



**OFFICIAL REPORT**  
AITHISG OIFIGEIL

# Justice Sub-Committee on Policing

**Monday 7 December 2020**

**Session 5**



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**JUSTICE SUB-COMMITTEE ON POLICING**  
**12<sup>th</sup> Meeting 2020, Session 5**

**CONVENER**

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

**DEPUTY CONVENER**

\*Margaret Mitchell (Central Scotland) (Con)

**COMMITTEE MEMBERS**

\*Rhoda Grant (Highlands and Islands) (Lab)

\*Fulton MacGregor (Coatbridge and Chryston) (SNP)

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

\*Liam McArthur (Orkney Islands) (LD)

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

\*attended

**THE FOLLOWING ALSO PARTICIPATED:**

Rt Hon Dame Elish Angiolini DBE QC

**CLERK TO THE COMMITTEE**

Diane Barr

**LOCATION**

Virtual Meeting



## Scottish Parliament

### Justice Sub-Committee on Policing

Monday 7 December 2020

#### Interests

*[The Convener opened the meeting at 11:00]*

**The Convener (John Finnie):** Madainn mhath, a h-uile duine, agus fáilte. Good morning, and welcome to the 12th meeting in 2020 of the Justice Sub-Committee on Policing. We have no apologies.

Agenda item 1 is a declaration of interests. Before we begin that, I pay tribute to James Kelly for all his hard work on the sub-committee and I wish him well in any new role that he takes on. I am pleased to welcome Rhoda Grant as a new member of the sub-committee, and I invite her to declare any relevant interests.

**Rhoda Grant (Highlands and Islands) (Lab):** I do not have any relevant interests as such, but I refer people to my entry in the register of members' interests. Just for information, I am a member of Unison and the Co-operative Party and I have an intern from Christian Action Research and Education.

**The Convener:** I have an interest to declare before we move on. In 2011, I was briefly a member of the police appeals tribunal. My election to Parliament meant that I could not proceed with the case. Albeit that we will not be discussing any historical cases or any live cases, I thought that I would place that on the record.

#### Decision on Taking Business in Private

11:01

**The Convener:** Item 2 is a decision on whether to take items 4 and 5 in private. Item 4 is a review of the evidence that we will hear today and item 5 is consideration of our forward work programme. Do members agree to take those items in private? If you disagree, please indicate either on screen or in the chat box.

Everyone seems happy with that, so thank you very much indeed.

## Independent Review of Complaints Handling, Investigations and Misconduct Issues in relation to Policing

11:02

**The Convener:** Item 3, which is our main business of the day, is about police complaints and is an evidence session on the final report of the independent review of complaints handling, investigations and misconduct in relation to policing. I refer members to paper 1, which is a note by the clerk, and paper 2, which is a private paper. I welcome our witnesses, who are the Rt Hon Dame Elish Angiolini QC, chair of the independent review group; and Ian Kernohan, head of the secretariat for the group. I thank the witnesses for taking the time to provide evidence to the sub-committee, and I invite Dame Elish to make some brief opening remarks.

**Rt Hon Dame Elish Angiolini DBE QC:** Thank you, convener, and good morning to you all. I have very brief comments to make, because I think that the report speaks for itself. I simply want to thank the huge number of members of the public who participated in the review, as well as the police officers. Police Scotland and the chief constable and his team were extremely co-operative and helpful during the review. Also, the Police Investigations and Review Commissioner, the Scottish Police Authority and the Crown Office and Procurator Fiscal Service were extraordinarily helpful and co-operative throughout. I am grateful to them all.

As members are aware, I published an interim report in June 2019 and I am pleased that Police Scotland, the PIRC and the SPA have made considerable progress on the recommendations in it. That is reflected in the final report. There is a genuine will in those organisations to effect change and improvement for the public interest.

**The Convener:** Thank you. I also thank those who have provided written evidence to the sub-committee, which is most helpful.

Before we move to questions, I remind members to indicate who their question is for, and I remind all participants to wait just a moment for their microphone to be activated before speaking.

As I am sure that you will anticipate, Dame Elish, we have a significant number of questions. The committee is aware of the enormous task in undertaking the review. Will you provide a general overview of the approach that you took in carrying out the review?

**Dame Elish Angiolini:** A considerable amount of research had to be done before we could see any members of the public, and I had to acquaint myself with the whole system. I have been away for many years, since 2011, so I had to look at the changes in law that have taken place in statutes, regulations et cetera.

Producing an interim report was not something that I had had to do before. At that stage, I was asked to show my thoughts as they were developing and make any interim recommendations that needed to be made in that context.

As I think that you are all aware, I did not look at the COPFS, because it was excluded from my remit. However, I have made some recommendations regarding delay and the role of the procurator fiscal, because they clearly have an impact, and I understand that Her Majesty's Inspectorate of Prosecution in Scotland will carry out a review of the criminal allegations against the police division—CAAP-D—of the Procurator Fiscal Service this year. That is timely and it will fit in with the review that I have carried out.

The interim report focused much on the structural issues, and I looked at those before I met members of the public. In the second section, from then on, I spoke to a number of focus groups and I had fantastic discussions with large groups of police officers, Scottish Police Federation representatives, members of the public and police officers who had been the subject of complaints or had made complaints. That was very helpful.

I also spoke to groups that represented particular parts of the community. One that was especially significant was the national independent strategic advisory group, which is an advisory group to the police. It alerted me to the fact that many new immigrants to this country come from states where policing is corrupt and can be brutal, and there is a significant lack of trust in the police in those countries. That presents a challenge for us, because those communities have a rebuttable presumption that the situation must be the same in this country, which it is not. A real effort is required to get into those communities and convince them of the benevolence of the police in this country and the great good that they do for us.

**The Convener:** Thank you, Dame Elish. Our next questions will be from Rona Mackay.

**Rona Mackay (Strathkelvin and Bearsden) (SNP):** Good morning, Dame Elish. It has been widely acknowledged that the systems and processes that are involved in police complaint investigations and misconduct proceedings are extremely complex. How important did you feel it was that the system was subject to such an in-depth review? Are you confident that, if your

recommendations are accepted, they will lead to the system becoming less complex and more accessible, and will enhance confidence in the system for police officers and the public? Some of the submissions that we have received suggest that police officers should not be involved in policing the police and that they should be taken out of the system.

**Dame Elish Angiolini:** The systems and processes were and are complex by their nature. We have four organisations that have an interest in complaints against the police, which of necessity requires a map to be navigated.

You will see that an emphasis on accessibility runs through the report—accessibility not just for those who are information technology literate but for everyone. There needs to be much greater humanity in the system so that people can speak to individuals rather than being required to email, and we need to ensure that those who are disabled and those who come from minority communities can access the system. That has been a challenge in the past. Accessibility is critical, and there is a clear understanding of that.

Following my interim report, the police went some way in improving their website. I described it originally as being like the wiring system for the Starship Enterprise for members of the public who tried to navigate it. It is necessarily complex because so many rights are involved and because we have put in protections, but I think that there is now a determination to ensure that it is simplified as far as possible. For instance, the Procurator Fiscal Service's CAAP-D can deal with complaints of criminality directly, so the public do not need to go near the police. That is one of the standing rights that members of the public have had for many years, but it is not well known. Therefore, there is a need to make that notorious—to make sure that that light is no longer under a bushel—so that people realise that, de facto, there is an independent system for the most serious allegations that can be made, and there is a need to make that more accessible.

I hope that that answered your points. I do not know whether you would like to ask a follow-up question.

**Rona Mackay:** I want to follow up with the question that I asked at the end of my first question. Do you agree with the recommendation that police officers should not be involved in policing the police?

Your final report contains 81 recommendations. Are there any in particular that you feel should be given priority? Are there any immediate measures that could be taken, either legislatively or otherwise, to improve the system? During a recent debate in the chamber, a colleague on the

committee raised the idea of having an action tracker on the Police Scotland website. We have received a submission signed by several stakeholders who very much support that idea. What is your view on that?

**Dame Elish Angiolini:** On the question of the police policing the police, there is not a straightforward answer. The reality is that the police are employers. Constables operate in a certain sphere of conduct. Because of the office that they hold, they do not have access to the normal human resources system that, say, an employee of Marks and Spencer has. However, nonetheless, there is a need to manage, train, support and give an example to those people, and that needs to be done at the management level—for a constable, that would be the sergeant or inspector, and so on, up the chain.

The police need to have room to manoeuvre. Mistakes or incidents of minor bad behaviour might be a manifestation of something that is wrong in that individual's life, such as the beginning of mental health problems or a domestic crisis. Therefore, there is a need for the police to have room to ensure that things are not escalated abnormally into a discipline system, rather than into what would, in any other context, be an HR system. That is why I said in my report that I think that the threshold for misconduct should be raised and that there should be much more proactive management. The difficulty that I have is that I do not know that there are many people who have the full set of skills that are required to do that management, to be the mentors and to address the situation. There is a challenge for the police to ensure that everyone in those promoted positions has the capacity and the room to manage those issues. Many of those people are extraordinarily overburdened. There are few sergeants in this country—many of those posts have been removed—and there is a need for an increase in their numbers, so that we can have people with the right disposition and high levels of morals who can be good exemplars and managers. There needs to be that room for what would be normal management elsewhere.

Beyond that, when you move to consideration of misconduct, there is an imperative to ensure that, where something is of a sensitive or serious nature, it is not being investigated by the police. I say that in the report. I think that that is an important recommendation, particularly where issues of human rights are involved—that is, where there are allegations of inhuman or degrading treatment or wrongful arrest of a serious nature. An example of an egregious case is one in which somebody who was completely innocent was kept inside for four days. Those matters need to be independently investigated, as do cases involving deaths and serious injuries.

It is sensible for issues involving what might be described as quality of service to be dealt with by the police. However, as I say in the report, they should not be dealt with by the line manager of the individual. In the evidence that I received from members of the public, they repeatedly said that they did not like the line manager of the officer in question coming to their house, because they felt that that brought with it a level of emotional blackmail. They were told things like, "Oh, he is a great lad," "This could mean the end of his career," and "This is not like him." They felt that, although those comments may have been well intended, they had an intimidating effect, which is why they wanted greater impartiality in the way in which such complaints are dealt with. That is why I recommended that the front-line professional standards department deal with those complaints rather than the line managers, even on those matters that are not of the level that would involve issues of misconduct or gross misconduct.

11:15

**Rona Mackay:** Would you approve of there being an action tracker on the Police Scotland website?

**Dame Elish Angiolini:** Yes. That sounds like an excellent idea, and I very much support it.

It is now for the Parliament and the Government to determine which recommendations they want to give priority to. I provided the report after two years of study and research with a tremendous team of civil servants. Ian Kernohan, who is with me today, Paul Allen and Jenny Colman were a fabulous team. A tremendous amount of work went into making the recommendations, and deciding where the priorities lie requires considerable consideration. I acknowledge that some of the recommendations will cost money and that we are in the middle of an international pandemic, and I am realistic about the Government and the Parliament having priorities at this point that overtake what is in the report. Nonetheless, I think that the recommendations are significant, particularly in a devolved context, so that Scotland has a system that the community and police officers can rely on and which is trusted.

**Rona Mackay:** Thank you. That is very helpful.

**Liam McArthur (Orkney Islands) (LD):** Good morning, Dame Elish and Mr Kernohan. I echo the convener's comments and thank you very much for your work on an important subject and for sharing the interim report with the committee and appearing before it at that stage. That was very helpful in giving us a sense of the direction.

One issue that was discussed then in light of concerns that the committee had heard was the

categorisation of complaints. We had heard examples of assaults having been miscategorised as excessive force, and perhaps even more egregious examples were cited by the committee. That issue was raised by colleagues in the debate on the report in the Parliament a couple of weeks ago. What steps have Police Scotland and the Crown Office been able to take to try to improve the way in which those complaints are categorised? From the report, what do you suggest still needs to be done to address a situation that will obviously give concern to the police force and the wider public?

**Dame Elish Angiolini:** Very soon after my report was published, the senior procurator fiscal in charge of the criminal allegations against police division instructed that all excessive force cases should be reported to him for consideration and that that should happen within 48 hours. That was done as a pilot, but the approach has been maintained, and that is exactly what should happen.

One of my recommendations is that all allegations of excessive force or assault should be reported to the procurator fiscal for the procurator fiscal to investigate or to instruct the PIRC to do that. It is important that the PIRC investigates those cases in order that those serious allegations are given an independent investigation. In the past, they have often been sent back to the police, but it should be for the PIRC to investigate them.

That is an important aspect. Members will see that Police Scotland itself quite properly carried out an audit. That was an excellent audit that was instructed by the chief constable, and it proposed that there were still miscategorisations. I do not think for a second that there was any conspiracy. It looks as if it is about training, as people have not been adequately trained on the professional standards. However, I understand that that has now been tackled. People need to have extensive training to identify and deal with those cases.

I have recommended that the PIRC carry out an annual audit of those cases to ensure that they have been properly categorised and also a contemporaneous audit so that it can dip in through the computer system—it is known as the Centurion system—and look at what has been categorised. The PIRC should have access to that system so that it can go right into it on a daily basis, and look at and dip sample cases that have been referred.

That set of protections, in particular the training and the regular audit, is important; when I did the interim report, there had not been an audit by the PIRC since 2014, so it was a long time since an audit had been carried out, because of resource issues that were described by the previous PIRC. It is important that that role of the PIRC is

executed and I am confident that, given the significant improvement in relations between all four agencies, which was a significant obstacle to effectiveness and efficiency, the new relationship will continue to be constructive, and I am delighted to see a sea change in the way they are co-operating to ensure that their respective and independent roles can be facilitated much better.

**Liam McArthur:** That is helpful. The point that you make about the relationships between the various protagonists featured prominently at the time of your interim report. It is encouraging to hear that those relationships are in a better place.

I have one observation on your response on the level of consultation with complainers about the complaints that they are making and whether improvements are needed. Whatever the process of investigating those complaints, the complainer should, one would assume, have at least a degree of understanding about the way that the complaint is categorised at the outset.

**Dame Elish Angiolini:** I agree with you. The communication aspect is critical, as is communicating in a way that is appropriate for the individual. Many people have mental health problems, significant disabilities or disabilities such as autism that make communication a challenge for both parties. That is why it cannot be a one-size-fits-all system. It needs to move away from emailing, although email is fine for some people if that is what they want. Virtual meetings—this meeting is an example—can help, as can ensuring that the police take into account that people can be nervous. The practice of a police officer's boss or superior officer going out to visit a complainant at home, in a police car and in uniform, does not take into account that that would embarrass many people. People are apprehensive about complaining about the police because they may need to rely on the police in future and are worried about the consequences of making a complaint. To have an officer come out to your house could make your neighbours think that you are about to be arrested or that there has been a domestic incident.

The police have to develop much greater emotional intelligence about how they deal with complaints and the sensitivities around that. They have to understand that it is a major thing even to walk into a police station to make a complaint, which is another option. The system has to be as open and accessible as possible to the full range of people, and reasonable adjustments must be made for those who are disabled and those for whom English is not their first language—*[Inaudible.]*

**Liam McArthur:** I turn to the recommendation in the report that the code of conduct be put on a statutory footing. It would be helpful to understand



the rationale behind that proposal and to hear any comments that you might wish to make about the importance of the code of conduct in influencing the culture in Police Scotland.

**Dame Elish Angiolini:** As everyone knows, the Police and Fire Reform (Scotland) Act 2012 was put through on an accelerated basis—the process was compressed. Some people describe the system as completely broken, but I do not agree with that—there are a lot of very good people in that system trying to make it work, and it is in its early days. It is a vast improvement on what went before.

The code of ethics that I suggest should be used is already—*[Inaudible.]*—but making sure that people understand the significance of that. It should be officers' bread and butter—it should be what they abide by.

Putting the code into statute would emphasise the importance of human rights within the oath, which is a tremendous amendment. I think that Scotland would be proud of having the code of ethics in its leading statute on policing.

**Liam McArthur:** In your conversations, have you met any resistance within Police Scotland to having the code of ethics on a statutory footing?

**Dame Elish Angiolini:** There has been none at all. The problem is that the code could just look like worthy words. It needs to permeate the service at every level. People need to be aware of and subscribe to the code, and it has to be a core part of induction training, too.

Fantastic training can be given, but someone's partner, or the person who influences them, might not set a particularly good example, so staff need the reassurance of the code as well as knowing that they can whistleblow independently. Members will have seen that I recommended that whistleblowing should go to a third party, and that the PIRC should have that role, although I think that that recommendation would require reserved legislation. That is really important. The Scottish Parliament would make a significant statement by putting the code in statute.

**Fulton MacGregor (Coatbridge and Chryston) (SNP):** Good morning, Dame Elish. I have a couple of questions that will allow you to build on or reiterate the answers that you have already given to my colleagues. In your report, you state that

"The key stages of the senior officer misconduct proceedings (both misconduct and gross misconduct) should in future be removed from the responsibility of the SPA and made subject to consideration by an independent legally chaired panel".

Will you outline why you think that that change is necessary?

**Dame Elish Angiolini:** The recommendation is about senior officers, so it relates to a small group of people, including assistant chief constables, deputy chief constables and the chief constable, and it further develops the recommendation that I made in my interim report.

I sat in on SPA committee meetings and met its members. The SPA is a rather small organisation, given its huge responsibilities. One thing that came over when I discussed matters with senior officers was the fact that they all know one another by dint of very legitimate purposes—they have meetings about strategy, IT and all the other things that bring them together, so they get to know one another very well, particularly because they are a small group of people. The same people whom they meet daily should not form part of what needs to be an impartial panel.

If a senior officer is involved in any aspect of misconduct, it is usually a matter of resignation or dismissal at that level. Serious decisions need to be made, so those decisions should be made independently. That is why I recommended the further development that all complaints against senior officers should go directly to the PIRC, which should then determine the nature of the complaint. If it was an HR issue or one that would normally be dealt with by management, it should go back to the SPA for it to deal with in the normal management way. However, if the complaint amounted to misconduct, the matter should be dealt with by the PIRC and presented to an impartial panel, consisting of a legal chair, who should be appointed by the Lord President, a layperson and a senior expert on policing from outwith Scotland. That is important, because the senior group is close.

Such a system would bring protections for the officers in question as well as for the SPA. It is really important, particularly in relation to the leadership group, that there is independence and professionalism around the investigation and execution of any misconduct proceedings. I suggest that the PIRC, rather than someone from the SPA or the police, should present the case, so that the SPA is completely cut out of that role.

**Fulton MacGregor:** Did you encounter any resistance to that proposed approach from anybody, and specifically from the SPA or senior police officers?

**Dame Elish Angiolini:** No, I did not. The former chair of the SPA, Susan Deacon, thought that it was a good idea and was quite keen on it.

**Fulton MacGregor:** Thank you for those responses.

11:30

**The Convener:** I have some questions regarding deaths in custody. You have recommended that

“such cases should be dealt with in the same timescale and with the same urgency as a homicide investigation.”

Will you elaborate on why you think that that is imperative?

**Dame Elish Angiolini:** If you are in police custody or in a cell and you are arrested, all sorts of rights immediately fall to you. You have the right to have access to a solicitor, who can come into custody and so on. If the worst possible thing imaginable happens and you die, no rights to a solicitor automatically transfer to your family. That aspect is important. The family need to have access to the same type of legal advice that the person who was in custody would have had. That should be immediate and expert advice, so that the family can get advice on what their rights are.

A death in custody invokes article 2 of the European convention on human rights, which is one of the most serious and solemn provisions in the convention. Basically, it is death at the hands of the state. When that happens, it creates huge stress, not just for the next of kin but for any officers involved. Their life is suspended. If the matter goes on for years, the officers cannot work and very often become ill. Therefore, it is imperative that such cases are dealt with for the benefit of all and in the public interest, particularly if several officers are involved in the case. Very often, they are not working or cannot work during that time.

When I say that the timescale should be the same as for a homicide, I am not talking about a 110-day homicide, which would be a custody case; I am talking about a year. You have a year to indict a murder case in Scotland, which is sufficient time for most investigations. In the past, we managed to get very complex murder and culpable homicide cases into court in that period by dedicating resources to that, and I am sure that the Lord Advocate manages to do so now. Those cases require expertise and resource, because they are the most serious cases.

**The Convener:** I come on to the issue of post-incident conferral among police officers who might have been involved in serious incidents, and the potential implications for the justice process. There is a lot of interest in that matter. Obviously, we are discussing things in general rather than in case-specific terms. The written submission from the human rights lawyer Aamer Anwar states:

“It goes without saying that any reforms would require to respect the fundamental right of the privilege against self-incrimination, as recognised by the European Convention on Human Rights.”

He uses the term “golden” witnesses, which I am sure you will be familiar with and which refers to crucial witnesses. I am sorry to drop this on you, because you may not be familiar with it, but Mr Anwar also refers to the Casale case from south of the border—

**Dame Elish Angiolini:** Sorry?

**The Convener:** I am referring to the Casale case. It is C-A-S-A-L-E.

**Dame Elish Angiolini:** That is not a case; it is the name of the very learned author of a report on death in custody.

**The Convener:** Yes, indeed—I beg your pardon. It is the Casale review of the death of Sean Rigg. Mr Anwar’s submission points out that it states:

“from the moment it is operationally safe to do so, [the police officers involved] should be kept separate until after their detailed individual factual account is obtained.”

Will you outline the implications of that not taking place in the case of a death in custody?

**Dame Elish Angiolini:** I referred to Casale in the review that I did for the Home Secretary on deaths in custody in 2017, in which I made a recommendation regarding post-incident conferral, and I have made a similar recommendation in the current report.

Civilian witnesses are kept separate. As soon as an incident has taken place, the police will normally try to separate the witnesses as far as that is possible. If it is not operationally possible, that must be accepted, but if it is operationally possible and safe to do so, the police will separate those who are material witnesses to the events so that they can get from each of them a fresh, unvarnished account that has not been influenced by what someone else has said.

I will give an example. Let us say that there is a couple in a car—the driver and a passenger—and there is an accident. In my case, I would normally say to my husband, “Oh! You were going too fast there,” or whatever, but he will have a completely different view of it. You begin to influence each other one way or the other. It is a question of making sure that a witness’s own recollection is not contaminated, accidentally or otherwise.

It is the same with police officers. Although they are professional witnesses, they are subject to all the same aspects that any eye witness would be subject to. If they have been in a traumatic situation, their welfare has to be guarded; we are not talking about not looking after their welfare. There is a need to ensure that the officers’ welfare is supported. However, it is also imperative in this context that the PIRC gets there as soon as possible. That is why I recommend that the PIRC

must be at the scene as soon as possible. I was concerned about the location of the PIRC in Hamilton, particularly when it comes to cases that take place up north. If there is a death of this nature, they need to have a helicopter to take them up there, because they need to get there quickly.

There is also a need to ensure, in so far as it is possible, that the police officers are okay, but that they are not put in a place where they can sit together for many hours. Even though nothing nefarious whatsoever might take place in that context, for members of the public, it is like throwing a skunk in a room and telling people not to smell it. It is not in the interests of the officers to be together.

When I took evidence on the matter in England, where it is a different context, members of the Police Federation of England and Wales told me that there would be no exchange of beliefs or opinions; they would just check facts. That is precisely the point. They said that the reason for that was that the Crown Prosecution Service there would come down on them like a ton of bricks if there were any discrepancies in their statements, but discrepancies are natural. That is the way in which things happen. It is not necessary to have identikit statements.

It is extremely important that there cannot be any cloud over officers in such circumstances. In addition, they need to have individual lawyers. It is not enough for the federation to send one lawyer to represent a group of officers. Individual advice needs to be provided. Once an officer has been identified as a witness by the PIRC, they have an obligation to provide a statement as soon as possible. That is a really important part of their duty to assist in the investigation of the death.

What Casale said is absolutely correct. Keeping officers separate in such cases is not an attack on the police. It is in the officers' interests because, later on, when someone cross-examines them on the fact that they were together over the period in question, they will have a hard time explaining the uniformity of their views at that stage.

There are some mitigation measures that could be taken, such as the use of body-worn cameras throughout the process. That might help, but even in that case, there would still be a danger of groupthink, or people being influenced, because not all people have the same interests. It is assumed that everyone in that group has the same interests, but that is not necessarily the case. It is really important for the future that that is clarified.

However, that is not to say that officers in such circumstances should not be supported. They absolutely must be—that is critical.

**The Convener:** Is it your view that officers being kept separate in that way would require a legislative change? I am sure that most folk would accept that it is good practice.

**Dame Elish Angiolini:** No, it would require a change of practice, not a change in law. However, the police in England have not implemented it. The College of Policing still recommends the same process. Despite the fact that the Independent Office for Police Conduct—the English equivalent of the PIRC—has issued guidance to the police in England and Wales to the effect that I have just discussed, it has not been implemented, and I worry. I worry about it for the officers and I worry about it for the public interest. I think that there is a degree of naivety involved.

**The Convener:** I invite you to say a little more about the role of victims such as family of the deceased, their representation and the fact that they do not always feel that they are involved in the process. Similar views have been voiced by victims of serious sexual crime, who have felt that the public interest and their interest are not necessary one and the same.

**Dame Elish Angiolini:** We have come some way since I started as a prosecutor in the early 1980s. At that time, there was a very different culture towards the public—it was very paternalistic. In the context that we are discussing, things were done for people and done to them. That has changed—and it continues to change—in the context of human rights and the rights-based culture that has been introduced. That culture is in our legislation and it underpins the Scotland Act 1998 and the Human Rights Act 1998, which oblige people to act in a way that is compatible with it.

Human rights require that, in the circumstances that we are discussing, people can participate effectively in investigations, particularly in the case of a death. People do not just have the right to be an observer. It is not just about people being kind to them and providing information—it is much more than that. They have a right to be informed, unless that would be operationally inappropriate at that stage, and a right to participate in a way that I, as a young depute fiscal, would not have recognised in a fatal accident inquiry. At that time, it was very much the case that the fiscal had responsibility for the public interest and the family. That has changed, and I think that the change has been an important and good one.

We need to consider what ability a family has to do anything after a death, even if their intellectual agility is supreme. Given the grief and the shock, they will be dazed, and they need someone to look after their legal interests and the rights that they have at that time. If they have lost a son—or a brother or a sister, or whatever—they need to

have someone at that point who is seriously engaged with what is happening and will ensure that their parental rights, which are implicit in article 2 of the convention, are looked after.

**The Convener:** Thank you for that. Our next series of questions is from Margaret Mitchell.

**Margaret Mitchell (Central Scotland) (Con):** Good morning, Dame Elish, and thank you for the tremendous amount of work that has gone into your insightful and far-reaching report. To me, it absolutely addresses the concerns that the Justice Committee had about complaints when we looked at the issue in our post-legislative scrutiny.

I want to focus on the PIRC, which has received a lot of powers. Your report recommends that the statutory function of preliminary assessment of misconduct allegations against senior police officers should be transferred from the Scottish Police Authority to the PIRC. Will you explain why that is important? Did you encounter any resistance to the idea?

The report also recommends that the PIRC be expanded to accommodate more powers and that some powers should be removed from the SPA and given to the PIRC. You indicated that a lack of resource has prevented the PIRC from carrying out its duty to monitor annually the categorisation of cases. Have you had any discussions with the Scottish Government on the cost implications of the additional powers?

**Dame Elish Angiolini:** The answer to your final question is no, and some of them would be resource significant. They could result in a transfer from one budget to another or an adjustment, depending on the approach to implementation. However, that would be for others to consider.

As I said to the convener at the beginning, I fully accept that we are in the context of a hugely challenging international pandemic, with all the consequences that flow from that, so the priorities will be for the Parliament to determine. However, when that happens, I think that the powers will be really important.

Many of the members of the public whom I spoke to are vulnerable individuals who have suffered for many years, and it is important that we recognise that it is a really big deal to make a complaint about the police. It tends not to be something that people do regularly, so we need to have a system that is fit for purpose and also fit for the future—that is, one that can adapt.

11:45

There was no resistance to the PIRC issue. I answered that question earlier, and I said that the SPA and its chair had no difficulty with that. They recognised the fact that they see those people

weekly. They may have coffee or sometimes lunch together, but there are regular meetings. On the idea that people suddenly have to be impartial in a committee, I am sure that they could do that properly, but it is about being seen to be impartial as well as being impartial, particularly on such serious matters as senior officers who are in difficulty.

On the PIRC's powers, I have said that people have described the PIRC as having been toothless. I do not think that it was toothless, but I think that there is a real need to strengthen its independent powers of investigation. Members will see that I have recommended giving it the power to take over a complaint independently of any person and to reinvestigate it in the public interest, rather than its simply having a power of recommendation that somehow is not always followed up or does not hit the particular target on making change. That is a significant power that would add reassurance and protection for the public.

There are other important and significant powers to do with wider thematic reviews. If something comes up constantly, the ability to do a thematic review would be a great tool for the chief constable.

Margaret Mitchell asked about resistance. There was no resistance; rather, there was real willingness for the system to develop and change. I commented on diversity and issues related to racism and discrimination, in particular. There is an executive in Police Scotland that is absolutely focused on those issues and that wants to take them not remotely defensively. That is our experience. I do not think that it was being insincere to me; I think that that is genuinely what it wants. I was extraordinarily impressed.

**Margaret Mitchell:** I think that there has been a change and that there now seems to be more co-operation between the SPA, the PIRC and Police Scotland. The submissions certainly suggested that. We will not go into the SPF's submission, which was not realistic and failed to grasp the importance of the recommendations.

There is a lack of checks and balances in the single police force as it stands. Are there any legislative reforms that could be implemented sooner rather than later and that would improve the complaints system in the immediate term? I know that that will be for the Parliament to decide. It is not just about the wider public; police officers are operating in a system that is not fit for purpose.

**Dame Elish Angiolini:** There are a number of significant recommendations. The PIRC's powers are really important. Members will see that I suggested that the PIRC's accountability should

go from the executive to the Parliament—to the non-executive body. The recommendation that accountability should be to the legislative body is compatible with the opinion of the Council of Europe's expert on human rights. There should be a statutory board to ensure that the PIRC is held to account for efficiency and effectiveness. That is really important, because the PIRC hovers without any real accountability, which other ombudsmen have. It is really important that that issue is addressed constitutionally.

Two deputy commissioners are needed, because there is a lot of law in what is happening. They do not necessarily have to be lawyers, although at least one should be a lawyer. The fiscals found that huge cases would be reported to them but that the law had not been analysed sufficiently well in them. It is really important that that element is there. Despite the fact that there will be many checks, that was not distilled in a way that made the decision making important.

If there was urgency in legislation, the resignation of officers when proceedings are pending or are about to take place, or when they are in the middle of proceedings, should be able to continue. That is really important, and that already happens in England and Wales, of course. It is important that the policing college compiles an advisory list of people who resigned in the course of disciplinary proceedings. That advisory list could be accessed by other police forces across the United Kingdom, to make them aware of the fact. There should also be a public list of people who have been found responsible for gross misconduct as well as of those who resigned during the course of such disciplinary proceedings.

**Margaret Mitchell:** It sounds as though there are stand-alone things that could be done via legislative reforms at the moment that would immediately improve things. I entirely take your point that it is for Parliament to decide whether that is a priority.

On the issue of there being a public interest test, with regard to the recommendation that the PIRC should have additional powers to investigate the current practice or policy of Police Scotland, if the commissioner believes that it would be in the public interest to do so, how extensive do you think that that power should be, and how should it be applied?

**Dame Elish Angiolini:** I think that it is something that should be done in exceptional circumstances. If the PIRC was conducting so many investigations that it was going in and out like a yo-yo, that could be disruptive and could have the effect of impeding the important independence of the chief constable. Further, there is the important role of Her Majesty's inspector of constabulary. I have met the

incumbent, who is a hugely impressive individual. The work that she is doing is important, and that cannot be discounted.

The police have to get on with the job; they cannot constantly be subjected to reviews and audits. However, I think that it is important that, in cases involving matters of significant public interest, the PIRC can carry out a review. I think that that is of benefit to the chief constable, because he may find it difficult to have the resources to conduct such an investigation, and HMICS might be involved in another matter at the time. However, I do not see it being a regular feature; I see it as being exceptional.

**Margaret Mitchell:** I forgot to mention HMICS and the excellent work that Gill Imery has been doing.

**The Convener:** Shona Robison will ask the next questions.

**Shona Robison (Dundee City East) (SNP):** In your final report, you say that the absence of a prescribed independent third party to whom whistleblowers in policing can report wrongdoing is a significant gap that should be filled. You go on to say that you think that the PIRC would be best placed to fill that role.

Can you say more about why you think that an independent entity is required? We have touched on some of that during your comments so far. Can you also say why you think that the PIRC is the right body? Are you confident that individuals will view the PIRC as being wholly independent?

I will ask my final question now, for the sake of time, so that we can wrap this up in one. What other action could be taken to ensure that whistleblowers would feel confident in approaching the PIRC with what could be serious concerns?

**Dame Elish Angiolini:** The issue of whistleblowing was raised by police officers. Although the chief constable has already given officers access to a charity known as Protect, which can give advice on whistleblowing and can counsel people through that process—that is a really important provision for officers—that charity cannot take action on the issue. What is needed is an independent party with teeth that can do something about the issue in a way that will still protect the individual in question.

The PIRC is truly independent—that is an important element. The reality is that, when you are starting an organisation from scratch, you have to find expertise for investigations from somewhere, and, understandably, many people were recruited from the police—there were retired police officers, senior police officers and so on. As a result of that, there are still a substantial number of former police officers in the PIRC. You will have

seen my recommendation that that should be phased out, although I accept that it cannot be done immediately, because those people are extremely valuable members of the organisation and have a real expertise.

The PIRC requires to get its investigative expertise from somewhere other than the police, although still using retired officers or officers from elsewhere as consultants. That needs to be done—indeed, the IOPC in England has made significant progress on that, and I understand that it will take place. It is not about making people redundant or dismissing people; it is about moving towards having fewer police officers there. I have to say that, in relation to the perception that the public might have about that being sinister, the reality is that police officers consider those officers in the PIRC as poachers turned gamekeepers who are truly independent in the way that they approach the issues.

Nonetheless, it is about perception and protecting the PIRC's impartiality. I am not suggesting that whistleblowing would go into some email inbox; that would be a matter for the commissioner or one of the two deputy commissioners, and none of those persons should be a former police officer. That would be a specific role only for those senior officers, and that would give the whistleblowing process a protection and assurance. It is important that that source is protected, and I have no doubt that that independence would be executed.

**Shona Robison:** You mentioned the important role of body-worn video cameras in relation to evidence gathering, and in your interim report you recommended that Police Scotland should accelerate its plans to extend the use of body-worn video technology. Can you say a bit more about how the use of such technology might impact on the nature and number of complaints that are made against the police, and can you expand on the risks associated with the use of such technology? Are you confident that Police Scotland has carried out due diligence to mitigate those risks and ensure that the public can have confidence in the use of the technology?

**Dame Elish Angiolini:** Body-worn cameras are critical for the future. In 20 years' time, we will look back and think that we were all quite daft to be still talking about them. The technology will have moved on: it will probably be woven into officers' uniforms and be much cheaper—you will probably be able to buy the cameras for 20p. At the moment, the technology is relatively new and it is dear, which is obviously an issue.

In England and Wales, 80,000 officers have body-worn cameras, and I have been told by the IOPC that there has been a reduction in the number of complaints about police officers. It is

one of the most effective ways of ensuring better behaviour on the part of those who are intercepted by the police but also on the part of the police. Everybody behaves better when they know that the camera is there.

I bumped into a group of police officers on the main street here, in Oxford, and they all had body-worn cameras, so I took the opportunity to speak to them about the technology. They could not have been more enthusiastic about it—they said that it is amazing. They said that they only have to point at the camera and suddenly even some of the most obnoxious and loud people begin to behave. It is very good protection for them. However, there are implications for resources in making sure that the cameras are robust enough and do not have to be replaced constantly. There is also an implication for the storage and reproduction of footage for proceedings but, with digital storage, that will become less of an issue in the future.

The technology would result in more guilty pleas in trials, so there would be savings for the justice system. I remember the introduction of video evidence and closed-circuit television evidence from the streets. Many of the cases that would have proceeded to trial are now pleas of guilty because CCTV evidence is available to the court. In America, there is evidence that body-worn cameras have had that effect. They are a great protection for all and would reduce the number of complaints.

**Shona Robison:** That is helpful.

You mentioned earlier where priorities should lie, given the challenges that the Government faces with the pandemic. It will not be able to do everything that is in your report at the same time, so what are the top three things that you would urge the Government to get on with quickly? Would they include the body-worn video technology or the powers of the PIRC that you mentioned earlier?

12:00

**Dame Elish Angiolini:** It is very difficult to say, because expenditure would be required. Some things could be done on a cost-neutral basis, if that was possible. I am the author of the report, so it is now for the Parliament and the Government to determine the priority that they want to afford to the recommendations. All that I can say is that body-worn cameras are a real source of protection for police officers and they need them in the 21st century, given that so many tragedies have occurred.

I will give an example. I sat through an inquest into the death of an individual who had been shot by an armed police officer in England. The officer gave his evidence but, to be perfectly frank, he

was not that impressive as a witness. He was not the best witness. If I had been the prosecutor in the trial, I would not have been entirely thrilled by how he delivered his evidence. However, footage from his body-worn camera was then played, which displayed just how terrifying the whole episode had been. It showed how justified his action had been and the fact that he had been exemplary in his conduct. That was probably the most telling evidence that I experienced at that time to show that body-worn cameras will help the police as well as members of the public.

Such cameras will ensure that the public feel better protected in certain circumstances, because they will know that there is the capacity for things to be recorded. We live in an age in which everything is capable of being recorded on mobile phones and on CCTV. It is important that the police have their own recordings in order to protect police officers in the future.

**Rhoda Grant:** Good morning. I will turn to diversity and inclusion. The report made for quite sad reading, to be honest, because it looks as though little has changed since the Macpherson report was published, in 1999, which was a long time ago. Are such attitudes embedded in Police Scotland?

**Dame Elish Angiolini:** I cannot answer that, because I did not see all the black and minority ethnic officers in the police. I think that there are 253 BME officers in the police force out of 17,000-odd officers, so it is a very small number. That is why I recommended that a review should be carried out. I think that the chief constable has already accepted that he wants that to take place.

I do not think that such attitudes are embedded, in the sense that senior officers are determined to deal with the matter and are passionate about doing so. I do not think for a minute that what they say is just synthetic; I think that they believe that in their hearts. Many officers would be horrified at the assertion that there is racism, and they behave in a manner that is absolutely correct. Even where there are pockets of that or, indeed, unconscious bias, some of it is not deliberate. Sometimes, it is because people have not been trained or educated to understand the nature of discrimination.

Therefore, there is a need for discrimination to be absolutely understood and for there to be zero tolerance of it. I describe it, as Macpherson did, as the “canteen culture”. Sexist, misogynistic or racist quips should not be tolerated. If you are sitting in a group of people who are all laughing at something, it is very difficult to say that something is not right or acceptable.

We need to think about those who come into the culture and who might feel that being diverse or a

member of the BME community is an exception. There is a tendency for people to feel as though they need to blend in. It horrified me when I heard that evidence. We do not want people to blend in; we want a police force that is as diverse as our population. Scotland has a tremendous culture of being welcoming to immigrants, but the reality is different for some people who come into the police, so we have to study that issue.

You mentioned that you found the report depressing. I felt extraordinarily depressed for many days after listening to the witnesses’ evidence. It came as a shock to me just as much as it has to everyone else. However, such behaviour is present, and it affects not just those from minority communities but women and lesbian, gay, bisexual and transgender people, all of whom are still subject to inappropriate quips or treatment as a result of who they are.

It is critical that that is not tolerated at all. I know that the chief constable and his senior team are horrified and that they have a real determination to deal with the matter. I have faith in that.

However, I must say that I was somewhat disappointed in the Scottish Police Federation’s response in not recognising that. Of course the majority of people behave properly, but such behaviour is present, and it is important—particularly for the SPF—to go out and meet those people and not simply refer them to black and minority ethnic organisations, because they do not have powers of representation. I find the lack of that recognition deeply worrying.

**Rhoda Grant:** You mentioned that the chief constable has accepted your recommendation to carry out an independent review. Should that be a one-off review, or should it be conducted on a number of occasions, to determine whether progress is being made? I get the feeling from reading your report that such behaviour is more embedded than we think. People are rightly horrified. If it is embedded in the organisation, I am not sure that one independent review will change that overnight.

**Dame Elish Angiolini:** No, it will not. I spoke to only a proportion of that population group. I think that it is important to see many more people than I was able to. Thereafter, it is about training, and training again. It is about people consciously understanding and looking at their behaviours. That does not mean that someone must go away to college; it can be done through different types of remote learning. It is also about discussing the issues and bringing them out into the open.

Line managers, and those who are sergeants and inspectors, are critical. If they do not display zero tolerance to these behaviours in their leadership, others will not behave. They are in

important leadership positions. I strongly believe that the police force needs more sergeants. The ratio of sergeants to constables has been depleted to such an extent that constables rely on other constables to be their role models. The sergeants and the inspectors are so loaded with administrative work and other tasks that they do not have the capacity or the headroom to manage people or to be role models. However, if the role models are the source of the problem, that is even more sinister.

There is an on-going need for every organisation—it is not just the police; it is all of us—to begin consciously and constantly thinking about the issues and how we treat people who are different from us, to ensure that we understand that they have exactly the same rights and that they must be treated with utter respect. It is just not good enough to dismiss people.

It would be lovely to think that the behaviour that is seen in the current television series “Small Axe” and in “Life on Mars” was confined to that period, but it is worrying that that behaviour is still there. It must be flushed out.

**Rhoda Grant:** How soon do you want the independent review to be carried out?

**Dame Elish Angiolini:** That is a matter for the chief constable. I think that he has indicated that he wants it to take place urgently, and I am sure that he will—[*Inaudible.*] It is a very important matter and the review should happen as soon as possible.

**Rhoda Grant:** I have a quick final question. Do those attitudes get in the way of the police dealing with complaints in the organisation and externally?

**Dame Elish Angiolini:** Of course they do. How they deal with the public is bound to be determined by how they deal with each other. If people treat others badly inside the workplace by being nasty or unpleasantly sarcastic or by making humorous quips about their gender, sexuality or race, they will not be able to go out and treat the public well, or, if they do, it will be superficial, because it is not in their nature. The bottom line is that people have to behave themselves; the bad treatment has to stop and they have to recognise that. It is not a case of picking people out and punishing them; it is about making sure that people understand the other person's perspective and are willing to ensure that bad treatment does not occur. That cannot be done in an atmosphere of fear; it has to come from the heart, but changing people's hearts and minds is very difficult and it is not possible to do so with some people.

However, even if some people entertain that type of mentality, they must not express it in a way that is detrimental to the rights of others and they should not feel comfortable in behaving in that way

in Police Scotland, which is part of a modern democracy that is moving forward and is progressive. If we talk a good game about being welcoming to immigrants, we also have to display that in our behaviours and the police should lead on that. I genuinely believe that the police have the determination and willingness to do that.

**Rhoda Grant:** Thank you.

**The Convener:** We have an additional question from Margaret Mitchell.

**Margaret Mitchell:** Although they are not part of the review, there are two recommendations relating to the Crown Office and Procurator Fiscal Service, which you mentioned in your opening remarks. Can you explain why those are important? You confirmed that there was going to be a review of the COPFS by the inspectorate. Specifically, do you think that it is important that the inspector who is head of the inspectorate should not be appointed by the Lord Advocate, as they are at present, and should not report directly to him? Also, the secondments have tended to be from within the Crown Office and Procurator Fiscal Service, and the people involved will return to that service. I cannot stress how much that has come to the forefront when I wear another hat in my role in the investigation into the Scottish Government's handling of harassment complaints. It seems that it needs to be urgently looked at.

**Dame Elish Angiolini:** The Lord Advocate is about to embark on a thorough review of how the complaints that go to the COPFS are dealt with. The first issue is about ensuring that the public are aware of a really important right, which is to bypass the police and go straight to the—[*Inaudible.*]—prosecutor with a criminal matter. If people have been the subject—or allege that they have been the subject—of a criminal matter, they do not require to go to the police. There is *de facto* in Scotland an independent prosecutor, who acts independently of any other person in the sector to deal with that. That information needs to be blasted from every police station and it needs to be on posters and available at citizens advice bureaux and other public places, so that people are aware of that.

Delay is another matter; I have mentioned that, so I will not rehearse it, but it is important that delays are addressed, so that the cases can be prioritised. Again, there is a resource issue, but the Procurator Fiscal Service recently had a refresh of its resources and more staff have been added into that section, so that will help, although I am not sure of the extent to which that will deal with the problems that have been referred to.

The PIRC's accountability to the Lord Advocate exists only *apropos* of the role in investigating deaths and prosecution matters. That line is



critical because, in that context, the Lord Advocate is independent of any other person, so the PIRC is de facto reporting to the Lord Advocate matters of criminality that could not go to anyone else in that context. However, currently, the PIRC does not have a line of accountability regarding the complaints handling aspect, such as when PC Bloggs has got mud all over someone's carpet, been cheeky and obnoxious or failed to investigate things properly. Pay and rations come from the Government and the Cabinet Secretary for Justice, but there is no accountability there, so it is important that that is sharpened up, and that is why I recommend that the accountability for that purpose should be directly to the Parliament, as is recommended elsewhere.

12:15

Regarding the personnel being senior prosecutors, I do not think that people who leave the Procurator Fiscal Service would be looking for a career back there. Those people who have been appointed, Kate Frame and the current commissioner, Michelle Macleod, are very senior prosecutors. We have someone who already has the skills base, and it is important to have that investigative skills base in the Scottish system in particular. There is no reason why the commissioners could not come from other countries. I went over to look at the system in Dublin, and one of the commissioners there is from America.

For some of the reasons that Margaret Mitchell has pointed out, I have also suggested that there should be three commissioners: a senior commissioner and two deputy commissioners. The body should be known as a commission. The "commissioner" name should be taken away, so that the body is clearly collegiate in its thinking. The two deputy commissioners should not come from the same place as the commissioner. It might well be that, in future, the person who is commissioner will not have a prosecutorial background, but one of the deputy commissioners will, for instance. I do not think that it is necessarily the case that the same thing will happen in future.

**Margaret Mitchell:** I am sorry—I was probably not clear enough: I was talking about the Inspectorate of Prosecution in Scotland. When we did our report, we found that people had not heard of it. The Crown Office and Procurator Fiscal Service is currently a part of the whole complaints system. For complaints against the COPFS, the Lord Advocate appoints the head of the inspectorate, reports go to the Lord Advocate and people from the COPFS are seconded for a period and then return to the COPFS. In the current climate, with all the things that are happening, it is essential to consider that.

**Dame Elish Angiolini:** HM chief inspector of prosecution in Scotland is not currently from the Procurator Fiscal Service, in fact.

**Margaret Mitchell:** No—

**Dame Elish Angiolini:** Indeed, I am sure that the Lord Advocate would be open to considering a different process for how that person is appointed in the future.

Having seen previous reports from HMIPS from when I was Lord Advocate, I can assure you that there is no degree of sycophancy whatsoever—they were particularly harsh.

I think that there is merit in what you say about the way in which the chief inspector is appointed, but it is good that it is someone from outside on this occasion. The former chief inspector was fantastic, as is evident in the fact that she has now been made the PIRC, and there is no doubt that she will be hugely successful in that role.

**Margaret Mitchell:** It is no criticism against a person, but the system under which—

**Dame Elish Angiolini:** Absolutely.

**Margaret Mitchell:** [*Inaudible.*—reviewed, and more independence in reporting to Parliament.

Thank you for those responses, which were very helpful.

**The Convener:** We are coming towards the conclusion of our evidence session, and I have three questions relating to some of the written evidence that we have received.

I will do these in sequence. First, the sub-committee has received written evidence from the Scottish Police Federation and the Association of Scottish Police Superintendents, in which they suggest that your final report does not have robust evidence in support of many of its conclusions and recommendations. How do you respond to that?

**Dame Elish Angiolini:** I think that that came from the SPF. I spent two years gathering evidence, and I met so many members of the public and police officers. Obviously, I carried out research. The assessment of the report is for others to make, not me—I am not here to defend it. I think that it is as robust as it can be in the circumstances. It is qualitative in its nature.

I am disappointed in the defensiveness of the federation. I think that there are real interests for officers in getting this right, and the defensiveness on the part of the federation is completely disappointing.

**The Convener:** I turn to one specific point that was made by the federation, which stated:

"We consider that in the round the recommendations in the report will return the complaints processes to an even

more adversarial, blame and sanction orientated procedure than what went before.”

Can you outline the discussions that you had with the staff associations in the course of the work for your report? Were any concerns relayed about that approach?

**Dame Elish Angiolini:** No. In my interim report, I made a recommendation that senior officer misconduct proceedings should be considered by an independent panel with a legal chair, a layperson and an expert on policing appointed by the Lord President. Likewise, a panel on gross misconduct should also be subject to an impartial chair and a legal expert appointed by the Lord President. The SPF's complaint at that time was that a layperson was not suggested for that panel. I was happy to consider that further and made that recommendation for the same reason—that is, to give those panels greater impartiality. Police officers hold an office, and it is very important, as it is for doctors, nurses and accountants, that the nature of the adjudication in the public interest should be impartial.

I am not sure that the SPF's suggestion that the recommendations will

“return the complaints processes to an ... adversarial ... procedure”

is remotely justified. I think that the general secretary of the SPF would agree with me that my recommendation is that the threshold for misconduct should be raised and that there should be much more by way of mediation and HR intervention into the behaviours of police officers, rather than complaints being escalated to misconduct “from flash to bang”, as a senior member of the police described it. Matters were being unnaturally escalated, and that is not in the interests of the force or the public. There needs to be more management of people by line managers.

In a sense, the issue is about diverting people away from the system at the bottom end and ensuring that it is proportionate. The term “adversarial” is used in a pejorative sense but, if a person is accused of something as serious as gross misconduct, it is important to the public that the system must be thorough and they must have the benefits of an adversarial system. Indeed, the European convention on human rights has moved away from the inquisitorial system, because of the faults and flaws in such systems in all parts of Europe, to a more accusatorial or adversarial system. That comes with greater protections. I do not think that that is a bad thing; rather, it is a benefit, particularly with serious matters of gross misconduct. I also suggest that the proceedings should be held in public, as they are in England and Wales.

**The Convener:** People of my vintage will recall that the change from discipline to misconduct was to facilitate a more managerial approach and to remove all the quasi-judicial terms. Does that suggest that there is a fundamental failing in how the complaints process has been dealt with?

**Dame Elish Angiolini:** I think that there has been a problem with people management. That is something that other people in organisations must do like breathing, but I do not think that it comes naturally to policing, because its nature is very much one of lines of command. Therefore, although interactions can be informal, that in itself does not give rise to sitting down and having a necessary conversation about someone and their behaviour, which can avoid matters escalating.

Say someone is constantly late or you smell alcohol on their breath. Those matters require early intervention, before they manifest themselves into greater problems or behavioural problems. The skills base for dealing with such issues must be enhanced in the police. That is important so that such cases are not necessarily escalated to misconduct and it becomes a matter of getting rid of a problem. You must deal with the problem before it becomes severe. That is very important, including for officers.

**The Convener:** I fully concur with that.

This is my final question. You have largely covered the issue in your responses to Rhoda Grant. We have heard evidence from Supporting Ethnic Minority Police employees for Equality in Race—SEMPER—Scotland, Scottish lesbian, gay and bisexual transgender and intersex police associations and the Scottish women's development forum about the need for a culture change and the ability for people to speak up, regardless of their background. I am sure that you agree with that. To what extent does misogynistic behaviour feature as part of the overall problem?

**Dame Elish Angiolini:** That is clear from the evidence that I took from those associations and from individual witnesses. Many officers who are still serving in the police force made submissions about their treatment and about throwaway sexist remarks or the patronising attitudes shown towards them as women. Currently, 32 per cent of the force are women, which is still a minority. One case was about the fact that equipment is designed for men; such things suggest that women are a slight nuisance, and people have to think in a different way.

It is also obvious regarding part-time working or other arrangements that can be made to facilitate people who have children, in families where the mother is the primary care giver. That was difficult because, in that case, it was not coming from the top, where those systems were in place and the

policies were available, but line managers made it absolutely clear that people having those hours was inconvenient and an encumbrance for all. If those attitudes permeate through the line management of individuals, that is very serious for the prospects of keeping valuable officers in the service for more than a few years. If they have a baby and that is treated as an inconvenience, they give up because they do not feel valued enough. Many of those people will be in the service for 25 or 30 years and there needs to be a recognition that that support has to be given. It is there in the policies and at the top, but it is not getting down to the coalface.

**The Convener:** Margaret Mitchell would like to ask a brief supplementary question.

**Margaret Mitchell:** My question is on the culture. In Police Scotland, in response to those low-level and misunderstanding types of complaints, instead of just acknowledging that things could have been handled better, there seems to be a defensive attitude. Do you feel that the power of an apology, for which we have the legislation, could be used more effectively to improve the service for all concerned in Police Scotland? It would save a lot of time and money and result in closure for all concerned.

**Dame Elish Angiolini:** Absolutely, and I wrote about that in the report. Many of the people I spoke to said that they did not want the officer dismissed and they did not even want him punished; they wanted him just to be told that that behaviour was not appropriate and for him to apologise for it, and that would have been the end of the matter. Instead, a whole sequence of events takes place. Of course, people want a sincere apology; they do not want something that is just to avoid greater trouble. That is why I criticised the way in which the police have sometimes used legalistic, officious language, so that, even when they were apologising, there was an absence of humanity in the way they did it. I understand that that has now been tackled. How they communicate and the sincerity with which they do so is very important. We could see many more problems resolved in that way and that is what the public want.

In many of the quality-of-service cases, the public do not want to see heads roll; they simply want something not to happen again or, as one woman said to me, “For that boy to learn that he is not going to get on in the service if he behaves like that”. She was concerned about him and his service and wanted him to learn.

Nobody instinctively welcomes a complaint, but there is a huge amount that people can learn, and a complaint gives an organisation a great deal of intelligence about how it is doing. The willingness for an entity to learn from complaints is a reflection

of its maturity and ability to adapt for the future; I hope that my report will contribute to that and that people will not be defensive about it. I am delighted that the SPA, the PIRC and the chief constable have all responded very positively. I genuinely trust that the recommendations will be taken forward, that Parliament will consider them and that they can add to the effectiveness of policing in Scotland in the future.

**Margaret Mitchell:** Thank you; that would be a major and very positive change.

**The Convener:** Thank you, Dame Elish. That is the end of our formal question session. Before we end this part of the meeting, would you like to add any closing remarks?

**Dame Elish Angiolini:** No, thank you. I have said quite enough.

**The Convener:** Thank you. I also thank Mr Kernohan for coming. That was our first evidence session on the final report. In February, we will hear from the Cabinet Secretary for Justice about the Scottish Government’s response to the report. The details of that session and how to submit evidence will be published on our website shortly. I thank the witnesses for providing evidence at today’s meeting.

The next meeting of the sub-committee will be in January, when we will hear from Police Scotland about the implications for policing of the United Kingdom’s withdrawal from the European Union. In the meantime, any follow-up scrutiny issues will be dealt with by correspondence, which is always published on our website.

12:30

*Meeting continued in private until 13:03.*



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Published in Edinburgh by the Scottish Parliamentary Corporate Body, the Scottish Parliament, Edinburgh, EH99 1SP

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