

Criminal Justice Committee  
Wednesday 24 April 2024  
15th Meeting, 2024 (Session 6)

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

### Note by the clerk

#### Background

1. The Committee is taking evidence on the [Police \(Ethics, Conduct and Scrutiny\) \(Scotland\) Bill](#) at [Stage 1 of the Parliament's legislative process](#).
2. The Bill proposes changes to the law to, in the view of the Scottish Government, ensure there are robust, clear and transparent mechanisms in place for investigating complaints, allegations of misconduct, or other issues of concern in relation to the conduct of police officers in Scotland.
3. The Committee expects to take Stage 1 evidence on the Bill from 17 April until the end of May 2024.

#### Today's evidence on the Bill

4. At today's meeting, the Committee will take evidence from two panels of witnesses. The first witness, on panel 1, is Margaret Gribbon. Ms Gribbon is an employment lawyer who has represented several female police officers, including those making claims of sex discrimination against Police Scotland. Most recently she represented former firearms officer, Rhona Malone.
5. The second witness, on panel 2, is Ian Clarke. Mr Clarke is a former police officer who has experience of the police complaints system.
6. The following submission has been provided to the Committee for Panel 2 and is reproduced at the Annex—
  - o [Ian Clarke](#)

#### Further reading

7. The Bill and supporting documents [can be found online](#).
8. A SPICe briefing on the Bill [can be found online](#).
9. The responses to the Committee's call for views on the Bill [can be found online](#).
10. A [SPICe analysis of the call for views](#) was circulated with the committee papers for the meeting on 13 March 2024.

**CJ/S6/24/15/1**

11. A [briefing](#) on the background to the Police (Ethics, Conduct & Scrutiny) (Scotland) Bill and a review of police complaints systems in other jurisdictions was published in 2023.

**Clerks to the Committee  
April 2024**

## **Annexe: submission from Ian Clarke**

To the Criminal Justice Committee, Scottish Parliament.

Call for views Police (Ethics, Conduct & Scrutiny) (Scotland) Bill.

Thank you for allowing additional submissions and the extension of the submission date. I will use my own experience of the disciplinary process as an example when answering relevant questions.

Q5 – the proposal to continue disciplinary procedures for gross misconduct, should an officer retire or resign.

I am an officer who retired during the misconduct process. I would have preferred that process was seen to a conclusion after my retirement. Instead, it is left hanging over me. To be accused of something and to have no formal resolution is wrong. It allows the guilty to walk away with no consequences and the innocent to have suspicion hanging over them for the rest of their lives, especially when the accusations attract public interest through the media.

I was a police officer and was accused of a crime and subject to disciplinary proceedings, suspended whilst the criminal process took place. After a trial I was found not guilty, the Sheriff ruling that no crime had been established.

It should have been obvious from day one, that the crime I was accused of was not a criminal act and I was in fact performing my lawful duty. The whole process from initial incident to the not guilty verdict took exactly 900 days, during which time I took early retirement.

I complained to Police Scotland and COPFS about the way I had been treated and that a crime had never been established, but they refused to accept any responsibility. My accusers walked away, with no formal recognition that there had been no misconduct on my part.

If the disciplinary process had to continue after I had retired, Police Scotland would have to record that there had been no misconduct on my part. Instead, under the present system, the process is closed, with no resolution. I would have preferred a misconduct hearing, where the false claims and failure to disclose exculpatory evidence had to be formally recorded. I would have also accepted a letter from Police Scotland acknowledging the Sheriff's comments and verdict and that there had been no misconduct on my part and for that reason, the process was now being closed.

Either way, that should be made part of the public record. Many misconduct claims do not result in trials. I have the trial verdict to prove the accusation against me was false. Others will not have that. Nowadays, with internet access, if someone searches my name and a few relevant details, they will find the not guilty verdict along with the initial accusation. The trial saved me from having to explain an accusation with no resolution. Those who retire or resign, with no trial or misconduct hearing, can be left with an unresolved accusation hanging over them.

I was able to use the media reports to explain to my present employer why I had retired early and that there had been no misconduct on my part. I would have preferred a formal acknowledgement from Police Scotland.

Obviously, the opposite applies where there has been misconduct, whereby retirement and resignation mean the process is closed and those guilty can escape consequences for their actions. Certain sanctions no longer apply after retirement or resignation, but a fine, along with use of a barred list should still be available. There need to be consequences for misconduct, rather than an escape.

Any police officer who retires or resigns during the disciplinary procedure can continue to pay Scottish Police Federation fees so retaining legal cover, or they can choose not to do that and cover the costs themselves. I retained cover after I retired, and the costs of my trial were paid for. I am still a member of the Federation today, in effect paying back those costs.

The costs to Police Scotland incurred by having to continue with disciplinary proceedings are, in my view, outweighed by the importance of not letting officers escape their misconduct. Letting guilty police officers walk away without consequence, is a poor way to save money.

A member of the public needs to be very rich, before they can consider taking any legal action against Police Scotland, who already spend far too much public money defending themselves, fighting off claims regarding misconduct.

Q6 – Time period for misconduct proceedings to apply.

I think that it should be the norm for misconduct proceedings to continue after retirement/resignation. I think that for minor misconduct, a 12 month period is proportionate. It could be appropriate to end the process with a letter, to say that no further action is being taken, because the allegation is minor, and it would be disproportionate to continue.

I think that serious misconduct, especially that accompanied by criminal proceedings, that can take far longer than 12 months, should continue with no time limit.

In my case, from the date of the initial incident to the last day of the 3-day trial, was exactly 900 days. If it were to be decided that 12 months also applied to a case like mine, would that be 12 months from the last day of the trial, or 12 months from the date I retired, which would mean 9 months from the date of the trial? I think that needs to be clarified.

Police misconduct proceedings can take years, all police officers will have anecdotal evidence from officers they know of misconduct lasting for years. I know of one that took 9 years, as it went to a tribunal. When the claim of harassment by one police officer against a group of others failed at the tribunal, the misconduct was finally concluded. That also needs to be considered. It would be too easy for misconduct proceedings to be allowed to drift over the 12 months and fall away. The 12 months should be considered a time scale, not a dead end.

Q7 – Establish a Scottish police barred and advisory list.

I agree with the introduction of a barred list. It will act as a deterrent, as it makes misconduct decisions public and can affect future employability. It also makes the process more public, reassuring the public that police officers cannot wholly escape the consequences of their misconduct.

As I said in Q5, I think it also needs to be a matter of public record where the verdict is that there was no misconduct. The reasons should also be recorded. To use my case as an example, it would be on record that the disciplinary proceedings against me had ended, after I was found not guilty in court, and the Sheriff's ruling that no crime had been established.

Q 19 – Provisions not in the Bill.

Police Scotland have been using Non-Disclosure Agreements to hide misconduct from public scrutiny. They have spent a lot of public money doing that. I would ask that the Bill prevents such, and NDAs cannot be asked for, when settling cases involving any form of misconduct. If Police Scotland have paid out to settle a claim of misconduct by a police officer, that needs to be made public. Not being able to use NDAs would save money. Scrutiny is not possible when any part of the misconduct process is kept secret. The name of the police officer and circumstances arising to the pay out and the amount paid out should be made public. The name of the person the money is being paid to, could be redacted.

This point relates back to Q5 and continuing misconduct proceedings to a resolution, which is then made public. It wrong to hide away any part of the misconduct process. It allows certain police officers to be protected, so their reputation remains intact, even if they are guilty of gross misconduct. It also leaves innocent police officers with no resolution to prove their innocence.

Ian Clarke  
9 January 2024