

Criminal Justice Committee
Wednesday 22 May 2024
20th 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 Committee will hear from representatives from the Scottish Police Authority and Police Scotland.

Panel 1

- **Fiona McQueen**, Vice Chair, Scottish Police Authority Board
- **Katharina Kasper**, Chair of the Complaints and Conduct Committee, and
- **Robin Johnston**, Head of Legal, Scottish Police Authority

Panel 2

- **Deputy Chief Constable Alan Speirs**, Professionalism, Strategy and Engagement
 - **Chief Superintendent Helen Harrison**, Head of Professional Standards, and
 - **Ms Nicky Page**, Head of Human Resources, Police Scotland
5. The following submissions have been provided to the Committee for panels 1 and 2, and are reproduced at the Annex—
 - [Scottish Police Authority](#)
 - [Police Scotland](#)

Further reading

6. The Bill and supporting documents [can be found online](#).
7. A SPICe briefing on the Bill [can be found online](#).

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

Section 2: Code of ethics

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 Authority supports these provisions in the Bill.

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 Authority supports these provisions in the Bill.

However, it is unclear from the Bill whether the duty of candour applies to matters occurring while a police officer is off-duty and, if so, to what extent. The Scottish Government's pre-Bill consultation sought views on this issue, and para 51 of the Policy Memorandum indicates that most respondents agreed that the duty should not be restricted to on-duty matters. The Bill does not contain any explicit provision addressing this issue.

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

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 Authority supports this provision in the Bill.

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?

The Authority supports this provision in the Bill.

The amendment is necessary in order to implement Lady Angiolini's recommendations (numbers 25 and 39 in her final report) that the PIRC perform a greater role in senior officer misconduct proceedings, beyond its current investigative functions.

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?

The Authority supports these provisions in principle.

The Bill simply provides an enabling power to Ministers to make regulations on this issue. While the detail of any new arrangements will be set out in regulations, the Authority would expect the continuation or commencement of gross misconduct proceedings in such circumstances to be discretionary, rather than mandatory in every case.

Any decision to continue or commence proceedings after an officer's retirement or resignation should be subject to a public interest test, taking into account e.g. the nature of the alleged misconduct, and the need to maintain public confidence in policing.

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?

A period of 12 months would seem appropriate; however, it is possible that something can be learned from the experiences in England and Wales where that timescale has been a feature of arrangements for some years.

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?

The Authority supports these provisions in principle, but see the paper apart for more detailed views.

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

The Authority supports this provision in the Bill, which would enhance independence in the misconduct procedures for the most senior police officers.

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?

The Authority fully supports the underlying intention of these provisions. However, the amendment made by section 9(b) to section 33A(b)(ii) of the Police, Public Order and Criminal Justice (Scotland) Act 2006 could perhaps be clearer.

As amended, section 33A(b)(ii) provides that the PIRC may investigate a death involving a person serving with the police, which the procurator fiscal is "required" to investigate under section 1 of the Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016. The PIRC may do so whether or not the circumstances occurred in the course of the person's duty, employment or appointment. However, sections 1 and 2(3) of the 2016 Act require the procurator fiscal to investigate only

those accidents occurring while the person was acting in the course of their employment or occupation. The reference to “required” in amended section 33A(b)(ii) is therefore potentially confusing.

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?

The Authority supports these provisions in the Bill.

The provisions clarify the circumstances in which police officers, police staff and Authority staff may make relevant complaints. In short, they may only do so where the act or omission complained about (a) occurred other than in their official capacity; and (b) was in relation to them, or adversely affected them.

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?

The Authority supports these provisions in the Bill.

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?

The Authority supports these provisions in the Bill. However, the Bill should clarify whether or not a complainer who is dissatisfied with the PIRC’s handling of a “called-in” complaint has any further recourse by way of an appeal, review etc.

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?

The Authority supports these provisions in the Bill. However, see the paper apart for views on a further recommendation by Lady Angiolini in respect of whistleblowing.

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?

The Authority supports this provision in the Bill.

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?

This additional power is not dissimilar to HMICS's existing powers to inquire, at the direction of Ministers, into "any matter relating to the Authority or the Police Service as they consider appropriate"; and to inquire into the "state, efficiency and effectiveness" of Police Scotland or the Authority (section 74(2) Police and Fire Reform (Scotland) Act 2012).

It is therefore unclear what these proposed powers would add to HMICS's existing powers. However, given that section 85 of the 2012 Act requires the PIRC to coordinate activity with HMICS to prevent unnecessary duplication of work, the Authority does not oppose this new provision.

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?

The Authority supports this provision in the Bill.

Section 17: Advisory board to the Commissioner

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

The Authority supports this provision in the Bill.

Recommendations made by Lady Elish Angiolini

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

Impact measures have been developed and approved by the SPA Complaints & Conduct Committee in respect of recommendations directed (either singly or jointly) at the Authority, which going forward will be formally reported to the Committee on an annual basis. By way of summary of key developments to date:

- A Framework is in place setting out how the Authority provides oversight of ethical issues within policing in Scotland
- Independent Custody Visitors are trained to consistently check that third parties have been notified of an individual's detention
- Police Scotland reports to Committee continue to develop in providing understanding of the number and nature of complaints and conduct matters, and the effectiveness with which they are handled

- The Authority annually assesses the suitability of complaint handling arrangement and reports this within its Annual Report & Accounts. Additionally, it publishes an annual Committee report which highlights trends in complaints received, complaint handling performance and provides assurance in respect of Committee scrutiny in this important area
- Public sessions of the Committee are livestreamed and able to be watched in full retrospectively. Items are only taken in private by exception, with equivalent reporting in public where possible, and the Authority publishes a public version of the minutes of discussion of private agenda items
- The Authority actively encourages individuals to safely disclose data to enable the organisation to develop an understanding of the diversity profile of those raising complaint
- Authority Complaint Handling Procedures and Guidance on Senior Officer Conduct Regulations have been reviewed in response to specific recommendations around prioritisation, use of suspension and preliminary assessment of potential conduct matters. This was undertaken in consultation with the PIRC and SCPOSA, as key stakeholders in this regard
- Authority officials have formal qualifications in complaint handling and undertake regular continuous professional development activity to maintain their knowledge and skills. The impact of this can be demonstrated through improvements in terms of the proportion of complaints resolved via Early-stage Resolution; timescales taken to close complaints; and the fact that, in respect of complaints closed from April 2019, PIRC have only undertaken one complaint handling review, with the complaint assessed as having been reasonably handled

In addition to the above, the Committee will, in its oversight capacity, seek assurance as to the development and monitoring of impact measures in respect of non-legislative recommendations directed at Police Scotland.

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

Introduction

The Scottish Police Authority welcomes this opportunity to provide written evidence on the Police (Ethics, Conduct and Scrutiny) Bill. This paper apart should be read alongside the Authority's responses to the pro-forma call for views on the Bill.

The Authority supported Lady Angiolini's legislative recommendations and proposals in its response to the Scottish Government's consultation. The Authority is also supportive of the Bill, insofar as it seeks to implement those recommendations and proposals.

This additional views focus on four specific issues:

(1) Lady Angiolini's proposals in respect of complaints about senior police officers, which are not reflected in the Bill;

- (2) the Authority's functions in respect of the Barred and Advisory lists (section 7 of the Bill);
- (3) Lady Angiolini's recommendation that the PIRC be included as a "prescribed person" under UK whistleblowing legislation; and
- (4) the use of the term "relevant complaint" in the Bill, and in the Police Public Order and Criminal Justice (Scotland) Act 2006.

Before addressing these issues in detail, it may be helpful to summarise the Authority's current responsibilities for complaints and conduct.

The Authority's responsibilities

As well as overseeing Police Scotland's complaints and conduct functions, the Authority has the following responsibilities of its own.

- Receiving, investigating, and responding to "relevant" complaints about the Authority, its staff, and senior officers of Police Scotland i.e. those of Assistant Chief Constable rank and above. ("Relevant" complaints are, broadly, non-criminal complaints by members of the public. They are subject to different legislative provisions and procedures from "misconduct allegations").
- Functions under the Police Service of Scotland (Senior Officers) (Conduct) Regulations 2013, including:
 - the preliminary assessment of "misconduct allegations" against senior officers;
 - where appropriate, referring allegations to the PIRC for investigation;
 - determining, in light of any investigation, whether a senior officer has a case to answer for misconduct or gross misconduct;
 - arranging misconduct hearings and establishing panels to conduct proceedings; and
 - determining appeals by officers against the decisions of misconduct panels.

In her final report, Lady Angiolini recommended that the PIRC take on responsibility for the key stages of senior officer misconduct proceedings, including several of those listed above. Section 8(2) of the Bill would allow that recommendation to be implemented through revised Regulations.

(1) Complaints about senior police officers

Lady Angiolini proposed that responsibility for receiving and handling complaints about senior officers transfer from the Authority to the PIRC.

The relevant passages in Lady Angiolini's final report are quoted below.

"12.49 Any 'relevant complaint' about a senior officer should be assessed by the PIRC. Where it relates to potential misconduct it should be dealt with as such; where it does not relate to potential misconduct but should instead be dealt with under the grievance procedure, or other HR processes, then it should be passed to the SPA to deal with. The SPA would continue to be the recipient of complaints about its own members of staff ...

12.51 Having considered all the responses, I believe that introducing independent consideration and determination of a complaint against a senior officer ... would serve to increase public confidence in the process ...

14.59 PIRC should be the recipient of all complaints about senior officers. If the complaint is criminal in nature the PIRC should refer it to the ... the Criminal Allegations against the Police Division of COPFS. If the complaint is non-criminal the PIRC should make the preliminary assessment, should carry out any investigation and, where appropriate, present the case to the independent legally chaired panel that hears the misconduct case ... If the complaint is a grievance rather than an allegation of misconduct the PIRC should refer it to the SPA to deal with ...

19.56 The Review received strong evidence from other organisations and sectors of a real benefit to the public knowing that there was a single point where they should take all complaints about an organisation or its people. That simplicity would help public awareness and make it easier for them to enter what can be a very complex police complaints system ... I take the view that complaints about the most senior officers should not go to the Scottish Police Authority or Police Scotland but to the PIRC ...

30.18 In the PIRC chapter I propose that the PIRC, rather than the SPA, should be the recipient of all complaints about senior officers of the rank of Assistant Chief Constable and above. The [Police Public Order and Criminal Justice (Scotland) Act 2006] would require to be amended to make clear that the appropriate authority for senior officer complaints [i.e. the body responsible for handling such complaints] is the PIRC and that the SPA is only the appropriate authority for the SPA and its staff."

Lady Angiolini therefore proposed that the PIRC should be the recipient of all types of complaint about senior officers; and should also handle relevant complaints about senior officers.

These proposals are not reflected in the Bill.

As observed by Lady Angiolini, independent determination of complaints about the most senior officers would likely enhance public confidence. It would avoid any perception of familiarity between Authority members/staff and senior officers arising from working relationships developed through exercise of the Authority's other functions. Indeed, it was precisely this perception which persuaded Lady Angiolini to recommend removal of the Authority's conduct functions for senior officers.

Implementing Lady Angiolini's proposals would also make the arrangements for handling complaints and misconduct allegations about senior officers easier for the public to understand. In her preliminary report, Lady Angiolini identified a need to "simplify and streamline systems to make it as easy as possible for members of the public to navigate this opaque landscape, and as easy as possible for them to access and understand information on how to make a complaint." Similar concerns about the complexity of current arrangements were raised by the Justice Committee in its review of the Police and Fire Reform (Scotland) Act 2012. In particular, the Committee referred to evidence that arrangements were a "complex mixture of internal and external processes, involving a number of organisations which people find difficult to navigate.

If Lady Angiolini's proposals are not reflected in the Bill, the PIRC will have responsibility for handling "misconduct allegations" against senior officers; and the Authority will have responsibility for handling relevant complaints about senior officers. Such an arrangement is likely to be confusing to the public, particularly as in practice there is often no real distinction between a misconduct allegation and a relevant complaint. It would also risk uncertainty in the processes themselves, as each body decides which is responsible for dealing with the allegation. Dividing these functions between two bodies would, in short, complicate, rather than simplify, the complaints and conduct processes.

Lady Angiolini's proposals would simplify arrangements by giving responsibility to a single body – the PIRC – to receive and assess all complaints about senior officers. Such an arrangement is likely to be easier for the public to navigate than one in which different categories of complaint are dealt with by different bodies.

Across the rest of the UK and in the Republic of Ireland, all police complaints bodies perform at least some routine role in receiving and/or investigating public complaints about senior police officers.

In England and Wales, serious complaints by members of the public about the conduct of chief officers (i.e. chief constables, and the Commissioner and Deputy Commissioner of the Metropolitan Police) must be referred to the Independent Office for Police Conduct (IOPC) without delay. Serious complaints about chief officers must always be investigated, and in practice such investigations are usually undertaken by the IOPC itself.

In Northern Ireland, all complaints about the police (including those about senior officers) are referred to the Police Ombudsman. Complaints by members of the public which are classed as serious are investigated by the Ombudsman.

In the Republic of Ireland, new arrangements for handling complaints by members of the public are set out in the Policing, Security and Community Safety Bill (the Policing Bill), currently before the Irish Parliament. Complaints by the public (including those about senior officers) will in terms of the Policing Bill be made to the Police Ombudsman or the national police force. Where complaints are made to the national force, these must be referred to the Ombudsman without delay. The Ombudsman will thereafter determine whether the complaint is admissible and, if so, whether it warrants informal resolution or investigation.

As presently drafted, the Bill does not provide for any routine involvement by the PIRC in the initial handling of relevant complaints about senior officers. Section 12 would allow the PIRC to "call-in" such a complaint; however, that power is likely to be used only in exceptional circumstances rather than as a matter of routine.

The Authority therefore supports Lady Angiolini's proposals and believes that they should be reflected in the Bill. If, ultimately, the proposals are not implemented, the Authority would wish to see the arrangements between the two bodies for handling senior officer complaints, including the threshold for referring potential conduct complaints to the PIRC, to be set out in legislation.

(2) "Prescribed person" status for the PIRC

Lady Angiolini recommended that the PIRC be included as a “prescribed person” under the Public Interest Disclosure (Prescribed Persons) Order 2014 (the Order). The Order is UK legislation.

Lady Angiolini’s findings

In her final report, Lady Angiolini referred to evidence given to the Justice Committee on this issue in 2018. UNISON, for example, expressed concern about the “limited pathways to pursue complaints and concerns about the operation of the service for police staff.” The Scottish Human Rights Commission highlighted the importance of whistleblowers being able to take their allegations directly to an external party.

Lady Angiolini also referred to the arrangements in England and Wales, where the IOPC is a prescribed person for conduct-related whistleblowing allegations.

Lady Angiolini concluded:

“Having weighed up the evidence, I believe that the absence of a prescribed independent third-party person to whom whistleblowers in policing can report wrongdoing is a significant gap that should be filled. Ideally concerns should be raised internally in the first instance so that the organisation can act quickly on those concerns but there may be many valid reasons why an individual would want to be able to report wrong-doing to an external body ...

In my view the PIRC is the organisation that is best placed to fulfil that crucial role because of its existing expertise, its understanding of policing and its ability, potentially, to make connections with other investigations.”

The Authority’s view

The Authority understands that the Scottish Government is to work with the UK Government with a view to the PIRC being included as a prescribed person in the Order. The Authority very much supports these efforts.

The PIRC’s inclusion as a prescribed person will allow police officers, police staff and Authority staff to make conduct-related whistleblowing allegations directly to an independent third party, while maintaining the protections afforded to whistleblowers under employment legislation. It will also bring Scotland into line with arrangements in England and Wales (where the IOPC is a prescribed person) and the Republic of Ireland (where the Garda Síochána Ombudsman Commission is a prescribed person under the equivalent Irish legislation).

(3) The Barred and Advisory lists

Section 7 of the Bill establishes the Scottish police barred and advisory lists. The barred list will contain the names of persons who have been dismissed following disciplinary proceedings, including those dismissed as a result of proceedings taken after their departure from the police service. The advisory list will include persons who left the service before gross misconduct proceedings were initiated or completed.

Section 7(1) provides that both lists are to be established and maintained by the Authority.

The Authority supported the introduction of the barred and advisory lists in its submissions to Lady Angiolini's review, and in its response to the pre-Bill consultation.

In the Authority's view, however, the most appropriate body to administer the lists is Police Scotland. The Authority therefore seeks an amendment to section 7 conferring the function of establishing and maintaining the lists on the chief constable. Police Scotland agrees that it is the appropriate body to perform these functions.

In England and Wales, the College of Policing administers the Barred and Advisory lists. However, that is because of the distinct role the College performs in relation to standards; and the fact that there are numerous police forces there.

In Scotland, there does not appear to be any reason why the function cannot be conferred directly on the chief constable. It would fit readily into Police Scotland's existing responsibilities and infrastructure for related functions such as vetting. In addition, most if not all of the data to be included in the lists would be generated through misconduct proceedings handled by Police Scotland rather than the Authority.

Section 7(2) does allow Ministers to make regulations allowing the Authority's functions in relation to the lists to be delegated. However, if the intention is to allow the Authority to delegate the functions to the chief constable, this perhaps underlines the question as to why the function cannot be conferred on the chief constable directly.

(4) "Relevant" complaints

The Authority supports the provisions in the Bill concerning relevant complaints (sections 10-12). In the Authority's view, however, consideration should be given to whether "relevant complaint" is an appropriate term for describing complaints by members of the public.

In the Authority's experience, the term sometimes causes confusion among the public and the media who have interpreted it as meaning that some complaints are "relevant", while others are "irrelevant". This can be unhelpful when communicating with members of the public in relation to their complaints.

In the Authority's view, the term used to describe complaints by members of the public should be plain and unambiguous (e.g. "public complaint").

Submission from Police Scotland

EXECUTIVE SUMMARY

- Since 2018, Police Scotland has fully engaged with and supported Lady Elish Angiolini's [Independent Review of Complaints Handling, investigations and Misconduct Issues in Relation to Policing](#) and continues to work collaboratively with key partners to implement the recommendations arising from the review.
- Police Scotland welcomes the introduction of PECSS to progress the recommendations requiring legislation and, acknowledging the consequential resource and financial impact, provided a response to the Scottish Parliament's Finance and Public Administration Committee which can be accessed [here](#).
- Police Scotland is supportive of the following provisions and welcomes the opportunity to work with Scottish Government to further develop proposals in relation to:
 - Placing the Code of Ethics on a statutory footing
 - Introducing 'Candour' as an explicit part of the constable's declaration (the 'Oath of Office'), as part of the Policing Principles and as an additional Standard of Professional Behaviour.
 - Procedures for misconduct – functions of the Police Investigations and Review Commissioner (PIRC).
 - Provisions to enable the future consideration of an Independent Panel to consider senior officer misconduct and to enable appeals to the Police Appeals Tribunal (PAT)
 - Creation of Scottish Advisory and Barred lists.
 - Amendment to the definition of a 'person serving with the police' with further dialogue requested in relation to the investigation of the death of a 'person serving with the police'.
 - Extended powers for PIRC in relation to Complaint Handling Reviews, the 'calling-in' of a complaint and audit of whistleblowing complaints.
 - Provision of information to the Commissioner.
- Whilst Police Scotland is supportive of the following provisions, further engagement with Scottish Government and stakeholders would be welcomed in relation to the following provisions:
 - Complaints made by persons serving with the police.
 - Misconduct provisions – former officers
 - Investigations involving constables outwith Scotland.
- Police Scotland acknowledges the provision for creating additional powers in relation to the PIRC being enabled to review and make recommendations about practices and policies. Further discussion would be welcomed on this for the reasons outlined within this report response.
- Police Scotland welcomes the opportunity to work with Scottish Government, following introduction of this Bill, to conduct a full review of associated secondary legislation and to consider additional opportunities, as detailed within this response, to strengthen existing legislative provision to enhance the efficiency and effectiveness of addressing misconduct matters.

BACKGROUND

Police Scotland is fully committed to driving improvements to enhance public trust and build confidence that officers and staff carry out their duties in a fair and impartial manner, including transparency and accountability in respect of complaint handling, investigations and conduct processes.

Significant improvements have already been made to improve culture across the Service through the [Policing Together Initiative](#) and ongoing focus on values and [Standards of Professional Behaviour](#) however it is recognised that there is no room for complacency. Police Scotland welcomes the opportunity to continue to work with key stakeholders to inform and strengthen legislative provision in respect of complaints, investigations and misconduct matters.

Since 2018, Police Scotland has fully engaged with and supported Lady Elish Angiolini's [Independent Review of Complaints Handling, investigations and Misconduct Issues in Relation to Policing](#) and continues to work collaboratively to implement robust governance structures to drive progress in order to improve service provision towards the communities it serves.

Progress on the implementation of the non-legislative recommendations arising from the aforementioned Review are reported through Scottish Government (SG) Thematic Progress reports, the most recent of which was published in May 2023 and can be accessed [here](#).

The SG Thematic Reports provide further detail on the background and progress of each recommendation and demonstrate the significant improvements made to bring greater transparency, fairness and accessibility to systems, policies and processes that underpin the police complaints and misconduct process.

In May 2022, a [consultation](#) on the recommendations requiring legislative change was issued and a copy of the Police Scotland response can be accessed [here](#).

On 06 June 2023, PECSS was introduced to the Scottish Parliament to progress recommendations requiring legislation.

On 01 November 2023, Police Scotland responded to the 'Call for Views' from the Scottish Parliament's Finance and Public Administration Committee on the financial implications' of the Bill. A copy of the response can be accessed [here](#).

THE BILL

It is acknowledged that the Bill is an entirely amending Bill and seeks to update provisions within the Police, Public Order and Criminal Justice (Scotland) Act 2006 and the Police and Fire Reform (Scotland) Act 2012, as well as the Conduct Regulations made under them.

The Bill is organised under the following headings:

- References to Acts (the aforementioned 2006 and 2012 Acts)
- Ethics of the Police
- Police Conduct
- Functions of the Police Investigations and Review Commissioner (PIRC)
- Governance of PIRC

This response provides the Police Scotland position on the specific questions posed on the wider aspects of the Bill in the 'Call for Views' issued by the Scottish Parliament's Criminal Justice Committee on 28 September 2023.

Section 2 – Code of Ethics

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?

Police Scotland's [Code of Ethics](#) is at the heart of [Policing Together](#) and outlines our values of integrity, fairness, respect and a commitment to upholding human rights. From this, we derive a direct link to values-based policing which reflects and represents our communities and is vital for public confidence and consent, from which policing draws its legitimacy.

The Code of Ethics for Policing in Scotland sets out the standards we expect of all individuals who contribute to policing in Scotland. The code is a practical set of measures, which reflect the values of Police Scotland and has been in existence, on a non-statutory basis, since Police Scotland was established in 2013.

The Bill seeks to place the Code of Ethics on a statutory footing and places a duty on the Chief Constable to:

- Prepare and consult on the Code given due regard to certain sources of ethics and human rights
- Involve the Scottish Police Authority (SPA) in the preparation of the Code
- Publish and promote the Code
- Review the Code at least every 5 years
- Ensure the Code is embedded in policing and understood by officers and staff
- Maintain records of efforts made to ensure all officers and staff have read and understand the Code.

Individual constables will also be required to make reference (or be treated as if they had made reference) to the Code in the Constable's Declaration.

Police Scotland is supportive of placing the Code of Ethics on a statutory footing, thus providing greater legal weight and, in practical terms, greater prominence in the minds of serving officers and staff.

Acknowledging the significant financial implications associated with the training requirements and associated resource abstraction to ensure full compliance with the legislation, Police Scotland provides further detail in the response to the Financial Memorandum which can be accessed [here](#).

Section 3 - Duty of Candour

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

The PECSS Bill proposes an additional Standard of Professional Behaviour, 'Candour', to be added to those already set out in Schedule 1 of the Police Service of Scotland (Conduct) Regulations (2013 and 2014). This seeks to ensure that:

- Constables act with candour and are open and truthful in their dealings, without favour to their own interests or the interests of the Police Service and;
- Constables 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.

It is proposed that the Constable's Declaration will be amended to include the word 'Candour' and that the Policing Principles will be amended to reflect that "the Police Service should be candid and co-operative in proceedings, including investigations against constables."

In respect of the wording under Section 3, paragraph (4) "Constables act with candour and are open and truthful in their dealings.....", clarity would be welcomed regards with whom it is required that police officers are open and truthful. If it is intended that police officers are open and truthful in their dealings with each other, the public, the police service, or all three, it is suggested that this be made clear. .

In relation to "...without favour to their own interests or the interests of the Police Service", Police Scotland considers that there could be circumstances where it may be appropriate for officers to favour "the interests of the Police Service", provided that this is not taken to mean covering up for wrongdoing. Police Scotland suggests that further consideration is given to the drafting of this aspect of the Standard of Professional Behaviour.

It is noted that a similar provision was added to the English and Welsh Standards of Professional Behaviour under 'Duties and Responsibilities' which, from 1 February 2020, has an additional element as follows:

'Police officers have a responsibility to give appropriate co-operation during investigations, inquiries and formal proceedings, participating openly and professionally in line with the expectations of a police officer **when identified as a witness.**'

Police Scotland notes that the new English and Welsh provision only imposes the duty of candour (and co-operation) when the officer has been identified **as a witness** and not when identified as a suspect.

This is to reflect that a police officer enjoys the right against self-incrimination, both in conduct and criminal proceedings. It is suggested that further consideration is given on the extent to which the said proposed new Duty can be properly reconciled with officers' existing legal entitlements – of which the right against self-incrimination is clearly one carrying strong protection.

Whilst the Standards of Professional Behaviour apply only to police officers, it would be incongruous if police staff, some of whom hold very senior, important and / or sensitive roles, were not obliged to participate in and support formal investigations or misconduct proceedings when they were mere witnesses.

It is recognised that to give effect (in the sense that enforcement may be taken in the event of material breach of, or deviation from, on the part of members of police staff) to the Code of Ethics for employees, as opposed to police constables, changes to terms and conditions of employment will be required. That is something which Police Scotland (in the shape of the SPA as employer) would require to progress in consultation with relevant Trades Unions and is not something to be effected directly via PECSS.

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

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?

Police Scotland is supportive of the proposals documented in Section 4 of the Bill which provides for the SPA to have liability for any unlawful conduct on the part of the Chief Constable personally.

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

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?

Police Scotland acknowledges the proposals to give the PIRC more extensive functions in relation to disciplinary proceedings, such as preliminary assessments of conduct, and welcomes the opportunity to work with Scottish Government and key stakeholders to develop these proposals during the review of secondary legislation.

Section 6 - Procedures for misconduct: former constables

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

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?

This section of the Bill is intended to make amendments to prevent a constable from being able to avoid disciplinary procedures for conduct, and findings of gross misconduct and sanction, by resigning or retiring. This will enable an investigation to continue, or commence, after an officer retires or resigns and will also enable individuals under investigation for gross misconduct, or where gross misconduct is subsequently proven, to appear on the newly proposed Advisory and Barred lists respectively.

Police Scotland recognises that this proposal will contribute to a feeling on the part of the public that officers subject of **gross** misconduct **are** held to account.

Whilst Police Scotland is supportive of the proposals, further dialogue with Scottish Government would be welcomed on an approach to streamlining processes in favour of fast track / accelerated hearings, whilst maintaining procedural fairness for officers. It is considered this would achieve the same outcome with significantly less expense and would, more importantly, minimise the adverse impact on victims and witnesses having to engage in a further process.

It is understood that the aforementioned provisions will be subject of further stakeholder engagement during the review of secondary legislation when the practicalities of application, details of the proposed public interest test and timescales will be consulted on and determined.

Section 7 Scottish police advisory list and Scottish police barred list

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?

Police Scotland is supportive of the proposals to create an Advisory list and a Barred list for Scotland to replicate provisions already in existence in England and Wales. The Bill confers a duty on the SPA to establish and maintain the lists however Police Scotland considers this duty should either be placed directly, or alternatively by delegation by SPA, on to Police Scotland to reduce data management risks and enable the Chief Constable to comply with statutory responsibilities as data owner.

Other than for Senior Officers, the SPA plays no role in the selection or appointment of police constables. It seems unnecessarily bureaucratic and burdensome to place the SPA in the principal role of establishment and maintenance of both (or either) lists.

The Professional Standards Database, Centurion, to which the SPA has access, already holds the required data to enable the list to be established and maintained. Further dialogue with SPA and Scottish Government would be welcomed to explore the practicalities, criteria, governance and ICT upgrades required, as well as the wider information sharing protocols with other Law Enforcement agencies, to fully implement these proposals.

Section 8 - Procedures for misconduct: senior officers

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

Police Scotland is supportive of the amendment to enable the Regulations for senior officers to provide for an Independent Panel (consisting of police and non-police members) to determine any conduct case against a senior officer, regardless of how serious the allegation and notes there is no change in relation to performance cases.

Police Scotland is therefore supportive of the ability of a senior officer to appeal a misconduct outcome decision to the Police Appeals Tribunal (PAT) as it supports the proposed creation of an Independent Panel for misconduct matters relating to senior

officers. This will provide clear delineation of responsibilities whilst supporting the ongoing working relationship between senior officers and SPA Board Members.

Section 9 - Investigations into possible offences by persons serving with the police

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?

Police Scotland is supportive of the proposals to extend the definition of a 'person serving with the police' to include a person who is, or has been, a person serving with the police. It is proposed that the PIRC, where directed by a prosecutor, can investigate any circumstances in which there is an indication that a person who is, or has been, a person serving with the police may have committed an offence (regardless of when those circumstances occurred). At present, the PIRC's powers cease to have effect when an officer retires or resigns from the service which presents issues if PIRC are part way through conducting an investigation and no longer have the power to continue to investigate and report to COPFS.

Police Scotland supports the proposed additional powers to enable the PIRC to investigate the death of a person serving with the police, regardless of whether the death occurred in the course of their duty, however queries whether this amendment contradicts – or at least may be thought materially incongruent to - the terms of the Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016. The 2016 Act provides that the Procurator Fiscal is only required to investigate deaths which occur while the person was acting in the course of the person's employment or occupation.

Section - 10 Investigations of complaints made by persons serving with the police

What are your views on the proposals to clearly define who can make a "relevant complaint" to the PIRC and in what circumstances?

Police Scotland acknowledges the proposal to amend the provisions of the 2006 Act to specify who can make a 'relevant complaint' to the PIRC. This is intended to make it clear that police officers or staff can make a complaint about an act or omission that adversely affected them in their personal capacity as opposed to their capacity as a person serving with the police.

Police Scotland considers that existing routes for making a complaint are sufficient and emphasises that it is vitally important to maintain clarity that 'A Complaint does not include a statement made a person serving with, or who has served with, the police regarding any matter which is related to a person's employment or service with the police'. This must continue to be dealt with by the internal grievance or whistleblowing procedure'.

Section 11 - Complaint handling reviews

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?

Police Scotland supports the proposal to enable the PIRC, subject to a public interest test, to conduct a complaint handling review (CHR) whether or not a request is made by the complainer or the appropriate authority (currently the Authority or the Chief Constable).

Whilst there is no existing statutory provision for Police Scotland to be required to provide a response to recommendations made by the PIRC following a CHR, Police Scotland welcomes independent scrutiny and learning opportunities to enhance public trust and confidence and, therefore, already implements over 90% of recommendations proposed by the PIRC.

Whilst supportive of these provisions, it is recognised that there may be additional CHRs being conducted and, coupled with the added requirement to provide a written report within set timescales, there will be an additional financial and resource demand to Police Scotland. Police Scotland welcomes the opportunity to work with key stakeholders to develop a fuller understanding of the resource implications of these proposals.

Section 12 - Call-in of relevant complaints

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?

Police Scotland supports the proposal to enable the PIRC to 'call-in' and consider a complaint instead of, or in addition to, consideration by the Authority to which the complaint is made, or a person appointed to reconsider a complaint following a CHR. Notwithstanding, further consideration of the practicalities of these proposals would be welcomed to minimise duplication of investigation and to ensure a fair and streamlined service to the public.

Section 13 - Review of investigation of whistleblowing complaints

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?

Police Scotland has a Whistleblowing Policy in place to deal with concerns raised and how these will be investigated and supports the proposal to add arrangements for reporting concerns (whistleblowing) to the list of things which the PIRC can audit as it does for the handling of 'relevant complaints'.

Section 14 - Investigations involving constables from out with Scotland

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?

Police Scotland supports the proposal to formalise and provide clarity around current arrangements which operate in the handling of complaints which may be raised and which concern, or at least involve, officers from elsewhere in the UK who are operating on Scotland – whether on ‘mutual aid’ or otherwise. Police Scotland welcomes the opportunity to explore the practical application of these proposals and to further understand any reciprocal arrangements which may apply to Police Scotland officers deployed elsewhere in the UK.

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

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?

Police Scotland acknowledges this provision to provide PIRC with a bespoke power to review practices and policies of the police, although would like to highlight that this has similarities to the statutory function of His Majesty’s Inspectorate of Constabulary in Scotland (HMICS). Police Scotland would welcome further discussion on this.

The role of HMICS was reaffirmed by the Police and Fire Reform (Scotland) Act 2012, which gave HMICS wide ranging powers to look into the “state, effectiveness and efficiency” of both Police Scotland and the Scottish Police Authority (SPA).

HMICS It has a statutory duty to ensure that the Chief Constable and the SPA meet their obligations in terms of best value and continuous improvement. If necessary, HMICS can be directed by Scottish Ministers to look into anything relating to the SPA or Police Scotland as considered appropriate and also has an established role in providing professional advice and guidance on policing in Scotland.

Police Scotland considers that existing powers granted to HMICS are adequate and provide appropriate management and oversight towards organisational practice and policy.

Should PIRC be granted these enhanced powers, it should be noted that the additional provisions of Police Scotland’s requirement to assist the Commissioner in such reviews and to produce a written Implementation Plan etc within prescribed timescales will place further financial and resource burden on the Service.

Section 16 - Provision of information to the Commissioner

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

Police Scotland supports the proposal for the PIRC to be given access to electronic databases which hold information it may require, predicated upon appropriate governance arrangements and robust information security and data protection measures being in place. Police Scotland considers that any remote access provided to the PIRC should be fully auditable.

Section 17 - Advisory Board to the Commissioner What are your views on the proposal to establish a statutory advisory board for the PIRC?

Police Scotland has no comment to make in relation to these proposals.

RECOMMENDATIONS (NON-LEGISLATIVE) MADE BY LADY ELISH ANGIOLINI

What are your views on the implementation of these recommendations?

Police Scotland is proud of the significant progress, working in collaboration with partners and in consultation with Staff Associations and Trade Unions, where appropriate, to discharge 21 of the 26 recommendations allocated to Police Scotland.

Among the significant improvements delivered to date, Police Scotland highlights the following key achievements:

- Implementation of a National Complaint Handling Model in April 2021, immediately bringing responsibility for the investigation of all complaints under the remit of the Professional Standards Department (PSD), bringing greater independence, fairness and consistency of outcomes.
- Working with the PIRC and an externally accredited training provider to deliver bespoke Induction Training Programme for all PSD staff to enhance complaint handling skills and quality of service.
- Improved awareness of how to make a complaint, enhanced accessibility and ease of making a complaint by developing QR codes and updating the Police Scotland website to enhance transparency.
- Establishment of a Post Incident Procedures (PIP) Professional Reference Group to provide governance and assurance over the national rollout of [Post Incident Procedures \(PIP\)](#) across Scotland. This process involves Staff Associations and the PIRC and is designed to balance the State's obligation to independently investigate the death or serious injury of a person who has had contact with the police, with the rights of the officer/staff involved.
- Greater focus on employee wellbeing including the development of 'Investigations - Wellbeing Guidance', designed to support those subject of, witness to, or supporting someone who is part of an investigation, to signpost to support services.
- National rollout of extensive Equality, Diversity, and Inclusion training and greater training for supervisors and senior managers, including specific focus on unconscious bias.

- Review of Whistleblowing procedures and introduction of new reporting tools to enable individuals to feel confident to raise concerns when they reasonably believe that wrongdoing is being, or has been done.
- Enhanced reporting on complaints and conduct matters to Local Police Commanders to support local management considerations and reporting to Local Scrutiny Boards.

Work continues in relation to 3 outstanding recommendations assigned to PSD namely, **Recommendations 5, 19 and 60**, all of which are dependent on upgrades to the PSD Database, Centurion. These relate to enhancing Police Scotland's ability to capture, analyse and understand Diversity Data, thereby developing capability to identify, address and report on emerging themes and trends in the public interest.

Work also continues in relation to **Recommendations 11 (Sergeant Workloads and Supervisory Ratios)** and **18 (Independent Review of Equality Matters in Police Scotland)** and, whilst significant work has already been completed, they remain ongoing with progress reported through the three tier governance structure detailed in the Scottish Government's Thematic Reports.

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

As detailed in the Police Scotland [response](#) to the consultation on the recommendations requiring legislation, it is considered that this Bill and / or the future review of secondary legislation could provide a valuable opportunity to further strengthen legislative provision to enhance public trust and confidence in policing.

Those matters are replicated below:

Misconduct in Public Office (MIPO)

The common law offence of Misconduct in Public Office (MIPO) has been utilised by forces elsewhere in the United Kingdom to effectively address circumstances where police officers or members of police staff (and former officers and members of staff) have abused their position in order to gain an advantage, be that sexual or otherwise.

The Law Commission for England and Wales has recently reviewed the aforementioned offence and recommended that MIPO should be replaced by 2 statutory offences namely;

(1) an offence of **corruption in public office**, where the public office holder, in using the position or power of the role, has knowingly engaged in "seriously improper" conduct with the purpose of achieving a benefit or detriment, and cannot prove that their conduct was, in all the circumstances, in the public interest; and

(2) an offence of **breach of duty in public office**, where the public office holder has a specific duty to prevent death or serious injury, is aware of that fact, and breaches the duty, causing or risking death or serious injury, while being at least reckless as to whether that would result.

Comparable legislation does not exist in Scotland which causes matters presenting significant organisational and reputational risk being progressed out-with the criminal justice system through internal conduct or disciplinary procedures.

Consequently, Police Scotland would welcome statutory provisions to formally recognise misconduct or corruption in public office which would allow such behaviours displayed by its workforce to be addressed through the criminal justice system prior to progression via internal misconduct/disciplinary proceedings.

Substance Misuse Testing

There is currently no express statutory provision within legislation in Scotland to permit Police Scotland to carry out 'with cause' drug testing in circumstances where information or intelligence is received regarding potential substance misuse, however, during the recruitment process our policy is to drug test as a 'condition of potential appointment'.

The Police Service of Scotland Substance Misuse Standard Operating Procedure currently provides the framework for the prevention and management of alcohol and substance misuse within the organisation, with legitimacy for 'with cause' drug testing currently drawn from the Standards of Professional Behaviour, coupled with a broader interpretation of the Chief Constables duty to provide a safe working environment for his workforce in terms of the Health and Safety at Work Act 1974 (Sections 2, 3 & 51A).

The absence of statutory provision to enable random drug and alcohol testing of officers and staff constrains Police Scotland's ability to ensure the fitness of its workforce and to deter those who may take illegal substances or drink alcohol to the extent that it impairs their ability to perform their duties.

Consequently, Police Scotland would welcome explicit legislation which provides express statutory powers to support the organisations ability to;

- require a police officer or member of police staff to provide a 'with cause' sample where information or intelligence of substance misuse is received;
- permit random drug and alcohol testing amongst police officers and members of police staff;
- compel police officers and members of police staff to provide associated samples.

Review of Existing Conduct Regulations

Police Scotland has identified circumstances where processes have been diluted upon revocation of the Police (Conduct) (Scotland) Regulations 1996 and would welcome discussion around progressing a full review of the Police Service of Scotland (Conduct) Regulations 2014, the Police Service of Scotland (Conduct) Regulations 2014 Guidance and the Police Service of Scotland (Senior Officers) (Conduct) Regulations 2013.

Fast Track / Accelerated Hearings – to replicate certain provisions already in place in England & Wales – 'where there is sufficient evidence, in the form of written statements or other documents, to establish on the balance of probabilities that the

conduct of the officer constitutes gross misconduct, and it is in the public interest for the officer to cease to be a member of a police force or a special constable without delay'. Hearings are, in general, heard between 10 – 15 working days after the decision is taken, without the need for further investigation.

The benefit of this more efficient approach would be to exit suspended officers from the organisation more quickly, where there is irrefutable evidence of gross misconduct, increasing public confidence. It would further minimise the impact on victims and witnesses and reduce salary costs for officers who can delay current Conduct processes (and who will ultimately never serve again), while on full pay.

Regulation 9 of the Police Service of Scotland Regulations 2013 – Police Scotland would welcome the opportunity to work with Scottish Government to expand the provisions of Regulation 9. This would be intended to provide greater opportunity to remove probationary constables from the organisation where they have misconducted themselves, in circumstances where criminal matters are still outstanding, without the need to revert to misconduct proceedings.

Currently the guidance on the Police Service of Scotland (Conduct) Regs 2014 states, **"In general terms misconduct by Probationary Constables will be dealt with under the Conduct Regulations but there may be occasions where action under the Police Service of Scotland Regulations 2013 would be appropriate"**. This had led to probationary constables, without any realistic prospect of becoming efficient and well conducted officers, remaining suspended on full pay while lengthy criminal or conduct investigations are undertaken.

In addition, Police Scotland would welcome engagement to further strengthen existing conduct processes including:

- The re-introduction of a 'presenting officer' in gross misconduct cases;
- Clarity around the statutory provision of witness statements to the person conducting proceedings;
- The requirement for officers subject to complaint to comply with legislative timescales or explicitly state that they are not providing a response;
- Opportunities for a Chair to hold a Preliminary Hearing with the subject officer's legal representative within specific timescales, in order to discuss points of law;
- Align certain regulations contained within the Police Service of Scotland (Conduct) Regulations 2014 with the associated guidance;
- Agree processes to reveal previous improvement action to a Chair prior to determination.
- Agreed Outcomes (AOs) for Conduct matters - consideration to developing proposals where agreement on an outcome could be reached by all parties, including the officer concerned, in certain circumstances. Introduction of greater flexibility for proportionate management of misconduct. This could potentially mirror current Police / Crown Office and Procurator Fiscal Service practices of Recorded Police Warnings / Fixed Penalty Notices as alternatives to prosecution, negating the need for a full conduct investigation when all pertinent facts are understood and fully accepted.

Vetting

Police Scotland would welcome the opportunity to work with Scottish Government to enhance or implement legislative provision in relation to vetting thereby introducing a regulatory mechanism for exiting officers who fail their vetting would fill a void in the existing statutory architecture and provide greater protection to the public.

This matter was reported within the HMICS' recent Vetting Assurance Review in October 2023 which, by Recommendation 1, recommended that Scottish Government should legislate so that any officer or staff who cannot maintain the requisite vetting clearance can be exited from the organisation.

Do you have any additional comments on the Bill?

Police Scotland have no further comments to make on the Bill.

Supplementary evidence from Police Scotland

Non-Disclosure Agreements (NDAs)

Since the last update in relation to NDAs on 8 March 2022 Police Scotland has entered into 24 NDAs in the settlement of civil claims and cases. Police Scotland settled 461 claims in the same time period. Of those 24 cases the NDA was included at the specific request of the claimant on 2 occasions. In the remaining cases the NDA was mutually agreed as part of the negotiated settlement terms.

In all cases the NDA covers only the terms of the settlement (and in some cases the fact of the settlement). This is due to the detail of the financial settlement being a matter of commercial sensitivity and accordingly the sum paid becomes a matter subject to confidentiality. In no cases does the NDA cover the fact, nature, or detail of the claim.

Duty Restrictions

The decision to place an officer on restricted duties will only be taken following careful consideration of all the circumstances (following initial assessment and investigation) balancing the requirement to maximise the effective use of policing resources with the need to maintain high standards within the service and retain public confidence in Police Scotland.

Risk assessments and recommendations are provided to the ACC Professionalism & Assurance and / or the Head of the Professional Standards Department to consider whether duty restrictions are required. Whilst not an exhaustive list, the following restrictions may be considered and will be applied proportionately depending on the circumstances of the matter under investigation:

- Non - operational
- Non - public facing
- Non - supervisory
- Removal of police driving authorisation
- Removal of Firearms authorisation
- Removal of access to systems (specify)
- Deployment out with Division or Department
- Any other relevant restriction

A balanced approach is taken with individual wellbeing, community impact and individual / Force reputation being fully considered. Restrictions are reviewed on a routine basis and if there is any significant change to circumstances.

Suspension from Duty

As the Committee will be aware, suspension of an officer is regulated under Regulation 6 of The Police Service of Scotland (Conduct) Regulations 2013 (for allegations of misconduct where the alleged act occurred prior to the 1st April 2014) and Regulation 8 of the Police Service of Scotland (Conduct) Regulations 2014 (for allegations of misconduct where the alleged act occurred on or after the 1st April 2014).

While the Regulations state the act of suspension may be carried out by any officer senior in rank, the decision to suspend will only be taken by the Deputy Chief Constable or ACC with delegated responsibility, considering whether;

- a) an effective criminal or misconduct investigation may be prejudiced if the constable is not suspended; or
- b) having regard to the nature of the allegation and any other relevant considerations, the public interest requires the officer's suspension.

Suspensions are reviewed at least every 28 days by the Deputy Chief Constable. Further information on the suspension of an officer can be found in the [Suspension from Duty Standard Operating Procedure](#).

Police Scotland
May 2024

Letter from Police Scotland on the use of non-disclosure agreements

Dear Convener

NON-DISCLOSURE AGREEMENTS

Thank you for your letter dated 17 February 2022 addressed to my colleague Deputy Chief Constable Malcolm Graham. Your letter has been passed to me to respond to as the use of Non-Disclosure Agreements ('NDAs') more appropriately sits within my portfolio.

As previous correspondence from Police Scotland has indicated, NDAs are not routinely used by Police Scotland, and indeed have been used in only 1.7% of settled cases in the previous three financial years. The use of a NDA can be proposed by either party to an Agreement, and where Police Scotland has sought such Agreements it is by and large for the purposes of commercial sensitivity.

It is perhaps important to outline the circumstances in which a NDA may be entered into by Police Scotland. They are where a claim for compensation or litigation has been raised against Police Scotland. As part of the settlement of that claim or litigation a NDA may be entered into to bring the matter to an end by way of negotiated settlement. Very often the detail of the financial settlement is a matter of commercial sensitivity and accordingly the sum paid becomes a matter subject to confidentiality. This is a legitimate practice used routinely by both commercial organisations and public bodies.

The benefit of a NDA is to quickly and satisfactorily settle matters without the recourse to evidence being led within a Tribunal or Court that may give rise to costs and possible reputational damage to one or both parties. They will not, though, be used to prevent complaints being raised and investigated.

Where relevant complaints have been made these are usually investigated by Police Scotland's Professional Standards Department (PSD) (except in some, rare, occasions where a claimant refuses to engage with the PSD processes). Police Scotland strives to learn from any complaint that has been made and the complaints process is accordingly independent of any legal process that may culminate in the use of a NDA.

Police Scotland has entered into just 21 NDAs in the settlement of civil claims and cases raised against it in the previous three financial years. Police Scotland settled 1,209 claims in the same time period. Police Scotland actively sought a NDA in 14 of the 21 NDAs entered into. The information that I have indicates that 4 of the NDAs entered into fell to be classified as involving sex discrimination claims (or part of the claim centred on allegations of sex discrimination).

I should also advise that NDAs are entered into voluntarily by both parties and both parties are encouraged to avail themselves of the benefit of independent legal advice should they wish it. Where an NDA is sought in resolution to a claim which is already before an Employment Tribunal then the ET's 'COT3' process will generally be the

acknowledged vehicle for conclusion of the said Agreement; alternatively, if the matter is an 'employment-type' complaint or claim but has not yet progressed to a Tribunal then regard is usually had to the applicable ACAS-approved processes. No aspect of any such NDA could be used to improperly suppress the making of a complaint or to prevent whistle blowing and Police Scotland has never entered into a NDA to such an end.

I have no difficulty in providing the Committee with a copy of the report submitted to the SPA Legal Committee in December 2021. Indeed, I understand that the SPA, intends to make the report available on its website. A copy of that report is attached herewith.

I want to reassure the Committee that Police Scotland is fully aware that the use of NDAs can draw suspicion from the public. By their very nature, NDAs preclude public knowledge of the settlement details of particular cases. I have provided details of the numbers of NDAs that Police Scotland enters into, which when compared to the overall numbers of claims settled, demonstrates that they are used by exception and for commercial reasons. They are never used as a means of hiding unacceptable behaviour from scrutiny. Further, in light of the legitimate public interest in this matter, I have instructed Police Scotland's Legal Services and People & Development department to enhance our corporate reporting by establishing a central register of all NDAs entered into in all 'employment-type' claims or cases together with details of why any such Agreement was felt necessary.

NDA Management Information will also be provided to me on a regular basis, outlining the number of NDAs entered into together with the reasons for their use. In addition, we will continue to report NDAs to the SPA Legal Committee as and when required.

This paper was presented in line with SPA Corporate Governance Framework Standing Orders Section 20(f)

1. BACKGROUND

1.1 The SPA Legal Committee met on 27 October 2021. A discussion took place regarding the use of Non-disclosure Agreements by Police Scotland. Verbal responses to Committee Members' questions were provided by the Legal Services Manager of Police Scotland. Following the meeting of 27 October, the SPA Legal Committee requested a report be submitted to them for discussion at the meeting scheduled for 13 December 2021 on the use of Non-disclosure Agreements and wished the following areas to be specifically addressed:

- To what extent have Police Scotland used NDAs over the past 3 years.
- A breakdown of gender in relation to those NDAs
- Which of those NDAs followed ACAS guidelines
- How many financial settlements have been reached and which of those settlements used NDAs
- Motives for entering into NDA's and who requests them (Police Scotland or Claimant)
- Number of NDA's as a percentage of the total number of cases settled.

This report seeks to provide the information requested by the SPA Legal Committee. The figures provided herein relate solely to the use of Non-disclosure Agreements entered into by Police Scotland and does not include any figures for any Agreements that may have been entered into by the Scottish Police Authority.

2. FURTHER DETAIL ON THE REPORT TOPIC

2.1 Non-disclosure Agreements are agreements signed by both parties to a legal dispute that provides for the confidentiality of, among other things, any settlement details contained within the agreement. Indeed, Non-Disclosure Agreements (hereafter NDAs) are often referred to as "Confidentiality Agreements" or "COT-3 Agreements" when used to settle employment place disputes.

NDAs can be used following the raising of legal proceedings but can also be used to settle matters before any proceedings are raised by one or other of the parties to a dispute.

NDAs are not unlawful, and bodies such as ACAS have produced guidance on when they are a legitimate and appropriate means of settling a dispute and when they are not. As a public body, Police Scotland are acutely aware that the use of a NDA may be viewed with suspicion by third parties as the intention behind their use is to prohibit public disclosure of details within the agreement itself. NDAs will only be entered into by Police Scotland where there are justified reasons for doing so. NDAs cannot be unilaterally imposed by one party upon the other without agreement nor can they be used to prohibit "whistleblowing".

Police Scotland do not use NDAs

- before seeing if another solution can be used instead

- when they are not needed
- to stop someone reporting discrimination, harassment or sexual harassment
- to cover up inappropriate behaviour or misconduct, particularly not if there's a risk of it happening again
- to avoid addressing disputes or problems in the workplace
- to mislead someone

NDA's are commonly used to prohibit the public disclosure of the details of a dispute settlement. This is often at the behest of the party receiving a financial settlement. Clearly any financial settlement constitutes financial data relative to an individual or an organisation and that person or organisation may not wish the details to become public knowledge. Employment disputes regularly attract media attention and employees from time to time will wish to retain a level of privacy.

NDA's are often utilised as a legitimate and appropriate means of safeguarding an organisation's commercial position. Police Scotland will only ever use a NDA where there is consensual agreement to do so.

By way of further explanation Police Scotland would not countenance the improper use of NDA's to prevent employees from revealing wrongdoing such as discriminatory behaviour or cases involving bullying or harassment. Whenever such cases are identified they are investigated and appropriate action taken/learning identified as necessary to avoid any repetition of such behaviour. NDA's are only used by Police Scotland in circumstances where there is consensual agreement between the parties to enter into an NDA.

2.2 To what extent have Police Scotland used NDA's over the last 3 years?

Police Scotland have signed 21 Non-disclosure Agreements in the previous three years. Seventeen relate to agreements reached with staff and officers and 4 relate to agreements reached with members of the public.

2.3 A breakdown of gender in relation to those NDA's

Fifteen of the Twenty-one agreements reached were with females and six with males.

2.4 Which of those NDA's followed ACAS guidelines

Seventeen of the NDA's have involved settlements reached with staff or Officers. Ten of those NDA's were signed since the ACAS guidance was published in February 2020. Seven were signed prior to the guidance being published but did not, in any event, breach the current ACAS guidance. Four NDA's related to public liability claims and although ACAS is primarily involved with employment law disputes, the terms of those four agreements similarly did not breach ACAS guidance.

Police Scotland always follows the guidance provided by ACAS when NDA's are being used in the settlement of Employer's liability claims. Any NDA signed by Police Scotland specifically excludes the Agreement from being used to prevent disclosure of any discriminatory behaviour.

2.5 How many financial settlements have been reached and which of those settlements used NDAs

Since the beginning of the 2018/2019 financial year, Police Scotland have settled 1,209 claims. This figure comprises 103 Employment place claims, 182 Public Liability claims and 924 Motor vehicle Liability claims. Accordingly NDAs have been used in 1.7% of settlement claims.

2.6 Motives for entering into NDA's and who requests them (Police Scotland or Claimant)

The motives behind the use of NDAs in any particular case attracts legal privilege and accordingly the reasons for any individual NDA being sought cannot be provided within this report. The reasons for entering into a NDA may be subject to confidentiality requirements in and of itself.

Five of the 21 NDAs signed by Police Scotland have been at the behest of the other party. Two NDAs were recommended by ACAS, and Police Scotland sought the NDA in 14 settlements. Accordingly, Police Scotland has sought an NDA in 1.2% of the settled claims reached since the beginning of the 2018 financial year.

Police Scotland's motives for requiring a NDA are almost always for commercial sensitivity purposes. They are never used to prevent whistleblowing.

2.7 Number of NDA's as a percentage of the total number of cases settled.

As stated above at Paragraph 2.5 above, Police Scotland has settled 1,209 claims since the beginning of the 2018 financial year. Accordingly, the use of NDAs has featured in 1.7% of settled claims.

3. FINANCIAL IMPLICATIONS

3.1 There are no further financial implications in this report.

4. PERSONNEL IMPLICATIONS

4.1 There are no personnel implications associated with this paper.

5. LEGAL IMPLICATIONS

5.1 There are no further legal implications in this paper to those listed above.

6. REPUTATIONAL IMPLICATIONS

6.1 There are reputational implications associated with this paper.

Although NDAs are a perfectly legitimate and appropriate means of settling disputes, Police Scotland does not seek their use as a matter of course. As a public body, it is accepted that transparency is often necessary. Police Scotland does though, have a responsibility to the public purse and will enter into a NDA where the situation merits it for commercial reasons. They are not used to prevent whistleblowing.

7. SOCIAL IMPLICATIONS

7.1 There are no social implications associated with this paper.

8. COMMUNITY IMPACT

8.1 There are no community implications associated with this paper.

9. EQUALITIES IMPLICATIONS

9.1 There are no equality implications associated with this paper.

10. ENVIRONMENT IMPLICATIONS

10.1 There are no environmental implications associated with this paper.

RECOMMENDATIONS

Members are invited to note the contents of this paper.

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](#)¹ and [2022-23](#)². 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

¹ Page 53-54

² Page 48-49

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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