

Criminal Justice Committee  
Wednesday 8 May 2024  
17th 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. These witnesses are representatives of external organisations, police unions and staff associations.

##### Panel 1

- **Stephanie Griffin**, Scotland Policy Manager, Equality and Human Rights Commission
- **Dr Genevieve Lennon**, Scottish Institute for Policing Research
- **Kate Wallace**, Chief Executive, Victim Support Scotland

##### Panel 2

- **Rob Hay**, Chief Superintendent, Association of Scottish Police Superintendents
  - **David Kennedy**, General Secretary, Scottish Police Federation
  - **David Malcolm**, Branch Secretary, UNISON Police Staff Scotland branch
5. The following submissions have been provided to the Committee for panels 1 and 2 and are reproduced at the Annex—

- [Equality and Human Rights Commission](#)
- [Scottish Institute for Policing Research](#)
- [Victim Support Scotland](#)

And

- [Association of Scottish Police Superintendents](#)
- [Scottish Police Federation](#)
- [UNISON Scotland](#)

6. The Committee received supplementary evidence from Alex O’Kane on behalf of Stephanie Bonner and from June and Hugh Mcleod. The Committee also received a letter from the Cabinet Secretary for Justice and Home Affairs with revised costs for the implementation of the Bill, as well as correspondence from Police Scotland and the Scottish Police Authority in response to requests for further information from the Committee. These are also reproduced at the Annex.

### **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.
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  
May 2024**

## **Annexe A: submission from the Equality and Human Rights Commission**

Dear Convener,

Subject: Police (Ethics, Conduct and Scrutiny) (Scotland) Bill – Call for views

The Commission welcomes the opportunity to respond to the Committee's call for views on the Police (Ethics, Conduct and Scrutiny) (Scotland) Bill (the Bill). We are supportive of both clarifying complaint procedures to enable better access to justice for victims of misconduct and improving accountability of the police.

The Commission [previously responded](#) to the Justice Sub-Committee on Policing's call for evidence on the final report of the Independent Review of Complaints Handling, Investigations and Misconduct Issues in Relation to Policing (the review).

While our response mainly focused on the non-legislative recommendations of the review, many of our positions are applicable to the implementation of the legislative recommendations and we would refer the Committee to that response. We have made some additional observations specific to the Bill below.

### **Code of ethics**

The Bill sets out the requirement for the Chief Constable to prepare a code of ethics for the Police Service, and that the Scottish Police Authority (SPA) should be involved in this process. It also lists principles, standards and rights set out in legislation which the Chief Constable must give regard to. We referred in our previous response to the public sector equality duty (PSED) under the Equality Act 2010 (EA). The purpose of the PSED is to ensure that public authorities, including Police Scotland, the SPA, and the Police Investigations and Review Commissioner (PIRC), integrate consideration of the advancement of equality into their day-to-day business. The general equality duty is intended to accelerate progress towards equality for all, by placing a responsibility on bodies subject to the duty to consider how they can work to tackle systemic discrimination and disadvantage affecting people with particular protected characteristics. The Bill should reflect the need to consider the PSED in preparing a code of ethics.

### **Persons to be consulted in respect of the Code of Ethics**

The Bill sets out the need to consult groups or individual constables or members of police staff characterised by one or more listed characteristics. These characteristics broadly align with some of the nine protected characteristics (PCs) of the EA. For clarity and consistency purposes, as well as assisting the Chief Constable and the SPA meet their PSED obligations, these should be amended to mirror the EA PCs.

### **Duty of candour**

The Bill sets out the need for Constables to attend interviews and assist and participate in proceedings (including investigations against constables) openly, promptly and professionally, in line with the expectations of a police constable.

There is limited detail in the equality impact assessment about accessibility options for those constables who may find it difficult to travel to and participate in interviews and therefore fulfil the duty of candour, due to one or more PCs.

The duty of candour must be supported with accessibility arrangements, as per the [EA's reasonable adjustment duty](#).

### **Advisory Board to the Commissioner**

Ensuring a range of diverse experiences to advise the Commissioner is essential and may help Scottish Ministers meet their own PSED obligations, such as the need to foster good relations between people who share a protected characteristic and those who do not. The Bill should reflect the need to ensure membership of the Board reflects diverse and intersectional experiences of PC groups.

We would be happy to discuss this response in more detail with the Committee at any point of the Bill scrutiny process.

Yours sincerely,

Stephanie Griffin  
Scotland Policy Manager

## **Submission from the Scottish Institute for Policing Research (SIPR)**

### **7. Information about your organisation**

SIPR is a collaboration between Police Scotland, the Scottish Police Authority, and 15 Scottish universities established to carry out high quality, independent research and to make evidence-based contributions to policing policy and practice.

### **8. What are your views on the proposals to establish a statutory Code of Ethics for Police Scotland, the requirement for police officers to have regard to the Code, and the procedures for producing the Code?**

1. The proposal to implement the recommendation in Dame Angolini's 'Independent Review' (2020) and place the Code of Ethics on a statutory footing is to be welcomed.
2. For the Code of Ethics to be an effective tool, it should be subject to monitoring. This can inform the review mechanisms already in the Bill (the proposed s.36B(2)). A good model is provided in Northern Ireland, where the Northern Irish Policing Board (NIPB) 'monitors the effectiveness of the Code by considering how officers are trained on the implications of it; by reviewing quantitative information on breaches of the Code of Ethics; and by evaluating qualitative information on how the PSNI both investigates and addresses such breaches, including disciplinary action taken or procedural or policy changes made' (NIPB 2008, p.3). The second and third elements remain relevant even if all breaches of the Code are not a disciplinary matter (see further below), focusing instead on disciplinary matters that include breaches of the Code. The Scottish Police Authority should be required to undertake such monitoring. Therefore, the Police and Reform (Scotland) Act 2012, s.2(1) should be amended to add, after s.2(1)(2): 'to promote and monitor the Code of Ethics'.
3. The current Code of Ethics 'sets out [Police Scotland's] commitment to human rights' (Police Scotland). This commitment should be explicitly included in the Bill as an addition to the proposed s.36A(2).
4. A Code of Ethics should not only reflect the values of Police Scotland, but also aid the police in comprehending and adhering to those values. To achieve this, the Bill could broaden the purposes of the Code, mirroring the requirement under the Police (Northern Ireland) Act 2000, s.52(1)(b) whereby a purpose of the Code of Ethics is to make 'police officers aware of the rights and obligations arising out of the Convention rights (within the meaning of the Human Rights Act 1998)'. This should be added to the proposed s.36A(2).
5. The Scottish Human Rights Commission should be added to the list of persons required to be consulted under the proposed Schedule 2ZA.
6. The current Code of Ethics for Police Scotland is explicitly 'not a discipline code', it is rather what Police Scotland 'aspire to' (Police Scotland). While approaches to Codes of Ethics vary across police organisations, there are strong justifications that breaches of the Code ought to be disciplinary matters. This approach is

taken, for example, in Northern Ireland and Quebec (Police Act, s.143). The resulting action may range from informal resolution through formal sanctions. Making the Code of Ethics a discipline code, in combination with the recommendations above, would ensure that 'the common thread of human rights and ethical practice runs through all police action and oversight of police action' (Kilpatrick: 44). This issue should, at least, be debated.

7. If the previous suggestion is not accepted, action should still be required to identify when a breach of the Code is an element of a disciplinary action. This would facilitate the monitoring outlined above.

References:

- Kilpatrick 'A human rights-based approach to policing in Ireland' (Irish Council for Civil Liberties, 2018).
- NIPB 'Police Service of Northern Ireland Code of Ethics' (NIPB, 2008)

## Submission from Victim Support Scotland

Victim Support Scotland welcomes the opportunity to respond to the Call for Views to the Scottish Parliament's Criminal Justice Committee about the Police (Ethics, Conduct and Scrutiny) (Scotland) Bill.

Our vision is that people affected by crime – victims, witnesses and their families – are treated with dignity and respect and are at the heart of justice in Scotland.

Our mission is that all those affected by crime receive the high-quality support and care they need to move forward with their lives.

### **8. What are your views on the proposals to establish a statutory Code of Ethics for Police Scotland, the requirement for police officers to have regard to the Code, and the procedures for producing the Code?**

Victim Support Scotland (VSS) would support the requirement for Police Scotland to have a statutory Code of Ethics. A Code of Ethics should be the cornerstone of standards of professional behaviour that officers should be required to abide by and that provides a foundation for ethical practice. The need for a robust ethical framework to policing is also underscored by a recent inspection by HM Inspectorate of Constabulary in Scotland, which made a number of recommendations to improve underlying culture within Scotland's police force<sup>1</sup>. People affected by crime have often highlighted to VSS the importance of legislation and policy translating from theory to improved professional practice. Connected to this, it is crucially important that the Code is both read and fully understood by all constables and police staff who must abide by the Code.

We have received the following feedback from people with lived experience on the Code of Ethics to evidence our position:

**'Yes, there should be a Code of Ethics and it should apply to Chief Constable and SPA jointly. The Chief Constable should be responsible. Having myself gone through a process of making a complaint with Police Scotland that had 11 points which weren't upheld, I feel like there should be a Code of Ethics as that would provide substance.'**

**Individual who had experienced stalking**

VSS believes that the Code of Ethics should be published and widely available to the public.

We have received the following feedback from our service users on the Code of Ethics to evidence our position:

**'There should be due diligence about how that Code of Ethics would be monitored, that it's being upheld properly.'**

**Individual who had experienced stalking**

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<sup>1</sup> [HMICS Thematic Inspection of Organisational Culture in Police Scotland](#)

### Section 3: Duty of candour

#### 9. What are your views on the proposal to introduce a duty of candour for constables as set out in section 3?

The introduction of a duty of candour for constables is something that Victim Support Scotland supports. People affected by crime have frequently highlighted to us the importance of the Police service in Scotland being accountable and transparent to the communities they serve. We regard the introduction of a duty of candour to be an important part of a wider measures that set key expectations that Police constables will be honest, truthful and cooperative in proceedings, including investigations of other constables.

We have received the following feedback from our service users on the duty of candour to evidence our position:

**'I can only go by my experience. There definitely should be an explicit duty of candour. They should cooperate fully with all investigations into allegations against its officers. I have found that the officers have not done that in my case.'**

**Individual who had experienced stalking**

### Section 4: Liability of the Scottish Police Authority for unlawful conduct of the Chief Constable

#### Police conduct

#### 10. Do you have any views on the proposal for the SPA to be liable for the unlawful conduct on the part of the Chief Constable in the carrying out of their functions?

Victim Support Scotland supports this move to ensure that constables of any position within the Police, including the Chief Constable, are held to the same standards when it comes to unlawful conduct. People affected by crime have told us that it is important to them that supervising officers, including those of the highest ranks, are able to be held accountable by the appropriate mechanisms.

**I think that supervising officers should be involved as well. Because quite often the on-duty officers will respond to their supervising officers and being advised to do a certain thing, and those supervising officers should be held accountable as well.'**

**Individual who had experienced stalking**

### Section 5: Misconduct procedures: functions of the Police Investigations and Review Commissioner

#### 11. What are your views on the proposal to broaden the functions of the PIRC to include any aspect of the regulatory disciplinary procedures, not just misconduct investigations?

Victim Support Scotland agrees that expanding the function of the PIRC in this way will allow for increased oversight of disciplinary procedures from an earlier stage. We



have heard from people affected by crime who have been involved in complaints procedures who have highlighted a wish for PIRC to have more extensive functions than its current remit. This increased flexibility in PIRC's function is in tune with what individuals have highlighted in other areas when it comes to PIRC's powers, for example, the ability of PIRC to ensure that investigations or other disciplinary procedures are returned in a reasonable timeframe:

**'PIRC should have stronger powers to insist within the statutes of law that Police Scotland return responses within the time limit.'**

**Individual who had experienced stalking**

## **Section 6: Procedures for misconduct: former constables**

### **12. What are your views on the proposals to continue disciplinary procedures for gross misconduct, should an officer retire or resign?**

Victim Support Scotland agrees with Lady Elish Angiolini's recommendation on this matter. It would not seem fair and just that an enquiry cannot be concluded due to the resignation or retiral of the officer subject to that investigation.

Victims and witnesses of crime and their families need to see justice being done and lessons being learned by individuals and the Police force.

We agree that investigations and hearings should continue until their conclusion regardless as to whether the officer who is the subject of the hearing leaves the Police.

### **13. Do you have any views on the proposed time period after which no steps, or only certain steps in the misconduct procedures would be applied unless additional criteria were met?**

Victim Support Scotland suggests that the proposed time period of 12 months, while better than a shorter time limit or no recourse to an investigation, must not come at the cost of appropriate misconduct procedures taking place when a longer time has elapsed. We would suggest that there should be a degree of flexibility allowed in the criteria beyond this set period.

Individuals affected by crime have often told Victim Support Scotland about their frustration with a wider justice system that sets what can seem to individuals like arbitrary time limits on bringing forward complaints. As a result, this can make individuals feel that their complaint is not valid, or that their voice has not been heard. This is exacerbated further by delays in other justice system processes that might mean that the ability to raise a complaint becomes delayed.

Victim Support Scotland would also like to highlight that it is important that decisions about misconduct investigations are made in consultation with any identified victim of the alleged misconduct, and that appropriate support is provided to these individuals.

## **Section 7: Scottish police advisory list and Scottish police barred list**

### **14. What are your views on the proposals to establish Scottish police barred and advisory lists and the criteria for the inclusion of an officer to either list?**

It is essential that the Scottish public - including victims and witnesses of crime and their families - receive the same vetting protections as those who reside in other nations of the UK. The establishment of a barred and advisory list to provide this additional layer of protection is supported by Victim Support Scotland.

In England and Wales, the barred list is publicly accessible. This for example, means that the list is available to organisations who might perform searches when vetting potential employees. This functionality for a Scottish barred list would mean an additional layer of protection and accountability for individuals in Scotland

## **Section 8: Procedures for misconduct: senior officers**

### **15. What are your views on the proposal to have an independent panel determine misconduct cases against senior officers?**

Confidence in policing in Scotland is vitally important to protect people affected by crime or people at risk of being affected by crime.

It is therefore important that matters affecting confidence in policing are properly investigated and lessons are learned to prevent future incidents. The requirement for an independent panel in senior officer conduct cases is something that Victim Support Scotland supports.

Some individuals affected by crime have in the past provided feedback that their experience has led to them feel that justice agencies govern themselves. Having a mix of police and non-police members on the panel for these particular cases would potentially enhance public confidence in this process

## **Section 9: Investigations into possible offences by persons serving with the police**

### **16. What are your views on the proposals to clarify the PIRC's investigatory powers in relation to criminal conduct and incidents involving deaths of serving police officers, as set out in section 9?**

Victim Support Scotland supports these proposals in line with our other viewpoints outlined elsewhere in this response. People affected by crime have indicated a need for the PIRC, as the investigatory body for police complaints, to have a remit that means there are no barriers to the robust and thorough investigation of complaints and criminal conduct. It is also the case that there is a need for investigatory powers to be sufficient to cover all circumstances. The clarification that these circumstances can include police officers who have 1) left the service, 2) became an officer after the conduct took place, or 3) were not on duty at the time the relevant incident occurred is a helpful one.

The clarification of PIRC having investigatory powers into any deaths of serving police officers which the procurator fiscal is required to investigate, including off-duty police officers, is helpful if it reduces gaps in PIRC's coverage within the legislation.

## **Section 10: Investigations of complaints made by persons serving with the police**

### **17. What are your views on the proposals to clearly define who can make a “relevant complaint” to the PIRC and in what circumstances?**

Victim Support Scotland, from the point of view of clarity for those making complaints, supports the proposal to clearly define that an off-duty police officer is regarded as able to make a 'relevant complaint' to the PIRC in their personal capacity as a citizen. Similarly, the proposal to clearly define separately that police officers or staff can make complaints about acts or omissions that occurred both during, or outside of, their working hours is something that Victim Support Scotland would support.

The need for clarification and improvement in this area is further evidenced by the recent HMIC Thematic Inspection of Organisational Culture in Police, which highlighted:

'Misconduct and grievance processes are perceived as lacking openness, transparency, fairness and pace of resolution. There was a general lack of trust in these processes, and we found they are having a direct and often damaging short and longer term impact on individuals and teams, which the service often fails to recognise.'

HMICS Thematic Inspection of Organisational Culture in Police Scotland  
December 2023 (p18)

## **Section 11: Complaint handling reviews**

### **18. What are your views on the proposals to enable the PIRC to carry out complaint handling reviews of its own volition and make recommendations in relation to complaints in a review report?**

Victim Support Scotland agrees that the proposal to enable the PIRC to carry out a complaint handling review without a request from the complainer or the appropriate authority (the Chief Constable or the SPA), if it was in the public interest, is something that is useful as a possible provision to allow for key learning and the prevention of future mistakes. There are useful models of complaints review in the public sector whereby reviews of findings of complaints are also anonymously published where appropriate to do so, such as the approach of the Scottish Public Service Ombudsman. Victim Support Scotland has heard in the past from people affected by crime who appreciate the transparency of these processes. There is also an existing model of this power in policing in Northern Ireland held by the Police Ombudsman for Northern Ireland (PONI).

However, Victim Support Scotland would also like to emphasise that while there might be some occasions where it is necessary to conduct a complaint review without a complainer requesting this, involving the complainer wherever possible in the review should be regarded as best practice. Published responses to complaint

reviews, particularly when created without a request from the complainer, should also be done fully respecting the full privacy and confidentiality of the complainer in order for members of the public to feel safe and comfortable in making complaints to PIRC in the future. Complainers should be informed wherever possible if the complaint they made is to be subject to a review that will enter the public domain.

We would also like to highlight that Victim Support Scotland support proposals in the current Victims, Witness and Justice Reform (Scotland) Bill to establish a Victims and Witnesses Commissioner, with a key role in complaints review. It would be expected that PIRC would cooperate fully with the Victims and Witnesses Commissioner to allow the Commissioner to achieve their function.

## **Section 12: Call-in of relevant complaints**

### **19. What are your views on the proposal to give the PIRC a statutory power to take over investigation of complaints being dealt with by the Chief Constable or the SPA under the circumstances set out in section 12?**

We support this proposal to allow for greater scrutiny by the PIRC of the Police complaints handling process. In order for the public to have faith in the Police complaints handling process, it needs to be as transparent and accountable as possible.

## **Section 13: Review of investigation of whistleblowing complaints**

### **20. What are your views on the proposals for the PIRC to audit and have oversight of the SPA and Chief Constable's arrangements for handling whistleblowing complaints and to report and make recommendations on the arrangements?**

We support this proposal as a means to allow for greater transparency in the arrangements for handling whistleblowing within the Police. Like the complaints handling process, whistleblowing arrangements within the police should be clearly understood and trusted by the public, as well as serving police officers and staff.

## **Section 14: Investigations involving constables from outwith Scotland**

### **21. What are your views on the proposals to allow the PIRC to investigate serious incidents, potential criminal offending and some deaths involving English, Welsh and Northern Irish constables who are carrying out policing functions in Scotland?**

We support the PIRC having the ability to investigate in these circumstances. For individuals affected by criminal offending in Scotland, or who are the relatives of constables who have died, it is important that there is full and thorough investigation of what happened. The constable's presence in Scotland should allow investigation from the PIRC.

## **Section 15: Review of, and recommendations about, practices and policies of the police**

**22. What are your views on the proposals for the PIRC to review and make recommendations on the practices and policies of Police Scotland or the SPA, either in relation to a specific complaint or more generally?**

We support this proposal as a means to increased emphasis on improvement around the practices and policies of Police Scotland or the SPA, and a way in which individual complaints or suggestions might have a recorded impact. The duty for the Chief Constable and the SPA to provide a written response and progress updates according to the situation of the recommendation is an essential part of this recommendation process.

It should however be noted that published responses to recommendations around individual complaints should also be done fully respecting the full privacy and confidentiality of the complainer, in order for members of the public to feel safe and comfortable in making complaints to PIRC in the future. Complainers should be informed wherever possible if the complaint they made is to be subject to a review that will enter the public domain.

**Section 16: Provision of information to the Commissioner**

**23. What are your views on the proposal to allow the PIRC to have remote access to Police Scotland's complaints management database?**

We would agree that this would appear to be necessary to fulfil the other functions of the PIRC proposed elsewhere in this Bill. We would emphasise that any access to information must be done alongside full respect of the rights and data protection of individual complainers or anyone else affected by the complaints.

**Section 17: Advisory board to the Commissioner**

**24. What are your views on the proposal to establish a statutory advisory board for the PIRC?**

Victim Support Scotland would support the creation of this enhanced level of scrutiny and independent oversight on the governance of the PIRC. It is key that people affected by crime and the public more widely can trust justice institutions, and, in turn, the organisations which scrutinise those institutions.

**Recommendations made by Lady Elish Angiolini**

**25. What are your views on the implementation of these recommendations?**

We would like to highlight that progressing promptly the pending non-legislative actions recommended by Lady Elish Angiolini is vital.

For individuals affected by crime, and for the public more widely, trust in the practice and conduct of the Police is often core to initial engagement of victims and witnesses of crime with the justice process. With the recent results of the 2021/2022 Scottish Crime and Justice Survey<sup>2</sup> highlighting that there has been a fall in confidence in the police over recent years, this programme of improvement is timely and vital.

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<sup>2</sup> [Scottish Crime and Justice Survey 2021/22: Main Findings - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/scottish-crime-and-justice-survey-2021-22/main-findings/pages/12.aspx)

The recommendation made to ‘hold in mind a possible PONI [Police Ombudsman for Northern Ireland] model’ for Scotland, which is currently being kept under review, is something that Victim Support Scotland would like to emphasise should remain an active consideration. We have heard from people affected by crime who have highlighted a wish to have the outcome of a complaint to the police reviewed, but have found there is no way accessible to them as an individual to progress it further. The additional recourse to complaint review that a Scottish Police Ombudsman might bring, if set up in a transparent and accountable way, is likely to be of benefit to victims and witnesses of crime and their families.

## **Submission from the Association of Scottish Police Superintendents**

### **7. Information about your organisation**

The Association of Scottish Police Superintendents represents the senior operational leaders of the Police Service of Scotland in the ranks of Superintendent and Chief Superintendent.

### **8. What are your views on the proposals to establish a statutory Code of Ethics for Police Scotland, the requirement for police officers to have regard to the Code, and the procedures for producing the Code?**

The Association of Scottish Police Superintendents (ASPS) is supportive of the proposals. A statutory Code of Ethics fits with a modern police service and underpins the National Decision Model.

### **9. What are your views on the proposal to introduce a duty of candour for constables as set out in section 3?**

**The Association understands what The Acts seeks to achieve through the introduction of a duty of candour.**

However, duty of candour, as proposed in The Act appears in direct conflict with the Criminal Justice (Scotland) Act 2016 and the legal protections it affords all citizens in terms of the right to silence / privilege against self-incrimination.

In future, police officers in Scotland could face the very real situation where, following legal advice to remain silent (as is their right under current legislation), they find themselves in breach of the act and facing sanction.

The Association recognises that the legislation makes no provision as to the legal effect of duty of candour, its enforcement, or sanctions for breach. However, understands that by introducing duty of candour into the Conduct Regulations a breach may be considered misconduct.

In either case, it is the opinion of the Association, that any sanction imposed is likely to be subject of legal challenge.

### **10. Do you have any views on the proposal for the SPA to be liable for the unlawful conduct on the part of the Chief Constable in the carrying out of their functions?**

The SPA issue the chief constable's contract and are therefore vicariously liable for her/his actions. ASPS has no further comment on this matter.

### **11. What are your views on the proposal to broaden the functions of the PIRC to include any aspect of the regulatory disciplinary procedures, not just misconduct investigations?**

Broadening the functions of the PIRC to include any aspect of the regulatory disciplinary procedures will necessitate additional resources and concomitant funding challenges. It would be helpful to better understand the extent to which those functions will be broadened, and an impact assessment made to ascertain the effect on existing procedures.

**12. What are your views on the proposals to continue disciplinary procedures for gross misconduct, should an officer retire or resign?**

The effect of a police officer retiring or resigning from the Police Service whilst gross misconduct proceedings are ongoing is for that individual to be removed from policing at the earliest opportunity.

As the ultimate sanction/disposal that the chairperson of a Misconduct Hearing can apply is dismissal without notice, it does not appear to be proportionate nor efficient for an officer's retirement/resignation to be delayed subject to conclusion of misconduct proceedings.

There is a misconception by those who are critical of current misconduct procedures that officers who choose to retire or resign are somehow "escaping justice". This is a misnomer as misconduct proceedings are not part of the justice system. The effect of retirement or resignation of an officer who may be unsuitable to continue serving in the police is to remove them from policing at an earliest opportunity.

There is ample evidence of gross misconduct proceedings being dragged out over many months if not years, all whilst the subject officer continues to serve and be paid salary and allowances, but often suspended from duty or restricted in what duties they can perform, all to the detriment of efficient and effective policing. Furthermore, there is a continuing and corrosive effect on the mental health and wellbeing of that subject officer, and quite possibly potential complainers/witnesses, that can be ameliorated by early retirement/resignation.

ASPS would challenge, what are the actual and tangible benefits that are realised by pursuing an officer into retirement/resignation? The associated costs of both salary and the investigation and hearing processes including legal representation can be avoided and the effect is still the same: An officer who may not be suitable for the office of constable has removed themselves from policing, at the earliest moment. To suggest that public confidence is somehow improved by holding at gross misconduct hearing (at which a subject officer cannot be compelled to appear) is not grounded in evidence or fact. A swifter conclusion brought about by early retirement/resignation is perhaps a better outcome for all.

There is a caveat to be applied to this position. The Service may choose to continue a misconduct investigation after a subject officer has retired or resigned where there may be other matters to conclude, not least if there are other subject officers who may come to the attention of investigators or there is organisational/quality of service issues that need to be addressed.



However, this does not prevent the service from liaising with witnesses to update them on the outcome of the misconduct process and offering appropriate support when required.

**13. Do you have any views on the proposed time period after which no steps, or only certain steps in the misconduct procedures would be applied unless additional criteria were met?**

As above, ASPS does not support, in any case, the pursuit of a subject officer into retirement for matters of misconduct. Criminality is an entirely different matter and misconduct procedures should not be confused with criminal justice outcomes. Very often, the Crown will have already considered matters of criminal responsibility of a subject officer(s), and where a prosecution is not in the public interest, have passed matters back to the Service. Again, we repeat, the chairperson of a Gross Misconduct Hearing cannot impose any sanction greater than to dismiss an officer from the Police Service without notice.

**14. What are your views on the proposals to establish Scottish police barred and advisory lists and the criteria for the inclusion of an officer to either list?**

In principle, ASPS supports barred and advisory lists to ensure that relevant information and facts are shared across the policing and quasi-policing landscape to ensure that officers of the Police Service of Scotland who are dismissed or retire/resign before a Gross Misconduct Hearing concludes, do not seek re-employment as a police officer (regular or special) or in roles closely associated with law enforcement.

Such administrative measures are understood to mitigate/reduce risk of an unsuitable person holding the office of costable in another jurisdiction. But what is less clear is the scope of such lists and to specify what roles they apply to. The bar for Gross Misconduct must be set higher than present and reflect intentions of previous reviews into police misconduct that recommended shifting the outcomes from 'sanctions to solutions' and where appropriate, performance management measures. The draft legislation does not prescribe the scope or levels at this time.

It is a matter of concern that as a personnel policy, the Police Service of Scotland chooses to not provide references for retired officers/staff other than certificates of service when leaving. In some circumstances it feels that it would be appropriate for the service to disclose the simple position that they would not reemploy a police officer.

**15. What are your views on the proposal to have an independent panel determine misconduct cases against senior officers?**

For SCPOSA to comment.

**16. What are your views on the proposals to clarify the PIRC's investigatory powers in relation to criminal conduct and incidents involving deaths of serving police officers, as set out in section 9?**

This is an interesting extension of the scope and power of PIRC just at the time when budgets are shrinking and there is a move to have fewer ex-police officers

appointed as investigators. Is this a proposal towards a PIRC more aligned to IOPC standards which are generally regarded as poorer performers than PIRC?

**17. What are your views on the proposals to clearly define who can make a “relevant complaint” to the PIRC and in what circumstances?**

As above, increase to scope of PIRC remit. The purpose and objectives of such an extension to the investigatory remit needs to be better explained with regards to rational and resourcing.

**18. What are your views on the proposals to enable the PIRC to carry out complaint handling reviews of its own volition and make recommendations in relation to complaints in a review report?**

As above, an expansion of scope and purpose of PIRC into an inspection role. Is there any duplication here of the role of HMICS? However, in the interests greater oversight and transparency of the investigations of complaints handled, PIRC could undertake these inspections if granted more resources. How will the effectiveness of PIRC be evaluated and how will their accountability be ensured?

**19. What are your views on the proposal to give the PIRC a statutory power to take over investigation of complaints being dealt with by the Chief Constable or the SPA under the circumstances set out in section 12?**

As above, this is expansion of the role and powers of PIRC. How will this be resourced and paid for? How will the effectiveness of this be measured?

**20. What are your views on the proposals for the PIRC to audit and have oversight of the SPA and Chief Constable’s arrangements for handling whistleblowing complaints and to report and make recommendations on the arrangements?**

As above, expansion of the role and powers of PIRC. There will be funding implications of this.

**21. What are your views on the proposals to allow the PIRC to investigate serious incidents, potential criminal offending and some deaths involving English, Welsh and Northern Irish constables who are carrying out policing functions in Scotland?**

As above, any expansion in PIRCs statutory areas of responsibility will have funding implication. In principle ASPS supports this proposal in terms of fairness and transparency, however would like to highlight such a change may affect the willingness of chief constables to provide mutual aid.

**22. What are your views on the proposals for the PIRC to review and make recommendations on the practices and policies of Police Scotland or the SPA, either in relation to a specific complaint or more generally?**

There is a very real risk that that this proposal would result in PIRC encroaching on the legislative space currently occupied by HMICS. It is the opinion of ASPS the

current governance framework around practice and policies should remain the preserve of the SPA and HMICS.

**23. What are your views on the proposal to allow the PIRC to have remote access to Police Scotland's complaints management database?**

What effect is being sought here? The extent of the expansion of PIRC's ability to reach into PSoS is not explained in context of what the problem is just now. Again, surely it is the function of HMICS to inspect such matters of where pertinent in a specific instance for PIRC be granted access to that complaint and the data held. Therefore ASPS is not supportive of remote access being granted where the scope and purpose is not clearly defined.

**24. What are your views on the proposal to establish a statutory advisory board for the PIRC?**

In principle a SAB may provide helpful oversight of the PIRC and its functions and address any concerns around the effectiveness, fairness and transparency of its work.

**Recommendations made by Lady Elish Angiolini**

**25. What are your views on the implementation of these recommendations?**

ASPS has participated along with other stakeholders in the services strategic oversight group that is implementing these recommendations.

**26. Are there provisions which are not in the Bill which you think should be?**

No.

**27. Do you have any additional comments on the Bill?**

No.

## Submission from the Scottish Police Federation (SPF)

The Scottish Police federation in answer to the consultation have the following comments to make.

Whilst we understand that the views were taken from all areas of the service and the public there are real concerns that due to the passage of time that some of these views would have been polarized and with changes that have been already made the are real concerns that many of these changes are unnecessary and overbearing.

Police officer's have always followed and where aware of the standards of professional behaviour that they must adhere to as published in the The Police Service of Scotland (Conduct) Regulations 2014 schedule 2. They have always been held accountable to these standards both on and off duty so and formalisation of a code of Ethics will have no noticeable effect as 99.9% of all officer's have already been abiding to these standards already.

The Duty of Candour insinuates that Police Officers would be dishonest and be unwilling to provide a statement re an incident. We have found this insinuation to be false and apart from an officer invoking their lawful rights as an individual when accused of a crime we have not been shown any examples as to when an individual's Duty of Candour has been called into question. The advice given by crown was in fact not to ask for any statements from subject officers when they were being complained about re an allegation and that advice has been followed. Concerns also have been raised within the interpretation of duty of candour and this would have to be clear that this duty of candour will have no effect on an individual's legal standing including when both on and off duty and the legal right not to self-incriminate. If this was not to be the case then this will result in future legal challenges.

If the functions in which the PIRC are able to investigate Police Officers re Misconduct, then that will undoubtedly have and extensive increase in the financial bill and opens up to the question as what happens when someone wishes to complain about the PIRC and to ask who will be capable of watching the watchers. The powers open to the PIRC are akin to having another Police service and we have to consider ethical and financial issues in their power being used in wider circumstances of disciplinary action and the unintended consequences of doing so.

We have not hidden our real concern of any action being taken re misconduct after an officer resigns or retires from the service. Misconduct is exactly that many officers face this process after a criminal process has ended and they have been acquitted. Lady Elish Angoloni made these recommendations in England and Wales and it is clear that this recommendation has not worked and is an expensive way of trying to bring into existence something that you would find hard to see in any other walk of life.

This then leads onto the Scottish police advisory list and Scottish Police barred list. We have to look at the real reasons why this was first muted in England and Wales, and we have no doubt that it was due to the inadequacies of checks being carried out. An advisory list in our view would breach the human rights of an individual and be grossly unfair to them to be placed on a list without any trial or any appeal. Proper HR processes would stop the need for any list like this having to be required and the

abuse that could come from this would undoubtedly mean further expense in legal challenges.

Following on to the Scottish Police Barred list we have not been made aware of any officer who has left the service prior to any misconduct proceedings taking place who has been accepted by another similar body in Scotland, Ireland or in England and Wales. The reason for this is simply due to proper diligence and proper HR procedures being in place. The introduction of such a list is not required in Scotland.

The same system for all ranks is paramount in having a fair appeals process and parity should be allowed no matter what rank is being looked at. This has always been the ethos behind the current regulations and should continue with whatever comes next.

The current provisions given to the PIRC re investigatory powers into criminal complaints should remain as is. The PIRC investigating criminal conduct of someone who has left the service, did not become an officer until after the conduct took place or was not on duty at the time of the relevant incident would be a step too far. Any powers given to the PIRC in this manner would be as formally stated, akin to having a second police force in Scotland. The investigation of deaths of serving police officers would only seem appropriate if there was an inference that the officer had died due to an issue with the service.

We have received several criticisms from police officers who are aggrieved at the way they were treated by the service and it can only be correct that serving officers are able to make a complaint against the police to the PIRC. It is clear that this should only be allowed after proper process has taken place ie grievance and or misconduct. Complaint handling reviews should be allowed to be instigated by the PIRC but should not be done in isolation of the service.

The PIRC were established to be an independent review of policing and any attempt to give them an oversight of the Scottish Police Authority and or the chief constable would change their remit dramatically and would leave the question again to who watches the watchers. Any investigation that is a criminal nature would surely be best to be investigated by the Police and any recommendation re practices and policies should never be allowed to interfere with the operational independence of the Chief Constable.

We can see no reason why the PIRC having remote access to police Scotland complaint management database would be needed and again process with checks and balances would surely have to be in place to make sure that access to this system is properly audited.

The introduction of an advisory board to the PIRC appointed by ministers would need to be absolutely independent and would this be sufficient to allow them to investigate and deal with complaints that will undoubtedly come in against the PIRC if their powers are increased to what can only be described as a second investigatory Police Service.

In summary the changes and costs associated with the bill need to be fully clarified as at present we are now making changes to legislation that from 2014 has never been utilised as designed. The changes that Lady Elish asked for in England and

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Wales haven't worked and they are now changing their processes away from what was previously put in place.

We would ask that serious considerations are made to pause this legislation and a review takes place to look at what will really work to maintain confidence in policing as needed and not by making changes that have not worked in England and Wales.

Yours sincerely

DAVID KENNEDY  
General Secretary

## Submission from Unison Scotland

UNISON is Scotland's largest trade union with more than 150,000 members across the public, private and voluntary sectors. We are the major trade union representing police staff in Police Scotland. We welcome the opportunity to contribute to the Criminal Justice Committee's consideration of this Bill. We welcome the actions being taken in response to recommendations made by HMICS and the independent review in police complaints handling, investigations and misconduct issues led by the Rt Hon Dame Elish Angiolini.

We recognise that recent cases of misconduct by Police officers have damaged the public trust and confidence with policing and understand why the Code of Ethics has been recommended to be written into law.

These reports have a very nominal and light touch on staff matters. The published details of the bill does not refer to trade unions or police staff and the interests of Police officers of all ranks will be represented by the appropriate staff associations. UNISON speaks on behalf of the police staff in the employee of the Scottish Police Authority

There has been no consultation with UNISON before the Scottish Government overview of the proposed bill was published in June 2023. A meeting took place this year with our Police Staff Scotland branch representatives in response to suggestions from the representatives of the Police Service of Scotland that police staff should be captured in this bill and this law applied to our members. UNISON has also heard from the Professional Standards Department within Police Scotland. that they are seeking to extend their remit beyond officers and onto our staff.

Police staff are public sector workers who work to a high standard, as expected by the public. They do not swear an oath of office, unlike the police officers. Including police staff in the scope of this legislation would be put employed staff on the same footing (but not wages!) as sworn officers. Instead of employment issues being dealt with via existing, fairly standard, investigatory and disciplinary processes, staff would be dealt with under a Police ethics code. Police staff are not police officers. This would seem, at face value protections they have through existing employment law of their employment rights are protected by employment law.

Police staff are expected to behave professionally and there are processes in place to deal with any alleged breaches, whether they be work-based or criminal. By definition, criminal acts are already covered by existing legislation. Many of the roles, and many of the expectations, not least the handling of confidential data, performed by police Staff, are also undertaken by NHS staff. NHS staff are not regulated as if they are doctors.

UNISON negotiated with the Scottish Police Authority on the Code of Ethics when it was written and introduced to include the caveat that the code is not a discipline policy. It is an aspiration.

Including police staff within the scope of this legislation not only interferes with our members' employment rights but also brings them into the area of being a regulated

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workforce of a sort they are not currently. It does not escape our notice that such workforces are generally paid far more than most police staff. Should any change of status be imposed, remedying such disparities would be a matter of urgency for UNISON.

UNISON Scotland  
April 2024



## **Supplementary submission from Alex O’Kane on behalf of Stephanie Bonner**

A couple of weeks ago, the PIRC upheld a further two complaints.

The first complaint was regarding Police Scotland repeatedly contacting Stephanie Bonner despite being requested not to do so. They were asked repeatedly to deal with me directly, as her named representative, as Stephanie felt intimidated by them.

The second complaint upheld by the PIRC was regarding Police Scotland sending a marked police van and a number of uniformed officers to my home address to deliver a letter.

The letter was simply acknowledging that an email I had sent to them, had been received. In other words, rather than simply sending me an email acknowledging my email, which would have taken a few seconds and cost nothing, they printed the letter, placed it in an envelope and dispatched a police van and a number of officers from the east of Glasgow to deliver this to my home in the north of Glasgow.

My wife saw the two uniformed officers coming into our garden and approaching our door. She immediately panicked as our son was literally on the other side of the world at that time. She feared something had happened to our son. Any right-minded parent would react that way.

Moreover, we live in the north of Glasgow and when the police are seen attending homes it can cause problems. Homes can get targeted.

So, the police know exactly what they are doing. I've come across this tactic several times in the past, years ago, when I was representing other people with complaints. On one occasion, I had six uniformed police officers in my front garden to deliver a message of no importance.

It's blatant intimidation. In the recent case that Stephanie mentioned Police Scotland argued that it was more efficient to send a marked police van and a number of uniformed officers to attend my home from a different part of the city - than it was to send an email.

I have been a community activist for over 25 years now and I have supported many people with complaints against the police. Or I have been mandated to make complaints against the police for other people. I have come across obstruction, manipulation and intimidation of some sort from the police nearly every time.

This is what you are up against if you complain against the police.

Police Scotland even changed their criteria to access the Police Scotland News Desk to prevent me from accessing it after I refused to them access to video footage which was part of the Stephanie Bonner’s complaint.

I previously had access, as founder of the No1seems2care social media help page which has a significant following, especially in Glasgow with nearly 110,000 followers and a reach of between 1 million and 2 million people every 28 days.

After I declined to share the video footage, which I had no permission to share with them, I was blocked by them for not holding a specific media union card. Then when I challenged this, they apologised and subsequently changed their website to make a different membership card a requirement. This new process blocked me.

I believe this was punishment for helping Stephanie Bonner and not co-operating with them.

This demonstrates that it is not easy to help people to make a serious complaint against the Police, as they will resist it, and there can be repercussions.

The Committee should consider including something in the Bill or in relevant guidance to ensure that those who make complaints do not experience intimidation, and that if they do there are appropriate sanctions for officers who engage in that behaviour.

The Committee should also consider including in the Bill or relevant guidance for police officers which makes clear that people who wish to make a complaint can nominate someone to take forward the complaint on their behalf. This is particularly important for people who are dealing with traumatic events and do not feel able to deal directly with the police. That would be a trauma-informed approach.

Alex O'Kane  
April 2024

## Supplementary submission from June and Hugh Mcleod

We share these witnesses' anger and frustration regarding the length of time that complaints made against policing bodies take. [Criminal Justice Committee evidence session of 17 April 2024]

In relation to one of many complaints made by my family, the PIRC in 2018 had made a recommendation to the SPA regarding the actions of a senior police officer.

The Committee will be aware that the PIRC's timescale for a recommendation to be implemented is **56 days**.

However, this particular recommendation by the PIRC to the SPA had taken over **550 days** (18 months) to be implemented.

During this time, we asked the PIRC to ensure that its recommendation to the SPA be fully implemented without further delay.

In the PIRC's response they stated that:

"As outlined in previous correspondence, while we expect our recommendations to be implemented by policing bodies within 56 days in most cases, I am afraid that we have no statutory power to ensure the implementation of our recommendations within any timeframe. We will, however, continue to press the SPA to conclude matters in your case promptly and – most importantly – to a satisfactory standard".

We were given no explanation as to the reason for this delay.

Due to these constant and lengthy delays by policing bodies it had taken my family **over 25 years** (quarter of a century) to get answers and unreserved apologies from both the Police and the COPFS for their failures, which needless to say during this time, these delays in seeking answers had taken its toll on my family, mentally, emotionally, physically and financially.

This is why we firmly believe that **ALL** the recommendations made by Dame Elish Angiolini **MUST** be implemented.

In particular, officers being held accountable for their actions even after they have resigned/retired. This, to avoid other families going through the torture and pain that we have experienced in our attempt to get some form of truth and justice. We continue to believe that the current police complaints process is designed NOT to hold officers accountable for their actions.

## Letter from the Cabinet Secretary for Justice and Home Affairs on the Financial Memorandum

1 May 2024

Dear Convener

Thank you for your letter of 25 April. I am writing to set out the information requested.

In regard to the Scottish Courts and Tribunal Service (SCTS) revised cost of £3,000, the Scottish Government accepts the SCTS justification set out in their evidence to the Finance and Public Administration Committee (FPAC) which confirms the Financial Memorandum as being accurate apart from an initial £3,000 set up costs. SCTS states:

*“Based on the current provisions of the Bill, the SCTS will incur set up costs, including making relevant I.T. changes to support these new appeals. It is estimated these costs will be in the region of £3,000.”*

There are no new additional costs for the other relevant bodies. However, at the point of revising the Financial Memorandum at stage 2 the Scottish Government will have regard to any pay settlements since the FM’s original publication and ensure any increased staffing costs are reflected.

The table provided as Annex A to this letter, originally included in the letter to Finance and Public Administration Committee (FPAC) on 22 April, shows the revisions in one document. As noted in the table, the costs to ‘other bodies’ is unchanged and estimated at £801,134. The overall cost of the Bill is estimated at £5,800,069 (as opposed to £1,414,474 in the FM), of which £2,356,134 is one-off costs and £3,443,935 is recurring.

I hope this information is of use.

Yours sincerely,

**ANGELA CONSTANCE**

**Annex A: Table provided to the FPAC**

In total, the new information in comparison to the original FM is as follows:

	<b>Financial Memorandum</b>	<b>Revised PS</b>	<b>Revised SCTS</b>	<b>Increase</b>	<b>Overall total revised costs</b>
<b>One off costs</b>					
Courts	£0		£3,000	£3,000	
Other bodies	£801,134			£0	
Training	£0	£1,552,000		£1,552,000	
<b>Total One-off</b>	<b>£801,134</b>	<b>£1,552,000</b>	<b>£3,000</b>	<b>£1,555,000</b>	<b>£2,356,134</b>
<b>Recurring Costs</b>					
Legal expenses for individual.	£392,000	£1,390,000		£998,000	
Staff costs for PS	£211,000	£1,250,095		£1,039,095	
Training		£793,500		£793,500	
Courts	£10,340			£0	
<b>Total Recurring</b>	<b>£613,340</b>	<b>£3,433,595</b>	<b>£0</b>	<b>£2,830,595</b>	<b>£3,443,935</b>
<b>Total</b>	<b>£1,414,474</b>	<b>£4,985,595</b>	<b>£3,000</b>	<b>£4,385,595</b>	
<b>Overall total revised costs</b>					<b>£5,800,069</b>

## **Supplementary evidence from Police Scotland in response to a request from the Criminal Justice Committee**

The Criminal Justice Committee asked Police Scotland to provide information on the work of the Professional Standards Department (PSD). This included: the number of personnel employed in the PSD; how that department fits into the structure of Police Scotland; how they undertake their work; how they engage with complainants; and the use the PSD makes of external expertise to assist them in their work.

### **Police Scotland's response:**

#### **Structure and Governance of PSD**

The Police Scotland Professional Standards Department (PSD) falls within the Professionalism and Assurance portfolio, led by Assistant Chief Constable (ACC) Stuart Houston, under the wider Professionalism, Strategy and Engagement portfolio, led by Deputy Chief Constable (DCC) Alan Speirs.

PSD is a national department responsible for all complaints (relating to officers and staff) and Police Officer conduct.

Police Scotland's People and Development (P&D) is responsible for grievance related matters and disciplinary matters relating to members of staff.

PSD is a national department with resources spread across the country. PSD is comprised of approximately 237 officers and staff who work within a number of distinct business areas, namely:

- **National Complaints Assessment and Resolution Unit (NCARU)**

The NCARU is responsible for assessing all complaints received by Police Scotland either in writing, over the phone, in person, or via the online complaints form.

Complaints can be made about the on-duty actions of individuals who work for the police, including serving officers, volunteers and members of police staff, or about the quality of service received from the organisation.

- **Investigations (Criminal and Non-Criminal)**

#### **Criminal**

On-duty criminal matters are investigated by PSD and reported to The Criminal Allegations against the Police Division (CAAPD) of the Crown Office and Procurator Fiscal Service (COPFS) for consideration of criminal proceedings.

As the Committee will be aware, Lady Elish Angiolini recommended that where the terms of a complaint against a police officer or member of police staff alleges a breach of Article 3 (assault / excessive force) of ECHR, such that there is an indication that a person serving with the police may have committed an offence, COPFS should instruct the PIRC to carry out an independent investigation. She further recommended that certain breaches of Article 5 (unlawful arrest / detention) of ECHR should also be referred to the PIRC for investigation by COPFS. Following a Standing Instruction issued by COPFS, all Article 3 referrals (and associated non-criminal allegations) have been referred to PIRC since October 2021. Following a revised Standing Instruction issued by COPFS recently, processes have been put in place to enable all relevant Article 5 referrals (and associated non-criminal allegations) to be referred to PIRC since 01 April 2024.

Off-duty criminal matters are generally investigated by local or specialist divisions. Officers and staff are treated in the same manner as a member of the public, with Standard Prosecution Reports submitted to COPFS for consideration.

Once any judicial proceedings are concluded, matters are generally referred to the PSD National Conduct Unit for assessment under the Police Service of Scotland (Conduct) Regulations 2014 (see below).

### **Non-criminal**

On duty non-criminal complaints will be assessed to determine whether the matter (if minor or trivial in nature) can be resolved by Front Line Resolution (FLR). If FLR is not achieved, or is not considered to be appropriate, the complaint will be allocated to the PSD Non-Criminal Investigations Team for further investigation.

- **National Gateway Assessment Unit (NGAU)**

The PSD NGAU is a single point of entry for all referrals relating to internal matters involving Police Officers and Staff and can include concerns such as; unprofessional, unethical, unacceptable, discriminatory or illegal behaviour.

The NGAU provides a consistent assessment and management of internal referrals ensuring a fair, proportionate, transparent and reasonable approach is maintained across the organisation.

Referrals can be submitted through a variety of reporting mechanisms including an internal reporting portal, Protected Disclosure (Whistleblowing), divisional reports, officer / staff reports, intelligence reports, Crimestoppers (including the new National Anti-Corruption and Abuse Line) and direct telephone calls.

Officers / staff members can also elect to remain anonymous whilst raising a concern.

Every referral is assessed against a number of criteria including Legislation, Conduct Regulations, Standard Operating Procedures, Force Guidance, Performance and Integrity Issues to identify and record the concern appropriately as either Protected Disclosure (Whistleblowing), criminality, conduct or staff disciplinary matters, grievance or a failure to adhere to the Standards of Professional Behaviour.

This assessment enables consistent, balanced, fair and proportionate progression, based on our Force Values of Integrity, Fairness and Respect.

- **National Conduct Unit**

The National Conduct Unit is responsible for the investigation of circumstances where it is alleged that our [Standards of Professional Behaviour](#) have been breached.

Investigations are governed by [The Police Service of Scotland \(Conduct\) Regulations 2014](#) and [The Police Service of Scotland \(Special Constables\) Regulations 2013](#).

Where allegations relate to events prior to 2014, the [Police Service of Scotland \(Conduct\) Regulations 2013](#) or [The Police \(Conduct\) \(Scotland\) Regulations 1996](#) may apply.

The National Conduct Unit operate a Hearings & Meetings Unit which is responsible for the administration of all matters relating to misconduct proceedings for officers.

Where matters of an officer's performance or attendance are of concern, the [Police Service of Scotland \(Performance\) Regulations 2014](#) may apply.

As previously mentioned, P&D are responsible for performance or disciplinary matters concerning members of staff.

- **National Anti-Corruption Unit (ACU)**

The ACU's core operational business is not only to conduct intelligence led investigations into the minority who engage in corrupt activity but also to support and protect officers and staff across Police Scotland in identifying, taking ownership of and proactively addressing any vulnerabilities, corrupt practices and unethical behaviour.



The ACU is comprised of:

**ACU Intelligence**

Responsible for gathering, developing, assessing and acting on intelligence related to corrupt activity by police officers and staff or persons who seek to corrupt our people.

**ACU Operations**

Responsible for conducting investigations where there are reasonable grounds to believe that any police officer or member of staff is engaged in any form of corruption.

- **Force Vetting Unit**

The Force Vetting Unit undertakes vetting checks on:

- all applicants seeking to join Police Scotland as an officer or member of staff.
- serving personnel who undertake a role which requires an enhanced level of vetting (this can include regular vetting reviews).
- companies and other bodies seeking to supply Police Scotland with goods or services to ensure that these suppliers are not linked to serious organised crime.
- non-police personnel who work on behalf of, or in partnership with the Scottish Police Authority (SPA) or Police Scotland are also vetted by the Unit.

The Force Vetting Unit acts as a liaison with the Scottish and UK governments in relation to national security vetting.

The vetting process follows rehabilitation legislation and uses a risk assessment process to ensure consistency and a proportionate response to vetting applications.

- **Support and Service Delivery (SSD)**

SSD provides support and central co-ordination for all PSD business areas and seeks to improve service delivery to all stakeholders, including the public, PIRC, COPFS, SPA, Local Divisions, Staff Associations and Specialist Departments.

SSD has responsibility for:

- Administration
- Support and Service Delivery
- Partnerships
- Preventions and Ethics Advisory Panels
- Learning and Improvement

**How PSD undertakes its work**

To answer how PSD undertakes its work and engages with complainers, it may be helpful to outline how the complaints and conduct processes operate in Scotland and to provide some additional information sources.

The complaints and conduct processes are distinct and separate matters and both have different assessment and recording processes on the Professional Standards Department (PSD) database.

All complaints received by Police Scotland are managed in line with our [Complaints About the Police Standard Operating Procedure \(SOP\)](#)

Further details in relation to our complaints process operates can be found on the Police Scotland website [here](#)

Should a complainer be unhappy with the way in which their complaint has been handled, they can apply to the PIRC for an independent complaint handling review.

When considering a complaint, reference will also be made to the [PIRC Statutory Guidance](#)

Once complaint matters are concluded, the circumstances may be referred for a separate conduct assessment. (Please refer to the detail within the National Conduct Unit section above for further information on how that process is governed for police officers).

For members of staff, the circumstances will be referred to People and Development for consideration of [Disciplinary Procedures](#)

Internal issues which do not amount to a complaint, conduct or disciplinary matter may amount to a Grievance, details of which can be found [here](#)

### **The use the PSD makes of external expertise**

Depending on the nature of the investigation, PSD will seek external expertise as required to facilitate a thorough and balanced complaint/conduct or criminal investigation. This could be from specialist departments within Police Scotland such as Legal Services, Operational Support Division, Specialist Crime Division or other areas of the Force with specific expertise or, externally, with our statutory partners and wider stakeholders. There is no definitive or formal list of people/organisations utilised.

Benchmarking regularly takes place with other Forces and agencies across the UK to share learning and best practice and minimise duplication of effort. Attendance at a variety of Regional and National (UK wide) Fora enables our officers and staff to keep abreast of developments across policing, forge strong peer networks and to promote continuous improvement.

PSD is held to account on delivery of our statutory responsibilities through internal Force Governance and, externally, by the Scottish Police Authority, the PIRC and HMICS.

Should the Committee wish to view the Police Scotland Quarterly Performance Reports on complaints and conduct matters they can be viewed on the SPA website [here](#)

## **Supplementary evidence from Scottish Police Authority in response to a request from the Criminal Justice Committee**

1 May 2024

Dear Convenor

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

Following a request from your Committee Clerk on 19 April 2024, I am writing to provide information to aid the Criminal Justice Committee's scrutiny at Stage 1 of the Police (Ethics, Conduct and Scrutiny) (Scotland) Bill.

#### **Complaints & Conduct Committee**

The Police and Fire Reform (Scotland) Act 2012 states that the Authority must keep itself informed of the way Police Scotland deals with relevant complaints with a view to satisfying itself that Police Scotland has suitable arrangements in place. A 'relevant complaint' is defined in legislation as a non-criminal complaint by a member of the public about the police, or about an officer or member of staff of the police. The Authority has no legal basis to oversee the performance of the Police and Investigations Reviews Commissioner (PIRC). The Commissioner is invited to attend the Board of the Authority annually to present and discuss her annual report.

The Authority's Complaints & Conduct Committee fulfils this function by monitoring, overseeing and scrutinising Police Scotland's handling of 'relevant' complaints. The terms of reference for our Complaints and Conduct Committee state that meetings will be used to:

- Monitor the handling of relevant complaints by Police Scotland, seeking information on themes or trends as appropriate, with a view to the Committee satisfying itself that the arrangements maintained by Police Scotland for the handling of relevant complaints are suitable.
- Critically examine reports from HMICS, PIRC, and any other information provided by Police Scotland in relation to complaints about the police and ensure that appropriate improvement plans are implemented, or remedial action is taken within agreed timescales.
- Contribute to and consider the findings of official reviews of complaints matters and ensure that recommendations from such reviews are implemented as appropriate.

To assess the effectiveness of Police Scotland performance in handling relevant complaints, the Committee takes evidence from:

- Police Scotland, through regular and ad hoc assurance reports.
- PIRC, on complaint handling reviews and thematic audits.
- Authority officials, through member briefing and reporting on regular dip-sampling.

The Committee seeks assurance, through audit and random case sampling, that complaints are being appropriately categorised and improvement actions are being progressed. For example, a progress [report](#) on discharging recommendations from

the recent joint audit conducted by the Authority and PIRC outlines additional training provided by PIRC to Professional Standards officers to ensure cases are appropriately recorded as 'relevant complaints' and with auditable records maintained outlining the rationale where cases are not recorded as such. Work is also being undertaken to review the current allegation categories to further support consistent recording.

The Committee is aware there will be individuals who are dissatisfied with Police Scotland's handling of their complaint and choose not to request a complaint handling review by PIRC. The Committee will receive structured feedback in the summer from Police Scotland on individuals who raise complaints.

I have summarised below some examples of the Committees' scrutiny of trend information in relation to complaints:

- The circumstances giving rise to increasing complaint levels and any correlation with Police Scotland resourcing levels.
- Geographical variances in complaint levels, seeking to understand underlying influencing factors, cross-division learning and assurance around preventative action taken.
- Analysis of allegations related to quality of service, irregularity in procedure and discriminatory behaviour, and assurance around remedial action.
- The Committee has also taken a particular interest in conduct matters where allegations have a sexual element. These cover complaints made by members of the public or internal complaints by officers and staff.
- Frontline resolution trends, reviewing appropriate categorisation, officer and staff training and future audit plans.

Following the above work, the committee will review resourcing levels of Police Scotland's Professional Standards Department, to inform the Authority's scrutiny of the Revised Model of Policing.

### **Lady Angiolini – Review Recommendations**

**Recommendation 29** - "The SPA Complaints and Conduct Committee should hold Police Scotland to account for delays in investigations into complaints and misconduct. Where there is evidence of excessive delays in PIRC investigations impacting on policing in Scotland the Committee should raise the matter with the Commissioner."

The Committee now receives information to support scrutiny of the timescales associated with investigations into complaints and misconduct. The information includes:

- Overall average complaint closure timescales.
- Proportion of complaint cases resolved at frontline within 56 days.
- Proportion of non-criminal complaint cases closed within 56 days (or within wider time limits thereafter).
- Overall average timescales for completion of officer misconduct investigations.

- Overall average timescales for completion of officer misconduct proceedings. More detailed breakdown of timescales linked to ongoing cases involving suspension or restriction of duty, with explanation of status.

The Committee has received improved information and there is clear evidence of progress against this recommendation. However, the Committee are not yet satisfied that there is effective data in relation to timescales that would discharge fully this recommendation. For example, at the end of Quarter 3 the year-to-date position for 2023/24 reporting period shows:

- Complaint cases were taking an average of 225 days to complete.
- 11.7% of cases were being closed within the 56 days.

The Committee recognises that some complaints can be complex in nature. However, it is concerned that 14% of cases closed to date during 2023/24 experienced excessive delays (in excess of 12-months). Police Scotland will provide the Committee with information and an explanation for any complaint case not completed within 12 months.

PIRC also provides quarterly reports to the Committee on the timeliness of its own processes, which are also published in its 2022-2023 [Annual Report](#):

- 80% of investigations completed within 3 months.
- 80% of complaint handling reviews completed within 4 months of receipt.

The PIRC also reports on timescales for the provision of information requested of Police Scotland in relation to complaint handling reviews. There has been an improvement in the time it takes to provide information to PIRC year on year from 2020-21. Police Scotland is on track to reduce this further in 2023-24.

**Recommendation 79** - “The Scottish Police Authority Complaints and Conduct Committee should scrutinise Police Scotland's performance in dealing with complaints and hold the service to account where the targets are not being achieved.”

The Committee receives and reviews:

- Complaint handling timescales.
- Upper and lower confidence limits in respect of normal complaint volumes, to enable scrutiny of any significant variation.
- Complaint volumes by each Division/Department.
- Allegation categories.
- Reporting in relation to allegations of discriminatory behaviour.
- Reporting on upheld complaints with information on common allegation categories/sub-categories.
- Trend analysis.

The Committee has required the service to set out targets and timelines for completing key stages of the complaint handling process.

The Committee has asked the Authority's staff to benchmark public reporting on police complaint handling in other UK jurisdictions.

**Recommendation 59** - "In order to ensure public confidence in the police, the SPA should confirm each year in its annual report whether or not in its view, based on an informed assessment by the Complaints and Conduct Committee and evidence from the relevant audits, the Chief Constable has suitable complaint handling arrangements in place."

The Authority has included a statement in its Annual Report for the periods [2021-22](#)<sup>3</sup> and [2022-23](#)<sup>4</sup>. The Committee reports "evidence of progress" which has been informed by input from PIRC in relation to 'relevant complaints' and an assessment of:

- The introduction (in 2021) of a new national complaint handling operating model.
- The provision of data contained in Police Scotland's quarterly and annual assurance reports to Committee.
- PIRC Complaint Handling Review outcomes (in 2022-23, 74% of CHRs were assessed as 'reasonably handled' – the highest recorded figure to date).
- The [findings](#) of an initial joint SPA/PIRC audit on the triage of complaints.
- [Progress](#) in discharging non-legislative recommendations arising from the review.

The Committee will further improve its assessment of Police Scotland's complaint handling arrangements for 2023-24, due to:

- Improved data analysis and insight in year.
- The reintroduction of random case sampling of closed cases.
- The forthcoming reporting on the findings of a further PIRC-led audit in respect of the six-stage complaint process outlined in its [statutory guidance](#).

The Authority now publishes an annual, detailed report on the business of the Complaints & Conduct Committee ([2022-23 report](#)). Reports to date have focussed on the Committee's oversight of 'relevant complaints'. Future reports will be expanded to include oversight of misconduct cases for example.

## Officers on suspension and restricted duties

Finally, it was reported to your evidence session on 24 April 2024 that the Scottish Police Authority stopped publishing reports of officers and staff suspended or on restricted duties. On the contrary this information is reported to the Authority's

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<sup>3</sup> Page 53-54

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Complaints and Conduct Committee quarterly. It is also published on the Authority's website and the vast majority of meetings are live streamed for openness and transparency. They can also be viewed as archived meetings on the Authority's website. The most recent report was considered by the Committee in February 2024.

I trust this information provides the Criminal Justice Committee with information to aid its scrutiny of the Police (Ethics, Conduct and Scrutiny) (Scotland) Bill.

Please do not hesitate to contact us if you have further requests.

Yours sincerely

LYNN BROWN OBE  
Chief Executive