is to increase trust and confidence in policing—that is, to investigate the wrongdoing and the complaint and, ultimately, to give a conclusion to a complainer. Sometimes, it is a conclusion that they are happy with; sometimes, it is not.

On our pushing out into the wider public domain, our annual report talks about our website. We have done a significant amount of work in the past year to digitise our services and explanations of them. If you go to our website now, you will find an animation. We have done a lot of consultation with hard-to-reach groups and people with protected characteristics, including people who are deaf or blind and so on, so that we can make modifications to make the website fully accessible for people to understand.

I get your point about trying to help people through what is quite a convoluted process. That is why we had the idea of the animation, which should make it easier for people to understand exactly how the process works. There are a

number of areas in which the PIRC cannot pursue complaints, but people get frustrated with us because their expectations are built up having spent all that time doing an online form, only for us to come back and say that something is not a relevant complaint. There are a number of hard stops in the process so that it is plain and clear what types of things we can do. That has been part of the work that we have undertaken to try to make the organisation more accessible.

There is no getting away from the fact that Crown Office directed investigations of on-duty criminality make up the vast majority of our workload. Since the Angiolini inquiry and the changes that were made with regard to articles 3 and 5 of the ECHR, such investigations have made up the biggest proportion of our casework on the criminal side. We also get police referrals in relation to the use of Tasers, serious injuries following police contact and the use of PAVA, which we spoke about earlier. Those are all areas in which, as pressure increases, the PIRC can use discretionary powers and, after fully assessing them, take on about 5 per cent of cases.

If demand increases to the point that we expect, it will put pressure on other areas of business, which is likely to be related to the discretionary casework that we have. The chief constable has a duty to refer cases to the PIRC, which then has to decide whether to investigate them. In cases where we do not investigate, it is in our minds that we need to ensure that checks and balances are in place that let people come forward, because some of them do not complain and, in essence, are people who have just experienced acts by the police. The police refer those cases to us, we investigate them and we sometimes make significant findings that help to change policing procedures.

Ben Macpherson: Communities need to be made aware of the PIRC, whether that is by parliamentarians such as ourselves, local authorities, the third sector or other statutory bodies.

Of course, an excellent website is welcome. I have constituents who are very aware of what you do or have been made aware by us. However, when told about the website, they have said, "Oh, I didn't know about that". That is just something to bear in mind.

The Convener: In regard to having constituents who are very familiar with the work of the PIRC, that probably goes for us all.

If nobody else has any questions, I want to clarify one final point, which relates to Pauline McNeill's question about the proposals on the presentation of cases at senior officer misconduct hearings. We did a wee check back of the

Government's response to our stage 1 report, in which the cabinet secretary said:

"Whilst this is not for the Bill itself, on balance, our intention is to consult on this when considering regulations with the Scottish Police Consultative Forum. My view is that PIRC are best placed to carry out this role. PIRC will have conducted the initial assessment, carried out the investigation and have all the documentation to present the case, though they may opt to procure the required skill set when necessary."

I just wanted to put that on the record in response to Pauline's question. You may not be bothered about that, Michelle, given that, as I understand it, you conclude your tenure in early 2025.

Michelle Macleod: I do.

The Convener: We wish you well in whatever comes next for you. Thank you again for coming along today.

We move into private session.

11:09

Meeting continued in private until 11:55.

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Official Report
Room T2.20
Scottish Parliament
Edinburgh
EH99 1SP

Email: official.report@parliament.scot
Telephone: 0131 348 5447
Fax: 0131 348 5423

The deadline for corrections to this edition is:

Monday 17 February 2025

Published in Edinburgh by the Scottish Parliamentary Corporate Body, the Scottish Parliament, Edinburgh, EH99 1SP

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