



**OFFICIAL REPORT**  
AITHISG OIFIGEIL

# Justice Committee

**Monday 24 June 2019**

**Session 5**



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**JUSTICE COMMITTEE  
19<sup>th</sup> Meeting 2019, Session 5**

**CONVENER**

\*Margaret Mitchell (Central Scotland) (Con)

**DEPUTY CONVENER**

\*Rona Mackay (Strathkelvin and Bearsden) (SNP)

**COMMITTEE MEMBERS**

\*John Finnie (Highlands and Islands) (Green)

Jenny Gilruth (Mid Fife and Glenrothes) (SNP)

\*Daniel Johnson (Edinburgh Southern) (Lab)

Liam Kerr (North East Scotland) (Con)

Fulton MacGregor (Coatbridge and Chryston) (SNP)

\*Liam McArthur (Orkney Islands) (LD)

\*Shona Robison (Dundee City East) (SNP)

\*attended

**THE FOLLOWING ALSO PARTICIPATED:**

Rt Hon Dame Elish Angiolini DBE QC

Maurice Corry (West Scotland) (Con) (Committee Substitute)

**CLERK TO THE COMMITTEE**

Stephen Imrie

**LOCATION**

The David Livingstone Room (CR6)



# Scottish Parliament

## Justice Committee

*Monday 24 June 2019*

*[The Convener opened the meeting at 15:30]*

### “Independent Review of Complaints Handling, Investigations and Misconduct Issues in Relation to Policing: Preliminary Report”

**The Convener (Margaret Mitchell):** Good afternoon and welcome to the 19th meeting in 2019 of the Justice Committee. We have received apologies from Jenny Gilruth, Fulton MacGregor and Liam Kerr. I am pleased to welcome Maurice Corry as substitute for Mr Kerr.

Our only item of business is agenda item 1, which is an evidence-taking session on “Independent Review of Complaints Handling, Investigations and Misconduct Issues in Relation to Policing: Preliminary Report”. I am pleased to welcome the Rt Hon Dame Elish Angiolini; Ian Kernohan, who is head of the secretariat supporting Dame Elish; and Paul Allen, who is a member of the secretariat. I refer members to paper 1, which is a private paper.

I invite Dame Elish to make some opening remarks, but before she does so, I want to thank her for providing the committee with a copy of the report.

**Rt Hon Dame Elish Angiolini DBE QC:** Thank you, convener, and thank you for the invitation to meet the committee.

As you might recollect, my independent review commenced in September last year, with a mandate from Scottish ministers to make recommendations that will help to strengthen public confidence in policing in Scotland a propos complaints and their investigation, and misconduct matters. Since then, I have conducted more than 80 interviews with individuals, held more than 30 meetings and led two focus groups to discuss the issues. This first report is a preliminary report that sets out the nature of, and offers a high-level analysis of, the functions of the organisations and the problems that have been identified to me.

The report covers a number of significant issues, but a number of matters are still to be dealt with: I will be moving on to them, from now. Those major issues include participation of the victim or

complainer in the process and how that is supported, and whistleblowing.

We will also look at some of the more significant propositions for structural change that might arise as a result of further deliberations. I will visit the individual who is responsible for investigating complaints against the police in Northern Ireland—the Police Ombudsman for Northern Ireland, or PONI—and I will go back to the Independent Office for Police Conduct in England to carry out more interviews and have more discussions with people who are implementing changes there.

We have also had visits with Home Office officials. As you will know, the English and Welsh police are about to get a whole new set of regulations governing their procedures. However, I did not want to be influenced unduly by that; I wanted to look at what I consider to be the issues here, although there is clearly some resonance with regard to what is being done to change procedures in England and Wales, based on the Taylor and Chapman reports.

Those are the only comments that I wish to make at this stage. As I have said, I hope to engage further with and to hear from the public, as well as officers at all levels.

We have had a very significant number of submissions from organisations, for which I am particularly grateful. Finally, I should say that we have had the fullest co-operation from the four major organisations and agencies that are involved in the matter.

**The Convener:** Thank you. That is very encouraging. We will move to questions, starting with Daniel Johnson.

**Daniel Johnson (Edinburgh Southern) (Lab):** I, too, thank Dame Elish for coming along, as well as for giving committee members the novel opportunity to see one another on a Monday.

With regard to the four agencies that you just mentioned, I was struck by paragraph 277 of the report, which talks about the professionalism with which the organisations approach their work. However, it goes on:

“What has however become clear through the evidence to the Review (and from recent media coverage) and is a matter of serious concern, is that certain aspects of those relationships are sub-optimal, are characterised by an absence of constructive engagement and coloured by a tone of cynicism.”

Indeed, in the subsequent sentences in paragraph 277, you use the word “suspicion” three times. I was concerned when I read that. Will you elaborate on how you characterise the relationships? What are the consequences of the apparent suspicion? Are there relationships

between any of the four organisations that are of particular concern to you?

**Dame Elish Angiolini:** Yes. The committee heard evidence on those matters during consideration of the Police and Fire Reform (Scotland) Act 2012, during which it would have been evident that there are tensions between organisations. Tension is not a bad thing, to some extent—it is natural—but independence is very often mistaken for isolation, and isolation, of course, undermines independence.

Although each of the organisations has a constitutional role to carry out, it is very important that there is not simply token interaction but regular interaction in order that they can understand one another—the problems, the challenges, what is good, what is positive, and what is not going right—so that that becomes a dynamic that drives continual improvement. That is what a great deal of the review is about.

The police seemed to be concerned and felt that the disposition towards them from the Police Investigations and Review Commissioner was one of suspicion. It is clear that an investigator must have an open mind—a mindset that is not prejudiced or jaundiced, because a jaundiced mindset is not an impartial one. They must not necessarily judge an organisation on the basis of what has gone before being on a continuum; rather, they must look at each case afresh and contribute more widely to continual improvement where they find things that are wrong.

What was really marked in the evidence, in particular from a number of police officers, was the view that there was cynicism about the police and that there were somehow conspiracies afoot in the police when, in fact, the police were trying to do their job. Whether they were getting it right is another matter, but they felt that people thought they were somehow conspiring to get things wrong. That came over in the evidence.

On particular relationships, the one between the Crown Office and Procurator Fiscal Service and the police seems to be workable. They are quite clearly independent, but there is clear respect between the organisations. That is also reflected in the relationship between the prosecution service and the PIRC; I do not think that there is an issue there.

The real issue seems to be the relationship between the PIRC and the police and the tone that came from—or was perceived to be coming from—the PIRC towards the police. As a result of a degree of cynicism, there was almost a rebuttable presumption of guilt about doing something behind anything that was found at that time. There was a sense of not being able to get relationships going in the way that they had been.

I will say that that began to change during my review, because I commented on it at an early stage. I was concerned about what was being said, having read the transcripts of the committee's important inquiry.

At the very beginning, I asked about what joint training was taking place. I think that there had not previously been very much of it, notwithstanding the fact that the organisations had common interests and a significant need to know about each other—to understand, for instance, how a police officer is trained to restrain someone, what they are taught, what it is like to be out on a Friday night when the streets are full of people who are drunk or disorderly, what that takes, and what types of issues an officer at police constable level or higher might have to deal with. They require practical and quite acute professionalism and understanding: people do not get that from simply reading a report in laboratory conditions in which they can make a clinical assessment of a person's conduct maybe days or months afterwards. Integration and understanding of what they are learning and, perhaps, what is wrong with what they are learning, are required.

I raised that in debate with the PIRC and with people in other organisations, and there was agreement with the idea—there was no resistance to it. The commissioner then suggested a number of courses at the Scottish Police College at Jackton that she had sent her staff along to in order to ensure that the organisations are aware of what is being taught. That built greater understanding of what is being dealt with.

**Daniel Johnson:** That is helpful. It strikes me that you are saying that there is a culture of suspicion that is not necessarily born out of reality. If that is about the perception of individuals within the organisation, will your recommendations, which are largely at governance level, be sufficient to break down that culture?

Were there any specific worries? Paragraph 283 of the report talks about

“evident non-sharing of certain information”.

Is that just a general issue or were there specific issues that you found—

**Dame Elish Angiolini:** Could you contextualise that last comment? You referred to a paragraph.

**Daniel Johnson:** Paragraph 283 states:

“The evidence suggests that improving communication between organisations needs to be addressed. The evident non-sharing of certain information between organisations concerns me.”

You then go on to talk about short memorandums of understanding existing. Have you found specific examples of information that should have been shared between the organisations? Would your

recommendations, which are largely at governance level, address that?

**Dame Elish Angiolini:** You have asked about whether there are specific examples. One feature that you might be aware of is that each organisation has standard documents, most of which are elderly: they pre-date the legislation and have not been updated. “From sanctions to solutions”, for example, is a creation of the previous Police Complaints Commissioner for Scotland.

The Lord Advocate’s guidelines are also elderly, and some of the training that police officers in the professional standards department have relied on has been piecemeal, through its having been brought together from Association of Chief Police Officers in Scotland guidance from 2006 and earlier.

What concerned me was that the organisations were all looking to different sources for their training and guidance. There did not appear to be any subsequent crossover between the organisations in order to look at what they were doing to address the issues that came from the 2012 act and to address complaints handling and investigations.

One of my recommendations is that a cross-organisation working group should be set up to look at the organisations’ individual training. I have deliberately suggested that they should all be party to that, because it is important that when they are developing it, they are aware of and privy to the policies, limitations and challenges in the work of the other organisations, so that they are not doing it in isolation.

The high-level working group will also be useful in taking forward closer working among the organisations. When I say “closer”, that does not mean “cosy”: independence is absolutely critical. Certainly, the police follow the directions of the Lord Advocate, but organisations can work collaboratively without compromising their independence or thinking that there is somehow a contemptuous attitude towards them by dint of their having got it wrong. Why they have got it wrong and how a solution can be found are the things that are really important.

The ethos that is the essence of “From sanctions to solutions” has not changed. It is about the culture moving away from a punitive approach to a problem-solving approach, so that there can be continuous improvements in the organisations. That is important.

Having watched all this from Oxford as an outsider, and looking into the matter now, it appears to me that much of what was happening was based on relationships that had, to all intents and purposes, broken down.

**Daniel Johnson:** I note what you said about the relationships needing to have distance, if not to be too distant, and about maintaining independence.

I also want to ask about the relationship between Police Scotland and the Scottish Police Authority. You note early in your report that that relationship has, at times, been too close. I note the proposal in paragraph 182 of the report that the SPA’s powers to investigate misconduct of senior officers be removed and its role replaced by a judiciary-led committee. Is your principal concern about the SPA’s role to investigate senior officers? Do you want that proposal to be implemented immediately? Do you have any other concerns about the closeness between Police Scotland and the SPA?

15:45

**Dame Elish Angiolini:** You have asked several questions, and I will try to recollect them. If I miss any, perhaps you could remind me what they were.

On whether my concerns about Police Scotland and the SPA are of the same nature, the answer is no—they are different. It seems that where they are close is quite legitimate and is what we would expect, given that the SPA is a small organisation and the group of senior officers—namely, the assistant chief constables, the deputy chief constables and the chief constable—that it meets and deals with weekly, if not more frequently, are held accountable by various SPA committees for the efficacy of their organisation and their efficiency. Several committees—for example, the finance, strategic and information technology committees—would have a chief constable coming in wanting resources and authority for, or acceptance of, their policies.

Through that, SPA members are sitting round the table, having a cup of coffee and getting to know those people—as happens in a small country. There are also sub-committees of the SPA board: there is a discipline committee, for example, to determine whether a complaint is to be upheld and, if so, what the penalty should be. The process of adjudicating on the credibility and reliability of an officer, as is the case in a disciplinary proceeding elsewhere in the police service, is populated by people with whom that officer regularly works.

I describe that situation colloquially as being too cosy. The numbers and the small scale mean that the process is just too intimate to be seen as impartial. This is about how things are seen to be and about perception. Therefore, although the SPA’s functions are critical as a buffer between Government and the police, and to ensuring accountability for the service, that aspect of its

conduct does not sit well because of the small number of chief officers with whom it deals—the SPA knows them all. As a result, the situation would be much better were we to establish

“an independent legally chaired panel”,

to deal with complaints of alleged misconduct against senior police officers. I am not proposing that the panel consist of members of the judiciary: I have suggested that the Lord President should appoint a legally independent chair.

That approach is not unusual—it happens in England and Wales, including for “junior” officers, if I can call them that—those below the level of senior officers. I am not sure whether that would be absolutely necessary for accusations of misconduct, but I have suggested extending the approach to accusations of gross misconduct against officers in the lower ranks in order to ensure impartiality and to ensure that the public has confidence in that process, too. That is the basis for the recommendation.

**Daniel Johnson:** On the technicalities, the appointment of a legally independent chair is not in any of your recommendations.

**Dame Elish Angiolini:** No. You will see that there are several suggestions in the report. This is a difficulty with a preliminary report. I have included a number of suggestions for further feedback—to give people the opportunity, while I am still seeking and gathering evidence, to respond to the propositions and to see whether alternative approaches might be more attractive. We are looking at that important issue.

Preliminary assessment is another aspect of the SPA’s role that is difficult. That is partly because of the legislative provision, which makes it very difficult to know precisely what one is supposed to be looking for. That certainly needs to be clarified. I am talking about situations in which someone in the SPA receives a complaint—via email, a letter or an anonymous phone call, for example. What does it do with that complaint, and how does it approach the process in terms of its statutory obligation? If allegations are made against a senior officer, the implications for the country are significant, so the process of investigation should be seen to be impartial and it should be legally chaired.

**John Finnie (Highlands and Islands) (Green):** Good afternoon, Dame Elish. I thank you and your team for your work. I will take you off in a totally different direction, if I may. A casual observer who looked at your remit might be surprised that you have found yourself commenting on grievance procedures, although I think that it is wholly appropriate that you have done so. You talk about raising awareness and understanding, and it seems that some issues that have built up a huge

head of steam could have been resolved appropriately through a human resources function, rather than ultimately being conceived as misconduct issues. Will you comment on that, please?

**Dame Elish Angiolini:** Although grievance is not part of the remit, it can be an explanation of why things are not as good as they could be. As you know, police constables are not employees, but hold an office. Apart from that legislative provision, however, they are to all intents and purposes similar to employees in that they are subject to orders and command, and there is a very hierarchical, deferential structure. We have a group of, I think, 15,000 police officers—I will be corrected if that number is wrong.

**Ian Kernohan:** It is 17,000, roughly.

**Dame Elish Angiolini:** There are 17,000 police officers, of whom about 13,500, I think, are police constables and approximately 2,500 are sergeants. That means that the organisation is very flat, which has an effect on promotion opportunities. I understand that the average term before a police constable is promoted to sergeant is 15 years. In an organisation that is as flat as that, promotion opportunities are few and far between, so all sorts of issues come about. People ask why they have not been promoted, or why X has been promoted. There can be all sorts of difficulties with regard to what we would ordinarily call personnel.

Also, there has also been a reduction in the number of sergeants in Scotland, so we have fewer officers with wider management spans, however we characterise it. We have more constables.

In any organisation, mentoring and intervention at an early stage are important when conduct issues arise—maybe people are absent more often, they are more rude or inconsiderate, or enmities begin to build up. In those situations, we intervene in a human resources context. There is an HR organisation for Police Scotland, but it seems not to be resorted to in the way that we would recognise in other organisations. Traditionally, there has perhaps been a tendency to resort to discipline more rapidly than we would expect. Things are escalated to the discipline stage more rapidly than they would be if there was a strong tradition of HR intervention, with grievance procedures et cetera being used in the way that they are used in civilian organisations. I really want to look into that. Her Majesty’s inspectorate of constabulary in Scotland has also been concerned about it. Episodes have been described as going “from flash to bang”.

We need to understand that, as I say in the report, we ask a huge amount of our police



officers. We ask them to go into events that I suspect none of us would go into—unless some of you have been police officers in the past. I note that John Finnie has, and he will have run into situations that most of us would run away from. If people are constantly dealing with terrible car crashes and tragedies and looking for missing people, there is a cost to emotional stability over time. There is a corrosive effect. It is therefore really important that there are interventions to support people at an early stage, before other habits are taken up, such as resorting to alcohol or indeed medication, or becoming violent in disposition.

It may sound as if this is a soft issue, but it is critical that interventions take place at as early a stage as possible in order to prevent behaviours that would otherwise manifest themselves later on and bring people into the misconduct field, perhaps as a result of some of those things. That is what I am referring to when I talk about the HR function. I do not think that it is being exploited as fully as it could be, and I think that there should be greater emphasis on it. I would like to look into that more fully and come back to you on it in my full report.

**John Finnie:** It is reassuring to hear you address the issue in that way, because of course the overwhelming majority of police officers and police staff go about their duties impeccably and deliver a very good service.

**Dame Elish Angiolini:** Yes, of course.

**John Finnie:** The danger is that there is a focus on a small number of people.

You talk about a proportionate response. I want to ask about training in mediation and customer handling. Again, that might be viewed as a soft issue, but the ability in the organisation to escalate things rapidly seems an important factor.

**Dame Elish Angiolini:** Emotional intelligence is an important feature of any police officer who has to go out on to the street to deal with people. Police officers have power and they can issue a command to obtemper the law. If an officer does not understand confrontation and is directorial in dealing with a person who has mental health issues or other issues, that person might not have the same cognitive response to the commands as others might have. The degree of sophistry that we now require of our police officers in communicating with members of the public is quite demanding. We ask much more of police officers now than we ever have in the past, and they have to deal with many people in our community who are suffering from significant mental health problems. Understanding how to deal with that is critical.

That applies also to those who consider complaints against officers. You cannot really assess someone's conduct unless you understand the dynamic in which they operate and the skill set that they require to deal with the demands that are placed on them. That issue is not confined to the police; it straddles the judiciary, lawyers and prosecutors. We now have a much more sophisticated understanding of human behaviour, but that does not necessarily make it easier to deal with.

It is therefore critical that there is that understanding and that training is available for those who handle complaints. They need to be able to listen and to understand how to deal with people who are irate, whether the contact is made by email or by phone call, and respond in a way that is understanding of the position that people are in. That training is important for those who deal with such issues at the front line.

**The Convener:** Liam Kerr is next. Sorry, I mean Liam McArthur. Liam Kerr is not even here, and I get it mixed up. Sorry about that.

**Liam McArthur (Orkney Islands) (LD):** Even when he is not here—we have hit a new low this afternoon. [*Laughter.*]

Dame Elish, thank you not just for your interim report but for the way in which you have engaged with members of the committee in its preparation, which is greatly appreciated.

In response to John Finnie, you talked about the welfare of officers. On a few occasions at the committee, an issue has arisen about the fact that officers can retire and then proceedings relating to misconduct or even gross misconduct are parked. In your report, you rightly make the point that nobody wishes to prevent officers who are genuinely ill or under stress from retiring, but you state that, when people do so in order to take what you describe as an “escape route”, that

“does not appear compatible with the principles of natural justice, especially where the alleged misconduct is associated with detriment to members of the public or there is a major issue of public interest at stake.”

You then suggest that

“there may be merit ... in terms of the public interest in transparency and justice”

in adopting an approach that is in place in England and Wales.

That suggests that your mind is not made up on the issue and that you can see strengths and weaknesses in that approach. However, you go on to set out what appears to be a fairly credible way of going down that route. Will you advise the committee on your current thinking on trying to amend the rules in that area?

**Dame Elish Angiolini:** The report was published only on Friday, and it is Monday now, so my thinking is pretty much where it was on Friday.

**Liam McArthur:** It is always good to check.

16:00

**Dame Elish Angiolini:** I am not so malleable.

Really, my concern is with allegations of gross misconduct. It is about proportionality and looking at what is appropriate. If proceedings are commenced after an allegation of gross misconduct and then, during those proceedings, the person retires, in a normal job, that is of course the end of the matter—it resolves it, because the person goes and the alleged problem simply evaporates. However, policing is different, because police officers have considerable powers as well as considerable obligations, and we are concerned with public conduct.

Therefore, if a very serious matter is the subject of such proceedings and the individual resigns or retires during that process, the proceedings are not brought to any conclusion—they are left where they are and no one knows what the position was. I am not suggesting that someone in that situation should be kept in the police in perpetuity without being able to resign—I think that there has been judicial consideration of that—but there is a question as to whether the proceedings should continue so that a conclusion can be reached.

There are two issues with that. Would the conclusions that were reached thereafter have any effect on the individual, if they had resigned? Would it simply be a hollow exercise? I do not think that it would be if a conclusion could be reached that allowed the authorities to advise—this is the second part of the equation—any other police force in the country of what had taken place and what the conclusions were. If, for example, I were to leave the police here and move to another police force elsewhere, there would be a genuine public interest in ensuring that that force was aware of the outcome of such proceedings.

In England and Wales, there is a vetting and barring register, which, if someone leaves one force in England and Wales during the course of proceedings and moves to another, can be consulted to determine whether that person has been barred and whether there is a matter of concern. I think that such a register should be introduced in Scotland and that it should be a cross-border register, because we have sufficient movement of officers across the border to make that necessary. That is part of the equation that relates to what I said before.

The question that I have is whether it would be sufficient for a finding to be made without any

imposition of penalty. I think that any individual who is in such circumstances should have available to them representation for those proceedings. I am very happy to listen further to people's views on whether either of those options is considered to be disproportionate or draconian, but I strongly believe that, when it comes to gross misconduct, there is a significant public interest in ensuring that such proceedings are completed, when that is possible.

**Liam McArthur:** One of the other observations that you made was about the rules on pension forfeiture. You observed that, in practice, they have not been used to any great extent. Were you given any reasons for that? Is that another potential sanction that could be used in cases of the kind that you have outlined?

**Dame Elish Angiolini:** I think that that is the case throughout the United Kingdom. There are very few examples of pension forfeiture. Reduction in rank is another option that could be considered; obviously, that option would exist only if the person was still within the force.

Pension forfeiture is probably not used—I am speculating here; this comes from two senior officers—because officers make their own contributions to their pension. There are also issues to do with the rights of family and children in that regard, which would be impacted on. That applies to most penalties—if someone is imprisoned, the family is affected by it—but there are issues of proportionality with pension forfeiture. It is an option that is available. If the matter is determined by an independent panel, whether that changes will depend on whether it is fair. I do not think that the risk of pension forfeiture is particularly significant as a motivating factor when it comes to resignation, given that it is used so rarely as a penalty.

**Liam McArthur:** As far as the procedures are concerned, you mentioned vetting and barring, but that presumes that someone who retires from their role might go on to perform a different role in another force elsewhere in the country. What other sanctions are used in the system in England and Wales that could come into play in the Scottish system?

**Dame Elish Angiolini:** Nothing is used that is very different from what we have here. The only difference is that there are different forces in England and Wales, which means that there is a lot of movement between forces. Now that we have one force in Scotland, it is easier to keep an eye on individuals. It is certainly important that if someone applies for a job, the employer is aware of what took place elsewhere. It is important that someone who has left another force in such circumstances could be referred to in the vetting register.

**Rona Mackay (Strathkelvin and Bearsden) (SNP):** I would like to ask about the time that is taken to investigate complaints. The committee has heard that complaints processes can be prolonged for various reasons and that that can often have a detrimental effect on the health of the complainant and of those who are the subject of complaints. Police Scotland and the SPA have a non-statutory deadline of 56 days to investigate and conclude complaints, which is often not met, for a variety of reasons. Does the system need to be reviewed? Is it reasonable to assume that not all complaints will be dealt with in the same way, so it would be difficult to introduce standard timescales for complaints to be resolved?

**Dame Elish Angiolini:** The answer to your second question is yes. The way in which complaints are dealt with varies considerably. Some cases are very straightforward and some are hugely complex. Some cases involve obtaining evidence from abroad or from experts from abroad, who might be experts in pretty esoteric areas. Therefore, even if an expert is identified, we might find that they are so busy that they cannot prepare a report for another six to eight months. That makes things incredibly difficult, but it can happen, including in ordinary criminal prosecutions.

If we have targets, there must be opportunities for there not to be an absolute time bar, because having such a limit could result in decisions that are not necessarily in the public interest. However, an officer being suspended from their role causes enormous tension for that individual and for the family, including the family of the individual who is making the complaint. They are in the spotlight, and it is incredibly difficult if the complaint lasts a long time, during which they suffer, too.

Delays are often caused through the interaction between the agencies, so the responsibility does not simply lie with one agency. For example, the PIRC might have investigated and reported to the Crown Office, which might then seek an additional investigation by the PIRC, so there could well be movement between two organisations. Although a case might be proceeding, there could be longer periods of delay.

Undoubtedly, when I write the full report, I will look at the issue of time, particularly in relation to the nature and scale of delays. Some cases are like summary complaints in court and can be dealt with very quickly, so they should be able to be completed in a very tight timescale. Cases that are identified as being very serious, high profile and complex—although high profile does not necessarily mean complex—should be weighted. The PIRC has a system of weighting the nature of such cases, and Police Scotland could certainly do

something to identify the type of complaint that it is investigating.

Of course, if it is a criminal matter, the police are subject to the directions of the prosecutor. The procurator fiscal has the power to direct the police to report within a particular period, so a time bar would not be required in such circumstances. However, if that meant that an incomplete investigation was presented, it would need to go back to the police, which would not be a satisfactory result.

Some very lengthy, complex and sensitive investigations have been bunched together over a couple of years. We would like to hope that that collection of very significant investigations taking place in a perfect storm would be a freak situation, but there is no guarantee that there will not be such situations in the future. That is why it is important to look at how the organisations can build resilience to allow for greater flexibility in dealing with such situations. With large organisations such as the Crown Office and Procurator Fiscal Service, large teams can be put together and people can be drafted in from different parts of the country if there is a major disaster or if something needs to be looked at. Organisations such as the PIRC are much more limited in terms of their resilience, so we should look at an organisation's ability to call in individuals. Alternatively, organisations might decide to have a number of on-call consultants who can come in, which might include those who are retired but who are keeping up their training through continuing professional development.

We cannot replicate the police force with the PIRC. It would be an enormous cost to the public to have a standby investigation service for what might happen perhaps once every eight years, so we need to find a way of allowing the PIRC to carry out its statutory responsibilities, while not having surplus staff for significant periods of time.

**Rona Mackay:** Is your final report likely to contain proposals for streamlining the system ?

**Dame Elish Angiolini:** Yes, and another issue involves looking at the nature of the personnel. One of the opportunities that I explored at the beginning concerned the complaints handling people and the investigative people, who form two quite discrete organisations within the PIRC. The PIRC has given evidence about complaints handling—I am not sure whether I am going to be questioned about that later—and she thinks that it should be moved elsewhere, to the Scottish Public Services Ombudsman, and that the PIRC should instead have a first-instance role in dealing with all the complaints that are currently dealt with by the police. I will discuss that later. In part, she sees the functions as being disparate, but I do not think that they are that different. If you are dealing with

complaints about how the police have handled cases and investigations, you will begin to learn all the necessary skills and the underlying concepts in law. Of course, if you were doing nothing but that, it would not be a job that I imagine that anyone would want to continue doing—dealing with complaints day in, day out is difficult. However, the skills that are developed in doing that offer opportunities for interchange and development in the organisation. At the moment, there is little traffic between the two areas. I think that that should be explored. Thought needs to be given to how the training can be widened out to ensure that there is more flexibility so that, when those challenges arise, you can draft in more staff from the complaints-handling side—complaints handling might have to be left aside for a while. You need the resilience to deal with such circumstances.

The PIRC's view is that the skills that are involved are very different. To an extent, some of them are. However, they are not so polarised that there are not some aspects of an investigation that could be carried out. You do not need everyone to have the full range of policing skills. For example, the Crown Office and Procurator Fiscal Service has procurators fiscal who prosecute and investigate cases, but it also has precognition officers who do not go into court or get involved in the prosecutorial side of things but are key to the process, so not everything has to be done by the prosecutors.

We need to look at the nature and make-up of the personnel. That is why I made a recommendation that a management consultant be appointed to review the profile of the staff. With a new PIRC coming in, it would be invaluable to consider different ways in which the work is carried out so that we can find ways of making the work more effective and ensuring that the job is more attractive as a career.

**Rona Mackay:** At the weekend, the press seemed to pick up on the suggestion that the police who are involved in an incident should be separated as soon as possible, to avoid them conferring and so on. Could you expand on that?

**Dame Elish Angiolini:** That is not something new that I have said, and it does not relate to any particular case—I say that because there was some photography in that press that could have led someone to infer that it related to one case in particular. In fact, in the report that I produced for the Home Secretary a few years ago, I examined that case in the context of a number of deaths in custody that had occurred, some quite notorious.

The practice that I examined in England was that, following such a death in custody, the police officers would be brought together, very often with a senior officer present. I spoke to the Police

Federation of England and Wales about what the objective of that procedure was, and I was told that that discussion did not involve an exchange of opinion about what happened but that, sometimes, it was felt that the facts had to be checked. That, in itself, concerned me, because the police had the view that, unless everyone had a uniform account of events, the Crown Prosecution Service and others would cross-examine them severely in relation to the discrepancies. Of course, that is wrong, because nobody ever perceives an event in the same way as someone else does, and discrepancies are natural, which means that, if anything, uniform accounts will be more suspicious than ones that contain discrepancies. Because of that, I did not think that the process in England and Wales was necessarily in the interests of those officers in that group. Equally, if they are together, there is the danger of groupthink and of innocent contamination of accounts.

Saying that the officers should not be put together in a room is not a criticism of police officers—indeed, it is in the interests of those officers that that does not happen. Following a traumatic event of this nature, it is important that the officers have support, have their welfare considered and have a representative from their association present, whether that is the Chief Police Officers Staff Association or whomever. However, putting them together in a room creates all sorts of difficulties because of the perception that, if they are all kept together, they will have an opportunity to influence the account. There might be an assumption that all of those officers have the same interests but they do not. They are individuals, and in any legal context, if there is any potential conflict, they would have separate legal advice.

There are all sorts of issues that make that process fraught. The safest approach, except in extreme operational circumstances, is to keep the officers apart. We have to accept that that might not happen if there is a disaster that results in a death and officers are moving on to do something else and save lives. As I said, it is not a clinical exercise. If the process is complete, so far as possible, the officers should be kept apart, in the way that is done with civilian witnesses. The police do not interview civilian witnesses together; they are separated as soon as possible and kept apart in order to get their individual accounts. However imperfect those accounts might be, it is their account and recollection that matter.

That approach is in the interest of police officers. It is not saying that we ignore their welfare or the trauma that they have undergone. However, it is appropriate that officers are not simply put together in such difficult circumstances. Months later, if there is a case, it can be difficult to rebut

accusations that are put in the course of cross-examination.

16:15

**Shona Robison (Dundee City East) (SNP):** I will move on to the related area of transparency. One issue that has arisen is that people do not feel that they are being given enough information with which to pursue a complaint. It has been suggested that the situation could be improved if policing bodies had a duty to provide complainants with regular updates on the progress of their complaints and, for example, the procedures that are being followed. Interestingly, it is suggested that they should be provided with a named contact. Is that a viable suggestion?

**Dame Elish Angiolini:** Yes, it is. In some circumstances, that is a matter of law. If a death is alleged to be at the hands of the state, such as a death in custody—if someone is in a prison cell, a police station or a police car—there is an obligation on the state to allow the family of the deceased or the next of kin to participate effectively in the proceedings. It is not a question of benevolence or giving the family information. They have a right to participate in the proceedings, which means that they must have up-to-date information and be able to understand the process.

When an investigation is being carried out, there may be points at which the information is sensitive. I comment on a situation in which an allegation was made that, if proven, would have amounted to gross misconduct and, based on a preliminary assessment, a public statement was immediately put into the press when it was far too early to do so. That can create huge problems for witnesses coming forward, because people are intimidated by that, and for the officer who is the subject of the allegation. There are times when an investigation cannot be carried out in public. If I ask for a search warrant, I will certainly not broadcast the fact that I am going to search someone's house. That type of thing has to take place in private. However, where possible, the family should be involved and should consistently have information about the development of the investigation so that they can participate. When it comes to an inquest or, in Scotland, a fatal accident inquiry, the family again must have the opportunity to participate effectively.

That is for deaths. On the rest of the spectrum, the more serious the event, the higher the level of participation and consultation we would expect. With all matters that get beyond the letter from front-line resolution and where someone is not satisfied, it is important that they have a contact person who they can go to. I want to look at that with complainer and consumer groups in the next

part of the review, which will look specifically at the participation of complainers.

**Shona Robison:** That could be an important next step.

From my mailbag over the years—other members might share this view—it seems that a lack of communication and a failure to keep people informed are often at the heart of the feeling that a complaint to the police is not being dealt with seriously. The next steps on that will be interesting.

I will move on to an issue that we began to touch on earlier. The Police Investigations and Review Commissioner has expressed concern about the level of discretion that Police Scotland currently has to categorise and investigate complaints in the first instance. Is that concern justified?

**Dame Elish Angiolini:** It would be justified if there were copious evidence of things that should be going to the PIRC not going to the PIRC. Interestingly, there was evidence that came from complaint handling. That is an example of how useful the complaint-handling side of things is; where complaints about the way in which a complaint had been handled came to the complaint-handling team in the PIRC's office, it was able to observe that those complaints should not be dealt with by that team but should have gone to the procurator fiscal. That is an example of the significance of the symbiosis between the complaints handling team and the investigation team.

In relation to the degree of discretion, the PIRC herself gave evidence in which she said that, although she would have liked to have been aware of the nature of a number of incidents, the chief constable had not reported them—he has discretion as to whether to report those matters. The committee will note that my report recommends that, when the chief constable has such an incident in the future, he should consult the PIRC. Whether that recommendation requires legislation is another matter. Nonetheless, as a matter of good practice, it would make sense. That relationship is very important. The chief constable should speak to the PIRC, explain that they are considering a case and be able to discuss that, in the same way that a police officer would come into the procurator fiscal's office and say that they are considering a case and are unsure whether it amounts to X or Y. Those discussions are important; they do not interfere with the independence of the prosecutor but simply use that resource and knowledge and create that working relationship, which is important.

It is important that all matters that should go to the PIRC go to the PIRC. That is why the

committee will see that I also made the recommendation that all allegations of excessive force should go to the procurator fiscal for determination. Those allegations could amount to a breach of article 3 of the European convention on human rights and should therefore go directly from the police to the procurator fiscal for them to determine whether the PIRC or the police can investigate matters, depending on how they interpret the evidence that supports the allegations at that stage. Certainly, there needs to be a sharpening up of the process to address the concerns.

The other aspect that concerns me is the underuse of audit, despite the fact that it is one of the best ways of detecting non-compliance with what are intended to be the areas of competence of each of the organisations. One of the important powers of the SPA is the power to audit. The committee will note that I suggest in the report that, although audits have been carried out, they tend to be “superficial” and statistical in nature. A more recent audit that I considered was excellent and more penetrating, which was a change.

The PIRC has also carried out audits—the three functions of the PIRC include auditing and carrying out research on policy. The research function has not been used, and the audit function has not been used for front-line resolution, for example—where a lot of problems were described by the PIRC—since 2014. If the police are to make those decisions at the front line, they should be subject to regular audit. The PIRC has the power to do that very effectively.

The PIRC can also do research. The PIRC’s position is that she simply has not had the resources to do research, and she has made a number of calls for additional resources. However, when I considered the complaints handling side of things, I referred to a report that was prepared some years ago by Robert Gordon, who was a member of the PIRC audit and accountability committee. His report looked at what he considered to be a counsel of perfection in complaint handling, whereby even though the ground of complaint—that the complaint had not been handled correctly—was not upheld, PIRC staff would continue to look into other issues such as failure to comply with the standard operating procedure. Rather than time being spent on going through each one of those issues, once it is established whether the complaint is good enough, other matters could be put aside for a thematic review for the chief constable.

The important point is that that team should be doing more audits. It could usefully do more than it has been able to, perhaps because it has been spending too long on individual complaints. That is

to do with how resources are used and what is most effective.

The other important suggestion that I make in the report is that there may be a case for giving the PIRC access to the Centurion computer system, on which all those matters are entered during the front-line resolution process, so that it can also do contemporaneous audit from time to time. It can dip in, look at what is happening and satisfy itself on that. Finding an occasional breach does not, in itself, suggest that a major structural change is needed in who has responsibility. However, the powers that exist are not add-ons; they are a core part of the process. The use of audit can be very effective in securing greater improvement.

**Shona Robison:** Finally, the commissioner raised a concern about the discretion given to Police Scotland in determining what constitutes a serious incident and whether to refer it to the PIRC for an investigation. In evidence, Ms Frame recommended that the term “serious incident” in the relevant regulations be amended to

“a potential breach of articles 2 and 3 of the European convention on human rights.”—[*Official Report, Justice Committee*, 6 November 2018; c 18.]

Is that concern justified and could that step be taken to resolve matters, or is there anything else that you would suggest?

**Dame Elish Angiolini:** I covered some of that in my previous answer.

**Shona Robison:** You have answered some of it.

**Dame Elish Angiolini:** However, if an incident is a potential breach of article 2 of the ECHR, which is death, that must be reported to the procurator fiscal and the PIRC. I do not think that there is any suggestion that there have been deaths that were not reported. That would be a very serious allegation. Article 3 is wider. It is about “inhuman or degrading treatment”—assault, torture or treatment that is highly injurious to an individual’s wellbeing. The vast bulk of those cases would be allegations that have been packaged as excessive force when they were, in fact, assault and should have been reported as such. Because of that, I have recommended that allegations of excessive force should be reported to the PF.

It is a long time since I dealt with complaints against the police, which I did when I was depute fiscal in Airdrie, but I remember reports coming in from the police when there were such allegations. The procurator fiscal who was assigned to custody would look at those to determine whether we were sufficiently concerned to ask for a full report on any of those matters. That should certainly be re-

instituted; the fiscal should see those reports and determine whether they should go to the PIRC.

**Shona Robison:** Thank you—that is helpful.

**Daniel Johnson:** Following on from your answers about the complaints handling process and your key recommendations on concerns about miscategorisation and so on, which involved audit and access to the Centurion system, can you elaborate on why you feel that that is sufficient? If the PIRC or another body had a triage function, it would be able to see the allegations at first hand, rather than having to rely on accounts of them. Why do you feel that a sort of second-level access is sufficient?

**Dame Elish Angiolini:** Partly because those approaches have not been used yet. It is important to do that. What you suggest may be an acceptable approach. The PIRC feels strongly that she would like to jettison the complaint-handling section and hand it to the SPSO. However, policing and crime are a specialised area, which I would be concerned about dislocating away from the people who are investigating further. Policing and crime are different from some of the other complaints issues. People might say that everything is special—medicine is special, as well—but there is the issue of how those people keep up their competence and understanding of the area. There would also be a Transfer of Undertakings (Protection of Employment) Regulations issue, because that group would be moved.

Instead of that, the PIRC could have the function of providing the front-line audit, which is basically what happens in Northern Ireland. I think that it was set up in that way because of the particular sensitivity and history in Northern Ireland. It could be done in that way, but there would be the issue of having created further bureaucracy. There would need to be a form of complaint about the handling of it by the PIRC, because it would now be the PIRC that determined the destination in the first instance. There would also be a dislocation from the ability to move as quickly as we might want.

16:30

You might say that they deal with complaints every morning and give out instructions but, for some of those, further information is required. I am not sure whether members have gone along to see the sergeants at work, but it would be interesting for you to do so. When I sat in, I observed that, as the messages come in, some of them are ambiguous because they are from people who are influenced by alcohol—that will not surprise you. Some are incoherent, so they require more explanation from the individual.

It might become apparent to the officer that what has been alleged is a crime, as opposed to a front-line resolution matter about quality of service, such as Police Officer Smith being rude to someone, not turning up on time or not responding to a report of a housebreaking. If it turns out to be something more than that, the sergeant nips next door to give the message to the inspector, who immediately puts it into an investigation unit to be investigated as a crime or to be sent to the procurator fiscal. That proximity is important.

I am slightly concerned that we would create a significant structural change, which could be bureaucratic and clunky. There are thousands of complaints—about 6,000—but the vast bulk of them do not relate to criminal matters and are of the nature of PC Bloggs being arrogant, bolshy or rude to someone, it taking him hours to turn up or the police not coming to investigate a housebreaking for at least six days. Those are the usual nature of complaints. It is critical for the police organisation to resolve such matters and improve itself. However, to put those complaints to another organisation is not logical and has not yet been shown to be necessary. That is the important point. When you exhaust the other routes or possibilities for doing it, you can improve it, as well as improving the training of those who are at the front line to ensure that their skills are as good as they can be.

**Maurice Corry (West Scotland) (Con):** Is Police Scotland currently subject to any form of oversight regarding the categorisation of potentially criminal allegations? Should that be subject to review?

**Dame Elish Angiolini:** Yes. Police Scotland is under the direction and supervision of the procurator fiscal. In Scotland, the prosecutor is independent of the police and has the power to direct, yet we sometimes overlook the significance of that. The Crown Prosecution Service in England has no power to direct the police, but in Scotland the procurator fiscal has that role as well as the responsibility for investigating deaths, whereas the coroner function is separated out in England. The Procurator Fiscal Service is a uniquely powerful organisation that superintends the police in their actions and, if necessary, prosecutes them.

**Maurice Corry:** Are you happy that that is working okay?

**Dame Elish Angiolini:** I have not been asked to look at the Procurator Fiscal Service; that is excluded from my remit. However, I did not hear anything from the other organisations to suggest that it was not working okay.

The criminal allegations against the police division, or CAAPD, is a huge improvement on what went before. I was a regional fiscal for

Grampian, Highlands and Islands and, for a brief period when I was up there, I had responsibility for such allegations. Bringing those all together in the senior prosecutor-led CAAPD, provided that it is properly resourced—more resources have come into it so that it is not a bottleneck of excellence, as it must move cases through in the same way as before—makes it a powerful and valid check on police conduct.

**John Finnie:** I have a brief question. Police officers have, historically, had a frustration about what seems to have been a marked reluctance on the part of the prosecution to instigate proceedings against those who make overtly malicious complaints against police officers. Accepting what you said about your remit not covering the Procurator Fiscal Service or giving direction to the Lord Advocate, is it logical to say that, with a more enhanced and robust complaints system, there would be more rigorous prosecution of malicious complainers, as a way of not only addressing crime but providing some comfort to those in the police service?

**Dame Elish Angiolini:** It is important that there is efficient and effective action to investigate complaints against the police. When complaints are found to be malicious or false, however, there must be an important message that there should be prosecutions—indeed, over the past couple of years, there have been two prosecutions in Scotland for wasting police time by false accusation. The charge of attempting to pervert the course of justice can also be brought, depending on the stage of proceedings and what happens.

There is an important public interest in bringing such prosecutions, but it is for the procurator fiscal and the Lord Advocate to exercise their functions in that regard independently of any person, including me.

Many vexatious complaints that might not be of a criminal nature are anonymous. As I said in the report, how anonymous reports are dealt with is a matter of huge sensitivity. Anonymity can be sought for very good reasons, but it sometimes provides a cover for people who are vexatious or disgruntled. In any future amendment to the legislation, it is important that specific provision be made for vexatious complaints that are not of a criminal nature.

**The Convener:** Should the Police Service of Scotland (Senior Officers) (Conduct) Regulations 2013 be amended to protect the identity of senior officers who are the subject of complaints?

**Dame Elish Angiolini:** We are talking about a level of seniority at which there cannot be complete anonymity. When I was the Lord Advocate, if I had dropped a Curly Wurly wrapper

in Sauchiehall Street it would have been news, because one would not expect such behaviour of the Lord Advocate. It might have been a minor offence, but it would have been important, nonetheless. With power comes huge accountability and visibility.

However, in my report I explored the issue of the preliminary assessment of misconduct allegations for which the 2013 regulations provide. While an allegation is subject to preliminary assessment—in other words, there is no suggestion of active investigation—there is just the ipse dixit of someone, who might be anonymous. They might have scribbled the allegation on the back of a bubblegum paper or made an anonymous call.

The obligation of the SPA, having made the preliminary assessment, is to pass the allegation to the PIRC. It might then become public by dint of the fact that there are so few senior officers. Even if the individual is not named, if they are one of only eight people, the situation can quickly mushroom in a way that is hugely prejudicial and damaging not just to the officer and their family—at a stage at which there is no prima facie case but simply an assertion—but to potential witnesses, who might not yet have been seen by anyone. Potential witnesses might be cowed and intimidated by the allegation's becoming public.

Therefore, although it is not a question of an investigation remaining sealed for the duration of the investigation, I think that, at that sensitive early stage of the proceedings, when there is no prima facie case and there is simply an assertion, the investigation should be sealed.

**The Convener:** You recommended that an investigation of a very senior officer—perhaps the most senior officer—should be prioritised. Did you mean that the investigation should be dealt with quickly or that there should be some other mechanism to deal with an allegation against someone at that level?

**Dame Elish Angiolini:** I do not need to speak to this audience about the destabilising effect of an on-going investigation when the senior command of the police is made up of such a small group. It is not about giving priority to an individual because of their status; it is about the potential for destabilising the investigation of crime by the police force in this country. It is therefore in the public interest that the matter is dealt with as quickly as possible—as is compatible with the evidence.

It is also important to look at more creative alternatives to suspension, given that, in such circumstances, there is really nowhere for the officer to be repositioned—we cannot put a chief officer into a post elsewhere. A person could be



seconded, for example to a force outwith Scotland or to work in a charity or other organisation, pending investigation. While the person is in a position of power, it is difficult for the investigation to take place, which is another reason why the investigation has to be done as expeditiously as possible. That is also in the interests of the public.

**The Convener:** Did I see a recommendation from you that, if a chief constable is asked for information, it must be provided timeously?

**Dame Elish Angiolini:** Yes. I think I suggested that it should be provided within two days, but that was à propos of allegations of unlawful detention that would be contrary to articles 3 and 5 of the European convention on human rights. If information is not provided quickly, a lot of evidence—particularly closed-circuit television evidence—can be lost. There were examples from the PIRC, who said that matters had been referred to her six to eight weeks on, by which time important evidence had been lost. She was right to say that information must be provided quickly in order that she can carry out an effective investigation.

**The Convener:** I suppose that one of the biggest issues to come out of the whole review is that complaining can be a complex process. Are there immediate measures that can be taken to simplify the process? Are relevant stakeholders doing enough to make the public aware, in plain language, of how the process works?

**Dame Elish Angiolini:** In my report, I said somewhat facetiously that the process of making a complaint is almost like the wiring of the starship Enterprise. The process is complex and opaque. The landscape has changed considerably since I left Scotland and the current structures are a huge improvement on what I experienced as a prosecutor. The unified police force makes eminent sense and, in the passage of time, will be a tremendous boon to the effectiveness of the police. However, it is natural at this juncture that we should look at the extent to which the procedures can be simplified.

One action that could certainly be taken is to look at how we direct the public to how and where they can make a complaint. I am not the most IT-savvy person on the planet, and I found it difficult to navigate my way around the website or find the form—even the form is not that obvious. What if someone is dyslexic? How else can people make a complaint?

One thing that troubled me was what happens if someone does not want to make a complaint to the police. What if they do not trust the police or are worried about their safety and security? Members of the public can make a complaint straight to the procurator fiscal. That has always

been the case, but that route is not obvious to the public. People do not have to go through the police processes if they are concerned about corruption, for instance.

There are also issues, which I will come to later, about the PIRC being a nominated agency. That might be an important matter in the future, particularly in relation to whistleblowing. However, I have not yet given sufficient consideration to that.

**The Convener:** I want to ask about whistleblowing and whether Police Scotland's current process is fit for purpose, but that is something for later. Liam Kerr?

**Liam McArthur:** Liam McArthur.

**The Convener:** I did it again. I am so sorry. I thought, "I won't say Kerr, because I got it wrong the last time."

**Liam McArthur:** Three times and it becomes harassment at work.

I want to touch on the issue of body-worn cameras. Your report acknowledges that there is a wider debate to be had about those and that there are pros and cons involved. You say that body-worn cameras have a role to play, in that they have the potential to reduce and resolve complaints, and that you support Scotland's aspiration to roll them out nationally. Will you explain why? What safeguards would need to be put in place to satisfy you that the benefits outweigh any potential downsides?

**Dame Elish Angiolini:** There is already evidence that, as far as police officers are concerned, the presence of a body-worn camera makes everybody behave better. As soon as someone refers to the fact that they are wearing one, there is a de-escalating effect on some conduct. The report refers to the Tulsa police department, where there was a significant reduction in certain conduct as a result of the introduction of cameras.

16:45

My experience of body-worn cameras is limited, because they had not been introduced when I was in office or when I was working as a prosecutor. However, CCTV evidence transformed the investigation of crime. When it was introduced, there were concerns about its efficacy and concerns relating to article 8 of the European convention of human rights, on privacy. In fact, it has allowed us to detect crime. I prosecuted a murder case that would have been much more difficult to prosecute if it had not been for CCTV. It is amazing how CCTV has advanced things, and I think that body-worn cameras are a natural extension of CCTV. The cameras will be there to protect the public and to protect the officers from

false accusation. They should also assist with conduct.

I will give an example of the use of a body-worn camera. When I was looking at how the police in England and Wales deal with complaints that are made against them regarding deaths, I attended an inquest on the shooting of a man in a tower block by a police officer. I was sitting in the benches, listening to the officer give evidence. When he described the scene and how he came to discharge his firearm, his evidence was not impressive—maybe it was nerves—and I did not know what to make of him. He did not come across as an impressive witness. His body-worn camera footage was then played, which was outstanding in its quality and showed how utterly terrorising the event was and how quickly it had transpired. Had a judgment been made on the basis of the officer's evidence alone, the outcome might not have been different but it might not have been as certain. That case convinced me of the value to the police and the public of body-worn cameras.

You mentioned privacy and third-party concerns. The same concerns were voiced about CCTV cameras. There must be a code of practice and/or a code of ethics on the use of body-worn cameras, which would include the editing of footage. You cannot edit out anything until the defence counsel or others have had an opportunity to see the footage, because of disclosure obligations, and that would be subject to agreement. Subject to that, the footage would not be made public.

**Liam McArthur:** I take all those points, but there are still anxieties to do with the proliferation of CCTV and the locations in which it is to be found, and the situation is similar for body-worn cameras. You refer to their deployment in the custody environment and in a public-facing role, but officers can be the ones who are engaging in those environments and who are therefore using cameras. Are there necessary safeguards in that situation?

**Dame Elish Angiolini:** I am not sure that I understand.

**Liam McArthur:** To what extent would the public need to be alerted to the fact that their engagement with an officer was being recorded?

**Dame Elish Angiolini:** It could be done by an officer declaring that a camera was present and simply saying, "I am wearing a body-worn camera." That, in itself, could have an effect on conduct. If their conduct was beginning to escalate, the person would be put on notice with such a declaration. However, it is unclear how practicable that would be if the circumstance was one of fear and terror. It is all very well for us to

talk about that in this environment, but I would hate to think that the absence of a declaration would strike out the admissibility of any evidence that was gathered in that way. I think that that would depend on the facts and the circumstances of the case.

With tasers, the police are trained so that, as they are beginning to present their taser, they shout to warn that they are in possession of it. I think that they shout, "Taser! Taser!" That might relate to the English police—that was certainly the case when I was looking at them for the Home Office. I am not sure what the situation is for the Scottish police.

**The Convener:** Will you clarify whether Police Scotland officers wear body cameras at present?

**Dame Elish Angiolini:** I think that they do in a very limited scope. I think that Police Scotland has been running pilots. There is no question but that the chief constable and others are very keen on having them. However, the issues that you have to think about are not just the cost of the cameras but their effectiveness. They must be good value for money and not putter out after 18 months or something.

There are also questions about storage, disclosure and their use in courts, including around the facilities that are needed to play the footage. All those elements have a cost that must be taken into account. I am sure that that would not be insignificant, so I referred to cameras being worn by officers in public-facing roles rather than their being rolled out comprehensively.

I would put money on the fact that, 25 years from now, all officers will have body-worn cameras, which will be very much cheaper. I suspect that—a bit like what has happened with mobile phones and other IT equipment—those cameras will get cheaper the more that people use them across the world.

**The Convener:** Is that happening without a code of practice or conduct? If so, does that matter, given that it is a pilot?

**Dame Elish Angiolini:** I do not know the answer to that question, but I can look into it and write to you on that point.

**The Convener:** Your final recommendation is:

"The Scottish Government should consider the case for amending the legislation to put beyond doubt the definition of a member of the public who may make a relevant complaint."

Dotted through the report, there are a number of recommendations for changes in legislation that could be implemented relatively quickly but that would have a major impact by improving the complaints process. It would be helpful to hear

whether you are looking for those changes to be made at pace.

**Dame Elish Angiolini:** They are important. Another issue is the ambiguity of the phrase “person serving with the police”. Does it mean a police officer who was serving with the police then or one who is serving now? Does it refer to off-duty officers as well as those who are on duty? It is important that those issues are put beyond doubt, and that is what Parliament will want.

A police officer might carry out certain offences in their private life that have no nexus with their role as an officer. For example, someone might keep an unlit skip on the road when they are moving house, which is an offence. There are a lot of minor offences that could attract criminality. For a traffic police officer, an offence of careless driving might be significant, but it might not have any significance at all for other officers. There is a spectrum of interest in what officers do in their private lives. If an officer was dealing drugs in their civilian capacity, that certainly would be a matter of interest, and we might want to ensure that any conviction was brought into misconduct proceedings as proof of that.

There are choices to be made as to what reach and level of focus regarding the private lives of officers we want the organisations that are charged with looking at complaints against the police to have.

**The Convener:** When the committee took evidence on the issue, there was a unanimous feeling from the SPA, Police Scotland and I think the cabinet secretary that no changes to legislation are necessary. Given that improvements could be made relatively quickly, that is maybe a question for the cabinet secretary when we see him tomorrow.

You suggest that the PIRC should operate in regional locations, which is a good idea. Where would those be, and how would that work?

**Dame Elish Angiolini:** I was surprised to learn that the PIRC is located in Hamilton. In fairness to the PIRC, she explained sensibly that it is a good place to be because it is on the motorway network and it is easy to get to the east and to the centre, and so on. The difficulty is with the northern areas. We are a huge country geographically but with a very small population, and significant incidents can take place anywhere. It is about the ability of the PIRC’s staff to cover the northern areas and islands. Obviously, you can get flights there but, even if you are in Aberdeen, you cannot necessarily get to the islands, because flights might not be operating. With the most serious types of alleged incidents, the PIRC has an investigative role. When there is a death, there is what is referred to as the golden hour for the

collection and protection of evidence, so it is really important that the PIRC staff get there.

I asked the PIRC whether she would consider regional locations, but she does not think that that is necessary. However, as time passes and there are more events, the concentration in one place might create an issue, and we should begin to anticipate that. In the meantime, I have looked at the pragmatic options. We have a network of procurators fiscal across the country, including in the islands. Some of the responsibilities of coroners in England and Wales are carried out by procurators fiscal here. The PIRC might well be able to secure an arrangement whereby the procurator fiscal attends the scene, which is what we used to do—we used to attend the scenes of murders and suspicious deaths. We would go there while the police were in attendance to superintend what was taking place. Investigations could be under that form of supervision until the PIRC arrived.

That might be possible, but that is a matter for those two organisations to deal with in the meantime. At the moment, the PIRC is not equipped to deal with something urgent that takes place in certain areas, and even a delay of two to three hours could be problematic when a death is involved.

**The Convener:** The issue seems to be not just about the time but about the volume of work that the PIRC has and the huge backlogs, so that idea would seem to make sense for a number of reasons.

As there are no more questions, I thank you very much for coming and giving up your time. I also thank members for fitting in an extra committee meeting, which has been worth while.

Our final meeting before the summer recess will be tomorrow at 10 am, when we will continue our evidence taking on Dame Elish Angiolini’s report by hearing from the Cabinet Secretary for Justice. We will also take evidence from the Scottish Government’s bill team on the Scottish Biometrics Commissioner Bill, as part of our consideration of that bill.

*Meeting closed at 16:55.*



This is the final edition of the *Official Report* of this meeting. It is part of the Scottish Parliament *Official Report* archive and has been sent for legal deposit.

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