



OFFICIAL REPORT
AITHISG OIFIGEIL

Justice Sub-Committee on Policing

Monday 15 February 2021

Session 5



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JUSTICE SUB-COMMITTEE ON POLICING

2nd Meeting 2021, 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:

Humza Yousaf (Cabinet Secretary for Justice)

CLERK TO THE COMMITTEE

Diane Barr

LOCATION

Virtual Meeting

Scottish Parliament

Justice Sub-Committee on Policing

Monday 15 February 2021

[The Convener opened the meeting at 11:00]

Decision on Taking Business in Private

The Convener (John Finnie): Madainn mhath, a h-uile duine, agus fàilte. Good morning everyone, and welcome to the Justice Sub-Committee on Policing's second meeting in 2021. We have no apologies.

Agenda item 1 is a decision on whether to take in private items 3, 4 and 5. Do members agree to take those items in private? If members disagree, please indicate that to me or use the chat function. I see that we are agreed. Thank you.

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

The Convener: Our main item of business today is an evidence session on the Scottish Government's response to Dame Elish Angiolini's "Independent Review of Complaints Handling, Investigations and Misconduct Issues in Relation to Policing—Final Report". 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. Humza Yousaf, Cabinet Secretary for Justice, is joined by two Scottish Government officials: Neil Hastie, head of the community safety unit, and Anita Popplestone, head of the police complaints and scrutiny unit. I invite the cabinet secretary to make some short opening remarks.

Humza Yousaf (Cabinet Secretary for Justice): Good morning, convener and all Justice Sub-Committee members. I hope that you are all keeping well and safe. Thank you for the invitation to the meeting.

The Lord Advocate and I are grateful to Dame Elish Angiolini for the significant work that she has undertaken to produce such a wide-ranging and forensic report on police complaints and their handling. We also thank the individuals and organisations that gave evidence, as well as the often-forgotten hard-working secretariat for their work on and analysis in the report.

As outlined in our joint response, working with partners, we intend to accept the vast majority of Dame Elish's recommendations, many as specifically set out. However, we also hope to explore other routes or mechanisms that might achieve the desired outcome.

As I am sure that the committee will agree, it is important that confidence in the police remains high. I greatly value the work of Scotland's police officers and staff in keeping communities safe and as a critical part of our public health response to the challenges of the pandemic. However, when things go wrong, it is essential that the police are held to account, lessons are learned and improvements are made. The Lord Advocate and I remain confident that the systems for the handling of police complaints, investigations and misconduct are fundamentally sound. Nonetheless, we agree with Dame Elish that reform of certain aspects is needed. The report provides a broad suite of recommendations that will provide a strong platform from which to derive meaningful improvement.

I do not underestimate the scale of the task ahead, but I am committed to delivering improvements in partnership and building on the successful improvement work that has been undertaken since publication of the preliminary report in June 2019.

I commend the significant steps that have been taken by Police Scotland, the Scottish Police Authority, the Police Investigations and Review Commissioner, the Crown Office and Procurator Fiscal Service and, indeed, the Government. Each partner organisation is putting in place important measures on which to build progress towards implementation. In particular, I welcome the strong statement and swift action from the chief constable of Scotland and the SPA in condemning discrimination and reinforcing the importance of diversity and inclusion within policing.

Given the complexity and breadth of the review, we are putting in place clear structures to oversee, co-ordinate and report on progress. Those in no way cut across or replace existing governance and accountability arrangements, but they will provide assurance to both me and the Lord Advocate on delivery.

I recognise the importance of transparency and I am committed to sharing information on progress in a way that is meaningful and accessible to a range of audiences. A list of all 111 recommendations from the preliminary and final reports, with a simple box to be ticked on completion, will not give an accurate picture of the work that is under way. Progress is far more nuanced than a binary tick-box can convey. Instead, progress will be reported under thematic headings to provide an overall picture of developments.

Workstreams that are not dependent on legislation are already very much under way. We are pressing ahead where there is a clear agreement on options that are to be delivered, and we are committed to working through options for which further discussion with and consideration by partners is required.

We will introduce comprehensive primary legislation, covering the necessary legislative changes in a single instrument where possible. When it is necessary, that will be supported by secondary legislation, to avoid a piecemeal approach. I recognise that the development and scrutiny of legislation takes time and requires consultation, and that it will also be subject to the outcome of the Scottish parliamentary elections in a few months.

In doing that work, I am committed to adopting a collaborative and inclusive approach to engagement with the whole policing community. I recognise the key role that staff associations will

play in that regard. As we progress implementation, it will be vital to work closely with partners to determine the next steps. We will build on recent progress, and we are confident that the resulting improvements will strengthen public confidence in policing in Scotland.

I again thank Dame Elish Angiolini and all those who were involved in helping her to produce her report. I look forward to discussing with the committee the report, its recommendations and the wider issue of police complaints handling.

The Convener: Thank you, cabinet secretary. We also thank Dame Elish, her team, sub-committee witnesses and all those who have provided written evidence to the sub-committee on this important matter.

As usual, I remind members to indicate who their question is for, and I remind all attendees to wait just a moment before speaking for their microphone to be activated.

The first couple of questions are from me. You talked about Dame Elish's work being wide ranging and forensic. It was always acknowledged that the task that Dame Elish undertook would be significant, but were you surprised by the breadth and scope of her final report and recommendations?

Humza Yousaf: Anybody—[Inaudible.]—Dame Elish Angiolini, as I have done over the years, would not be surprised that she has done a thorough job. We certainly expected her to do that, and her preliminary report was an indication of just how thorough the final report would be. It is also true that some of the recommendations—[Inaudible.].

The Convener: We appear to have lost you a wee bit, cabinet secretary. Hang on—are you back with us?

Humza Yousaf: —does not surprise me or some in the policing family. I am not surprised by the breadth of the report. Dame Elish has done this piece of work thoroughly.

The Convener: You might be aware that you are now with us on audio only, as the quality of the sound in the middle of your response was challenging.

In your opening remarks, you talked about not taking a tick-box approach. In your joint response with the Crown Office, you have chosen a thematic approach to dealing with the recommendations. Will you explain further the rationale for that?

Humza Yousaf: Can I just double check that you can hear me? I think that you lost me halfway through my answer.

The Convener: You are coming through loud and clear on audio only. Fulton MacGregor is on screen at the moment. Please continue.

Humza Yousaf: I will do so. I think that I got the gist of your question, as I could hear you fine. I have another device on stand by, so if I get cut off again, I am happy to switch devices.

Please interrupt me if I get the gist of your question wrong, but I think that you were asking me about the thematic approach that we have taken to the recommendations.

The Convener: Indeed. I picked up your comment about not taking the binary tick-box option. Why have you taken a thematic approach?

Humza Yousaf: We thought that that would be the most sensible approach. We could have gone through the recommendations in sequential order, but that would not have been right, because a number of the recommendations will require legislation.

With so many recommendations—111 from the preliminary and final reports, as I said—it seemed that the most rational and logical way to take forward the work was to group them into obvious themes that all partners could agree on.

However, that is not the only way in which we will approach implementation. Although we have the themes, as partners we are also looking at the recommendations that do not require legislation and on which we all agree, so that we can move on those relatively quickly.

We are also looking at a grouping of recommendations that requires legislation and on which there is agreement, as well as at recommendations that do not require legislation but which need further discussion, such as those on which there is no agreement.

Finally, we are also considering the category that is probably the most difficult when it comes to how much time it will take: that in which there is no unanimous agreement and for which the recommendations would require legislation.

Those are the themes that will take time to work through. The thematic approach seems to me the most sensible way to approach wide-ranging and numerous recommendations, although I am interested to hear the sub-committee's thoughts.

The Convener: Thank you very much, cabinet secretary. Some of those points will be probed in detail by members. Our next series of questions comes from the deputy convener, Margaret Mitchell.

Margaret Mitchell (Central Scotland) (Con): Good morning, cabinet secretary. The review was published on 11 November 2020. Given the significance and importance of the report, why was

there no ministerial statement when the review was published?

Humza Yousaf: I know that that was mentioned during the Conservative Party debate. Your colleague Liam Kerr suggested that there was a ministerial statement when the interim report was published, but there was not, and Liam Kerr was good enough to correct the record. Of course, I attended the committee—I cannot remember whether it was the Justice Committee or the sub-committee—on the back of the preliminary report, but there was no ministerial statement at the time.

It was right and proper, I think, to give committee members the opportunity to scrutinise the Government's response, which was always going to take a bit of time. It would have been unreasonable for anyone to expect a ministerial statement a week after the publication of a report that had 81 recommendations and was more than 500 pages long, in the middle of a global pandemic.

I thought that it was sensible to discuss our intentions with stakeholders, then produce a joint response, and for me then to appear in front of the committee to be grilled and interrogated on that response, as I am certain will happen this morning. If members then wish to have a further ministerial statement, I will be happy to make myself available, although that would be for the Parliamentary Bureau to decide. However, I see no difficulty in the approach of being interrogated by the committee in the first instance.

Margaret Mitchell: It is unusual that a report of this significance was not the subject of a ministerial statement as soon as the full findings were known.

The Crown Office and Procurator Fiscal Service is one of the key stakeholders in investigating police complaints. With hindsight, do you consider that it might have been better for the Scottish Government alone to have set the remit for the review and to have issued its own response, rather than doing so jointly with the Lord Advocate?

Humza Yousaf: I am happy to reflect on that one, but I do not think so.

When the report was commissioned by my predecessor, it was done so with the Lord Advocate because so many of the recommendations would understandably touch on the ministerial remit of the Lord Advocate, who is a minister in the Government, and the ministerial remit of the Cabinet Secretary for Justice. I therefore think that that made sense, but I am happy to reflect on it.

I do not think that there was anything in the joint response from myself and the Lord Advocate that

would give rise to any concerns but, again, if committee members feel that there is something, I am happy to give that reflection.

If you feel that any future discussion, debates or responses would be better coming from myself and the Lord Advocate separately, I am prepared, as I have said, to consider that.

Margaret Mitchell: In the joint response, you state that you intend to

“accept the majority of Dame Elish’s recommendations, many as specifically set out, but with scope to explore options where other routes or mechanisms may achieve the desired outcome”.

Will you confirm that, whatever approach is taken, all the recommendations which have been put forward will be realised?

11:15

Humza Yousaf: I cannot do that, because some of the recommendations fit firmly into the operational space of the chief constable or the PIRC, and I would be interfering with their operational independence if I was to do so. For example, the PIRC thinks that Dame Elish’s recommendation on regional offices should not be progressed. She has given her reasons why she thinks that it is probably not needed.

I am not sure whether you are suggesting that the Government should accept all the recommendations, but that would mean overriding the operational independence of the PIRC, which would not be good for the complaints handling system. There have been allegations, which we reject and refute, of cabinet secretaries interfering in the complaints handling process, so we know that it is an area in which ministers and cabinet secretaries should respect the operational boundaries of the PIRC.

On the broader question of the direction of travel in which Dame Elish is taking us, I have said—and the Lord Advocate and I said in our joint response—that we absolutely want to get there. We accept the majority of the recommendations, but we reserve the right to allow operational partners to make the decisions that are for them. Importantly, there might be alternative routes or mechanisms to realise the recommendations. However, as I said, I whole-heartedly accept the broad direction of travel in which Dame Elish is taking us with her recommendations to achieve more independence and greater transparency in the process.

Margaret Mitchell: Dame Elish has made a total of 111 recommendations. Are there any particular recommendations that should be given priority?

Humza Yousaf: Yes. As I explained in my response to the convener, I think that if we can take action on recommendations that do not require legislation and have the universal agreement of all partners, we should just get on and do it. Progress has already been, and continues to be, made in that regard.

I suspect that a number of the committee members were as struck as I was by the recommendations on diversity and inclusion, which made for stark and worrying reading. In terms of public confidence, it is hugely important that priority is given to those recommendations, if possible, and I commend the chief constable and the SPA for their quick and decisive action in that regard.

This is about having a process that is effective and commands public confidence, so we should prioritise the recommendations that will have the greatest impact on public confidence.

Margaret Mitchell: The joint response concludes:

“There are—and always will be—opportunities to improve the complaints handling and investigation process. We are confident that we have good systems for the handling of police complaints, investigations and misconduct but our aim is to have the gold standard.”

That is a complacent conclusion, given that the review established that the current system is not fit for purpose and that the necessary checks and balances to inspire public confidence and protect the police from malicious or vexatious complaints are not in place. Dame Elish’s governance and accountability recommendations are therefore particularly important. She specifically recommended that the relevant legislation

“should be amended to re-designate PIRC as a Commission comprising one Police Investigations and Review Commissioner and two Deputy Commissioners”—

who should be legally qualified—and to

“create a statutory Board”.

She recommended that the

“Commissioner should be appointed by ... The Queen on the nomination of the Scottish Parliament”—

not ministers—

“and should be made accountable to the Scottish Parliament”.

Will you confirm that the Scottish Government considers that those recommendations, as set out in the review, are crucial and that they should be implemented in full?

Humza Yousaf: I disagree with your characterisation of complacency. I do not think that anybody could read my and the Lord Advocate’s joint response and come to that conclusion. If you turn to page 11 of our response,

you will see a sub-heading at the top, “Wider powers for the PIRC”. I will quote directly from that section:

“We welcome the recommendations that have been made by Dame Elish to increase the current powers of PIRC, recognising PIRC has the people, skills and the values of integrity, impartiality and respect. Neither we nor Dame Elish believe the PIRC is toothless but recognise the report has identified where the role of PIRC could be further enhanced.

As mentioned, we view these recommendations favourably and will consider with the Commissioner and other partners the proposals put forward for enhancing the role of PIRC by providing additional statutory powers”.

I think that our response is pretty clear. Yes, we definitely believe in beefing up the PIRC. We would want to do that—understandably, I hope—in consultation with the PIRC, with other partners and indeed with the Parliament, which I think it is important to involve, as well as with staff associations such as the Scottish Police Federation.

To answer your question, the long and short of it is that the PIRC should indeed be beefed up. We will want to understand the legislative consequences of that, taking into account the PIRC’s own views. When I spoke to the commissioner, I found that she has some reservations about being directly accountable to Parliament, because she believes that there should not be any political interference in her role whatever. That is something that the sub-committee would have to discuss with the PIRC.

We will need to work through a couple of the recommendations. All in all, a beefed-up PIRC is clearly what Dame Elish Angiolini has recommended, and that will happen.

Margaret Mitchell: Thank you for that response. It only remains for me to say that a beefed-up PIRC does not fill me with total confidence. I would have hoped for a commitment approving the specific recommendations that I read out.

That concludes my questions, however.

The Convener: [*Inaudible.*] I think that my connection may have crashed. I hope that I am being heard. I can see colleagues on my screen—[*Inaudible.*]

Rhoda Grant (Highlands and Islands) (Lab): I was able to hear you, convener, but you are breaking up.

The Convener: [*Inaudible.*]—watching—[*Inaudible.*]—with the cabinet secretary’s—[*Inaudible.*]

Diane Barr (Clerk): This is the clerk to the sub-committee. I ask Margaret Mitchell to suspend the

meeting for a few minutes, so that we can check the convener’s connection.

The Deputy Convener (Margaret Mitchell): Yes. We will suspend the meeting and reconvene in five to 10 minutes.

11:24

Meeting suspended.

11:31

On resuming—

The Convener: Hello and welcome back to the Justice Sub-Committee on Policing. I am sorry that we have had some technical difficulties. Those seem to be at my end. The deputy convener is ready to step in if the connection fails again, and I am grateful to clerking and broadcasting colleagues for trying to keep us on stream.

At the point at which we cut out, we were going to take the next series of questions, which are from Rona Mackay.

Rona Mackay (Strathkelvin and Bearsden) (SNP): Good morning, cabinet secretary. You have committed to publishing progress against the report’s recommendations. That transparent approach is very welcome. How will stakeholders and the public be made aware of those recommendations that have not been accepted by the Scottish Government and justice partners?

Humza Yousaf: Simply, when we publish the progress that we have made, I intend to ensure that we include information about recommendations that are not being taken forward, and that we give a description of the reasons why, because I think that that is important.

It may be possible to realise the outcomes of some of the recommendations through a different route from the one that Dame Elish Angiolini has requested. Given that there are 81 recommendations—or 111, if both reports are taken together—some recommendations may perhaps have been overtaken by events, or partners might think that there is a better way to deliver the outcomes. However, to answer your question, I think that it is important to give a reason why certain recommendations may not be fully realised, and I intend to do that as part of the reporting process.

Rona Mackay: Thank you. Earlier, in an answer to the deputy convener, you referred to equality, diversity and inclusion. In the final report, as you know, Dame Elish raised some serious concerns over discriminatory attitudes and behaviours in Police Scotland, and recommended that an independent review on equality matters should be

established. Will you comment on those observations and outline what work has been going on and what will be undertaken in order to address those issues?

Humza Yousaf: As I think everybody did, I found those quite stark and difficult to read. I have family members who are in Police Scotland; they are from ethnic minority backgrounds. I speak often to the Scottish Police Muslim Association and to SEMPER Scotland, which represents ethnic minority police officers. They have at times raised with me concerns over a variety of matters and I know that they have also raised those directly with the chief constable—as have I—but nothing has been quite to the level of what we read about in Dame Elish's report.

First, we must acknowledge that it is for Police Scotland to take forward that recommendation, as it is very much an operational matter. However, clearly, we all have an interest in ensuring that Police Scotland rids itself of any discrimination, whether that is structural, overt or through unconscious bias. I have been heartened by the responses not just of the chief constable and the SPA, which were swift and decisive but also of the staff associations, such as the Scottish LGBTI Police Association, the Scottish women's development forum, SEMPER Scotland and a number of others, which have pledged to work with Police Scotland in order to realise that outcome.

An independent external review—we must stress the word “independent”—of these matters is, I think, imperative, and I know that Deputy Chief Constable Fiona Taylor is taking forward that work. She is in good discussions with the likes of Gill Imery, Her Majesty's chief inspector of constabulary in Scotland, on the issue. Again, Police Scotland can update you on the detail of how that is progressing. It is an area that has to be prioritised.

Liam McArthur (Orkney Islands) (LD): Good morning, cabinet secretary. I will follow up on Rona Mackay's question. As you have said, the findings of Dame Elish's report were stark. They may have gone beyond what most people would have expected.

Although responsibility for taking forward recommendations at an operational level may very well fall to Police Scotland, do you feel from your discussions with it that there is a recognition, not just at the more senior level but throughout the organisation, of the extent of the issues that exist in the force? Do you get that feeling from discussions with the Scottish Police Federation, as well as the other bodies to which you have referred?

Humza Yousaf: That is a tricky question. Without a shadow of a doubt, among the senior leaders I have talked to—the chief constable and the DCCs to whom I speak weekly—there is absolutely a recognition that they have to take action and appoint somebody independent and external to go through Police Scotland and its structures surrounding discrimination and so on. There is an acceptance that that has to be done. There is also an acceptance by the chief constable and senior leaders at DCC level, who I speak to regularly, that they have to listen to the lived experiences of their rank and file officers who are coming forward with concerns.

I cannot say with certainty that that is being understood in its fullest by everybody, because of course I do not speak to all the ranks in Police Scotland as regularly as I do with the senior leadership. As far as the Scottish Police Federation is concerned, the committee would have to speak to Callum Steele and David Hamilton about their feeling on those recommendations. When I have spoken to SEMPER Scotland, which represents ethnic minority officers, it has not been surprised by the recommendation.

Whatever part of the policing family someone belongs to, it is important that they listen to the lived experiences of the officers who have come forward. Anybody who has any doubt about the problem, or about the extent of the challenge, needs to focus on those who are speaking to their lived experience, and not be dismissive of that.

Liam McArthur: I move on to the issue of gross misconduct procedures and conduct processes. In your response, you have proposed that full consideration be given to a range of options to improve gross misconduct procedures and the transparency of conduct processes. Will you set out in a bit more detail what those options are and how you see them improving on what is currently in place?

Humza Yousaf: That is an important area, because public confidence is a key issue, and it would be foolish of me to suggest that the events that led up to the review would not have had an impact on public confidence. I try to think about it in a way that goes beyond focusing just on the policy level, although that is, of course, important. From an individual perspective, how would someone go about raising a complaint with Police Scotland? The chances are that someone would google “Police Scotland complaints” and then be directed to either Police Scotland's website or the Police Investigations and Review Commissioner's website as the top two websites.

That work is under way as one of a number of recommendations from Dame Elish. Recommendations 48 and 49 of the report related

to how Police Scotland should improve its website and enhance its public engagement and messaging. Police Scotland is in the process of updating its website to make clearer how a member of the public can make a complaint. PIRC is also doing that. It has been updating its website to make it clear that a member of the public can also make a complaint to the Scottish Public Services Ombudsman if they are not satisfied with PIRC's involvement.

Sometimes, when it comes to public confidence, we can get lost in some of the policy analysis. Again, that is important, but priority should be given now to some of the simpler things that will make a big difference to the public's knowledge of police complaints, and I am pleased that those are being done.

Liam McArthur: Interaction through improved websites can make a difference, but substantive changes have also been proposed. There is a recommendation to introduce independent legally qualified chairpersons, appointed by the Lord President, to consider gross misconduct hearings for all ranks. Do you agree with that proposal, and will you take it forward with the relevant bodies?

Humza Yousaf: Yes, we are supportive of what has been suggested on gross misconduct. I have spoken about different avenues that could be taken, and there might be avenues other than legislative change to realise some of these changes. However, in general, for gross misconduct—particularly where that involves senior officers—I can see that we will take forward the bulk of the recommendations from Dame Elish Angiolini, without the need for much discussion between partners. Obviously, where there is going to be legislation, consultation will be needed.

There are a few recommendations that I would like to delve into more deeply with operational partners, in order to understand that there will not be any unintended adverse consequences and that there would not be an impact on, say, the integrity of the process. However, nothing immediately rang an alarm bell for me. Therefore, on the gross misconduct recommendations, the long and short of it is that the bulk, if not all, of Dame Elish's recommendations will be pursued.

Liam McArthur: I want to be clear: the proposal for independent legally qualified chairpersons for gross misconduct hearings is not one of the issues that you want to explore further—in case there might be some unintended consequences or implications—and you see merit in that and will look to take it forward.

Humza Yousaf: That particular recommendation does not immediately set off any alarm bells, but I should say that, with all the recommendations that might require legislation,

we would carry out a consultation, just as we would with any piece of legislation. That would not suggest that we thought that there was no merit in those recommendations; it would simply be the case that we would like to get the views of the public on them.

The Convener: You stated that many of the recommendations will require a legislative solution and that it is your intention to bring forward a single bill. Please outline why you would use a single bill as the vehicle for that. Given the electoral process that is due to take place, have you given thought to the timeframe for that?

11:45

Humza Yousaf: Yes. There are some recommendations that would require legislation on which partners could agree almost immediately, so I understand why some people might then say, "For sure, you should bring those forward." However, as the committee knows too well, a lot of work goes into legislation. As well as that, a lot of parliamentary time would need to go into legislative scrutiny.

The legislative timetable has been hugely impacted by the pandemic during the past 12 months, and none of us knows what the next session of Parliament will look like and what bills will need to be caught up on. Therefore, introducing three or four bills in a piecemeal fashion makes little sense. That is because of all the work that is entailed for the Government in consulting and drafting the legislation and because the Parliament would have to scrutinise that legislation. It makes sense to have one legislative vehicle.

That said, we are also exploring whether we can realise some of the recommendations through areas on which the Government has committed to make legislation. For example, Dame Elish made a recommendation about legal assistance for families who are involved in fatal accident inquiries. You might know that the Minister for Community Safety has already committed to introducing a legal aid bill, dependent on the result of the elections. Therefore, we are considering whether there is broad agreement that that could fit in as part of that legal aid bill.

I am afraid that, for all the reasons to do with the pandemic that I have already spoken about, I could not commit. However, there is no dithering on these matters. We have structures in place, as my response details. We have discussed them in great detail. There will have to be a consultation on legislation—as there should be—and we want the public, staff associations and everybody else to engage on that.

Without undue delay, I would like that legislation to proceed. It is important that we get this right and do not rush.

The Convener: That is helpful. You touched on the complexity and number of relationships that there are, and you also told us that PIRC has updated its website to make it more accessible. Are there any recommendations in the report that you think will lead to the system becoming more understandable for the general public?

Humza Yousaf: What I said about the website is important. That is how most of the public get their information. In the age that we live in, that is the route that most people will take, so updating the website to a very easy-to-read format will be important.

Dame Elish made a number of other recommendations, for example on letters of rights. It is important that those who might interact with policing know their rights. The recommendations that Dame Elish made in both her preliminary report and her final report about where interactions with the public happen should be acted on at pace, where we can move quickly on those because they do not require legislation.

The Convener: I agree with you fully on that.

Fulton MacGregor (Coatbridge and Chryston) (SNP): Good morning. I want to ask about the statutory code of ethics for policing. You stated that positive consideration will be given to the recommendation that the code could be underpinned in statute. Do you think that that will be a straightforward proposal to implement, or will there be any difficulties with it?

Humza Yousaf: On first reading, it sounds like a simple proposal. However, it requires changes to legislation, and there is a process around that, which I have spoken about. Several of the recommendations are similar in that they look straightforward, but we have to carefully assess their impact, dependencies and potential unintended consequences.

Policing in Scotland is underpinned by statute. That is essential to its independence and efficacy, but it means that changes like this should not be made in isolation. However, I am generally very positive about that recommendation from Dame Elish—it is important. I just want to understand it, with partners, in greater detail, if I can.

Fulton MacGregor: Thanks for the clarity on that. With regard to serious incidents involving the police, you have agreed that a statutory duty should be brought forward in relation to police officers assisting during investigations, inquiries and formal proceedings. Can you elaborate on what the duty will entail? Given the gravity of such

incidents, should the duty be introduced at the earliest opportunity?

Humza Yousaf: Again, that is an exceptionally important issue, which is why we have agreed with the recommendations around it. However, they require primary legislation and therefore consultation, and just careful thought about the detail of a statutory requirement. I expect that there will be a wide range of views about how useful and proportionate it would be to introduce a statutory requirement. Staff associations will be crucial with regard to the recommendation. I am not speaking for any of those staff associations, but they will tell you that there can be pros and cons around taking that route.

I think that there will be wide agreement about the expectation of officers to assist, but the detail of exactly how we do that will be subject to discussion. As I said, I am positive about the recommendation, but how could I not be? It is important to have that co-operation and assistance from police officers during investigations, inquiries and, as you said, formal proceedings. I am positive about the recommendation, but we would just like to take some time to speak to staff associations and others about any unintended adverse consequences.

Fulton MacGregor: I have a final question on the same area. Dame Elish Angiolini has recommended that, where the terms of a complaint made allege a breach of article 3 of the European Convention on Human Rights by a police officer and, therefore, that a crime might have been committed, the Crown Office and Procurator Fiscal Service should instruct the PIRC to carry out an independent investigation rather than direct Police Scotland to investigate it. How easy do you think that it will be to implement that recommendation? Have you any ideas about how you would propose to do that?

Humza Yousaf: Again, I agree with the thrust of your question. Obviously, allegations of breaches of article 2 and article 3 are serious. We are talking about the right to life here and the prohibition of “inhuman or degrading treatment”—torture and so on—so they are the most serious allegations that somebody could make. Our response makes clear, though, that the matter is firmly one for the Lord Advocate, so I should be careful not to step into his remit, as he is the head of the prosecution system. The question of what would happen is therefore one for the Lord Advocate to answer.

However, there should be and will be careful consideration of what we do on the matter. There are significant organisational resource implications as well as important questions of rights to weigh up. We acknowledge that there will be resourcing implications for the PIRC if it does as

recommended. In fact, a number of the recommendations have resourcing implications. That is partly the reason why we have increased funding to the PIRC for 2021-22. Obviously, that is still subject to parliamentary approval, but it will allow the PIRC to increase staff resources to be able to undertake independent investigations of complaints that might allege breaches of article 3 or, indeed, article 5 by police officers. As I said, I am positive about that recommendation, but I am a bit reticent to get into the detail of it because it is firmly in the Lord Advocate's space.

Fulton MacGregor: That is an understandable response. Thank you.

The Convener: Our next series of questions is from Rhoda Grant.

Rhoda Grant: Turning to deaths in custody, Dame Elish's report recommended that cases should be dealt with in the same timescale and with the same urgency as homicide investigations. Do you agree, and what steps need to be taken to ensure that that happens?

Humza Yousaf: Yes, is the short answer. I agree in principle that a death in custody should not differ in priority or be treated any differently than had it occurred outside of a custodial setting. In short, therefore, I agree. You will of course understand that these are primarily matters for the PIRC under the direction of the Crown. We welcome the priority that has been placed on those investigations. They work to robust internal targets: 80 per cent of investigations to be reported on to the Crown in relation to such cases have to be done within three months.

As we set out in our joint response, there is clear commitment and willingness on all sides to minimise delays. However, I hope that there is also recognition that these cases can often be complex and sometimes require additional expert input. I noticed that Dame Elish does not call for any timescales to be put in statute in her recommendation, but we will of course continue to support the work of the PIRC and partners to prioritise those serious investigations. I agree with Rhoda Grant's premise that homicide investigations into such deaths should not be treated any differently to those into deaths that took place outside of a custodial setting.

Rhoda Grant: I will push you a little bit on that. What steps need to be taken to make sure that that happens? It does not happen currently.

Humza Yousaf: The internal timescales and targets that I referenced are pretty challenging for the PIRC to work towards.

As to what also has to happen, I do not want to pre-empt anything that could come out of the independent Sheku Bayoh inquiry that is being

taken forward by Lord Bracadale. However, regardless of that inquiry, progress has been made. The internal targets are important, as is close working between the PIRC, the Crown and Police Scotland.

For me, there has been a step change and priority has been put on deaths that happen in custody, which we, the Crown and others have been criticised for not progressing as quickly as possible in the past.

Rhoda Grant: Are there concrete changes that you would recommend at the moment that would make the difference?

Humza Yousaf: There are. For example, you referenced recommendation 73—if I get that right—from Dame Elish Angiolini. We will give more than full consideration to the recommendations that Dame Elish makes. As we have said in our response, we are very positive about the recommendations that we will take forward. Progress is being made, but it has not waited until Dame Elish's report. The Crown and the PIRC have themselves put forward very robust internal targets to make sure that such deaths are prioritised.

Rhoda Grant: I will turn to legal and financial support for families who are having to go through a fatal accident inquiry. You touched on that earlier and said that there is a forthcoming legal aid bill that could possibly hold the key to providing that kind of support. Is that what you believe should happen, and would it take into account the length of time that a fatal accident inquiry is likely to take? Legal aid is means tested, but would it require a different type of means testing to take into account that even those with a reasonable income might find it absolutely unaffordable to have legal representation for the whole of the inquiry?

Humza Yousaf: Again, those are matters for the Crown, but you are right to indicate that there have been delays to fatal accident inquiries that have caused distress to families. Once a fatal accident inquiry has begun, it will often not take as long as some of the fatal accident inquiries that we may have in mind, which have, unfortunately, taken months or years.

12:00

I can tell you that I am positive about the recommendation that you highlight. A number of families who have gone through the FAI process have told me that they felt that they had not been able to have their views represented adequately because of how the system is currently structured in relation to legal aid and financial support for families. I am positive about such a change, and it should be made.

In recognition of the importance of the issues that you have just raised, the Minister for Community Safety, Ash Denham, has assured Parliament that they will be part of the consultation on the legal aid bill. That means that we may be able to bring about the particular change that you highlight more quickly than any legislative change in respect of the review's recommendations.

The Convener: Our next series of questions comes from Shona Robison.

Shona Robison (Dundee City East) (SNP): Cabinet secretary, in your response to the review, you state:

"the need to clarify the definition of 'person serving with the police' in legislation",

as recommended by Dame Elish,

"is of fundamental importance and will feature strongly in consultation and engagement with partners and stakeholders on future legislative amendments."

Can you say a bit more about why you think that that is so important? Given its importance, could a legislative amendment in that regard be made sooner rather than later? What sort of timeframe are you considering for that?

Humza Yousaf: Again, I am positive about the change itself, but it probably falls into the bracket of things that, although they look quite simple on the face of it, involve a fair degree of complexity. It is quite possible—we are getting clarification on this—that it may also require changes to be made to reserved, as well as devolved, legislation.

The reasons why Dame Elish suggested that change are sound, and I do not think that anybody can argue with them. We know that investigations can potentially be disrupted as a result of officers leaving the service, and we have to address that in a way that is sensible and proportionate. I am very positive about the recommendation, but I do not think that it could be implemented without primary legislation.

Again, we are exploring those matters—as members would expect—through the ministerial group and the strategic oversight group. However, I do not think that there would be a way of making that change through secondary legislation or through a legislative amendment as such. It would require legislative change, and we would need to take the necessary time to do that. As I said, it might possibly even require changes to reserved legislation.

Shona Robison: As things stand, the PIRC does not have the power to investigate incidents that involve officers from other territorial forces operating in Scotland. Dame Elish has recommended that the Scottish Government should agree with the UK Government and the Northern Ireland Executive how primary legislation

could best be amended to give the PIRC such a power. Is that another example of where the appropriate legislative solution should be sought at the earliest opportunity? Do you intend to begin those discussions?

Humza Yousaf: Again, it would be for the PIRC to take forward those discussions in the absence of legislation. However, having spoken to partners, I know that they have taken a collaborative approach and pulled together a draft agreement that sets out the key principles, with actions for relevant organisations, to support a collaborative approach until any new legislation can be put in place. That joint working and discussion is very much happening, in the absence of legislation. We are committed to developing legislative proposals to address the matter. Again, the proposals will be subject to consultation. Given that the recommendation relates to counterparts in other jurisdictions, we are keen to seek their views.

To cut to the chase, it does not require legislation for progress to be made; progress has already been made on the matter. When it can be made through the PIRC producing draft agreements or memorandums of understanding, that work is pursued.

Shona Robison: I assume that the recommendations on widening the powers of the PIRC will require legislation. Can you say a bit more on the substance of the new powers and how you intend to give effect to the recommendations? Will you do that through the bill that you talked about earlier?

Humza Yousaf: Yes. In short, all the new recommended powers for the PIRC will require legislation. In our response to the report, I welcomed the fact that the PIRC has the skills and strengths to take on additional powers, which is a testament to the commissioner and the vigour that she has brought to the role. Although we recognise and accept the intention behind the proposed new powers, further discussion and consultation with partners will be required. For example, there are various recommendations on misconduct and the PIRC taking over the preliminary assessment process from the SPA, so it is essential that staff association views are sought and that there is discussion about how the system will work in practice.

I could talk about a number of the recommendations on the PIRC's powers. Some of the recommendations will require discussions with the United Kingdom Government. For example, recommendation 20 in the report is that the PIRC be a prescribed body in relation to whistleblowing. The PIRC is working through what the implications of that might be, but discussions with the UK Government might also be required.

We will move as quickly as we can, because I understand the impacts and effects of the recommendations. As I said to Margaret Mitchell, the Government's broad message, which reflects the joint response from me and the Crown, is that we absolutely agree that the powers of the PIRC need to be beefed up and that it needs to have greater resource, including staff resource, where necessary. If the PIRC needs to be structured differently, as Dame Elish has suggested—again, I am favourable to that recommendation—we have to understand the full implications of that.

The Convener: I want to ask about the views of rank-and-file officers. Police officers are in a privileged position of being able to deprive people of their liberty and legitimately use force. We have been discussing a complicated area in which a series of competing rights are at play. Some people will voice concerns that, once again, people who are remote from the front line are pontificating about very important issues. Can you give a categorical assurance that the individual human rights of serving police officers will not be eroded by anything that is decided at the end of this process?

Humza Yousaf: That is a very good question, and it is why there should and must be consultation, particularly on changes that will be underpinned in statute. There should, of course, be a public consultation, but there should also be discussions and consultation with staff associations in order to understand what the impacts might be.

Some individuals—even some parliamentarians—tell us to rush into implementing the recommendations. However, we should really understand the implications of that from a human rights perspective, because we are talking about somebody's livelihood. When a serious allegation of misconduct—potentially gross misconduct—is made, particularly if it references articles 2, 3 or 5, that is really serious. There has to be due process and we would have to work through that.

It is an excellent question and is one that we are aware of. The long and short of it is that we want to have the broadest possible consultation with the rank and file and the bodies that represent the rank and file.

Margaret Mitchell: I seek clarification on your response in relation to the publication of progress made against the recommendations. Can you confirm that, in the interests of transparency and accountability, the Scottish Government will list all the recommendations on its website for the public to see, that alongside each recommendation it will state whether the Scottish Government accepts or rejects the recommendation—and if it rejects a recommendation, why—and that the tracker will

show which agency was responsible for delivering that recommendation and at what stage it is at?

Humza Yousaf: In short, yes. I can guarantee that all that information will be part of a progress report. I do not suggest that we would have all the recommendations in a binary tick box list showing whether it is completed or not completed, and I accept that that is not what you are asking me. I think what you are asking for is a nuanced picture of whether a recommendation has been accepted and I have committed that if something is not accepted, we will give the reasons and rationale for that. You are also asking for it to show what partner is responsible, which is reasonable, and about what progress has been made, which, again, is reasonable. For example, as I have already mentioned, where legislation is required, there would have to be consultation, followed by a consultation analysis, drafting of legislation, introduction of that legislation and parliamentary scrutiny, so it would be helpful to be able to give details of that, and any progress report—you called it an action tracker—would include what stage the various recommendations are at.

Again, in short, all the information that you have asked for should be part, and will be part, of any progress report.

Margaret Mitchell: I wanted to make sure that that will be published on the Scottish Government website. I wanted to ask you that question because, as you know, when we did our post-legislative scrutiny of the police and fire services legislation, we realised that complaints was a huge issue, and that led to Dame Elish being asked to conduct the independent inquiry. That was in 2018 and we are now in 2021. Last November, there was no ministerial statement to emphasise how important and urgent it is that those recommendations are implemented, so I want to be absolutely clear that this does not go into the long grass and that the Scottish Government website will reflect all the recommendations and the progress that is being made on them and state whether they have been implemented and the reasons why any have not been, such as further legislation or secondary legislation being needed.

Humza Yousaf: Yes, again, if we did not publish it on the website, I am not sure where else we would bother publishing it, so, yes, it should be published—it will be published—on the Scottish Government website and, I would hope, on the partners' websites.

I do not want to keep harking back to the ministerial statement, but I am not sure that, after the preliminary report, there was a request made at the Parliamentary Bureau for a ministerial statement. If there was a request by partners, forgive me. I would have been more than happy to have made a statement, but my understanding in

2019 was that I was to appear in front of committee and answer questions, as I am doing today. I should say, without any hesitation and on the record, that if members of the Opposition would like a ministerial statement in the future on any aspect of the Dame Elish report or its entirety, I will make myself available to the chamber to do that at any time that we can fit that into the parliamentary timetable.

Margaret Mitchell: I can clarify that for you, cabinet secretary—it was not the interim statement that required a ministerial statement but the final report. It was surprising and disappointing that there was not immediately a ministerial statement. However, I think that we have covered the issue, convener, so I am happy to leave it there.

12:15

The Convener: Yes, I believe that you have covered that extensively. Thank you.

Cabinet secretary, I return to the issue of transparency and accessibility. Dame Elish made eight recommendations relating to that. In your response, you note that

“there is agreement by partners to make improvements to deliver on the intent of all recommendations”.

Can you elaborate on the work that has already been undertaken in that area and on what still requires to be done to give full effect to the relevant recommendations?

Should there be wider engagement beyond justice partners to ensure that people are fully aware of how to make a complaint? That might involve Scottish Women’s Aid and Victim Support Scotland, for instance.

Humza Yousaf: On your latter point, that almost inevitably must be done, and I think that it should be done: there should be broader engagement. We should not just leave it to recommendations where there are legislative requirements that there absolutely should be consultation.

I have spoken to more than just the policing partners I have referenced regarding the review. The matter has been raised by others proactively. Wider engagement with victims organisations should be essential. You have raised an important point there.

The partners—PIRC, the Crown Office, Police Scotland and the SPA—have committed to work to better publicise the possibility of reporting a complaint of a crime by a police officer directly to the criminal allegations against the police division—CAAP-D, as it is known. While it will be for the various partners to consider how to strengthen that wider engagement, I will certainly raise the matter with them in my next conversations with them. It is really important that

this is not just a conversation among the policing family—for want of a better phrase.

The Convener: That completes our questions and concludes our evidence session. Thank you for your full and frank evidence. I also thank your officials for attending and providing evidence to the sub-committee today.

That concludes the public part of today’s meeting. The sub-committee’s next meeting will be on Monday 1 March, when we will take evidence from Police Scotland on the impact of Brexit on policing in Scotland.

Any follow-up scrutiny issues will be dealt with by correspondence, which, as ever, will be published on our website.

As previously agreed, I now move the meeting into private session. I thank our broadcasting colleagues.

12:17

Meeting continued in private until 12:44.

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