

# PIRC Response to the Criminal Justice Committee Police (Ethics, Conduct and Scrutiny) (Scotland ) Bill Stage 1 Report

August 2024



## **PIRC Response to Stage 1 Report of the Criminal Justice Committee (the Committee)**

This document is provided in relation to the invitation of the Committee to PIRC to respond to the report's recommendations prior to the Stage 1 debate, with an indication of whether PIRC accepts them.

This response supplements the comments, views and opinions provided by PIRC to the public consultation on the draft provisions of the Bill<sup>1</sup>.

### **COMMITTEE RECOMMENDATIONS**

#### **DUTY OF CANDOUR**

**The new Code of ethics needs to be robust and reflect the challenges of modern policing. The Bill does not include details of what is to be included in the new Code and we therefore recommend that the Criminal Justice Committee is able to review the draft Code. The Committee asks the Scottish Government to clarify how the Code of ethics and duty of candour will impact on police staff. (82)**

**The Committee recommends that the individual duty of candour should also apply to police staff who undertake operational roles which provide them with statutory powers and duties, such as police custody and security officers. (149)**

#### **PIRC Response**

As noted in the report, PIRC agrees that consideration should be given to extending any specific statutory duty of candour to those members of police staff who undertake operational roles and have statutory powers and duties such as Police Custody and Security Officers ['PCSOs']. While PCSOs are not warranted Police officers but members of staff who are not subject to the various conduct regulations, Section 28(5) of the 2012 Act does make them subject to certain duties in the same way as police officers (criminal of neglect of duty). It is proposed that the requirement to follow the Code of Ethics – and therefore the statutory duty of candour – could be inserted into section 28 of the 2012 Act. This will ensure effective investigation and recovery of key evidence from all witnesses as early as possible.

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<sup>1</sup> [Response 395702581 to Police \(Ethics, Conduct and Scrutiny\) \(Scotland\) Bill - PIRC](#)



## DUTY OF CO-OPERATION

### PIRC Response

As stated in my evidence to the Committee, PIRC would prefer the duty to co-operate in interviews and investigations to be statutory, as currently, there is no remedy in the circumstances where a police officer or member of staff who has been confirmed as a witness, refuses to provide a statement.

## POLICE CONDUCT

**The Committee welcomes the new powers set out in the Bill for secondary legislation to enable PIRC to carry out the initial assessment and investigation of misconduct allegations about senior officers, as this will enhance independent scrutiny of allegations and remove any perception of familiarity between senior officers and the SPA. (198)**

### PIRC Response

PIRC acknowledges the Committee's approval for PIRC to undertake the initial assessment and investigation of misconduct allegations about senior officers. This will avoid some of the duplication that currently exists.

**The Committee recommends that PIRC should continue its policy to reduce the reliance on the employment of former police officers and introduce procedures to ensure that people who have worked together previously must declare an interest and are prevented from investigating one another. (199)**

### PIRC Response

By way of contextual background, in 2013 at the establishment of PIRC, 85% of the staff within the investigations department were former police officers. This number has been gradually reduced through the recruitment of investigators from other investigative backgrounds, including investigators from the Military, Health Regulator, Borders and Immigration Service as well as our trainee scheme. Currently, 37 of the investigators within the investigations team are former police officers, equating to 64% of the investigations department staff and 43% of PIRC staff overall<sup>2</sup>.

It is the PIRC policy to seek to diversify but, as acknowledged by Lady Angiolini<sup>3</sup>, this is a process that will take some years.

Further, while I agree that there should be people from different backgrounds in the organisation to provide balance and diversity, it is my resolute opinion that to be a credible and effective investigative body, PIRC requires to have investigators with

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<sup>2</sup> As at 16 August 2024

<sup>3</sup> Policing – complaints handling, investigations, and misconduct issues: Independent Review – Para 14.104

relevant policing investigative experience – whether former police officers or from other investigative bodies. Many stakeholders, including senior police officers, acknowledge that to effectively hold policing to account requires employees who understand and have worked in a policing environment, including areas involving specialist skills. Policing has required to develop and morph it's capabilities to deal with an increasingly complex range of topics and issues, including cyber enabled crime and public protection particularly in relation to crimes against women and girls.

The PIRC must keep pace with the change and, to maintain credibility and provide a professional service to all victims and complainers, ensure that we are fully equipped with trained, knowledgeable and experienced investigators who can provide the same level of service that would be given to victims and complainers had the issues been investigated by Police officers. This is important to maintaining the trust and confidence of policing through conducting impartial, robust and effective investigations into allegations against those serving in the Police Service of Scotland.

Having employees, who have relevant expertise and experiences, aligns with other professions who are responsible for reviewing the conduct and actions of staff or members of their respective professions. For example, within the Law Society, solicitors adjudicate on issues of conduct / discipline of other solicitors. Within the General Medical Council, doctors similarly adjudicate on the actions / conduct of other medical professionals. As I understand it, a similar position occurs in the fields of dentistry and teaching etc. The reason for this is self-explanatory; it is peers within these professions who have the relevant and necessary expertise to provide oversight on whether the actions were appropriate in terms of their guidance, procedures and processes.

It should also be highlighted that the current Chief Inspector of His Majesty's Inspectorate of the Constabulary in Scotland (HMICS) - who is the senior professional police advisor to the Scottish Ministers - with wide ranging powers to look into the 'state, effectiveness and efficiency' of both the Police Service of Scotland and the Scottish Police Authority – is a former police officer. The most recent advertisement for the position of Chief Inspector required the person to have experience of operating at a strategic level with authority and credibility in the policing sector at a level of Chief Superintendent or above, presumably recognising the need to have expertise in policing. HMICS also regularly seconds police officers from Police Scotland.

In his evidence<sup>4</sup> to the **Criminal Justice Committee** in relation to the Police (Ethics, Conduct and Scrutiny (Scotland) Bill, when asked about the employment of former police officers in the PIRC, the present Chief Inspector of the Constabulary in Scotland, Craig Naylor stated:

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<sup>4</sup> Criminal Justice Committee 23 May 2024

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“I have worked under both the PIRC system and the IOPC system, and both have wrestled with the issue.

The IOPC has very much moved away from using retired officers to investigate, and I have had some real difficulties with the quality and standard of investigation and the presentation of evidence at court and in other places. To be honest, it is a troubled organisation. I will not go much further than that. We always had difficulties when I worked with it.

There is an issue about how the PIRC maintains a capable investigative process. It is very hard to get the investigative skill set without having come through the police or another investigative organisation such as the National Crime Agency.

However, people who have worked together should be prevented from investigating one another. That is key.”

I agree that is key. It is fundamental that all PIRC investigations and reviews are independent of any policing body.

Against a background of having staff with the necessary knowledge, skill and understanding of policing, I also appreciate the power of public perception. While it is critical to have the trust and confidence of the policing bodies we investigate, it is also vital that we have the trust and confidence of the public that we will investigate impartially, with credibility and without fear or favour. In this, I am confident that PIRC has robust and appropriate safeguards in place to ensure that any potential conflicts of interest arising out of our staff’s previous employment are declared swiftly and appropriate steps taken to ensure that our investigations are conducted with transparency, integrity and free from any bias, or perceived bias.

PIRC has a robust Code of Conduct which requires any member of staff who has any relationship or connection with any person involved in a review or investigation, (be that the complainant or the officer or member of Police staff that is subject of an allegation / complaint), to declare it at the outset to their manager, Head of Department and PIRC HR. Such disclosures will require the member of staff involved be removed from the enquiry concerned.

Staff are also required to declare personal or business interests, remunerated or voluntary employment or activity which may, or may be perceived (by a member of the public) to influence their judgement. PIRC’s senior management team, including myself, are also required to declare and register interests which are made public via PIRC’s website.

Given there are approximately 23,000 police officers and police staff in the country and only 37 PIRC investigators, who are former police officers, the likelihood of PIRC investigators being involved in an investigation where they have a relationship with, or knowledge of, the subject officer is extremely remote. However, where this does occur, I believe we have efficient and robust processes established to eliminate any conflict of interest.

Finally, all sensitive and serious cases, including all deaths in custody and cases where there is sufficient evidence of criminality, are quality assured by myself and issued in my name. As Commissioner, I am appointed by Scottish Ministers and it is a condition of that appointment that I am not, and have never been, a member of a policing body or an elected politician.

**The Committee considers the proposal that PIRC should carry out the initial assessment and investigation of allegations of misconduct about senior officers only, Assistant Chief Constable and above, as proportionate. (210)**

#### **PIRC Response**

PIRC welcomes and agrees with the Committee's statement.

### **HANDLING OF COMPLAINTS**

**The Committee agrees with the SPA that there should be a role for PIRC to receive and carry out an initial assessment of all complaints about senior officers, Assistant Chief Constable and above, and not only those relating to misconduct. (239)**

#### **PIRC Response**

PIRC disagrees with the above proposition.

We highlighted several issues with the proposition that we should carry out an initial assessment of all complaints about officers of Police Scotland in our consultation response. These are still pertinent and no solutions have been proposed.

The first and most fundamental issue that requires to be considered is how this aligns with PIRC having an oversight role? The Police, Public Order and Criminal Justice (Scotland) Act 2006 provides that PIRC can examine the manner that a relevant complaint has been dealt with by a person serving with the police. PIRC has no jurisdiction in dealing with police complaints in the first instance. Thus, if the complainant is unhappy with the outcome of their complaint from PIRC, which organisation is envisaged or indeed empowered to provide oversight of PIRC?

A second consideration is that PIRC has an oversight role for **all** policing bodies that operate in Scotland, not just Police Scotland. This includes Police Scotland, the

Scottish Police Authority, British Transport Police, British Transport Police Authority, Ministry of Defence Police, Ministry of Defence Police Committee, Civil Nuclear Constabulary, Civil Nuclear Police Authority, National Crime Agency, Her Majesty's Revenue and Customs and the UK Border Force. Other than the SPA, no other organisation has expressed any interest in PIRC becoming involved in dealing with complaints relating to their senior officers. It would, therefore, be anomalous for us to have a different role with Police Scotland. Further, we would have no mechanism to access policing systems to obtain the relevant documentation.

While it is accepted that there is some discussion of PIRC receiving complaints/allegations about senior officers within the Angiolini Report – it is not one of the final recommendations.

Further, in the report the discussion is framed in the context of the recommendation that PIRC takes on the preliminary assessment and later formal stages relating to conduct. The report speaks about grievances, conduct and criminality but it is submitted that it does not fully consider relevant complaints that are not criminal or conduct matters nor does it present a compelling argument why the status quo should be altered in relation to such complaints.

At paragraph 12.49 of the Angiolini Report , it states:

“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 process, 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 and staff.”

In such a scenario the following potential issues arise:

- Who in the proposed new model determines if the “complaint” is a grievance or a relevant complaint?
- What if there is a disagreement between PIRC and the SPA? How will it be resolved – through the courts via Petitions for Judicial Review?

It is submitted that there is the potential for tension and disagreement between PIRC and the SPA in the categorisation of communications undoing all of the constructive work that has been undertaken since publication of the Angiolini Report to foster a positive and productive working relationship.

Finally, while, the SPA submission indicates that such complaints and grievances are rare with only 15 in 21-22, a PIRC audit in 2017 over a 2 year period, found that the SPA received 30 relevant complaints but in addition **335** complaints/enquiries that

were deemed to be out with the SPA remit. This is of concern as all such complaints/queries would require to be triaged.

**The Committee recommends that PIRC continues to make improvements to its processes to ensure it is communicating effectively and timeously with complainers about the complaints process and the outcomes of its investigations. (257)**

### PIRC Response

PIRC has published timescales for completing Complaint Handling Reviews and Investigations. These are contained within our Strategic Plan 2023-2025<sup>5</sup>.

### Investigations

Timescales for the PIRC Key Performance Indicators ( KPIs) are tiered according to the category of investigation. The proposed timescales for category A<sup>6</sup> (excluding major cases<sup>7</sup>) investigations is to complete and report 80% of investigations within 90 working days from the date the policing body provides the relevant case papers and 120 working days for category B<sup>8</sup> and C<sup>9</sup> volume investigations. Category A investigations, including crime directed death investigations, remain as a priority.

Investigations are currently meeting the KPI for Category A cases. 77% of Category B and C investigations are being completed within the KPI. The slight slippage is primarily due to an increased volume of such cases.

### Reviews

The time scales for the completion of a Complaint Handling Review (CHR) ( including discretionary decisions) align with the timescales for the completion of a Category A investigation. The KPI is to complete 80% of reviews, including discretionary decisions, within 90 working days for all categories of reviews work, excluding major CHRS, from receipt to conclusion following receipt of all relevant background papers and agreement of the heads of complaint.

Reviews are currently meeting all KPIs.

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<sup>5</sup> [PIRC Strategic Plan 2023-2025](#)

<sup>6</sup> Investigations into deaths in police custody or following police contact: or a major investigation with complex lines of enquiry where the securing of evidence required significant resource allocation over a protracted time period or an investigation which generates high levels of public / political interest placing additional demands on the organization in relation to completion times.

<sup>7</sup> Major cases include a small number of protracted complex cases each year that the Director of Operations or Commissioner has reviewed and authorized exemption from the above timescales

<sup>8</sup> An investigation where the lines of enquiry are apparent from the outset but where the securing of evidence can only be achieved through prolonged investigation

<sup>9</sup> A routine investigation where the lines of enquiry are apparent from the outset and the gathering of all relevant evidence can be achieved without placing great demands on the investigation team.



In terms of engagement, generally, there are timescales for communicating with the complainer at the different stages of the CHR application and the investigation. For example, all CHR applications are acknowledged and processed within 5 working days. The acknowledgement letter explains that we have processed the application form and requested police complaint papers from Police Scotland and that it can take up to 15 working days.

The teams aim to provide an update to the complainer/victim every 6 weeks unless they have requested that they wish more or less contact.

It is acknowledged that, following the pandemic, there were some backlogs in dealing with CHRs. Fortunately, that is no longer the case and the timescales are currently being met.

We will, of course, keep this under review.

## **PRESENTATION OF CASES AT SENIOR OFFICER MISCONDUCT HEARINGS**

**The Committee asks the Scottish Government to consider the reasons given by PIRC for its strenuous objection to the proposal that it could take on the role of presentation of cases at senior officer misconduct hearings and to clarify whether this remains the Scottish Government's intention (261)**

### **PIRC response**

PIRC welcomes the Committee's request to clarify if this remains the intention of the Scottish Government.

As previously stated PIRC is strenuously opposed to the proposition that PIRC assume responsibility for the presentation of Senior Officer Gross Misconduct cases. PIRC is an independent investigatory body. It does not have the requisite skills, nor resource to present Senior Officer Gross Misconduct hearings.

We have also highlighted concern that there would be a lack of appropriate checks and balances if PIRC is to undertake the preliminary assessment, the investigation and also present cases of gross misconduct. In effect PIRC is being asked to fulfil the role of being the investigator, decision maker and prosecutor. The lack of checks and balances is likely to be of concern to police officers and members of the public.

Our submission is that the responsibility for the presentation of such cases should remain with SPA.

Given the infrequency of such cases, if this proposition is implemented, PIRC would simply have to outsource this to Senior Counsel. In that regard we would seek

reassurance from Scottish Government that they would fund such costs and this would need to be confirmed in an Agreement or Memorandum of Understanding. It is also noted that even with the outsourcing of the presentation, there would be a requirement for qualified legal staff to support this process. PIRC do not currently have this resource and would likely require to recruit it.

**As the costs for implementing the police conduct provisions cannot be fully assessed at this time, the Committee recommends that the Scottish Government keeps these costs under review and revises them in accordance with the actual costs for Police Scotland and PIRC, once known, and informs the Committee of any changes to costs (277)**

### **PIRC response**

PIRC agrees that it is necessary for the Scottish Government to keep costs under review.

The Financial Memorandum specifies a figure of up to £177,000 for legal fees for PIRC for three cases of senior officer misconduct. It is unclear how this figure was derived. (390).

## **PROCEDURES FOR MISCONDUCT: FORMER CONSTABLES**

The following aspects of the Committee's evidence is relevant in relation to this provision.

The Scottish Government's policy intention is that an officer can be subject of proceedings up to 12 months after leaving their employment or beyond 12 months where a public interest test is met. (278)

Steven Bunch, Scottish Government, confirmed that the 12-month time limit, after which PIRC should apply the public interest test, applies to all former officers subject to allegations of gross misconduct. (311)

The Cabinet Secretary confirmed that the 12-month timescale "is not a hard and fast statutory requirement", and that it would be for the Commissioner "to make a judgment on public interest and fairness", based on all the facts and circumstances. (312)

**The Committee would have concerns if any investigations into gross misconduct took longer than is necessary. As such, the Committee recommends that any investigations into an officer who has left the force should be completed as timeously as possible. We also recommend that the SPA monitors this process over the initial years to ensure that this is the case and shares its findings with the Committee. (336)**

**The Committee asks the Scottish Government to confirm the circumstances in which PIRC will carry out a preliminary assessment of an allegation to assess whether it would amount to gross misconduct. (337)**

### **PIRC Response**

PIRC also seek the clarification requested at paragraph 337. As noted in the report at paragraph 281,

“In its written evidence, PIRC sought clarity on whether they would only be carrying out this preliminary assessment for former senior officers, stating that—

“PIRC is of the view that the proposed amendment does not make it suitably clear that PIRC’s remit relates to conducting a preliminary assessment of whether the conduct would, if proved, amount to gross misconduct in relation to former senior officers only [...] if the responsibility for such preliminary assessment for non-senior officers is to rest with the PIRC, this encroaches into new territory for PIRC. This would require to be resourced and it is submitted that this should only be in limited circumstances, i.e., where the allegation is received more than 12 months following their ceasing to hold the office of constable: in line with the Angiolini Report.”

The evidence outlined in the report, suggests that it is intended that the PIRC will be responsible for carrying out a preliminary assessment of an allegation to assess whether it would amount to gross misconduct for **all** former officers and not just senior officers.

The PIRC currently has no statutory role or involvement in misconduct proceedings for officers below the rank of Assistant Chief Constable. Our role is restricted to Senior Officers only: this is as set out within the Police Service of Scotland (Senior Officers) (Conduct) Regulations 2013.

Accordingly, PIRC has very limited experience in dealing with issues of conduct. If, PIRC was to assume this responsibility, there are resource and financial implications. Undoubtedly, we will require additional resource to undertake such assessments and, in particular, personnel with relevant expertise in dealing with police conduct matters.

In considering the potential number of cases this might involve, it is noted that a Police Scotland FOISA response<sup>10</sup> dated 29/01/24 provides that between 1 January and 31 December 2023 inclusive, a total of 15 Police Officers resigned or retired following procedures being instigated in terms of Regulation 14 of the Police Service of Scotland

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<sup>10</sup> FOI-24-0051 – Police Scotland Professional Standards Department - Officers retired / resigned during misconduct - 2023

(Conduct) Regulations 2014<sup>11</sup>. Over the same period, it is understood that, in addition, two officers resigned or retired prior to Regulation 14 being instigated.

There is also the potential for such decisions to be judicially challenged which involves further resource.

It is envisaged that for PIRC to take on this responsibility, it would require a standalone team. On the basis that it would require, as a minimum, legal support and 2 persons experienced with dealing with conduct matters, a conservative estimate of the resource required is: £216,876<sup>12</sup>.

Finally, if it is intended that PIRC is to carry out assessments on all officers in this position, it would be improper for the SPA to have an oversight role as proposed. PIRC is independent body and thus it would be inappropriate to have another body monitor the role of the PIRC. For that reason, if the role of PIRC extends beyond senior officers, we would be opposed to the recommendation at paragraph 336.

## **FUNCTIONS OF THE POLICE INVESTIGATIONS AND REVIEW COMMISSIONER**

### **INVESTIGATIONS INTO MATTERS INVOLVING PERSONS SERVING WITH THE POLICE**

The following aspects of the Committee's evidence is relevant in relation to this provision.

The Angiolini review found that the term "person serving with the police" was not clearly defined in legislation and that this caused uncertainty in determining whether the person's actions or omissions, which might constitute criminal offences, could be investigated. (423)

The Policy Memorandum indicates that section 9 of the Bill puts this beyond doubt for police officers. It explains that—

"The Bill clarifies that the PIRC investigations into **criminal conduct** can continue and occur when the police officer concerned has since left the service, did not become an officer until subsequent to the conduct or was not on duty at the time of the relevant incident, by stating that the PIRC can be directed to investigate where a person "who is, or had been, a person serving with the police may have committed an offence (regardless of when those circumstances occurred)." (424)

<sup>11</sup> i.e. where the Deputy Chief Constable determines there is a case to answer.

<sup>12</sup> 1 x In House legal advisor and 2 x B2 Investigators.

The Explanatory Notes indicate that section 9 of the Bill clarifies that PIRC can be directed to investigate deaths involving “off-duty police officers”. It states that—

“It adjusts section 33A(b)(ii) of the 2006 Act so to provide expressly that it does not matter whether the circumstances of the death occurred in the course of duty etc”.(425)

**The Committee welcomes the provisions, as they will assist PIRC in undertaking investigations into those who, at the time of an act or omission which might constitute a criminal offence, were serving with the police. (430)**

**The Committee seeks clarifications from the Scottish Government about whether the use of the term ‘person serving with the police’, means that these provisions will also apply to police staff. (431)**

### **PIRC Response**

PIRC acknowledges that it is appropriate for PIRC to have the ability to investigate criminality regardless if the officer has left the police. As the provision refers to persons serving with the police, we assume it includes police staff but we would welcome confirmation of this.

This provision will undoubtedly expand the volume of PIRC investigations and have resourcing implications. However, we are unable to quantify the impact as there is no available data on the number of officers who leave, whether following retiral or resignation, while being investigated.

**The Committee asks the Scottish Government to clarify how the off-duty provisions will work alongside the Fatal Accidents and Sudden Deaths etc (Scotland) Act 2016 requirement to investigate only those accidents occurring while the person was acting in the course of their employment or occupation. (440)**

**The Committee also seeks clarification as to whether these provisions are to apply to the death of a person serving with the police, whether they are on or off-duty. (441)**

### **PIRC Response**

PIRC welcomes the request for the Scottish Government to clarify how the off-duty provisions are intended to work.

S 33A(b) provides:

Where directed to do so by the appropriate prosecutor—

(ii) to investigate, on behalf of the relevant procurator fiscal, the circumstances of any death involving a person serving with the police which that procurator fiscal is required

to investigate under section 1 of the Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016;

The category of deaths referred to by Section 1 of the Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016 are mandatory inquiries which include:

- (3) The death of a person if the death was the result of an accident which occurred—
  - (a) in Scotland, and
  - (b) while the person was acting in the course of the person’s employment or occupation.
- (4) The death of a person if, at the time of death, the person was—
  - (a) in legal custody, or
  - (b) a child required to be kept or detained in secure accommodation.

#### (4) Discretionary inquiries

- (1) An inquiry is to be held into the death of a person which occurred in Scotland if the Lord Advocate—
  - (a) considers that the death—
    - (i) was sudden, suspicious or unexplained, or
    - (ii) occurred in circumstances giving rise to serious public concern

The Bill team has advised that in addition to mandatory inquiries, the Crown may hold discretionary inquiries. While we acknowledge that discretionary inquiries extend beyond deaths of persons in the course of their employment, the role of PIRC would be to investigate a death involving police officers which implies that they are acting in an official capacity and thus on duty.

It is our submission that the provision requires to be amended to clarify that it only relates to police officers / staff on duty.

## **COMPLAINTS MADE BY PERSONS SERVING WITH THE POLICE**

The Policy Memorandum explains that this is to “clarify that constables 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”. (443)

### **PIRC Response**

PIRC already undertakes CHRs from police officers who have complained about acts or omissions that adversely affected them in their personal capacity and, as such, has no issue with the proposed amendment.

**The Committee asks the Scottish Government to clarify whether the Bill’s intention is that only acts or omissions which directly affect people, and not**



**those which are witnessed by a person serving with the police in their personal capacity, will be defined as a relevant complaint. (454)**

### **PIRC Response**

PIRC welcomes the clarification sought. Events witnessed by a person, regardless of whether they are a police officer, should not be included within the definition of a relevant complaint. This would open the floodgates to an extent where policing bodies and PIRC would be overwhelmed.

## **COMPLAINT HANDLING REVIEWS – RECOMMENDATIONS**

Section 11 of the Bill enables PIRC to carry out a complaint handling review without a request having to be made by the complainer, Police Scotland or the SPA, if it is in the public interest to do so. It enables PIRC to make recommendations in its complaint handling review report for the SPA and Police Scotland and requires them to respond to them within eight weeks or within the timescales set out in the report, setting out what they have done, plan to do, or providing an explanation why nothing has been done. (456)

**The Committee is of the view that the Bill should be amended to include provisions requiring the SPA and Police Scotland to be under a duty to comply with PIRC’s recommendations, subject to a public interest test, unless there are operational reasons not to. However, there may be cost implications associated with this recommendation and we ask Scottish Ministers to keep these under review. (472)**

### **PIRC Response**

PIRC welcomes the introduction of some element of accountability for organisations in receipt of our recommendations, in respect of implementation or compliance. We are also flexible and if the mischief identified can be remedied in a different manner than our recommendation, we would be open to consider an alternative approach.

**We recommend that the Bill be amended to include a presumption that PIRC publishes the responses by Police Scotland and the SPA to its recommendations for them in complaint handling review reports, unless there are exceptional circumstances. (473)**

### **PIRC Response**

PIRC publishes the majority of Complaint Handling Reviews including any recommendations. Those not published are due to the sensitivity of the subject, the vulnerability of the complainer or the circumstances are likely to identify the complainer.



Accordingly, there is already a presumption towards publication. We therefore see no necessity for it to be included in the Bill.

## **CALL-IN OF RELEVANT COMPLAINTS**

**The Committee seeks clarity from the Scottish Government on how PIRC's new process to call-in complaints is to be monitored, and what the appeals process will be for a complainer who is dissatisfied with PIRC's handling of a "called-in" complaint. (492)**

### **PIRC Response**

As an independent body, it is not appropriate to have another body monitoring PIRC and particularly not the SPA over which PIRC has oversight. If there is a complaint about delays etc, this is already covered by the remit of the SPSO. Further, PIRC will have an Advisory Board providing scrutiny and oversight.

PIRC is in effect providing an appeal by "calling in" a complaint as this would be unnecessary if it had been dealt with appropriately by the policing body. It is our view that there is no requirement for an appeal process in relation to the substantive investigation. If someone wishes to challenge the process/outcome of a complaint handling review, they have the right to challenge by means of a judicial review. This option would similarly be available to a complainer in relation to a complaint that has been "called-in" and dealt with by PIRC.

## **WHISTLEBLOWING**

**The Committee is of the view that both PIRC and the SPA should be added as prescribed persons in UK legislation. This will provide a relevant independent third party for employees of Police Scotland and the SPA to report whistleblowing concerns to. (513)**

### **PIRC Response**

As previously stated adding PIRC as a prescribed person will not be of any practical benefit.

The purpose of the Public Interest Disclosure (Prescribed Persons) Order 2014 is to allow a disclosure to a prescribed person beyond an employer where the employee does not feel able to make the disclosure to the employer. The Order sets out the relevant Prescribed Persons who have the investigatory and regulatory functions in terms of the type of disclosure being made who can consider and – where appropriate - act upon the information that has been disclosed to them.

In terms of the Prescribed Persons already listed, any potential disclosures to be made by police officers or staff already have a relevant prescribed person, for example (but



not limited to): the Lord Advocate; Health and Safety Executive; Scottish Information Commissioner; Audit Scotland; Scottish Criminal Cases Review Commission; His Majesty's Revenue and Customs Commissioner; Director of the Serious Fraud Office.

The current Government guidance provides that where making a protected disclosure to a prescribed person (as opposed to the employer), it should be made to the relevant prescribed person and that will depend upon the subject matter of the disclosure. So, if a protected disclosure was made to the PIRC in relation to matters falling within the organisational remit of any of the prescribed persons already listed, PIRC would be little more than a post-box forwarding on those disclosures. This does not add value to the process and indeed presents a distinct risk of adding an additional layer of delay for whistleblowers to endure for no reason.

Further, and significantly, as PIRC is not the employer, we would have no ability to provide the protections against detriment the officer / member of staff would be entitled to under the Employment Rights Act 1996 ['ERA']. For example, that they were not moved to a different role or denied a promotion opportunity as a result of making the disclosure.

We could not manage any risk associated with that person still being in post if they disclose something that would give rise to concern. Indeed, the Guidance specifically states: *"A prescribed person cannot help you with your relationship with your employer."*

It should also be borne in mind that the legislation is clear that personal grievances (for example bullying, harassment, discrimination) are not covered by the legislation as a protected disclosure and should be progressed in other manners such as grievances or tribunal claims.

It is PIRC's view that being able to audit and report on the arrangements in place for the investigation of information provided in a whistleblowing complaint will provide real and significant value by ensuring those arrangements are efficient, effective, have an appropriate degree of independence and are being adhered to. The Bill also contains the provision for the PIRC to make recommendations in this regard for the modification of said arrangements as necessary which if we were prescribed we would not be able to do.

We are supportive of the SPA being a prescribed organisation as being an employer they can ensure that the whistleblower receives the necessary protections and does not suffer any detriment in terms of their employment.

## **REVIEW OF, AND RECOMMENDATIONS ABOUT, PRACTICES AND POLICIES OF THE POLICE**

**The Committee welcomes PIRC being given the power to review the practices and policies of the police generally, and not just in relation to a particular incident. (550)**

**The Committee would welcome the Cabinet Secretary's views on her consideration of the proposal from HMICS for PIRC to have the power to refer particular matters to HMICS, should that be appropriate. (551)**

**The Committee welcomes that PIRC will be able to publish its review reports on the policies and practices of Police Scotland and the Scottish Police Authority, as this will improve transparency. (556)**

**The Committee agrees that the SPA and Police Scotland must respond to the recommendations within the timescales set out in PIRC's report, setting out what they have done, plan to do, or an explanation if they have not done so. (557)**

### **PIRC Response**

PIRC welcomes this provision. Thematic recommendations can have a greater impact than a recommendation(s) arising from a single incident / matter on a case-by-case basis. This provision would provide PIRC with the flexibility to determine the best process to adopt to suit the particular circumstances under review.

We do not see the need for a provision entitling PIRC to refer matters to HMICS as PIRC is already able to do this. PIRC has regular meetings with HMICS and has previously raised concerns with the former Chief Inspector regarding certain policies and practices. While it is for HMICS to lead in such areas there may be circumstances (such as capacity of HMICS or trends emerging via PIRC investigations / CHRs), where it is sensible and appropriate that PIRC is able to employ a thematic approach and make recommendations.

## **PROVISION OF INFORMATION TO THE COMMISSIONER**

**The Committee also seeks confirmation from the Scottish Government that necessary security and data protection safeguards will be in place prior to the provisions being enacted. (579)**

### **PIRC Response**

Having a lawful basis to obtain this information is welcome. Police Scotland and PIRC have Information Sharing Protocols for a number of areas and it is intended that one is established to facilitate PIRC having access to Centurion.

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## **FINANCIAL COSTS - SECTIONS 9 TO 16**

**As the costs for implementing the functions of the Police Investigations and Review Commissioner provisions cannot be fully assessed at this time, the Committee recommends that the Scottish Government keeps these costs under review and revises them in accordance with the actual costs for PIRC, Police Scotland and the SPA, once known. (585)**

### **PIRC Response**

PIRC welcomes and agrees with this recommendation.

## **GOVERNANCE OF THE PIRC**

**The Committee recommends that the Scottish Government takes measures to ensure that the Advisory Board's membership reflects the diverse groups in society and that its role and work are transparent. This is important for public confidence in the role of PIRC. (602)**

### **PIRC Response**

PIRC is supportive of the membership of the Advisory Board reflecting diverse communities.

## **SUGGESTED LEGISLATIVE CHANGES**

**The Committee asks the Scottish Government to consider and respond to these requests for legislative changes. (608)**

### **PIRC Response**

PIRC welcomes the Committee's request for the application of Regulation 5 of the 2013 Regulations to be extended to Crown directed investigations to be considered. As it already applies to Police referred investigations, we do not accept that it would be problematic in terms of ECHR nor that it would erode the protection against self-incrimination.

I hope this response has covered all of the recommendations applicable to PIRC. If the Committee require any aspect to be expanded or wish commentary on any other area not included in this response, then please let us know and we will seek to assist.

*M. Macleod*

**Michelle Macleod**  
**Police Investigations and Review Commissioner**