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Criminal Justice Committee

Police (Ethics, Conduct and Scrutiny) (Scotland) Bill Stage 1 Report



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Criminal Justice Committee

To consider and report on matters relating to criminal justice falling within the responsibility of the Cabinet Secretary for Justice and Home Affairs, and functions of the Lord Advocate other than as head of the systems of criminal prosecution and investigation of deaths in Scotland.



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INTRODUCTION

Proposals in the Bill

1. The Police (Ethics, Conduct and Scrutiny) (Scotland) Bill (“the Bill”) was introduced on 6 June 2023 by the Scottish Government.
2. The Criminal Justice Committee was designated as the lead committee on the Bill.
3. The Bill makes provision about the ethical standards of the Police Service of Scotland, procedures for dealing with and the consequences of certain conduct by constables, and how policing in Scotland is scrutinised.
4. It is an entirely amending Bill, which seeks to amend the following two Acts, and two associated Conduct Regulations—
 - [the Police, Public Order and Criminal Justice \(Scotland\) Act 2006](#)
 - [the Police and Fire Reform \(Scotland\) Act 2012](#)
 - [the Police Service of Scotland \(Senior Officers\) \(Conduct\) Regulations 2013](#)
 - [the Police Service of Scotland \(Conduct\) Regulations 2014](#)
5. Part one of the Bill provides references to these Acts.
6. The Bill has 20 sections, organised under four subject headings, which propose changes in the following areas—
 - ethics of the police
 - police conduct
 - functions of the Police Investigations and Review Commissioner (PIRC)
 - governance of the PIRC.
7. According to the [Policy Memorandum](#) published by the Scottish Government, the overarching policy objective of the Bill is to—

“...ensure that there are robust, clear and transparent mechanisms in place for investigating complaints, allegations of misconduct, or other issues of concern in relation to the conduct of police officers in Scotland. The legislation will embed good practice, and underline the importance of maintaining the high standards expected of Scotland’s police officers.”

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

8. In 2018, the Scottish Government and the Lord Advocate jointly commissioned the Rt. Hon. Dame Elish Angiolini DBE QC, a former Lord Advocate, now Lady Angiolini, to carry out an independent Review of Complaints Handling, Investigations and Misconduct in Relation to Policing (“the Angiolini review”).
9. The Angiolini review’s remit was to—
 - consider the current law and practice in relation to complaints handling, investigations and misconduct issues, as set out in relevant primary and secondary legislation;
 - assess and report on the effectiveness of the current law and practice; and
 - make recommendations to the Cabinet Secretary for Justice and the Lord Advocate for improvements to ensure the system is fair, transparent, accountable and proportionate, in order to strengthen public confidence in policing in Scotland.
10. The review encompassed the investigation of criminal allegations against the police. It did not address the separate role of the Lord Advocate in investigating criminal complaints against the police or the role of His Majesty’s Inspectorate of Constabulary in Scotland (HMICS) in scrutinising the state, effectiveness and efficiency of both the Police Service of Scotland (Police Scotland) and the Scottish Police Authority (SPA).
11. The Angiolini review published a Preliminary Report in June 2019,ⁱ which made 30 recommendations. A Final Report was published in November 2020,ⁱⁱ which included a further 81 recommendations. The 111 recommendations in total included proposals for both legislative and non-legislative change.
12. On 5 February 2021, the Scottish Government and the Crown Office and Procurator Fiscal Service (COPFS) published their joint response to the Angiolini review.ⁱⁱⁱ The response indicated an intention to “accept the majority of your recommendations”. With regards to the legislative changes, the response stated an intention “to take forward as many of these in a single Bill with associated secondary legislation”.
13. Between June 2021 and May 2023, five thematic reports were published by the Scottish Government. These provided updates on the actions taken to implement the non-legislative recommendations made by the Angiolini review.^{[4]^{iv}}

i Preliminary Report: [Independent Review of Complaints Handling, Investigations and Misconduct Issues in Relation to Policing](#).

ii Final Report: [Independent Review of Complaints Handling, Investigations and Misconduct Issues in Relation to Policing](#).

iii [Scottish Government and Crown Office and Procurator Fiscal Service joint response to the Angiolini review](#).

14. At the Scottish Police Authority Board meeting of 25 May 2023, the then Chief Constable of Police Scotland, Sir Iain Livingstone QPM, [stated](#) that “Police Scotland is institutionally racist and discriminatory”. In October 2023, Chief Constable Jo Farrell [confirmed](#) that she agreed with that statement, saying that “Police Scotland is institutionally discriminatory”. The Chief Constable indicated her intention to drive forward “an anti-discriminatory agenda”.
15. As part of its Stage 1 scrutiny of the Bill, the Committee heard evidence about the impact of the implementation of the non-legislative recommendations on the police complaints system.

Approach to scrutiny

16. Our role was to consider the merits of each of the proposals, in turn and on their own terms, with reference to the specific wording of the Bill. This principle has underpinned the approach to our scrutiny.

The voices of those with experience of the police complaints system

17. It was important for us to hear from people with personal experience of the police complaints system. From those who had made complaints, as well as those who had complaints made about them. We appreciated the opportunity to hear personal testimonies from those with direct experience of the police complaints system.
18. We are grateful to Stephanie Bonner, Bill Johnstone, Magdalene Robertson, Ian Clarke and Margaret Gribbon for taking the time to give their insightful evidence.
19. We are also grateful to have met, privately and informally, with one individual who provided evidence anonymously. In this report, we refer to him as Witness A.^v
20. We issued a call for written views on the provisions in the Bill, between 26 September and 8 December 2023. The Committee received 45 written submissions.^{vi}
21. We wish to thank all those individuals and organisations who took the time to engage with us on the Bill and to provide their views. The evidence received has informed the Committee’s scrutiny of the Bill.
22. We would like to thank the Justice Committee clerks from the Northern Ireland Assembly for providing a [comprehensive briefing](#) on the reform to police complaints in Scotland and the experience and practice in a number of other jurisdictions internationally.

iv Scottish Government thematic reports: <https://www.gov.scot/policies/police/complaints-investigations-and-misconduct/>

v A transcript of the evidence session can be found [here](#).

vi [Criminal Justice Committee written submissions received in response to the call for views.](#)

Finance and Public Administration Committee

23. The Finance and Public Administration Committee has a role in scrutinising the financial provisions in the Bill.
24. That Committee received [4 submissions](#) in response to its call for views on the Bill's [Financial Memorandum](#).
25. The Finance and Public Administration Committee [wrote](#) to us, following its evidence sessions with the Scottish Government's Bill team and the Cabinet Secretary for Justice and Home Affairs.
26. In the letter, the Convener of the Finance Committee highlighted that the cost estimates in the Financial Memorandum required to be revised from £1,414,474 to £5,800,069. This is to reflect the increase in estimated costs provided by Police Scotland to the Finance and Public Administration Committee. The letter indicated that—

“The updated overall total revised costs are estimated to be £5,800,069. Updated total one-off costs are estimated to be £2,356,134, compared to £801,134 in the original FM, and updated total recurring costs are estimated to be £3,443,935, compared to £613,340 in the FM”.
27. A significant increase in the estimated costs is to enable the Chief Constable to meet the statutory duty to ensure that all constables and police staff have read and understood the statutory Code of ethics. This cost and other resourcing issues are dealt with in the relevant sections in our own report.
28. In her [letter to the Committee](#), the Cabinet Secretary for Justice and Home Affairs indicated that costs may increase further, saying that “at the point of revising the Financial Memorandum (FM) at stage 2 the Scottish Government will have regard to any pay settlements since the FM's original publication and ensure any increased staffing costs are reflected”.

29. The Committee notes the position outlined above and the importance to committees of having up-to-date costs for this Bill. Whilst we welcome the letter provided to this Committee by the Scottish Government setting out revised costs, the Committee still wishes to see a revised Financial Memorandum provided at stage 2 or sooner. In any case, the Committee requests that it is kept updated if there are further significant changes in the expected costs of this Bill.

Delegated Powers and Law Reform Committee

30. The Scottish Government prepared a [Delegated Powers Memorandum](#) . It describes the purpose of each of the subordinate legislation provisions in the Bill and outlines the reasons for seeking the proposed powers.
31. This Committee received a [report on the Bill](#) from the Delegated Powers and Law Reform (DPLR) Committee on the delegated powers in the Bill.

32. The DPLR Committee stated it was content with the delegated powers in the Bill.
33. We refer to the recommendations of the DPLR Committee in the relevant sections of our report.

Policy Memorandum

34. Under Standing Orders Rule 9.6.1, the lead committee scrutinising a Government Bill is required to consider and report on its Policy Memorandum.
35. The Committee does not have any specific points to raise on the Policy Memorandum itself. The Committee does, however, comment on the policy objectives of the Bill throughout the report.

Overall views on the Police (Ethics, Conduct and Scrutiny) (Scotland) Bill

36. The Committee appreciates that the measures in this Bill seek to introduce robust mechanisms to address the unacceptable conduct and behaviours of a minority of police officers and staff. We recognise that the vast majority of police officers and staff are dedicated, honest and hard working, and do an incredibly difficult job.
37. The evidence that we have received on the Bill demonstrates the need for the police complaints system to improve, both for those who make complaints, as well as for those who find themselves the subject of a complaint.
38. Many of the personal experiences that we heard about pre-date the Angiolini review, and the work done by policing bodies and others within the criminal justice system to implement the review's non-legislative recommendations, but not all.
39. We have found it difficult to reconcile the conflicting views we have heard about the police complaints and conduct systems and come to a definitive view on whether all the necessary improvements have been made, are in train, or whether there is much left to do. In particular, we are unsure whether the provisions in the Bill will sufficiently improve the experience of officers and members of the public.
40. We appreciate that this Bill cannot be viewed in isolation and is part of much wider work that has, and is, being done to improve the police complaints and conduct systems. However, our role is to scrutinise and come to a view on whether the provisions in the Bill meet the Scottish Government's intention that "there are robust, clear and transparent mechanisms in place for investigating complaints, allegations of misconduct, or other issues of concern in relation to the conduct of police officers in Scotland".
41. There are measures in the Bill which will improve the robustness, transparency and fairness of some of the processes. In particular, greater powers for various bodies, requirements on Police Scotland and the SPA to respond to PIRC's recommendations and provide the Commissioner with direct access to relevant information, as well as the commencement or conclusion of gross misconduct

proceedings, regardless of whether the person leaves the police service, and the introduction of Scottish advisory and barred lists.

42. However, the systems also need to be proportionate, efficient and effective. The evidence we received clearly indicates that the Bill, as introduced, will have little impact on the length of time taken to consider and conclude police complaints. This is a key issue for all those who are involved in the police complaints system, which remains largely unresolved.
43. Questions also remain about the robustness of the oversight mechanisms in place within policing and whether the culture within policing has changed. We heard evidence of unacceptable behaviours and practices within Police Scotland, which had devastating impacts on those involved. It is unclear how those behaviours and practices were not identified and addressed by the SPA in its oversight role. This does not provide us with the necessary reassurance that those who make complaints, or who are the subject of complaints, will not have the same experience today.

PARTS 2 AND 3: ETHICS OF THE POLICE

Proposals in the Bill


44. All of the provisions under this heading concern the ethics of the police and seek to amend the Police and Fire Reform (Scotland) Act 2012, (“2012 Act”) and associated conduct regulations.
45. Police Scotland currently has a non-statutory Code of ethics which sets out the standards of those who contribute to policing in Scotland. [The Code of ethics for Policing in Scotland](#) sits alongside the standards of professional behaviour, which are set out in schedule 1 of the conduct regulations for officers and senior officers. The standards of professional behaviour outline the expectations of police officers, whether on or off duty.
46. The Bill creates a duty on the Chief Constable of Police Scotland, with the assistance of the SPA, to prepare and review periodically a statutory Code of ethics. The Chief Constable will have a duty to consult upon the Code, publish it, and take all necessary steps to ensure that every constable and member of police staff have read and understood the Code. Constables are to make the following commitment to follow the Code in the constable’s declaration—
- “... that I will follow the Code of ethics for Policing in Scotland”.
47. The Bill introduces an individual duty of candour on constables by amending the conduct regulations for all officers to add the following duty of candour into the standards of professional behaviour—
- “Constables act with candour and are open and truthful in their dealings, without favour to their own interests or the interests of the Police Service.
- Constables attend interviews and assist and participate in proceedings (including investigations against constables) openly, promptly and professionally, in line with the expectations of a police constable”.
48. It also introduces an organisational duty of candour by adding the following policing principle to the 2012 Act “that the Police Service should be candid and co-operative in proceedings, including investigations against constables”.
49. The Bill also amends section 10 of the 2012 Act to include “candour” after “fairness” in the following constable’s declaration—
- “I, do solemnly, sincerely and truly declare and affirm that I will faithfully discharge the duties of the office of constable with fairness, integrity, diligence and impartiality, and that I will uphold fundamental human rights and accord equal respect to all people, according to law”.
50. The Policy Memorandum explains that these provisions “makes clear on a legislative basis the need for police officers to be open and transparent”.

Code of ethics

51. Section 2 of the Bill seeks to put Police Scotland’s existing Code of ethics (“the Code”) on a statutory footing. It confers a duty on the Chief Constable of Police Scotland, with the assistance of the SPA, to prepare the Code of ethics.
52. In doing so, the Chief Constable, also has a duty to consult and share a draft of the Code with persons specified in the Bill, publish it, take all steps necessary to ensure that all constables and police staff have read and understood the Code, and make provisions for reviewing it once every five years.

Impact

53. The Committee considered how the introduction of a statutory Code of ethics might impact on the behaviour of police officers and staff, and how it might improve public confidence in policing.
54. In the written and oral evidence received by the Committee most people agreed with the introduction of a statutory Code of ethics. A minority view was that Police Scotland’s non-statutory Code of ethics, as well as the conduct regulations, were sufficient. Some people expressed reservations about whether a statutory Code of ethics would have much, if any, impact on improving the police complaints system.
55. In her evidence to the Committee, the Rt. Hon. Lady Elish Angiolini KC, said that she was “particularly pleased about the inclusion of the Code of ethics and the duty of candour, as it is important that “right from the beginning of the process, the police service recruits the right people for the right reasons”. Lady Elish explained that “more than anything, the culture in policing is what keeps the police off the disciplinary aspect or produces a cynical, difficult environment for police officers”.¹
56. A statutory code is supported by the SPA and Police Scotland. Police Scotland indicated in its [written evidence](#) that it will provide “greater legal weight and, in practical terms, greater prominence in the minds of serving officers and staff”. The SPA confirmed in an email to the Committee that it “does not have its own Code of Ethics applicable to its own staff”. In response to a question about whether the current non-statutory Code of ethics applies to any SPA staff, the Authority stated that “Although the code isn’t explicit as to who it covers, the Code of Ethics was developed by Police Scotland, against its own values”.²
57. Craig Naylor, HMICS, told the Committee that a statutory code will set out what is expected of police officers and staff, so that “there is no dubiety”. The Chief Inspector added that—

 “The issue for me is how that is used in the conduct process at some point in the future. Whether that becomes regulation or whether it becomes practice within Police Scotland”.³
58. Chief Superintendent Rob Hay told the Committee that a statutory code “would be well supported” by the Association of Scottish Police Superintendents’ (ASPS) membership, as it is an opportunity to improve Police Scotland’s internal culture. He added that, there is also a requirement for the provision of equality, diversity and inclusion training and refresher training to all officers. Chief Superintendent Hay

said that—

” “The service has had to react to some of the cases that I know the committee will have heard about ... There is a greater level of examination of how we can change the culture of the organisation and move on by, for example, making that Code of ethics come to life within the organisation and highlighting the standards of professional behaviour”.⁴

59. Stephanie Griffin from the Equality and Human Rights Commission (EHRC) recommended that training be provided “to make officers aware of their obligations in relation to equalities and human rights”, and that the training is reviewed regularly. Ms Griffin said that this is to ensure that police officers have—

” “... knowledge of the current law around protected characteristics and what is and is not acceptable, the risk of ignoring or seeming to approve inappropriate behaviour and personal liability”.⁵

60. In its [written response](#) to the Finance and Public Administration Committee’s call for views on the Financial Memorandum, Police Scotland indicated that “A robust regime of ‘training’ is essential” for the Chief Constable to demonstrate statutory compliance with ensuring that all constables and police staff have read and understood the Code, and that a record is made and kept by the Chief Constable of the steps taken in relation to each constable and member of staff”.

61. Former police officer, Ian Clarke, told the Committee that the Bill should also codify exactly how an investigation is conducted, to ensure that police officers can have confidence that investigations are fair, thorough and less able to be influenced by the opinion of the investigating officer. Mr Clarke explained that this might avoid the experience that he had, when he was the subject of a complaint, saying that—

” “My experience of the investigation into the allegation against me was that reasonable lines of inquiry were not followed, exculpatory evidence was not disclosed, my case was not subject to any review, and the code [of practice, under section 164 of the Criminal Justice and Licensing (Scotland) Act 2010] had been breached on multiple occasions. My complaints to Police Scotland, COPFS and PIRC were all about that but, with the code being voluntary, it was easy to excuse those breaches”.⁶

62. In its [written evidence](#) to the Committee, the Scottish Police Federation (SPF), stated that officers are held accountable by the standard of professional behaviour in the conduct regulations and that the “formalisation of a Code of ethics will have no noticeable effect as 99.9% of all officers have already been abiding to these standards”.

63. David Malcolm told the Committee that Unison Police Staff Scotland Branch (“Unison”), was not initially consulted by the Scottish Government on police staff being included in the Code of ethics provisions, as that was not the original intention of the legislation. Mr Malcolm said that this provision, and any extension of the duty of candour to police staff will require Unison to take legal advice, as “The situation could lead to changes to contracts. Does that proposal infringe on employment rights?”. Mr Malcolm added that there may also be costs associated should police staff become a regulated workforce, saying “we would expect remuneration in

comparison with other public sectors for that”.⁷

Compliance and accountability

64. The [Explanatory Notes](#) that accompany the Bill confirm that there will not be any sanctions for officers or staff for not following the Code, it states that—
- “The Code will not have any particular legal effect. A failure to comply with the Code will not of itself give rise to grounds for any legal action. Neither will a breach necessarily constitute misconduct, which will continue to be measured by the standards of professional behaviour alone”.
65. The Committee heard differing views on whether a statutory Code is necessary and, if so, whether it should be a disciplinary code with sanctions for breaches or a set of values for Police Scotland’s officers and staff to aspire to.
66. Dr Genevieve Lennon, Scottish Institute of Policing Research (SIPR) told the Committee that whilst a statutory code “is symbolically important”, it would be strengthened by being a discipline code, which would require some reworking of the current code. Dr Lennon said that “Without making it a disciplinary code, I am not sure how much difference it will make day to day”.⁸
67. Dr Lennon added that it is important that data is gathered on whether the code is being adhered to, and that this role should be done by the SPA, saying that—
- ” ... the policing board should be responsible for gathering and disseminating a review of adherence to the Code of ethics, whether in terms of breaches or whatever else. That is comparable to the approach that is taken, for example, in Northern Ireland, where the Northern Ireland Policing Board is responsible for monitoring adherence to the Code of ethics”.⁹
68. Mr Bill Johnstone told the Committee there should be a sanction for breaching the Code of ethics, however, this would depend on breaches being reported. Mr Johnstone said “Absolutely, but the problem is how you decide when they have breached the Code of ethics when nobody will co-operate”.¹⁰
69. Magdalene Robertson told the Committee that there is no reason to create another code, saying that consideration should be given to “what would happen if there were a breach of the Code of ethics that the police are already sworn to”. Ms Robertson said—
- ” I cannot express how much I disagree with doing that. There should definitely be clear information on what the minimum is that it [Police Scotland] would suffer if it committed an offence ... or does not uphold its duties”.¹¹
70. Kate Wallace said that people who are supported by Victim Support Scotland expect the Code to be “transparent and publicly available” and that it “will hold people to account” when not adhered to. Ms Wallace added that training alone would not be sufficient to ensure compliance, and highlighted the following three things that need to be in place—

” “The first is about using it as a positive tool to promote improvements in the way that people behave and things are done. The other is to ensure that, when there are breaches, they are monitored, addressed and dealt with properly in every instance. Another aspect is public awareness of the code”.¹²

71. In its [written evidence](#) to the Committee, the Coalition for Racial Equalities and Rights (CRER), recommended a requirement for officers and staff to have to comply with the Code, saying that—

” “The Code of ethics should be given the same statutory status as the current standards of professional behaviour, in that failure to respond may result in a finding of misconduct. This could potentially be remedied by adding compliance with the Code of ethics to the standards of professional behaviour on a statutory basis. Compliance with the Code of ethics should be reported publicly on an annual basis”.

72. Witness A made a similar point in [evidence](#) to the Committee about the importance of accountability, as well as transparency—

” “The Code of ethics is a good idea, as everyone will know how to proceed in good faith. Police officers who are guilty of misconduct should be disciplined. It should be a transparent process, with the findings of misconduct proceedings published”.

73. Robin Johnston of the SPA, said that the purpose of the Code is to reflect the expected standards and values of officers and staff, and it is the conduct regulations which contain the professional standards that officers must adhere to. Mr Johnston thought this was the correct approach, saying—

” “To some extent, then, the Code of ethics is trying to achieve a different thing from the discipline code. Essentially, it is a guide that, if followed, will mean that officers can avoid ever having to enter the misconduct regime ... If properly implemented, the code can be used successfully to avoid anyone ever entering the conduct regime.”¹³

Responsibility for the Code of ethics

74. The Policy Memorandum states that, as the Code “relates to mostly operational matters, the Chief Constable will bear ultimate responsibility for it”.

75. The Angiolini review recommended that the Chief Constable and the SPA should have joint responsibility to prepare, consult on, publish and revise the Code—

“Police Scotland’s Code of ethics should be given a basis in statute. The Scottish Police Authority and the Chief Constable should have a duty jointly to prepare, consult widely on, and publish the Code of ethics, and have a power to revise the Code when necessary”.¹⁴

76. In its [written evidence](#) to the Committee, Amnesty International UK agreed with Lady Angiolini’s recommendation that the SPA and the Chief Constable should have

joint responsibility. Their view is that this approach will “offer greater public reassurance of independence and accountability”. It will also bring Police Scotland’s Code into line with the [Council of Europe Code of Police Ethics](#).

77. In its [written evidence](#) to the Committee, EHRC recommended that “The Bill should reflect the need to consider the public sector equality duty (PSED) in preparing a Code of ethics”. Stephanie Griffin told the Committee that the provision for consulting, reviewing and collecting data is “a huge part of meeting the requirements of the Scottish specific duties” of the Equality Act 2010.¹⁵

Consultation

78. The Bill inserts section 36B into the 2012 Act. It contains a list those who the Chief Constable should consult and share a draft of the Code with. This is set out in schedule 2ZA.
79. In its [written evidence](#) to the Committee, Amnesty International UK highlighted that the proposed statutory list of consultees does “not include any person or organisation external to policing bodies or the Scottish Government”. They recommend that it “should include the Scottish Human Rights Commission and relevant civil society organisations, including those representing the interests of people with lived experience of police interventions, including those with negative experiences of policing as identified in Dame Angiolini’s report”.
80. Dr Genevieve Lennon told the Committee that the Scottish Human Rights Commission and possibly the Equality and Human Rights Commission should be added as persons to be consulted in respect to the Code.¹⁶
81. **There is already a non-statutory Code of ethics for police officers and staff. The Committee welcomes the provisions in the Bill to introduce a statutory Code of ethics for officers and staff.**

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

83. **The Committee asks the Scottish Government to confirm whether the intention is that the statutory Code of ethics will apply to any SPA staff. For example, those who work in forensic services.**

84. **The Committee agrees that the Chief Constable should have responsibility to prepare, consult widely on, publish and revise the Code, with the assistance of the SPA.**

Duty of candour

85. It also places a duty on the SPA to promote the principle that the Police Service should be candid and co-operative in proceedings.

86. The Policy Memorandum describes the intention of these provisions, as follows:

“By embodying the duty of candour in a separate standard, it emphasises that the requirement to assist in investigations is not only the same as following any other duty or order, but is of a different, more serious and more fundamental nature”.

Impact

87. The Committee sought views on the impact of introducing a duty for individual police officers to be candid and co-operative, as well as an organisational duty for Police Scotland to be candid and co-operative in proceedings, including investigations against constables.

88. Margaret Gribbon told the Committee that she did not think that a statutory duty of candour or Code of ethics “will make a massive amount of difference in practice”. Ms Gribbon explained that—

” “My understanding is that the oath given by all police officers should be inherent in what they do day to day. If that is codified, I do not suppose that it will do any harm, but in the context of police complaints handling, I do not think that a duty of candour or a Code of ethics on their own will be enough, I am afraid”.¹⁷

89. Stephanie Bonner told the Committee that she did not believe that a statutory duty of candour, without any consequences for those who choose not to co-operate, will bring about the required changes to the behaviour of police officers. Mrs Bonner said that—

” “You are asking police officers who stand shoulder to shoulder with each other and may literally protect each other’s backs in dangerous situations to be truthful and co-operative, which could lead to their colleagues being disciplined and punished. They protect each other every working day, so they are most likely going to protect each other in these types of situations. Perhaps giving evidence under oath, with a perjury-type system in place, might make officers more willing to co-operate. There have to be consequences in place if officers do not co-operate or are proven to be untruthful.”¹⁸

90. Bill Johnstone agreed, telling the Committee that the only way the public will get complete candour from police officers “is if they are under oath and if, before that, they are presented with evidence to show that, if they go in there and just spin a story for their pals, they are gonnae go to jail”.¹⁹

91. Witness A held a similar view, [saying](#) that the duty of candour needs to be broad enough to be enforceable, there should be clarity about what it means, and consequences for not adhering to it.

92. Magdalene Robertson highlighted that police officers are already required to be

honest, telling the Committee that—

” “Why do we need another set of rules? If I were in the police or the PIRC and someone said, “Would you like to create another set of duties?”, I would say, “Yes, I will take that on and I will write as many lists as you want.” It does not matter; it makes no difference. Just scrap it and stick with the duty that we already have”.²⁰

93. Ian Clarke recommended that the duty of candour, as well as the Code of ethics, should apply more widely, and that there should be sanctions for failure to comply. Mr Clarke said—

” “The code and duty should not apply only to police officers who are under investigation; they should also apply to COPFS and the PIRC—the people doing the investigations. There is widespread mistrust within the police of the present misconduct system and of the behaviour of the PSD, the PIRC and CAAPD”.²¹

94. Kate Wallace told the Committee that Victim Support Scotland’s experience is that “officers are not forthcoming” if they have made a mistake, which “can lead to bigger problems”. Ms Wallace said, therefore, that a statutory duty of candour could “make a big difference”.²²

95. Dr Genevieve Lennon from SIPR said that the duty of candour should “be expanded to apply to retired officers and their conduct as officers”. Kate Wallace confirmed that Victim Support Scotland shared that view.²³

96. In her [written evidence](#), Professor Denise Martin stated that while the duty of candour is a starting point “it will not be successful unless other broader organisational culture shifts to allow staff to feel secure in being open and honest”, are in place. Professor Martin said that Police Scotland needs to “shift towards a more open and transparent organisation”, to enable staff to feel “safe to speak out and being open, without being ostracised by other peers and colleagues”.

97. The Committee heard evidence that a culture exists within Police Scotland, where police officers do not feel supported to admit they have made a mistake or to call out inappropriate behaviour.

98. Stephanie Bonner told the Committee that Police Scotland did not admit at the start that they had made errors during the investigation into her son’s disappearance and unexplained death, and did not apologise, saying that—

” “They could have been open and said, “We did this wrong at the very start. We’re so sorry, but we’re going to rectify this right now, at the very start and find things out”; I believe that they knew from the start that it was wrong”.²⁴

99. Magdalene Robertson said that enabling police officers to be able to admit a mistake and apologise is essential, saying that, “You have to allow the police to apologise at the offset, too. That might solve a lot of issues without having to go into full, big, complaints that go on and on”.²⁵

100. Witness A [told the Committee](#) that there is a refusal to admit when an officer has

done something wrong. He added that “There are good people within Police Scotland who should be able to make recommendations to improve the service”.

101. Margaret Gribbon said that, in her experience of representing former police officers, she has observed that “The difficulty is the culture and the psyche. It seems to be an instinctive defence mechanism”.²⁶
102. Nicky Page explained to the Committee that Police Scotland’s Policing Together programme aims “to create an environment where people can come forward and learn”. Ms Page said that changing the culture and providing wraparound support to officers has been the focus over the last three years, stating that—
- ” “A lot of the work that we are doing in policing together is to create an environment where people can notice things as they are going wrong and come forward before the situation escalates or behaviours escalate, because we then have a better opportunity to step in and assist people before things get worse”.²⁷
103. Deputy Chief Constable Speirs acknowledged that Police Scotland must change its culture and be a more open and transparent organisation. DCC Speirs explained that the Policing Together programme aims to prevent misconduct occurring, by providing leadership, equality, diversity and inclusion training. DCC Speirs added that—
- ” “We recognise that we have a lot of work to do, and some of the lived experiences that the committee has heard about will have reflected that ... Through the committees at the SPA, we will clearly be held to account. We have a range of performance measures against which we will try to assess whether we are making progress in that direction”.²⁸
104. HM Chief Inspector of Constabulary, Craig Naylor told the Committee that giving officers and staff a Code of ethics to rely upon and a duty of candour will mean that “when things are really difficult, they will know what they are entitled to do and what they are expected to do”. Mr Naylor added that HMICS is satisfied that the duty of candour provides clarity to officers, as well as the necessary protections. The Chief Inspector said that—
- ” “... where it is clear that an individual is a witness in a criminal matter, there should be a duty of candour that means that they should provide a statement as soon as is reasonably practical to the Police Investigation and Review Commissioner, or whoever is doing the investigation ... we also see the need to have protections of people who are under criminal investigation as either suspects or accused persons ... The legislation covers that well”.²⁹
105. Deputy Chief Constable Speirs highlighted that police officers do an incredibly difficult job and can be asked to provide information on really difficult circumstances. DCC Speirs said that in his experience “officers and staff, when required, co-operate fully”. He added that a statutory duty of candour will be helpful for “public inquiries, fatal accident inquiries and more interaction with the PIRC”.³⁰
106. The Cabinet Secretary for Justice and Home Affairs told the Committee that she is beginning to see culture change within Police Scotland. This is in part through the

acceptance and implementation of the Angiolini review’s non-legislative recommendations, as well as the oversight work of the Ministerial Group. The Cabinet Secretary said—

” “That is in part because of the work that Police Scotland does on diversity and inclusion and because of how the organisation is moving forward to actively tackle racism and misogyny. Monitoring, accountability and auditing processes have improved in the PIRC, Police Scotland and the Scottish Police Federation”.³¹

107. The Cabinet Secretary explained that the duty of candour is being introduced for police officers as “Those who hold the office of constable and the powers of that office have a higher duty than others to account for their actions and record what they did or saw in the execution of their duties”.³²
108. The Cabinet Secretary added that a statutory duty will make the expectations “clear around that culture of co-operation ... Raising the significance of that by locating it in legislation would allow case law in and around this area to grow”.³³
109. The Committee considered whether the duty of candour should apply to police officers who are off-duty, and whether it should be extended to police staff.

Applicable to off-duty officers

110. Robin Johnston explained that the Policy Memorandum records that most respondents to the Scottish Government’s consultation on the Bill were in favour of the duty applying to off-duty officers. However, as the Bill does not contain any explicit provision addressing this issue, the SPA is seeking clarity, “so that there is no dubiety about it in practice”.³⁴
111. Deputy Chief Constable Speirs said that Police Scotland’s view is that “Care needs to be taken in considering whether the duty of candour extends to circumstances that happen off duty”.³⁵
112. The Cabinet Secretary confirmed to the Committee that the duty of candour “does apply to off-duty officers”.³⁶

Applicable to police staff

113. The Policy Memorandum provides the following explanation for the Bill not including an individual duty of candour for police staff, stating that—

“... those staff are not afforded the same powers and responsibilities as officers, and so it could be argued that they should not be subject to the same degree of scrutiny. However, in applying an organisational duty of candour through the Policing Principles, police staff can be covered under this wider umbrella”.
114. David Malcolm, Unison, told the Committee that as police staff “are contractual

employees of the Scottish Police Authority”, any proposal to extend the duty of candour to them would require an amendment to their contracts and “remuneration in comparison with other public sectors”. Mr Malcolm confirmed that Police Scotland’s staff do not wish the duty to extend to them, and have expressed concerns that they do not have the right to silence in conduct proceedings. Mr Malcom said—

” “Our members tell us that they are being treated like police officers, but they are not police officers. They do not swear an oath of office. Why should they be considered in the same way?”.³⁷

115. In its [written evidence](#), PIRC recommended extending an individual duty of candour to police custody and security officers, as they have direct responsibility for persons in custody, stating that—

“... consideration should be given to extending any specific statutory duty of candour to those members of police staff who undertake operational roles and have statutory powers and duties such as Police Custody and Security Officers [‘PCSOs’]. While PCSOs are staff and, therefore, not subject to the various conduct regulations, Section 28(5) of the 2012 Act does make them subject to certain duties in the same way as police officers (criminal of neglect of duty)”.

116. The Commissioner, Ms Macleod, told the Committee that she does not share the Scottish Government’s view that police staff “do not have the same powers and responsibilities as police officers”.³⁸

117. Robin Johnston confirmed that the SPA agrees with PIRC that the duty of candour should apply to police custody and security officers, as “police staff in those capacities are much more likely to be witnesses to the kinds of incident that the PIRC is investigating”, and this “might impact on the effectiveness of investigations in the future”.³⁹

118. Nicky Page said that whilst Police Scotland’s front-line staff are more likely to be involved in investigations, to ensure public trust and confidence, it is her view that the duty of candour should apply to all police staff. Ms Page said that—

” “My position is that that should be a duty on all who work in policing, and it should be for the PIRC and others to say, “It is you who can assist.”⁴⁰

119. HM Chief Inspector of Constabulary, Craig Naylor, said that his personal view is that the duty of candour should apply to all staff, and that it should not be linked to additional pay. Mr Naylor told the Committee that—

” “My personal view is that that should apply to everyone: every member of staff and police officer in Scotland should have that duty of candour, with the appropriate protections around criminal matters ... To ask for more money to have a duty of candour rubs the wrong way for me, as a public servant”.⁴¹

120. Kate Wallace told the Committee that Victim Support Scotland would like to see the duty of candour extended to police staff.⁴²

121. The Cabinet Secretary highlighted to the Committee that police staff are employed on a different basis to police constables, who “are office-holders who have very particular rights and responsibilities and they are in a heightened position of trust”. The Cabinet Secretary confirmed that there is in place “an ethics and values framework that applies to police staff”.⁴³
122. The Cabinet Secretary added that “Where there is an organisational duty, it applies to everybody collectively”.⁴⁴
123. Caroline Kubala, Scottish Government, stated that police staff have a “code of conduct, which is part of their terms and conditions of employment”, which sits outside legislation. Ms Kubala clarified that—
- ” “It is possible that some duties with regard to conduct could be added by the SPA through the terms and conditions of staff, but that would have to be discussed further and it would have to decide whether it thought that that was appropriate, fair and proportionate”.⁴⁵
124. In [correspondence](#) to the Committee following the evidence session, the Cabinet Secretary for Justice and Home Affairs clarified that “The SPA and Chief Constable should carry out their own consideration as to whether candour should be reflected in the staff code”.

Duty of co-operation

125. The Committee heard conflicting evidence about whether the Bill should be amended to introduce a duty of co-operation for police officers.
126. The Angiolini review concluded that the co-operation of police officers should be put beyond doubt in primary legislation, recommending that—
- “The Scottish Government should consult on a statutory duty of co-operation to be included in both sets, or any future combined set, of conduct regulations as follows: “Constables have a duty to assist during investigations, inquiries and formal proceedings, participating openly, promptly and professionally in line with the expectations of a police officer when identified as a witness”.⁴⁶
127. The Policy Memorandum, which accompanies the Bill, provides the following explanation for the Scottish Government’s decision not to include a duty of co-operation in the Bill—
- “The Scottish Government when analysing the recommendations concluded that, while the Bill would set out what was required by way of co-operation, it is a facet of the duty of candour and not a freestanding duty”.
128. In its [written evidence](#) to the Committee, HMICS stated that the organisational duty of candour puts beyond doubt that police officers and staff will co-operate with investigations, saying that—
- “HMICS concurs with Lady Elish Angiolini’s contention that whilst there is currently an assumption of co-operation, that this requires to be put beyond

doubt. This element of the Bill is further strengthened by the inclusion of an organisational duty of candour”.

129. In PIRC’s [written evidence](#), the Commissioner takes the opposite view, saying that “In PIRC’s view, the duty of candour does not satisfy the requirement for a duty of cooperation”. The Commissioner stated that a duty of co-operation should be introduced for police officers and staff with witness status, saying that—

“A legislative duty of co-operation for police officers - and police staff - would compel police officers to provide operational statements and attend within a reasonable timescale for interview. Taking into account the right not to self-incriminate, the duty should apply only to officers and staff whose status has already been confirmed as that of a witness”.

130. Michelle Macleod, Police Investigations and Review Commissioner (“the Commissioner”), explained to the Committee that the duty to co-operate in interviews and investigations into constables and police staff should be statutory, as there is not a remedy in the circumstances where a police officer or member of staff who has been confirmed as a witness, refuses to provide a statement. The Commissioner said that—

” “The issue is that, although it is a policing principle and there is therefore an obligation on officers to provide a statement, we do not know what the sanction would be if an officer chose not to do so in certain circumstances”.⁴⁷

131. In the circumstances that an officer’s status changed during the investigation from a witness to a suspect, Ms Macleod confirmed that this is kept under review, and that should court proceedings commence “issues of admissibility and fairness are taken into account, because of the rights of the officer or members of the public under article 6 of the European convention on human rights”.⁴⁸

132. Lady Elish Angiolini told the Committee that she recommended a statutory duty of co-operation to “ensure that such evidence is preserved and is the evidence of each individual— not what might impliedly be the groupthink”. Lady Angiolini questioned what would happen if an officer did not co-operate and provide a statement, saying that “would have to be dealt with by the chief constable”.⁴⁹

133. Justin Farrell from the Criminal Allegations Against the Police Division in the Crown Office (CAAPD), told the Committee that he would be in favour of a duty of co-operation if there was a way to make it compliant with the European Convention on Human Rights Article 6, the right to a fair trial. Mr Farrell explained that this would be difficult to achieve, as—

” “Once you get into compelling someone to attend for an interview and attach potentially punitive consequences for not doing so, you could get into difficulties, if they incriminate themselves, in using that product in any event”.⁵⁰

134. Chief Superintendent Rob Hay indicated that the view of the ASPS members is that a statutory duty of candour “will largely achieve” the intention of police officer co-operation. He added that a concern is how the duty would impact on an officer’s right to a fair trial and their right “not to self-incriminate in criminal inquiries”. Chief Superintendent Hay questioned the fairness of introducing a process where an

officer who chose “to exercise their right to silence”, is then “sanctioned for failing to adhere to a duty of candour”.⁵¹

135. David Kennedy told the Committee that the SPF does not believe that a duty of candour is necessary for police officers, as they provide a statement “99.9 per cent of the time”. Mr Kennedy explained that an officer will make that decision based on their status—

” “An officer has to understand whether they are a suspect, an accused or a witness. Once they know their status, they will provide the necessary statement. When that status is clarified, that is exactly what happens”.⁵²

136. Robin Johnston, SPA, suggested that the legislation could adopt the same approach to the standards of professional behaviour in England and Wales, by making it clear that “the duty of candour applies only to police witnesses, rather than to anyone who has been suspected of a crime or misconduct”.⁵³
137. Robin Johnston told the Committee that the SPA’s view is that “the bill probably does not go far enough in providing a proper remedy in the very small number of cases, if any, where police officers do not adhere to that duty of candour”. Mr Johnston added that there “are ways and means” of including in the Bill a power to compel police officers to attend interview and to provide information to PIRC once identified as a witness, as there are similar powers in place in England, Wales and the Republic of Ireland.⁵⁴
138. In its [written evidence](#), Police Scotland noted that the provision in place in England and Wales “only imposes the duty of candour (and co-operation) when the officer has been identified as a witness and not when identified as a suspect”. Police Scotland indicates that “This is to reflect that a police officer enjoys the right against self-incrimination, both in conduct and criminal proceedings”, and state that further consideration is required on “the extent to which the said proposed new Duty can be properly reconciled with officers’ existing legal entitlements – of which the right against self-incrimination is clearly one carrying strong protection”.
139. The standards of professional behaviour in [The Police \(Conduct\) Regulations 2020](#) for police officers in England and Wales includes the following responsibility—
- “Police officers have a responsibility to give appropriate cooperation during investigations, inquiries and formal proceedings, participating openly and professionally in line with the expectations of a police officer when identified as a witness”.
140. The Policy Memorandum states that the duty of candour does not infringe on the right to silence or privilege against self-incrimination, explaining that—
- “As is clear from the way in which the duty is expressed and implemented, it is subject to the specific protections of the general law, which includes the right to silence and the privilege against self-incrimination”.
141. **The Committee supports the aims and objectives of the introduction of the provisions in the ethics of policing sections of the Bill. In particular, to improve the culture within policing and public confidence in its ability to deal effectively with police complaints. However, the Committee considers that**

their impact could be largely symbolic and is unable to assess what tangible impact they will have.

142. **The introduction of an individual duty of candour for police officers, as well as the organisational duty of candour are important mechanisms for demonstrating the values and culture of Police Scotland to its officers and staff, and to members of the public. The Committee notes that these changes are part of wider measures that have been introduced to change the culture within policing.**
143. **The Committee welcomes the inclusion of the individual duty of candour for police officers in the conduct regulations, as this means that disciplinary proceedings can be implemented against those officers who do not comply with the duty.**
144. **The Committee notes the evidence received that the proposed statutory duty of candour will not necessarily ensure that police officers and staff who are identified as witnesses will provide full statements to PIRC.**

145. **The Committee appreciates that the overwhelming majority of police officers already adhere to the principles set out in the proposed duty of candour. For the small minority of officers who do not, Police Scotland should pursue the relevant disciplinary proceedings when it is demonstrated that officers are not adhering to the new duty.**

146. **The Committee asks the Scottish Government to clarify the reasons for not introducing a duty of co-operation in the Bill and to respond to the Angiolini review recommendation and PIRC's evidence to the Committee supporting the introduction of a duty of co-operation.**

147. **The Committee is content that the introduction of an individual duty of candour for police officers and an organisational duty of candour, does not affect the right to silence and the privilege against self-incrimination of anyone working for Police Scotland who is suspected of a crime.**

148. **The Committee asks the Scottish Government to clarify whether the individual duty of candour will only apply to police officers, and that the organisational duty of candour will only apply to police staff, who have witness status, rather than to anyone working for Police Scotland who is suspected of a crime or misconduct.**

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

150. **The Committee asks the Scottish Government to consider whether SPA staff who undertake relevant policing roles, such as those who work in forensic services, should also be covered by the duty of candour.**

151. **The Bill introduces an individual duty of candour on constables by adding the duty to the standards of professional behaviour within the conduct regulations for all officers. The standards of professional behaviour apply to officers whether they are on or off duty. The Committee asks Police Scotland to clarify its reasons for asking that care be taken when extending the duty of candour to circumstances that happen off duty.**

Financial costs - sections 2 and 3

152. The Financial Memorandum, that accompanied the Bill, estimated that the costs for Police Scotland to implement the ethics of the police provisions “are likely to be below £10,000” and therefore could be “absorbed” by Police Scotland.

153. In its [written response](#) to the Finance and Public Administration Committee’s call for views on the Financial Memorandum, Police Scotland stated that the costs attributed to Police Scotland are “significantly underestimated”.

154. This is in large part due to the statutory responsibility on the Chief Constable to ‘secure that all such steps are taken as the Chief Constable considers necessary to ensure that all constables and police staff have read and understood it (the Code of ethics); and that a record is made and kept by the Chief Constable of the steps taken in relation to each constable and member of staff’.

155. Police Scotland confirmed in its submission that this will require funding of a “robust regime of training”, to ensure officers and staff understand the police ethics provisions, as currently there is no mandatory training covering the standards of professional behaviour.

156. Police Scotland estimated that there will be one-off costs of £1,517,000, and £758,500 recurring costs, for training. There is also a recurring cost of £35,000 to maintain training of support specialists. In her evidence to the Finance and Public Administration Committee, the Cabinet Secretary confirmed that she accepted these revised costs as accurate.

157. In response to a question about why the Scottish Government did not publish a revised Financial Memorandum at the time of Police Scotland providing the revised costs, the Cabinet Secretary explained to the Committee that—

” “I do not just accept what people tell me something is going to cost; I expect my officials to robustly examine it. In March of this year, we got to the point at which the Government accepted the revised costs. The financial memorandum was the best estimate based on the information that I and my officials had at the time”.⁵⁵

PARTS 4 TO 8: POLICE CONDUCT

Proposals in the Bill

158. All of the provisions under this heading are concerned with procedures for dealing with, and the consequences of, certain conduct on behalf of police constables. They amend the 2012 Act.
159. Section 4 addresses a perceived gap in existing legislation by clarifying that liability for any unlawful conduct on the part of the Chief Constable sits with the SPA.
160. Section 5 gives PIRC a greater role in relation to misconduct proceedings for senior officers. The Bill widens the functions that can be conferred on PIRC in secondary legislation, such as the statutory preliminary assessment function, consideration of whether the allegation is vexatious or malicious, a statutory function to present cases at a senior officer misconduct hearing and the power to recommend suspension of a senior officer.
161. Section 6 enables gross misconduct proceedings to continue or commence in respect of persons who have ceased to be constables. The procedures are to apply where a preliminary assessment of the misconduct allegation finds that the conduct of the person while they were a constable would, if proved, amount to gross misconduct. The Policy Memorandum, which accompanies the Bill, indicates that PIRC is to carry out the preliminary assessment. The Bill also includes a power to state a period of time from the date of an officer resigning or retiring, after which no steps or only certain steps in the procedures can be applied unless additional criteria are met. The Policy Memorandum indicates that the criteria will include a proportionality test carried out by PIRC. The details are to be set out in secondary legislation.
162. Section 7 enables the SPA to establish and maintain a Scottish police advisory list and Scottish police barred list and sets out the criteria for entering a police officer on to the lists.
163. Section 8 allows an independent panel to determine a conduct case against a senior officer, instead of the SPA. It gives an additional right to senior officers to appeal to the Police Appeals Tribunal (PAT)^{vii} against any decision to take disciplinary action short of dismissal or demotion against them in pursuance of conduct.

Liability of the Scottish Police Authority for unlawful conduct of the chief constable

164. The Bill provides that the SPA is liable in respect of any unlawful conduct on the

vii A constable may appeal to a Police Appeals Tribunal against any decision to dismiss the constable, or to demote the constable in rank. Schedule 3 of the Police and Fire Reform (Scotland) Act 2012 contains provisions for the constitution and membership of the PAT..

part of the Chief Constable, or in the event that the office of Chief Constable is empty, is liable for whoever is acting as Chief Constable, in the carrying out (or purported carrying out) of their functions. This is in the same manner as an employer is liable in respect of any unlawful conduct on the part of an employee in the course of employment. The intention of this provision is to protect the victims of unlawful conduct by the Chief Constable.

165. The Policy Memorandum, that accompanies the Bill, explains that these provisions intend to address a “perceived gap in existing legislation”. This change “aligns the treatment of unlawful conduct by the Chief Constable with the existing treatment of unlawful conduct by other police officers”.
166. There was general agreement to this proposed change by those who provided evidence to the Committee.
167. In its [written evidence](#), CRER recommended that any report on the misconduct of the Chief Constable be published. This is to ensure parity with senior officers, should the Bill introduce public gross misconduct hearings.
168. **The Committee welcomes clarification that the SPA is liable for any unlawful conduct on the part of the Chief Constable.**

169. **The Committee asks the Scottish Government to clarify whether the intention is that any report on the misconduct of the Chief Constable will be published.**

Procedures for misconduct: functions of the Police Investigations and Review Commissioner

170. PIRC is independent from the police. One of its key roles is to provide independent and impartial oversight of investigations. PIRC independently investigates incidents involving policing bodies in Scotland. These include incidents such as serious injuries or death following police contact, allegations of criminality by on-duty officers, and senior officer misconduct cases.
171. Section 5 of the Bill amends the 2012 Act to widen the functions that can be conferred on PIRC in secondary legislation, to include any aspect of the regulatory disciplinary procedures for senior officers, and not just misconduct investigations.
172. The Policy Memorandum explains that the regulatory changes enabled by the Bill in relation to senior officer conduct, will include PIRC having responsibility for “the assessment, investigation and presentation of cases”.
173. Misconduct investigations into the conduct of officers below the rank of Assistant Chief Constable will continue to be undertaken by Police Scotland.
174. The Angiolini review recommended that the preliminary assessment of a misconduct allegation about a senior officer “should be transferred from the SPA to PIRC in order to enhance independent scrutiny of allegations, remove any

perception of familiarity, avoid any duplication of functions or associated delay, and give greater clarity around the process”.⁵⁶

The current police misconduct procedures

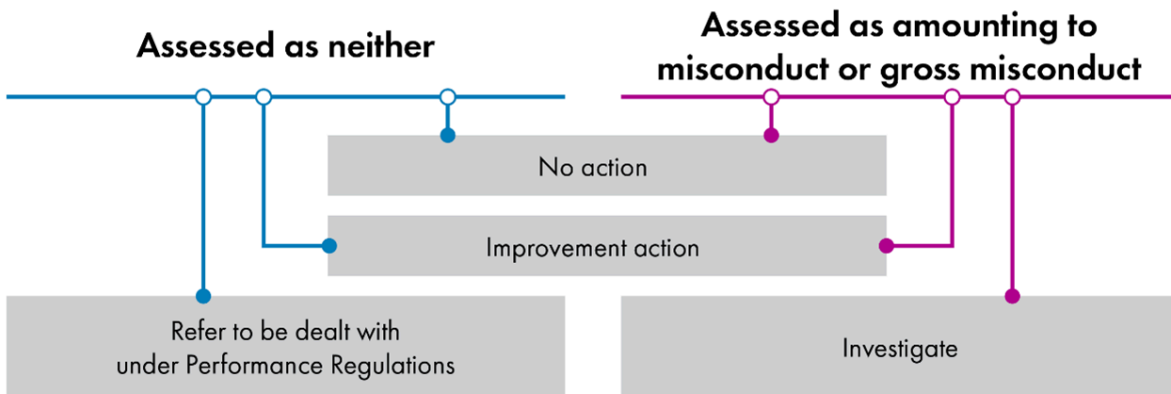
175. In scrutinising the proposed changes to the police misconduct procedures, the Committee considered the current procedures for misconduct and gross misconduct allegations against a senior officer, Assistant Chief Constable (ACC) or above, and police officers below that rank. The images below show these processes, and the current roles of the different organisations within them.

176. Image 1 provides an overview of the preliminary assessment stage of the police misconduct process, whilst Image 2 shows the process and the organisations involved in the investigation stage.

Image 1: An overview of the preliminary assessment stage of the police misconduct process

Preliminary assessment of allegation

Assessing whether, if proved, the allegation amounts to misconduct, gross misconduct or neither. This assessment is made by Police Scotland for non-senior officers (below the rank of Assistant Chief Constable), and by the Scottish Police Authority for senior officers.



Source: Scottish Parliament Information Centre (SPICe)

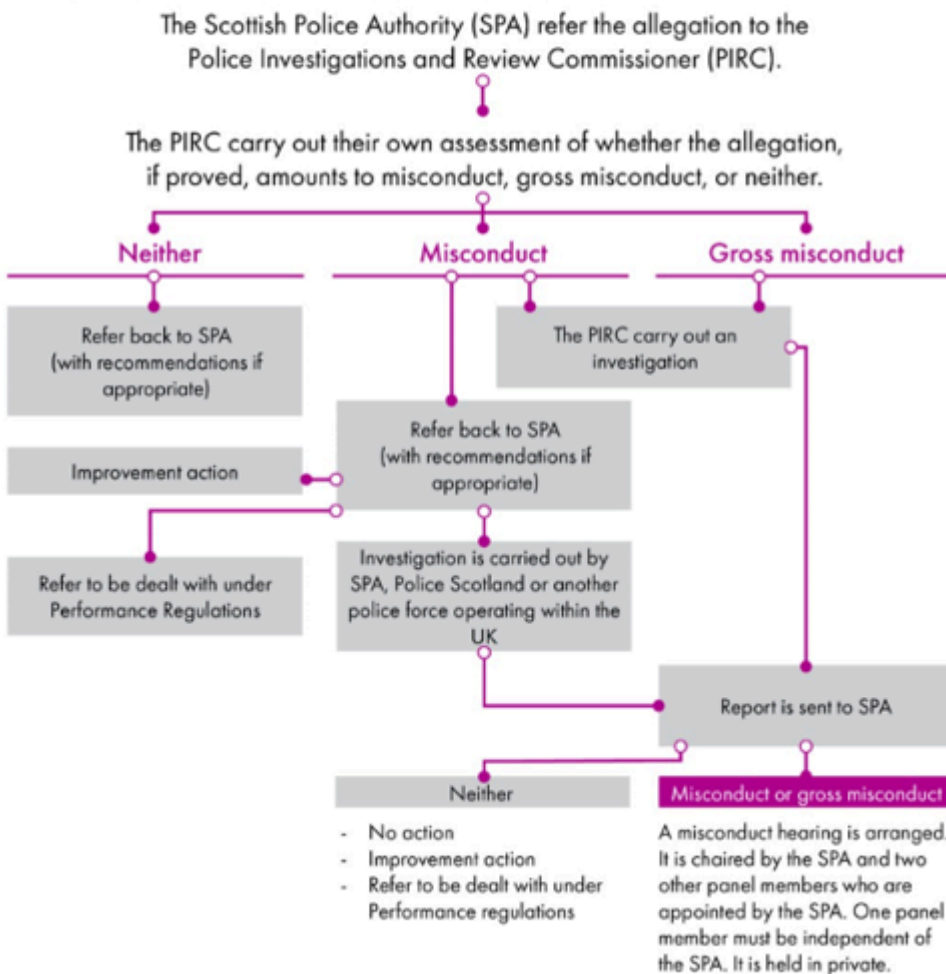
Image 2: An overview of the investigation stage of the police misconduct process

Investigation Stage

For ranks below Assistant Chief Constable



For senior officers - Assistant Chief Constable and above



Source: Scottish Parliament Information Centre (SPICe)

177. In scrutinising the proposed changes to the police conduct and complaints processes, the Committee considered the current roles of Police Scotland, the SPA, PIRC, and CAAPD and how the introduction of the provisions in the Bill would change them.
178. The tables below provide details of the current roles of each organisation and their proposed new roles in the complaints and conduct processes.

Police Scotland

| | Current Role | New Role |
|-------------------|--|--|
| Complaints | Receive all complaints for officers below the rank of Assistant Chief Constable (ACC) | NO CHANGE |
| | Assess and investigate all complaints for officers below the rank of ACC | NO CHANGE |
| Conduct | Carry out the preliminary assessment for all misconduct allegations for officers below the rank of ACC (to assess whether, if proved, the allegation amounts to misconduct, gross misconduct or neither) | Expands this role to include former officers. The intention would be that this would be up to a period of 12 months after the person ceased to be an officer. (PIRC have requested clarity on whether they or Police Scotland have to carry this assessment out during this period.) |
| | Carry out the investigation into misconduct allegations for all officers below the rank of ACC | NO CHANGE |
| | Carry out misconduct meetings or hearings for all officers below the rank of ACC | NO CHANGE |

Scottish Police Authority

| | Current Role | New Role |
|-------------------|---|--|
| Complaints | Receive all complaints for senior officers (ACC and above) | NO CHANGE |
| | Receive all complaints for SPA and forensics staff | NO CHANGE |
| Conduct | Carry out an assessment of whether, if proved, the allegation would amount to misconduct, gross misconduct or neither for senior officers | The ability to extend the functions of the PIRC will be introduced by the Bill which would allow this role to be moved to the PIRC. |
| | Present the case at a misconduct hearing for senior officers | The ability to extend the functions of the PIRC will be introduced by the Bill which would allow this role to be moved to the PIRC. |
| | Chair the misconduct hearing and appoint the other two panel members (one panel member must be independent of the SPA) | The Bill enables regulations to be amended to provide for an independent panel to determine any conduct case against a senior officer. |

Police Investigations and Review Commissioner

| | Current Role | New Role |
|-------------------|---|--|
| Complaints | Assess and investigate (if required) all on-duty allegations of assault (Article 3 breaches) and unlawful detention (Article 5 breaches) against police officers and staff | NO CHANGE |
| | Carry out complaint handling reviews | Expands this role to enable PIRC to carry this out without a request from the complainer or the appropriate authority. Call-in and take over the consideration of complaints themselves. |
| | Make recommendations following a complaint handling review | Expands this role so that these must be responded to by Police Scotland or the SPA setting out what they plan to do, have done, or explaining why nothing has been done. (This will also apply where they call in complaints or carry out an audit of the handling of arrangements for the information provided in whistleblowing complaints). |
| | Investigate deaths involving police officers | Expands this role to include officers from other UK forces carrying out policing functions in Scotland. |
| | Investigate serious incidents (includes serious injuries in police custody and the use of firearms by police officers) | Expands this role to include officers from other UK forces carrying out policing functions in Scotland. |
| | Investigate allegations of criminality by on-duty police officers and staff | The Bill clarifies that this includes any circumstances involving someone who is, or has been, a person serving with the police. Expands this role to include officers from other UK forces carrying out policing functions in Scotland. |
| | | Carry out audit of the handling of Police Scotland and the SPA's arrangements for the information provided in whistleblowing complaints. |
| Conduct | Carry out a further assessment of conduct allegations for senior officers to see if the allegation, if proved, would amount to misconduct, gross misconduct or neither (following the SPA's preliminary assessment) | Carry out the preliminary assessment of conduct allegations for senior officers (instead of the SPA). Expands this role to cover former officers. The intention would be that this would be up to a period of 12 months after the person ceased to be an officer. |
| | | Carry out a preliminary assessment of allegations received for former officers where the allegation is received more than 12 months after the person ceased to be an officer. PIRC will determine if it is reasonable and proportionate to pursue proceedings after this period. |
| | Investigate misconduct allegations for senior officers | NO CHANGE The Bill will introduce an enabling power that would allow the Scottish Government to confer further functions on to the PIRC – including the presentation of cases at senior officer misconduct hearings. |

CAAPD

| | Current Role | New Role |
|-------------------|--|---|
| Complaints | Responsible for the investigation of criminal complaints against on-duty police officers | Clarifies that this includes allegations which include any circumstances involving someone who is, or has been, a person serving with the police. Expands this role to include officers from other UK forces carrying out policing functions in Scotland. |
| Conduct | No involvement in conduct proceedings | NO CHANGE |

179. The Committee also considered the types of conduct by police officers that would be found to be misconduct, gross misconduct or a performance issue.

180. Gross misconduct is defined in Regulation 2 of the Police Service of Scotland (Conduct) Regulations 2014 and the Police Service of Scotland (Senior Officers) (Conduct) Regulations 2013 as:

“a breach of the Standards of Professional Behaviour so serious that demotion in rank or dismissal may be justified.”

181. Examples of the outcomes of gross misconduct cases are shared publicly by Police Scotland through the SPA’s Complaints and Conduct Committee. The most recent report can be accessed [here](#).

182. Police Scotland provided the Committee with some examples of behaviour that may fall within the categories of gross misconduct, misconduct and performance. Police Scotland clarified that each case is assessed based on the circumstances of the case and there is no prescribed list.

Gross Misconduct (Off Duty):

- Allegations of serious criminality whether convicted or not (e.g. domestic / sexual offending)
- Criminal conviction for serious matter (e.g. domestic offending, sexual offending, assault, drink driving, disorder offence with significant aggravator)
- Controlled drug misuse

Gross Misconduct (On Duty):

- Sexualised behaviour towards others (sexualised comments / behaviours)
- Criminal Conviction for serious matter (e.g. neglect of duty, perjury, assault, theft)
- Discriminatory behaviour (including inappropriate social media messaging)

Misconduct (Off Duty):

- Criminal conviction for less serious matter (e.g. low level disorder with mitigation)
- Inappropriate use of social media (not involving discriminatory behaviour)
- Disorderly behaviour not leading to criminal charge

Misconduct (On Duty):

- Absence without genuine reason
- Oppressive type behaviour towards colleagues
- Driving offence
- Inappropriate use of language

Performance:

- Repeated low level incivility / failure to take direction

- Failure to adequately manage workload / investigate reports.

Views on the proposals in the Bill

183. In the evidence received by the Committee there was general agreement to remove this function from the SPA. However, questions were raised about whether the provisions are necessary and, if so, whether PIRC is sufficiently independent to ensure there is public confidence in it taking on these new responsibilities. A key area of concern for some is the number of former police officers who are employed by PIRC and their roles within the organisation.

184. Chief Superintendent Rob Hay told the Committee that ASPS does not think that legislation is required to deal with the issues of gross misconduct in the police service. He indicated that if the current regulations were applied, issues of performance would be dealt with more effectively. Chief Superintendent Hay acknowledged that—

” “There is a question about what is sufficient to satisfy the Parliament and our oversight bodies that we are taking the necessary steps and about what is sufficient to embed public trust and confidence”.⁵⁷

185. David Kennedy said that the SPF shares this view, telling the Committee that the legislation and regulations that are currently in place “must be adopted properly”. Mr Kennedy explained that a lot of low-level performance issues could be dealt with at source, without requiring the view of the Crown Office about whether or not a crime has been committed, adding that many officers leave the service “not because they have been found guilty of misconduct but because what the system puts them through absolutely destroys them”.⁵⁸

186. Lady Elish Angiolini told the Committee that she does not agree with this view, saying that whilst she accepted “there should not be an automatic reference to discipline” for management and welfare issues, there is a need for a legislative framework. Lady Angiolini said that—

” “I do not think that having a voluntary version is good enough for an organisation that has so much power. It is really important that there is a structure to that”.⁵⁹

Preliminary assessment and investigation of senior officer misconduct allegations

187. The Committee heard conflicting views on the proposal to transfer responsibility for the preliminary assessment and investigation of allegations of misconduct against senior officers from the SPA to PIRC.

188. The Commissioner, Michelle Macleod, told the Committee that she had received confirmation that for the section 5 misconduct provisions: “our role will remain in relation only to senior officers”, and stated that she was content for PIRC to take on the preliminary assessment and investigation roles for senior officers.⁶⁰

189. The Angiolini review heard concerns from members of the public about the degree of impartiality of PIRC’s investigations as, at that time, former police officers made

up 51% of PIRC’s investigators. Lady Angiolini recommended that—

“Following the retirement of former police officers PIRC policy should be to replace them with non-police officers. The PIRC should also adopt a similar policy to the IOPC’s in England and Wales by recruiting non-police officers when recruiting to the most senior posts”.⁶¹

190. The most recent data available to the Committee indicates that the number of former police officers working for PIRC has reduced to 39, or 41% of its staffing complement.⁶²
191. In [correspondence](#) to the Committee, the Cabinet Secretary for Justice and Home Affairs confirmed that “The PIRC have told the Scottish Government that only 13% of PIRC staff involved in the complaint review side have a policing background”.
192. In its [written evidence](#), the CRER said that the number of former officers employed by PIRC, “means that it would be difficult to trust the impartiality of the organisation” They recommended that the “PIRC be reformed to ensure its independence from Police Scotland and SPA”.
193. Dr Genevieve Lennon, SIPR, told the Committee that it is “the norm internationally, that police officers are excluded from senior positions”, in police complaints bodies. Dr Lennon explained that—
- ” “By law, none of the current complaints bodies across the UK—the Independent Office for Police Conduct in England or Wales, the Northern Ireland ombudsman or indeed PIRC—can have serving officers in such roles. They have lists of people who are excluded from the most senior leadership, and they include senior officers. That is standard now”.⁶³
194. Magdalene Robertson told the Committee that she was concerned that those within PIRC who were investigating her complaints might have relationships with the senior officers under investigation. Ms Robertson’s request seeking clarification on this issue from PIRC was denied. She said that—
- ” “I would like clear freedom of information, given before the PIRC even does the investigation. It should provide a statement of fact that PIRC officers either know or do not know the officers who have been complained about”.⁶⁴
195. HM Chief Inspector of Constabulary, Craig Naylor told the Committee that HMICS is aware of difficulties with PIRC, such as “deference being paid to senior officers during various investigations” and “declaring conflicts of interests”. The Chief Inspector said that “people who have worked together should be prevented from investigating one another. That is key”. He suggested that something “be built in about declaring conflicts and preventing people who have worked together, or for someone else, from being involved in such an investigation”.⁶⁵
196. In its [written evidence](#) to the Committee, CRER questioned whether PIRC is the right organisation to carry out a preliminary assessment of allegations against senior officers, as the Policy Memorandum acknowledges that—

“While this alone does not meet the policy aim to enhance independent scrutiny and remove any perception of familiarity in the conduct process, it will

allow Scottish Ministers to confer functions on the PIRC in relation to procedures for misconduct, which should in turn lead to a fairer and more transparent process”.

197. The Cabinet Secretary confirmed to the Committee that PIRC has adapted its recruiting practices, and there is “an acceptance that broader diversity among the people coming into the organisation is needed and that policing is not the only area in which people develop experience and skills in investigation”.⁶⁶
198. **The Committee welcomes the new powers set out in the Bill for secondary legislation to enable PIRC to carry out the initial assessment and investigation of misconduct allegations about senior officers, as this will enhance independent scrutiny of allegations and remove any perception of familiarity between senior officers and the SPA.**
199. **The Committee recommends that PIRC should continue its policy to reduce the reliance on the employment of former police officers and introduce procedures to ensure that people who have worked together previously must declare an interest and are prevented from investigating one another.**

Should the PIRC assess and investigate misconduct allegations against all officers?

200. The Committee considered whether responsibility for the assessment and investigation of all misconduct allegations should be undertaken by PIRC, or whether this should remain the responsibility of Police Scotland’s professional standards department for non-senior officers.
201. In [correspondence](#) to the Committee, the Cabinet Secretary for Justice and Home Affairs clarified that sections 5, 6 and 8 of the Bill make various changes to the disciplinary procedures, and outlined the legislative basis for dealing with conduct issues, as follows—
- “Conduct issues can arise in a number of ways, in the same way as in any workplace. Section 52 makes provision about regulations relating to disciplinary procedures. Disciplinary procedures can be in respect of the *conduct* of officers or their performance. In respect of performance, the Bill makes no changes”.
202. Margaret Gribbon told the Committee that broadening the powers of PIRC in relation to senior officers only, will not make “a massive amount of difference in practice”. Ms Gribbon explained that—
- ” “... we need to consider that the change will actually affect only senior officers, ranked ACC and above, so we are talking about a dozen or so officers—I think that there are 14 or 15. As far as I understand it, we have 16,500 full-time equivalent police officers in Scotland. Section 5 will not affect the overwhelming majority of complaints against the police. The Angiolini review said that the majority of complaints against the police were against officers at the rank of constable”.⁶⁷

203. Chief Superintendent Rob Hay, ASPS, told the Committee that in his experience “the level of investigation by the police has at times been disproportionately high in terms of how stringent those investigations have been”. He stated that “just because someone does not agree with an outcome or it has been a difficult process for them, that does not necessarily mean that it is inherently unfair”.⁶⁸
204. Chief Superintendent Hay explained that a culture where the focus is on disciplining officers and not on reflecting on performance issues, means there is “no wider organisational responsibility about how we trained and equipped them to do the job that we asked them to do”. He added that—
- ” “The other part is culture. It is difficult for a legislature to legislate for culture, but that is at least 50 per cent of the challenge that we have here”.⁶⁹
205. David Kennedy of the Scottish Police Federation agreed, saying that Police Scotland’s professional standards department focuses on discipline and conduct, rather than on improving performance. Mr Kennedy said that the SPF accepts that the misconduct process “can fall short when a police officer complains about the police”, adding that the performance regulations should be used to change behaviour—
- ” “However, when the service looks at an issue with an officer, the problem that we have is that it investigates it as if it were a crime, which it should not do. It then investigates it at the top level and not at the bottom level”.⁷⁰
206. David Malcolm, Unison, confirmed that police staff have a similar experience, saying that: “Police officers investigate staff as though it is a criminal investigation. They are trained to do that”. Mr Malcolm said that Unison would prefer that investigations into staff are carried out by staff and would welcome a review of the relevant policies and procedures.⁷¹
207. In response to these concerns, Deputy Chief Constable Speirs told the Committee that, as the conduct regulations are regulated if Police Scotland was misusing them or adopting them in the wrong way “we would be subject to frequent challenge”. DCC Speirs confirmed that “there is no evidence to support” that Police Scotland does not use the performance regulations.⁷²
208. Katharina Kasper, SPA, highlighted that if this change was introduced, “one of the potential unintended consequences would be extended timeframes” for investigations. Ms Kasper told the Committee that Police Scotland conducted 368 preliminary conduct assessments last year, and if PIRC was to take on this role for allegations against all officers, it “would be quite a substantial increase in the number of cases going to the PIRC”.⁷³
209. In her evidence to the Committee, the Commissioner, Michelle Macleod confirmed that she was not in favour of PIRC considering conduct matters about all officers, saying that—

” “I am comfortable with the PIRC dealing with conduct matters relating to senior officers, but our role is to look at the criminality aspect and to drive up standards in complaints handling. We do not have a general role in relation to conduct proceedings for rank-and-file officers—that is a matter for the Scottish Police Authority and Police Scotland, and it is for them to decide how to improve the situation”.⁷⁴

210. **The Committee considers the proposal that PIRC should carry out the initial assessment and investigation of allegations of misconduct about senior officers only, Assistant Chief Constable and above, as proportionate.**
211. **The Committee notes Lady Angiolini’s recommendation that the case for all complaints being received by an independent police complaints body such as PIRC should be kept under review by Scottish Ministers and if, after a reasonable passage of time, the changes recommended in the Angiolini review report have not secured appropriate improvement, then they should consider afresh whether they want to move to a Police Ombudsman for Northern Ireland model where all complaints go to that independent body in the first instance.**

Should the PIRC assess and investigate complaints about officers?

212. The Committee heard that it is vital that the preliminary assessment of complaints against officers is dealt with quickly, fairly and transparently, to ensure that members of the public and police officers have confidence in the process.
213. Some witnesses, in particular those who told the Committee about their personal experiences of the police complaints system, recommended that Police Scotland should no longer carry out the preliminary assessment and investigation of complaints against its non-senior officers.
214. Stephanie Bonner told the Committee that there “is a lack of willingness” for the police to investigate themselves, saying that—
- ” “As long as the police are being asked to investigate themselves, I do not believe that there is any way to avoid that. The sooner that the PIRC or other more independent and objective bodies become involved, the better”.⁷⁵
215. Bill Johnstone said that, in his experience, in-house investigations do not work. He described the internal Police Scotland complaints system as “not fit for purpose” and “fatally flawed from the outset”. Mr Johnstone recommended the removal of the police service from the initial stages entirely and for the complainant to be able to provide a statement directly to PIRC, especially for fairly serious complaints. He said that—
- ” “The problem with professional standards is that it is manned by the guys who they used to be pals with when the guys were serving cops—or by guys who are still cops ... For as long as you want to leave them in there, you will be doing this all over again”.⁷⁶

216. Margaret Gribbon told the Committee that “complaints against police officers of all ranks should be assessed, investigated and determined entirely independently of the police”. Ms Gribbon referred to the experience of the women police officers that she had represented, who were subject to sexism and misogyny by fellow police officers, and which Police Scotland were reluctant to investigate. She said that non-senior police officers—

” “... do not have the option of any form of independent scrutiny, unless they have the time and resources to take a complaint to an employment tribunal. Often, that is a last resort. For them, the PIRC is not a resort, so they are pretty much stuck with the professional standards department and the police investigating the police”.⁷⁷

217. Ms Gribbon highlighted that her suggested approach could reduce the resource implications due to the number of complaints in general, as well as those going to employment tribunals. Ms Gribbon added “Such a reform would make sense from a public policy perspective”.⁷⁸

218. Witness A [expressed a similar view](#) to the Committee, stating the need for independent assessment, a transparent approach and “independent oversight” for complaints about all officers.

219. Dr Genevieve Lennon, SIPR, said that the Garda Síochána Ombudsman Commission in the Republic of Ireland is to expand its remit to cover all complaints. Dr Lennon said—

“It adheres better to international standards and it probably reflects better the public perception, which is that the PIRC is the independent complaints body, as opposed to being primarily a review body”.⁷⁹

220. Magdalene Robertson told the Committee that “transparency is key” to effectively handling police complaints. Ms Robertson said that, in her experience, there was a lack of transparency about the information documented, the categorisation of her complaints, and the actions being taken by the police service in response to them. Ms Robertson added “there should be transparency and the person who is making the complaint should have equal input into that”.⁸⁰

221. Those with experience of making complaints about police officers, and the experience of an officer who was the subject of a complaint, told the Committee about a lack of confidence in Police Scotland’s professional standards department having responsibility for the assessment and investigation of complaints. Most of these complaints were made prior to the Angiolini review. Their testimonies provide a powerful argument for change. A selection of that evidence is provided below.

Selected views from those with experience of complaints assessed and investigated by Police Scotland’s professional standards department

Stephanie Bonner - “Police Scotland took me on a journey and I experienced many of its tactics first hand. I can only describe that journey as a hellish merry-go-round of distractions, deceit, deception and manipulation—all done in the hope that I would be overcome by grief and simply go away.”

Witness A - “Police Scotland should have investigated whether the officers were guilty of misconduct and highlighted the outcome of that investigation in their report. Instead, they looked after their own officers”.

Magdalene Robertson - “I would suggest that the system needs to be changed completely. To talk about the things that do not work would be to talk about everything. It should be scrapped, reset and replaced with something completely new that is based on different morals and a different group”.

Ian Clarke - “My own limited experience of PSD investigations during my service was that they were distrustful and aggressive and assumed guilt. I could not face that ... I spent large periods off sick with situational clinical depression and anxiety, and I was on antidepressants during the final two years of my service. It terminated my career.”

Margaret Gribbon - “Rhona Malone’s complaints of sexism and misogyny were just not dealt with. The case was bold and overt, in that she had made a complaint that she had been victimised for raising concerns about a sexist email. The PSD tried to dissuade her from raising the complaint and, when she would not be dissuaded, it confirmed to her in writing that the complaint would be investigated. It was never investigated, however”.

222. Lady Elish Angiolini told the Committee that her review looked at the way that Police Scotland investigates complaints against police officers. Lady Angiolini confirmed that she was “impressed by the people who conduct the investigations. If anything, they are very energetic about the investigations into their colleagues”. Lady Angiolini suggested that “random checks are quite an effective way of deterring people from doing things that they should not”.⁸¹
223. Robin Johnston told the Committee that the SPA had not considered whether PIRC should assess and investigate complaints against all officers, as it was not one of the Angiolini review’s recommendations. Mr Johnston stated that this was not recommended by Lady Angiolini, as “She did not see the value in all complaints, from the most minor to the most serious, being dealt with independently”. He added that should PIRC be given this role, it would need to be based on evidence that leaving that function with Police Scotland “is causing particular issues”.⁸²
224. Katharina Kasper explained that the SPA is of the view that Police Scotland’s introduction of a national model where complaints handling has been removed from local policing to a central department in PSD “creates a centre of excellence and an extra layer of independence”. Ms Kasper added that—
- ” “... the system overall is moving in the right direction in terms of making it easier for people to complain ... I would like to think that someone coming to the process now might have a different experience”.⁸³
225. Deputy Chief Constable Alan Speirs told the Committee that Police Scotland had removed complaint handling from local divisions and local officers “where perhaps they check their own homework”, to the professional standards department, which handles all complaints across Scotland. DCC Speirs said this enables a consistent

approach and a focus on training needs to improve the experiences of those who come into the system.⁸⁴

226. Deputy Chief Constable Speirs said that the PSD is best placed to assess and investigate complaints about police officers, as the staff are trained to do so and committed to trying to be as efficient and effective as they can be. DCC Speirs acknowledged that he “would like us to be quicker in handling complaints”, but highlighted that from—

” “... an average of 7,000 a year—only 2 per cent of complainers go to the PIRC to say that they are dissatisfied, and that, in about 70 per cent of those instances, the PIRC will say that we handled the complaint pretty well”.⁸⁵

227. Chief Superintendent Helen Harrison added that the PSD provides feedback to divisions on organisational learning and the trends and patterns that come out of complaints, it also puts measures in place to bring a swifter conclusion to complaints and is trying to be more transparent about its processes.⁸⁶

228. HM Chief Inspector of Constabulary, Craig Naylor, told the Committee that the majority of the 6,500 complaints that the police get a year are for low-level issues and are dealt with by frontline resolution (FLR). Mr Naylor confirmed that an explanation and an apology tended to resolve these issues.⁸⁷

229. The Cabinet Secretary confirmed that the work done by Police Scotland to implement the non-legislative recommendations from the Angiolini review had improved transparency, accessibility and the handling of complaints. The Cabinet Secretary added that—

” “The changes that have taken place in the police standards department, which is much more focused on early engagement and early resolution, and Police Scotland’s work on front-line resolution are particularly important”.⁸⁸

230. In response to a question about whether the PSD should retain responsibility for assessing and investigating complaints about non-senior officers, the Cabinet Secretary stated that it is “entirely proportionate and reasonable for any front-line operational organisation, where appropriate, to be the first port of call to deal with complaints and issues”. Ms Constance added that—

” “The creation of the national complaints assessment and resolution unit also facilitates the requirement for all front-line resolutions processes to be dealt with by the professional standards department”.⁸⁹

231. The Angiolini review received “strong evidence from other organisations and sectors of a real benefit to the public in knowing that there was one single point where they should take all complaints about an organisation or its people”. In response to this evidence, Lady Angiolini said in her final report that—

” “I take the view that complaints about the most senior officers should not go to the Scottish Police Authority or to Police Scotland but to the PIRC, and I also believe that it is right that in cases of criminal allegations against police officers the public should be able to make those allegations direct to the independent prosecutor”.⁹⁰

232. The Criminal Allegations Against the Police Division in the Crown Office (CAAPD) is responsible for the investigation of criminal complaints against on-duty police officers.
233. The Committee heard evidence of significant delays in CAAPD coming to a view on whether to prosecute officers. The HM Inspectorate of Prosecution in Scotland's (HMIPS) report *Inspection of the management by COPFS of criminal allegations against the police* found that "Reporting compliance rates of 90% and above against a 12-week target has given a misleading impression of the time taken to decide whether proceedings should be initiated in cases involving criminal allegations against the police". The report indicated that this was due to a process within CAAPD where targets were frozen and then reset.
234. Justin Farrell of CAAPD confirmed to the Committee that this is no longer the practice within CAAPD, and that they are now progressing work a lot more quickly. Mr Farrell said that "The target is that we progress and conclude 75 per cent of the cases that are reported to us within six months. We have been comfortably meeting that target since it was introduced in 2021".⁹¹
235. In its [written evidence](#) to the Committee, the SPA confirmed that its responsibilities include "Receiving, investigating, and responding to "relevant" complaints about the Authority, its staff, and senior officers of Police Scotland". These complaints are "broadly, non-criminal complaints by members of the public", and subject to different legislative provisions and procedures from misconduct allegations. The SPA's view is that implementing the Angiolini review's recommendations would simplify arrangements, explaining that—
- ” “If Lady Angiolini's proposals are not reflected in the Bill, the PIRC will have responsibility for handling "misconduct allegations" against senior officers; and the Authority will have responsibility for handling relevant complaints about senior officers. Such an arrangement is likely to be confusing to the public”.
236. Fiona McQueen, vice chair of the SPA Board, told the Committee that the Authority considers the Bill not implementing this recommendation, a "missed opportunity". Robin Johnston explained that the SPA's view is that the inclusion of this power for PIRC "would be in the public interest, because it would enhance independence in the handling of the most serious complaints about police officers in Scotland."⁹²
237. In its [written evidence](#), PIRC indicated that it is not in favour of providing an initial assessment of all complaints relating to senior officers, and stated that this role should remain with the SPA. The Commissioner questioned how this responsibility sits with PIRC's oversight role, saying that—
- ” “The 2006 Act provides that PIRC can examine the manner in which a relevant complaint has been dealt by a person serving with the police. PIRC has no jurisdiction in dealing with police complaints in the first instance. Thus, if the complainant is unhappy with the outcome of complaint which organisation will provide oversight of PIRC?”.
238. In its [written evidence](#), PIRC also confirmed that following a recommendation in the Angiolini review, on 4 October 2021, "COPFS issued a standing instruction to Police Scotland and PIRC that all on-duty allegations of assault made against police

officers and police staff should be referred to PIRC for independent assessment and / or investigation". The Commissioner confirmed that the implementation of this instruction "has had a significant impact on the workload of PIRC investigations department".

239. **The Committee agrees with the SPA that there should be a role for PIRC to receive and carry out an initial assessment of all complaints about senior officers, Assistant Chief Constable and above, and not only those relating to misconduct.**
240. **Whilst the Committee heard evidence from witnesses recommending that PIRC should carry out the initial assessment and investigation of all complaints about officers of any rank, we view that approach as premature, disproportionate and resource intensive.**
241. **The Committee agrees that Police Scotland's Professional Standards Department (PSD) should retain responsibility to carry out the initial assessment and investigation of complaints about officers below the rank of Assistant Chief Constable.**

242. **The Committee recommends that the SPA keeps under review the PSD's role in carrying out the initial assessment and investigation of allegations of misconduct and complaints about non-senior officers. To inform this review, the SPA's Complaints and Conduct Committee should seek the views of those who have made complaints and those who have been the subject of a complaint. This recommendation reflects the evidence we heard from those with personal experiences of the police complaints system. The new approach where a centralised professional standards department considers all complaints is a welcome development. However, it is essential for public confidence that this new approach is subject to robust and transparent oversight and governance, to ensure that those who make complaints do not have the same experiences as the people who spoke to us.**

243. **The Committee welcomes plans by HMICS to examine how misconduct is dealt with by Police Scotland, whilst also looking at preventative approaches and how Police Scotland seek to ensure appropriate behaviours by all members of staff. The Committee looks forward to considering the outcome of that work.**

Should a new independent organisation be established to consider police complaints?

244. Some of those who provided evidence to the Committee expressed a preference for a new independent organisation to assess and investigate complaints about police officers.
245. Mr Bill Johnstone told the Committee that there should be an independent organisation to investigate complaints, "something like an ombudsman". Mr Johnstone said that PIRC did not meet his expectations, stating that—

- ” “... you would have to have a completely independent body to look at the complaints, regardless of how serious they are. That body would decide whether a matter is criminal and what the head of complaint is”.⁹³
246. Magdalene Robertson held a similar view, telling the Committee that she did not believe that PIRC could be reformed to address her concerns. Ms Robertson recommended that only those from a non-policing background should assess and carry out investigations into complaints about the police, saying that—
- ” “The PIRC is made up of ex-police, so it has the same culture and mindset. We cannot go ahead with making improvements and investigating police with the same mindset that has created those issues”.⁹⁴
247. Margaret Gribbon held a different view, telling the Committee that whilst it would be “concerning” if an independent body was populated by a majority of ex-police officers “I think that there would be a role for them to play in any external body”.⁹⁵
248. Dr Genevieve Lennon said that her personal view is that there should be an independent ombudsman to deal with every complaint, similar to the model in Northern Ireland. Kate Wallace confirmed that Victim Support Scotland shares this view.⁹⁶
249. Kate Wallace said that victim or complainant care running through the system “is missing at the moment”. Ms Wallace explained that Victim Support Scotland would like there to be a commitment and leadership to ensure that the police complaints process is trauma-free, which she described as “the opposite of what happens now”. Ms Wallace said—
- ” “It would help if there was a commitment to a trauma-free complaints process, with clear communication, and a commitment to investigate as quickly as possible once an investigation has started ... a proper explanation should be provided so that a victim feels that their complaint has been investigated thoroughly, independently and impartially”.⁹⁷
250. Chief Superintendent Rob Hay highlighted that a new independent organisation would face similar criticism for employing police officers, saying that—
- ” “If another independent organisation wanted good quality investigators, it would be likely to attract ex-police officers, in which case we would be back having the same discussion about whether they were truly independent”.⁹⁸
251. David Kennedy said that if a new organisation was created to consider complaints against all officers, the SPF would want to know who would provide oversight, to be reassured that it would introduce a fair process, and to understand the expected costs.⁹⁹
252. David Malcolm, Unison, stated that as police staff are public sector workers “There are too many unanswered questions for me to have any confidence that that would be the right way to go”.¹⁰⁰
253. The Angiolini review found that the case had not been made for the establishment

of an independent body to consider all police complaints. Lady Angiolini recommended that this—

“... should be kept under review by Scottish Ministers and if, after a reasonable passage of time, the changes recommended in this report have not secured appropriate improvement, then they should consider afresh whether they want to move to a PONI (Police Ombudsman for Northern Ireland) model where all complaints go to that independent body in the first instance”.¹⁰¹

254. The Cabinet Secretary confirmed to the Committee that she considers “the PIRC to be an independent and robust organisation”, and that some of the measures in the Bill will “broaden, strengthen or clarify the role of the PIRC”.¹⁰²
255. In [correspondence](#) to the Committee, the Cabinet Secretary said that any new body created to fulfil the same role as PIRC “might also have to recruit some persons of a policing background to ensure there were sufficient numbers of persons in the organisation with the right skill set to investigate from the outset”. The Cabinet Secretary added that “If the organisation had to train people to be investigators “this takes time and resource”, adding that “It is difficult to see how a new body would be legally, practically or presentationally more independent than the PIRC”.
256. **The Committee heard some evidence about the benefits of establishing a new independent organisation to consider all police complaints. Whilst some Members see the merits of that approach, the Committee was not able to consider the details of such a proposal and therefore is not in a position to fully consider the implications of such a change. We wish to consider the impact of the changes in this Bill of the additional powers for PIRC, as well as the outcome of the SPA’s review of the centralised PSD, before coming to a view on whether a new approach is required.**

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

Presentation of cases at senior officer misconduct hearings

258. The Policy Memorandum, which accompanies the Bill, indicates that one of the powers to be given to PIRC is to present cases at senior officer misconduct hearings—
- “Further changes will allow the PIRC to be able to handle key stages of senior officer misconduct proceedings, provide for a statutory function to present cases at a senior officer misconduct hearing and give the PIRC the power to recommend suspension of a senior officer”.
259. In its [written evidence](#) to the Committee, PIRC stated that it “is strenuously opposed” to assuming responsibility for the presentation of senior officer gross misconduct cases. The Commissioner argues that as PIRC is an independent investigatory body, it “does not have the requisite skills, nor resource to present

Senior Officer Gross Misconduct hearings”.

260. In her evidence to the Committee, the Commissioner, Michelle Macleod, questioned where the checks and balances would be if PIRC took on this responsibility, and recommended that the SPA retains this power, explaining that—

” “First, we are an investigatory body, not a prosecutorial body. If we are doing the preliminary assessment, carrying out the investigation, making the decision about gross misconduct and presenting the case, I do not know where the checks and balances would be in that system ... We think that the responsibility should rest, as it does at the moment, with the employer—that is, the SPA”.¹⁰³

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

Financial costs – sections 4 to 8

262. The Committee considered the estimated costs for the police conduct provisions.

263. The Financial Memorandum states that—

“There are limitations in our ability to assess the full impact of the legislative changes we are taking forward before they are delivered. Many of the provisions in the Bill are enabling provisions that provide a framework for powers to be taken forward in regulations and guidance. This means that the financial impacts of the Bill are likely to be felt indirectly and as a consequence of the way that the regulations are taken forward”.

264. The Commissioner, Michelle Macleod, told the Committee that as some of the provisions in the Bill are enabling and therefore their breadth and scope is not yet known “That puts us in a difficult position when trying to estimate what the financial implications will be for us”.¹⁰⁴

265. Ms Macleod explained that the costs for PIRC to take on the presentation of misconduct cases are not able to be quantified at this time, explaining that—

” “We do not know that, but we do know that officers in those situations always instruct counsel and I presume that, for parity, we would have to do the same. We have said to the Scottish Government that we would need an undertaking that it would pay for counsel’s fees. In those circumstances, we would outsource the work to counsel and then seek recompense for that”.¹⁰⁵

266. The Financial Memorandum includes estimates for Police Scotland staff and legal costs for gross misconduct investigations. These costs are based on the assumption of a similar number of non-senior officers, 14, as those who retired or resigned with active proceedings against them in 2020 and 2021.

267. Assuming the average number of officers stays the same and that all cases would have continued if the officer had not retired or resigned, the Financial Memorandum estimates that the annual cost to Police Scotland of additional hearings “would be between £103,000 (if the officer retires after the investigation but before the hearing) and £211,000 (if the officer retired/resigned before the investigation and the hearing)”.
268. Following revised costs provided by Police Scotland, which have been accepted by the Scottish Government, the staff costs have increased to £1,250,095, with an additional £793,500 allocated for training.
269. The Financial Memorandum states that costs incurred by individuals who seek legal support to attend a hearing after they have retired “are not likely to be covered by police staff associations”. Assuming that the average number of officers stays the same as in 2020 and 2021, the Financial Memorandum estimated an annual cost of £392,000. Following revised costs provided by Police Scotland, and accepted by the Scottish Government, the legal costs increased to £1,390,000.
270. In its [supplementary submission](#) to the Committee, HMICS suggested “that there needs to be some revision to this memorandum to fully scope the additional costs now that there is a better understanding of the contents of the bill for all parties concerned”. One of the issues raised by HMICS is the requirement to continue to progress conduct enquiries once individuals have resigned or retired. The Chief Inspector said that—
- ” “This will significantly increase the number of cases being taken to hearings requiring the use of officers’ time to present, hear and defend those individuals”.
271. In their written evidence to the Finance and Public Administration Committee, [Police Scotland](#) and the [Scottish Police Federation](#) both indicated that the costs to implement the police conduct provisions are underestimated.
272. David Kennedy told the Committee that the SPF thought an estimate of £5.8m to implement all of the provisions in the Bill is “unrealistic” and that it could be five times that figure. Mr Kennedy explained that the Financial Memorandum had not captured the “actual cost of an investigation from start to finish and how it affects the service”. He said that—
- ” “We have tried to look at the average costs and it is difficult to get that figure, but I have members whose legal bills have been anything between £20,000 and £70,000 for one individual. That is just the legal bill. If you take their wages and the investigation that takes place, the figure is probably at least five times what it would cost the service”.
273. Chief Superintendent Rob Hay, ASPS, agreed that the costs to implement all of the provisions in the Bill are likely to be higher than those provided in the Financial Memorandum, saying that “it is potentially likely to be far in excess of that £5.8 million”.
274. In its [written evidence](#), ASPS said that it would be helpful to understand the extent to which the functions of PIRC are to be broadened, and to have “an impact assessment made to ascertain the effect on existing procedures”.

275. David Malcolm said that Unison had not considered the financial implications of the police conduct provisions, but he expected the costs to be higher than estimated, saying that “I consider how long investigations take when members of my union have been suspended for more than two years and the cost and the legal implications of that”.¹⁰⁶
276. Deputy Chief Constable Alan Speirs confirmed that Police Scotland’s assessment of the costs to implement the Bill’s police conduct provisions cover “training, legal and proceedings costs and the requirement to uplift the teams that we have”. DCC Speirs added that—
- ” “I probably have a slightly different view from the one that the staff associations expressed. We already have significant costs associated with handling complaints and managing conduct. I perceived some of the staff associations’ comments about the costs to relate to the entirety”.¹⁰⁷

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

Procedures for misconduct: former constables

278. At present, where there is an allegation of misconduct and the police officer resigns or retires during the investigation or proceedings, those proceedings come to a halt
279. The provisions in section 6 of the Bill allow disciplinary procedures to apply to persons who have retired or resigned, in certain circumstances, where the allegation is about behaviour while the person was a constable, which would amount to gross misconduct.
280. The Policy Memorandum confirms that the intention is for PIRC to carry out the preliminary assessment of allegations of misconduct against all officers. It states that—
- “The procedures would apply where a preliminary assessment of the misconduct allegation made by the PIRC finds that the conduct of the person while the person was a constable would, if proved, amount to gross misconduct”.
281. In its [written evidence](#), PIRC sought clarity on whether they would only be carrying out this preliminary assessment for former senior officers, stating that—
- “PIRC is of the view that the proposed amendment does not make it suitably clear that PIRC’s remit relates to conducting a preliminary assessment of whether the conduct would, if proved, amount to gross misconduct in relation to former senior officers only [...] if the responsibility for such preliminary assessment for non-senior officers is to rest with the PIRC, this encroaches into new territory for PIRC. This would require to be resourced and it is submitted that this should only be in limited

circumstances, i.e., where the allegation is received more than 12 months following their ceasing to hold the office of constable: in line with the Angiolini Report.”

282. The Bill also includes a power to set a period of time from the date at which the person ceased to be a constable, after which no steps or only certain steps in the procedures can be applied, unless additional criteria are met. The Policy Memorandum indicates that the time period is expected to be 12 months, which is “based on Dame Elish’s recommendation which drew on the system in place in England and Wales, which is set at 12 months”. It states that—

“The Scottish Government intends that regulations will set this period at 12 months and that the criteria will include a proportionality test carried out by the PIRC, having regard to a number of factors, including to the seriousness of the allegation, the impact of the allegation on public confidence in the police and the public interest”.

283. The Angiolini review made the following recommendation—

“I recommend that in Scotland where an allegation of gross misconduct comes to light more than 12 months after the person ceases to be an officer, proceedings should commence and continue to a conclusion but only in the most serious and exceptional cases of gross misconduct likely to do damage to public confidence in policing. In such cases it should be the Police Investigations and Review Commissioner who determines if it is reasonable and proportionate to pursue disciplinary proceedings after the twelve-month period, taking into account the seriousness of the alleged misconduct, the impact of the allegation on public confidence in the police, and the public interest”.

284. The Angiolini review found that there was compelling evidence that there is strong public interest in “dealing fully and thoroughly with police officers’ gross misconduct after they have left the police service”. In her final report, Lady Angiolini said the following—

“While there can be no sanction against a former police officer whose conduct is determined to have been gross misconduct and who would have been dismissed had they still been serving, it is right and proper that the process should be followed to a conclusion. I believe that the public would expect no less and the compelling first-hand evidence that I have heard on this subject has confirmed that belief”.¹⁰⁸

Accountability

285. The Committee heard evidence that officers resigning or retiring prior to gross misconduct proceedings concluding denied justice to members of the public, as well as to those police officers who wanted the complaints process to conclude so that they would have an outcome and be able to clear their name.
286. In their [written evidence](#), June and Hugh Mcleod, described the devastating impact on their family when an officer retired just days prior to facing a disciplinary hearing for gross misconduct. Mr and Mrs Mcleod said that it “clearly denied us justice and had left us seeking answers over the police investigation into our son’s death”.
287. Mr and Mrs Mcleod said that misconduct investigations continuing to a conclusion is necessary for there to be accountability. They stated that—

“This recommendation will hopefully ensure that no other family in Scotland suffers like we have for over two decades which numerous complaints made by us were disturbingly neither recorded nor logged by police as complaints, also some of our complaints lodged had shockingly taken years to get a response from the authorities”.

288. In his [written evidence](#) to the Committee, former police officer Ian Clarke said that he would have preferred the misconduct proceedings to have continued to a conclusion after he retired, so that he would have a record that there had been no misconduct on his part. Mr Clarke explained that—

“To be accused of something and to have no formal resolution is wrong. It allows the guilty to walk away with no consequences and the innocent to have suspicion hanging over them for the rest of their lives ... under the present system, the process is closed, with no resolution. I would have preferred a misconduct hearing, where the false claims and failure to disclose exculpatory evidence had to be formally recorded.”

289. Mr Clarke told the Committee that the inadequacies of the investigations into allegations of criminal conduct by police officers is demonstrated by the “incredibly poor conviction rates”. He added that he “was extremely disappointed in CAAPD for taking the witness evidence without ever questioning it”.¹⁰⁹

290. The Commissioner, Michelle Macleod, confirmed that PIRC’s approach to criminal allegations against police officers, is now more robust, saying that—

” “Recently, we have employed what we call a report checker, which is a person with a legal background who assists by providing more robust analysis of the evidence, because we now have so many more such cases”.¹¹⁰

291. Robin Johnston told the Committee that if the Scottish Government is to adopt a similar approach to that taken in England and Wales, the SPA would expect “every gross misconduct allegation that is made against a former police officer within those time periods [12 months] would be subject to investigation”.

292. Mr Johnston added that concluding proceedings against former police officers “will give a sense of natural justice to complainers who make misconduct allegations, while the barred and advisory lists allow there to be a penalty, as it were, for officers who commit gross misconduct”.¹¹¹

293. David Kennedy said that, whilst the SPF understood why some people might be in favour of this proposal, it had been introduced in England and Wales and “cost a lot of money”. Mr Kennedy said that “The amount of money and time that would be wasted in the proposed process would far outweigh the result that it is trying to achieve”.¹¹²

294. In 2023, the Home Office undertook a [review of the process of police officer dismissals](#). It found that bringing disciplinary hearing against former officers to ensure they are placed on a barred list is “an expensive, time-consuming process which draws forces’ resources away from dealing with those individuals who are still serving”. The review recommended the introduction of legislation “for a presumption that all cases brought in respect of former police officers are held at accelerated

hearings unless the individual specifically requests a hearing before a misconduct panel”.

295. Chief Superintendent Rob Hay said that the ASPs’ membership questioned the purpose of commencing or continuing gross misconduct hearings for officers, as “the ultimate sanction for gross misconduct is to lose your job”. He highlighted that there are unanswered questions about timescales, saying—

” “How long could we go back? As I have said already, things change in society and in organisations. Do we risk applying today’s lens to things that happened a decade ago and beyond that? We would raise some real challenges about that”.¹¹³

296. David Malcolm confirmed that Unison’s view is that the provisions should not be extended to police staff, explaining that “If it concerned an employment matter, employment rights mean that, if you have left the job that should be the end of it”.¹¹⁴

297. Craig Naylor told the Committee that HMICS is in favour of proceedings for gross misconduct continuing for former officers, as it provides “the opportunity to put the individual on the barred list to prevent them from being a police officer or member of police staff in future, in any other organisation”. Mr Naylor said it removes the risk of the person being able to move “when the heat becomes too much in their current organisation”.¹¹⁵

298. The Commissioner, Ms Macleod, stated that allowing PIRC to continue investigations into criminal allegations when a person retires or resigns, will resolve the current situation where PIRC and Police Scotland could be running parallel investigations into officers. Ms Macleod explained that—

” “... if an officer retires or resigns while we are investigating an allegation of criminality, we can no longer investigate that. The Crown Office then has to ask Police Scotland to investigate that officer’s conduct, while, in parallel, we could be investigating other officers who are still in the force in connection with the same set of circumstances”.¹¹⁶

299. Justin Farrell explained that these provisions will also address the practical difficulties for CAAPD when PIRC and Police Scotland are investigating the same incident.¹¹⁷

300. In relation to the potential costs of PIRC taking on this role, the Commissioner explained that PIRC did not know how many criminal cases there would be and therefore it was not possible to quantify the expected impact on resource requirements at this time.¹¹⁸

A 12-month time period to commence proceedings

301. The Committee heard conflicting views on the proposal to introduce a time limit for the commencement of gross misconduct proceedings against former officers. The Scottish Government’s policy intention is that an officer can be subject of

proceedings up to 12 months after leaving their employment or beyond 12 months where a public interest test is met.

302. Kate Wallace told the Committee that Victim Support Scotland has concerns about the proposed time limit of 12 months, as it does not take into account the ability of traumatised victims to take forward their complaint or delays outwith the complainer’s control, such as the length of time that Police Scotland might take to respond to PIRC’s recommendations. Ms Wallace recommended that—

” “There should be an ability in exceptional circumstances for investigations to take place outwith that limit. In some circumstances, victims do not become aware of certain things until much further down the line”.¹¹⁹

303. Craig Naylor said that HMICS is not in favour of a time limit for gross misconduct issues to be raised, as this would be unfair on a victim who is too traumatised to raise the egregious behaviour within that artificial time limit. Mr Naylor explained that—

” “If something is reported and assessed as gross misconduct, it should be investigated and responded to proportionately. To my mind, there is no time limit on that ... Having an open-ended time limit does not remove the person’s opportunity to defend themselves.”¹²⁰

304. Magdalene Robertson told the Committee that the seriousness and the effect that the behaviour of police officers had on people or their property should be considered and that investigations of gross misconduct “should definitely not be time limited—no way”.¹²¹

305. In its [written evidence](#) to the Committee, Family’s United, described their experience of a senior police officer who retired and was employed in “a very sensitive senior role”, whose actions did not come to light until after a year into their new role. They said that—

“We believe that there should be the principle of an extension of up to 5 years if there are significant findings/developments in an officers previous actions”.

306. In its [written evidence](#), the Scottish Community Safety Network indicated that the 12 month time limit is appropriate. However, there should not be a time bar in the circumstances where police officers are the subject of a subsequent investigation several years after the event. They said that—

“We would like to see in exceptional similar circumstances and clearly in the public interest that a gross misconduct allegation not to be subject of a time bar especially as the criminal threshold test may not have been met”.

307. Dr Genevieve Lennon indicated that SIPR’s view is that there could be circumstances around on-going investigations which would require an extension to the 12 months’ time limit, saying that—

” “If an on-going investigation had to be abandoned in the middle because somebody hit that 12-month period, that would be damaging for victims, complainants and the process more generally”.¹²²

308. Lady Elish Angiolini told the Committee that depending on the seriousness of the matter, extending proceedings might not be in the public interest, but for “very difficult inquiries” an extension may be required, saying—
- ” “... you would have to look carefully at the pattern of the types of cases that are coming in. There are cases in relation to which you would have to have a provision to allow an extension of that time limit”.¹²³
309. The Commissioner, Michelle Macleod, told the Committee that when assessing whether to commence gross misconduct proceedings for senior officers who had left the force, PIRC would take a proportionate approach and consider the following issues when weighing up whether the public interest test was met—
- ” “We would take account of many aspects of the circumstances, such as how serious the allegation is, whether it involves vulnerable witnesses and whether it falls into a sphere of real public concern, all of which would make us more likely to go ahead. If the allegation is less serious, we would take that into account”.¹²⁴
310. Robin Johnston confirmed that the SPA expects the public interest test applied after the 12-month period to involve such things as “whether the allegation is sufficiently serious to significantly undermine public confidence in policing, and there would also be a provision to state that the public interest requires misconduct proceedings in those cases”.¹²⁵
311. Steven Bunch, Scottish Government, confirmed that the 12-month time limit, after which PIRC should apply the public interest test, applies to all former officers subject to allegations of gross misconduct.¹²⁶
312. The Cabinet Secretary confirmed that the 12-month timescale “is not a hard and fast statutory requirement”, and that it would be for the Commissioner “to make a judgment on public interest and fairness”, based on all the facts and circumstances.¹²⁷

Accelerated hearings

313. In its [written evidence](#), Police Scotland indicated that it is supportive of the proposals, and would welcome a discussion with the Scottish Government on streamlining processes in favour of accelerated hearings, as—
- “It is considered this would achieve the same outcome with significantly less expense and would, more importantly, minimise the adverse impact on victims and witnesses having to engage in a further process”.
314. The Committee heard evidence of the benefits to Police Scotland and members of the public of the introduction of an accelerated hearing process, which maintains procedural fairness for officers.
315. The Angiolini review recommended that—
- “... accelerated misconduct hearings should be included in Scottish conduct

regulations for all ranks of constable to deal with circumstances where the evidence is incontrovertible and where that evidence means that without further evidence it is possible to prove gross misconduct, or where the subject officer admits to their behaviour being gross misconduct”.¹²⁸

316. David Kennedy, SPF, told the Committee that the conduct regulations enable hearings to take place within 35 days, and that this timescale could be met in circumstances where the person accepted there was misconduct on their part. Mr Kennedy said—

” “Under the current misconduct regulations, the timeline is supposed to be 35 days from start to finish. That is how long it should take from somebody being told that they are being investigated to being at a hearing ...The vast majority are probably 365 days or more”.¹²⁹

317. Chief Superintendent Rob Hay agreed that the existing regulations do provide for accelerated hearings, saying that “We need to understand better why that has not been successful and try to fix that first”.¹³⁰

318. Deputy Chief Constable Alan Speirs told the Committee that the conduct regulations do not allow for misconduct hearings to take place within 35 days, explaining that—

” “Under those regulations, there are three phases; after all, we have to give an officer time to respond, and the process itself equates to 60 working days. The 35 days that was referred to relates to the period of notification that we have to give a subject officer before they can attend a gross misconduct hearing”.¹³¹

319. DCC Speirs described the conduct regulations as “not fit for purpose” and identified the following gaps—

” “... the inability to fast track a process; equity or parity of voice at conduct hearings; our inability to proceed without delay, as we have to wait for criminal proceedings to be completed; and our constraints around substance misuse”.¹³²

320. Deputy Chief Constable Speirs told the Committee that Police Scotland has “an officer who is probably three years into their suspension, and we are frustrated that we are constrained, because the case will be sitting somewhere in the criminal justice system or will just fall into the conduct system”.¹³³

321. Kevin Lee told the Committee that the Scottish Government’s reading of the conduct regulations “is that they do not stop misconduct proceedings from continuing”. Mr Lee said that for non-senior officers this is at the discretion of a deputy chief constable.¹³⁴

322. Caroline Kubala indicated that the Scottish Government would need to investigate further to determine why misconduct proceedings are not progressing at the same time as criminal proceedings.¹³⁵

323. The [Police Service of Scotland \(Senior Officers\) \(Conduct\) Regulations 2013](#)

provides the SPA with discretion as to whether to suspend or postpone misconduct proceedings whilst criminal proceedings are being brought against senior officers. The [Police Service of Scotland \(Conduct\) Regulations 2014](#), provides a similar discretion to the Deputy Chief Constable. Section 9 indicates that—

“Alleged offences

9.—(1) If the deputy chief constable considers that it can reasonably be inferred that a constable may have committed a criminal offence, the deputy chief constable—

(a) must refer the matter to the appropriate prosecutor; and

(b) may suspend or postpone any proceedings under these Regulations until the appropriate prosecutor intimates that—

(i) criminal proceedings are not to be brought in respect of any matter mentioned in the misconduct allegation; or

(ii) any criminal proceedings which have been brought have been concluded”.

324. The Committee wrote to Police Scotland and the SPA to seek clarification as to whether they can continue misconduct proceedings against officers and senior officers whilst criminal allegations are being considered by the Crown Office and Procurator Fiscal Service and, if so, why this is not happening in practice.

325. In its response, Police Scotland confirmed that whilst regulation 9 does not expressly prevent running parallel misconduct investigations, through existing legislative provisions “Police Scotland must follow the lawful instruction of an appropriate prosecutor”. They added that “CAAPD have expressed reservations about the use of material gathered during criminal investigations being used during the misconduct process and prejudicing future proceedings.” Police Scotland indicated that they—

“... are supportive of amending Reg 9 of the 2014 regulations to make the default position that misconduct proceedings “**must** proceed without delay”, notwithstanding extant or possible criminal proceedings, provided that to do so does not prejudice the criminal proceedings”.¹³⁶

326. In [correspondence](#) to the Committee, the SPA confirmed that the decision to suspend or postpone misconduct proceedings is “discretionary”. However, in practice, “such decisions are influenced heavily by the views of the prosecutor”.

327. The Cabinet Secretary told the Committee that the Bill provides enabling powers which provide an opportunity for existing conduct regulations to be revisited through secondary legislation, “as opposed to through a directive from ministers”. Ms Constance confirmed that “There would also need to be extensive engagement and consultation on any proposed changes”.¹³⁷

328. In answer to a question about the fairness to police officers being subjected to a criminal trial, followed by a misconduct hearing, the Cabinet Secretary said that “It is just not unusual for criminal proceedings not to proceed or to come to an end but, thereafter, for there to be a fair process in relation to whether someone has committed a breach of conduct”.¹³⁸

329. The Committee considered whether it is possible to make the necessary changes to the conduct regulations more quickly, as the evidence received suggests this could improve the experience of those who make complaints and those who are the subject of complaints, as well as reducing costs.
330. The Cabinet Secretary confirmed that if Parliament consents to the Bill being passed, that following Royal Assent, “the earliest that aspects of the bill can be implemented would be next summer”. The Cabinet Secretary added that—
- ” “We will want to have a cohesive programme, particularly in and around conduct regulations, because I do not want to take a piecemeal approach to pursuing matters that need to be addressed”.¹³⁹
331. In [correspondence](#) to the Committee following the evidence session, the Cabinet Secretary confirmed that whilst it is not possible to “set out exactly what will follow and when”, as the Bill is currently being scrutinised by Parliament—
- “I believe that it is generally accepted that Parliament expects legislation to be brought into force and powers used to benefit society relatively soon after the passing of legislation. I do expect delivery will need to be phased so as not to delay elements which can be brought into force quickly, as they have no contingent dependencies - such as policing partners ability to take on responsibilities”.
332. The Committee is aware that at the [Scottish Police Authority Board](#) meeting on 23 May, the Chair, Martyn Evans, stated that “the regulations need to be modernised at pace”, and that in his view the redrafting process does not need to wait on the Bill being passed. Mr Evans told the Chief Constable that he expects Police Scotland to be working with the Scottish Government now to outline the key issues which should be included in redrafted regulations.
333. In [correspondence](#) to the Committee, Police Scotland confirmed that there is “a collective will to expedite the review of secondary legislation to incorporate the significant changes to modernise the existing PSoS Regulations and Conduct Regulations”. In its letter, Police Scotland also specify some proposed changes to the conduct regulations, as well as some provisions for inclusion in the Bill, which they wish the Committee to consider. This is covered in the section on suggested legislative changes at the end of this report.
334. **The Committee welcomes the introduction of provisions to commence or continue gross misconduct proceedings for officers who have retired or resigned. We believe that cases should be allowed to commence up to 12 months after an officer has left employment and that any cases raised after 12 months should be subject to a public interest test. The Committee believes this should be a clear commitment and contained in regulation. This will provide confidence to the public that officers will be held to account for gross misconduct, as well as a conclusion for officers who wish to clear their name.**
335. **The Committee asks the Scottish Government to clarify whether gross misconduct proceedings can continue beyond the 12-month period if they have begun within this period, or whether the intention is that allegations**

can be raised and continue until conclusion, however long that takes.

336. **The Committee would have concerns if any investigations into gross misconduct took longer than is necessary. As such, the Committee recommends that any investigations into an officer who has left the force should be completed as timeously as possible. We also recommend that the SPA monitors this process over the initial years to ensure that this is the case and shares its findings with the Committee.**
337. **The Committee asks the Scottish Government to confirm the circumstances in which PIRC will carry out a preliminary assessment of an allegation to assess whether it would amount to gross misconduct.**
338. **The Committee welcomes Police Scotland’s commitment to work with the Scottish Government and stakeholders to expedite a review of the conduct regulations, so that they can be amended as soon as possible after the Bill is enacted.**

339. **The Committee notes the recommendation from Police Scotland at paragraph 325 to amend section 9 of the 2014 conduct regulations for officers to make the default position that misconduct proceedings “must proceed without delay”, notwithstanding extant or possible criminal proceedings, provided that to do so does not prejudice the criminal proceedings. The Committee asks the Scottish Government to provide a view on this recommendation and whether a similar amendment should be made to section 7 of the 2013 conduct regulations for senior officers.**

Scottish police advisory list and Scottish police barred list

340. It also includes wide enabling powers allowing the Scottish Ministers to make provision in regulations in respect of those lists.
341. A person would be entered on the advisory list where disciplinary proceedings have been brought against them for gross misconduct, either after they ceased to be a constable or where they ceased to be a constable before those proceedings were concluded. This could be due to resignation, retirement or dismissal for performance.
342. A person would be entered on the barred list if they were dismissed for gross misconduct, or would have been dismissed, had they not already ceased to be a police officer at that point.
343. The Policy Memorandum explains that the provisions aim to strengthen Police Scotland’s vetting procedures by making it possible for policing bodies in England and Wales to be made aware of a Police Scotland officer’s gross misconduct. It states that—

“It is intended that the regulations will include preventing the employment or other appointment of a person on the barred list to other policing roles in Scotland, as well as provision requiring policing bodies in Scotland to consult the lists before appointing or employing a person to a policing role in Scotland”.

344. The Angiolini review found that advisory and barred lists could be used as a vetting tool, as well as to ensure that all complaints come to a conclusion, as officers would remain on the lists until a determination was made. ¹⁴⁰

Views on the proposals in the Bill

345. There was general agreement in the evidence received by the Committee to the creation of a Scottish police advisory list and Scottish police barred list. There were mixed views on who should have access to the information on the lists and whether the lists should be published.
346. In its written evidence to the Committee, [HMICS](#) supported these provisions, saying that they will “create valuable consistency across Great Britain and enhance the robustness of vetting procedures when former officers seek to join forces from other jurisdictions”. The Chief Inspector added that the addition of a person’s name to the list “would only be reasonable after the conclusion of a suitably robust and structured process”.

Establishing and maintaining the lists

347. The Bill provides the SPA with responsibility for establishing and maintaining the lists. In England and Wales, the College of Policing has responsibility to administer the advisory and barred lists.
348. The details of the powers to be given to the SPA are to be provided in subordinate legislation. The Bill indicates that the regulations will make provisions for:
- the information to be included on the lists;
 - the circumstances;
 - notifying the person to be included on the lists;
 - the circumstances in which the lists could be shared and published; and
 - the persons who must consult the advisory list and the barred list before employing or otherwise appointing a person.
349. Robin Johnston told the Committee that the SPA’s view is that Police Scotland is the most appropriate body to establish and maintain the lists, as this “avoids a situation in which sensitive personal data is needlessly—in our view—passed between organisations”. Mr Johnston added that—
- ” “I do not think that there is a reasonable case for thinking that Police Scotland would not automatically include former officers on those lists and that, therefore, the lists would be required to be operated by a separate body”. ¹⁴¹

350. Police Scotland expressed a similar view in its [written evidence](#), saying that Police Scotland establishing and maintaining the lists would “reduce data management risks and enable the Chief Constable to comply with statutory responsibilities as data owner”. Police Scotland does not think that the SPA is the right organisation to take on these responsibilities, as, other than for senior officers, “the SPA plays no role in the selection or appointment of police constables”.
351. Sharon Clelland, PIRC, told the Committee that “If the list is to sit with the police authority, we feel that the legislation should make clear the lawful basis for sharing that information”.¹⁴²
352. The Cabinet Secretary confirmed that the police advisory and barred lists will bring Scotland in line with policing partners in Great Britain, that the intention is that the lists will be available to the British Transport Police, the Ministry of Defence Police and the Civil Nuclear Police Authority, and can be published. The Cabinet Secretary said this is necessary, as “It is not acceptable for anyone who has been dismissed from Police Scotland to turn up and get a policing job elsewhere on these islands”.
353. On the question of who should establish and maintain the lists, the Cabinet Secretary indicated that whilst the SPA is to have that responsibility, “there is a power for the SPA to delegate that to Police Scotland”.¹⁴³

Should the lists be published?

354. The lists aim to provide information about officers who are subject to disciplinary procedures for gross misconduct, who have been dismissed or would have been dismissed, had they still been employed by Police Scotland. The Committee considered who should have access to the information on the lists, and for what purposes.
355. The Policy Memorandum states that the Scottish Government has engaged with the UK Government and the College of Policing and confirms that “there is a common desire for barred and advisory lists to be shared”.
356. Steven Bunch, Scottish Government, told the Committee that the College of Policing in England and Wales publishes the lists, clarifying that “In England and Wales, the barred list is published, but the advisory list is not published when an outcome has not been reached”.¹⁴⁴
357. Representatives from the ASPS and the SPF told the Committee that their members do not believe that the lists are necessary, as the aims could be achieved by better provision of employment references. Both representatives raised concerns about the proportionality and the rationale for making the lists publicly available. Chief Superintendent Rob Hay said that “there needs to be a wider consideration of the impact on individual officers”. David Kennedy said that “If a barred list is to be introduced, it must be solely for police purposes”.¹⁴⁵
358. Deputy Chief Constable Alan Speirs confirmed that Police Scotland supports “broader public sector organisations to have the ability to access the barred list”. DCC Speirs clarified that this would prevent former police officers who were on the barred list from gaining employment in public service-type roles.¹⁴⁶

359. In its [written evidence](#) to the Committee, Victim Support Scotland stated that it is essential that victims and witnesses in Scotland receive the same vetting protections as those who reside in other nations of the UK. They support the introduction of a barred list which is “available to organisations who might perform searches when vetting potential employees”, as this “would mean an additional layer of protection and accountability for individuals in Scotland”.
360. **The Committee welcomes the introduction of Scottish advisory and barred lists, as important vetting tools, which will provide consistency across police forces in Great Britain.**

361. **We recommend that Scotland follows the practice in England and Wales where the barred list is published, but only relevant organisations are able to access the advisory list.**

362. **We agree that the SPA should have responsibility to establish and maintain the barred and advisory lists.**

Vetting

363. In a [letter](#) to the Committee, the Cabinet Secretary for Justice and Home Affairs, said that the Scottish Government is exploring the legislative basis for vetting, particularly in the context of the Police (Ethics, Conduct and Scrutiny) Scotland Bill in response to the following recommendation in the [HMICS Assurance Review of Vetting Policy and Procedures within Police Scotland](#)—

“The Scottish Government should place into legislation the requirement for all Police Scotland officers and staff to obtain and maintain a minimum standard of vetting clearance and the provision for the Chief Constable to dispense with the service of an officer or staff member who cannot maintain suitable vetting”.

364. Lady Elish Angiolini highlighted to the Committee the importance of vetting, as well as random vetting, saying that policing is “a hard job”, which can change police officers after many years.¹⁴⁷
365. Chief Superintendent Rob Hay told the Committee that a robust vetting system, as well as re-vetting being carried out routinely would pick up those officers who had received criminal convictions whilst an officer.¹⁴⁸
366. Deputy Chief Constable Alan Speirs confirmed that over the past couple of years Police Scotland had enhanced its vetting team and wanted “to have a more routine re-vetting programme”. DCC Speirs said that Police Scotland would welcome legislation to address the gap in its “ability, when somebody’s standard falls short of our vetting standard, to have them exit the organisation”.¹⁴⁹
367. Chief Superintendent Helen Harrison added that the introduction of this power for the Chief Constable would make clear to police officers that there is an—

” “... expectation that they meet the recruitment vetting standard to join the organisation, but if that ability were to be put in legislation, there would also be the expectation that they maintain that standard”.¹⁵⁰

368. Nicky Page told the Committee that the vetting procedures should also cover Police Scotland staff.¹⁵¹

369. Craig Naylor said that whilst HMICS supported the introduction of this power for the Chief Constable, it should not be “a blank canvas for the chief constable to dismiss people who cannot sustain their vetting”. The Chief Inspector recommended that it be used in the following circumstances—

” “If someone cannot sustain the very basic level of recruitment vetting and, after being given advice, support and help, they either refuse or are unable to do so, the chief constable should not have to bear the risk of that individual staying in the organisation”.¹⁵²

370. The Cabinet Secretary told the Committee that robust vetting for policing is a vital strand to public confidence and confirmed that Police Scotland had increased its vetting resource from 29 to 50. The Cabinet Secretary stated that “we are committed to exploring the legislative basis for vetting; I know that officials are talking to Police Scotland, the SPA and HMICS in that regard”.¹⁵³

371. The Committee recommends that the Bill should include a power for the Chief Constable to remove someone who is unable to maintain their vetting.

Special power of dismissal for the Chief Constable

372. Lady Elish Angiolini told the Committee that the [independent inquiry](#) into UK policing matters that she recently chaired, recommended that a Chief Constable should have a power of summary dismissal in the most egregious cases. Lady Angiolini confirmed that this measure is being introduced in England, saying that—

” “Certainly, with the benefit of looking at different circumstances and widening the issues that the committee is considering, it would seem to me to be appropriate, albeit in very few cases, for the chief constable to have such a power”.¹⁵⁴

373. The Cabinet Secretary told the Committee that she is “considering” the proposal that the Chief Constable should have a power of summary dismissal in the most egregious cases, adding, “We will do some further work on it during the summer”.¹⁵⁵

374. The Committee notes the evidence it received that there should be a significant new power for the Chief Constable to dismiss officers in the

most egregious of cases. The Committee requests an update from the Cabinet Secretary in her response to this report on the Scottish Government's view. The Committee will come to a view on this issue once that update is received.

Procedures for misconduct: senior officers

375. Section 8 of the Bill amends the 2012 Act to replace the requirement that the SPA must determine senior officer conduct cases, with a requirement for an independent panel to determine any case which relates to the 'standard of behaviour' of a senior officer or a person who has ceased to be a senior officer. The SPA is to continue to decide cases relating to senior officer performance.
376. The Explanatory Notes indicate that the composition of the independent panel to determine any conduct case against a senior officer will consist "of a mix of police and non-police members". The details are to be provided in secondary legislation.
377. Section 56(1) of the 2012 Act gives all constables a right to appeal to the Police Appeals Tribunal (PAT) against any decision for dismissal or demotion. The Bill introduces an additional right for senior officers to appeal to the PAT against any decision to take disciplinary action, and not just about a decision for dismissal or demotion.
378. The Explanatory Notes state that "This change is necessitated by the future move to an independent panel determining all conduct cases against senior officers".
379. The Policy Memorandum explains that the removal of the SPA from the determining role for senior officer misconduct will address any concerns around "actual or perceived partiality, or antipathy, when it comes to disciplinary matters in which senior officers might be involved".
380. The Angiolini review recommended that an independent panel should consider gross misconduct allegations for all ranks of officers—
- "Gross misconduct hearings for all ranks should have 1) an independent legally qualified chair (LQC) appointed by the Lord President, 2) an independent lay member appointed by the Lord President and 3) a policing member. This means in senior officer cases the role of Chair should transfer from the SPA to the independent legally qualified person. The policing member in senior officer cases should be appointed by the Lord President; in all other cases the policing member should be appointed by the Chief Constable".¹⁵⁶
381. Lady Angiolini acknowledged in her report that this change would have "a resource implication for the overall justice budget, with additional demands on Police Scotland and the PIRC". However, she argued that costs would only relate to a "relatively small number of gross misconduct hearings", and would be "outweighed by the benefits of increased independence, transparency and public confidence".¹⁵⁷

382. The Policy Memorandum provides the following explanation for the Scottish Government’s decision to only introduce this provision for senior officers—
- “It is felt that the proportionate response is that a LQC of a hearing could properly hold a senior officer to account and also not leave the process open to perceptions of proximity bias between senior officers and SPA (who would currently chair senior officer hearings). This was not the case with non-senior officers. There is also a significant difference in the number of non-senior officer cases which would potentially be delayed and incur large costs”.
383. The Angiolini review recommended that “There should be one route of appeal against a determination of a gross misconduct hearing or the disciplinary action to be taken and that should be to a Police Appeals Tribunal, as at present”.¹⁵⁸
384. This recommendation is subject to the Police Appeals Tribunals being transferred into the Scottish Courts and Tribunals Service (SCTS).
385. The Committee understands that it is the Scottish Government’s **intention** that the Police Appeals Tribunal is to transfer to the SCTS in 2025.
386. In its **response** to the Finance and Public Administration Committee’s call for views on the Financial Memorandum, the SCTS indicated that it “considers that the contingency included by the Scottish Government of £10,340 for two appeals per annum is a reasonable estimate of the potential recurring annual costs including members’ fees and administrative costs”. The SCTS estimated that the costs of “making relevant I.T. changes to support these new appeals”, would be in the region of £3,000. This additional cost is accepted by the Cabinet Secretary for Justice and Home Affairs.

Views on the proposals in the Bill

An independent panel to consider senior officer misconduct cases

387. In its **written evidence** to the Committee the SPA indicated that it supports this provision in the Bill, as it “would enhance independence in the misconduct procedures for the most senior police officers”.
388. In its **submission**, Police Scotland indicated its support for an independent panel “to determine any conduct case against a senior officer, regardless of how serious the allegation”.
389. Margaret Gribbon told the Committee that implementing this change for senior officers only would mean that it will “apply to a tiny number of police officers” and have limited effect. Ms Gribbon clarified that Lady Angiolini’s recommendation that an independent panel should consider conduct complaints about all officers, was not only to address proximity bias, saying that—

” “The reason why she recommended that is that she took the view that all panels must be seen to have an impartial process ... The Scottish Government’s Policy Memorandum for the bill says that its rationale for that decision is that the issue of proximity bias does not apply to non-senior officers. I accept that it does not apply to them to the same extent as it does to senior officers. However, the review recommendations in that respect did not stem only from concerns about proximity bias”.¹⁵⁹

390. The [Financial Memorandum](#) states that since the inception of the SPA and Police Scotland, no senior officer misconduct hearings have taken place. The cost estimates provided by the Scottish Government are for up to a maximum of three hearings each year, totalling up to £372,000 per year, once the regulations are in place. It provides the following breakdown of estimated likely costs which will be incurred by “SPA (up to £18,000 for venues and panel), PIRC (up to £177,000 for legal fees) and staff associations (up to £177,000 for legal fees)”.

Composition of the independent panel

391. In its [response to the Scottish Government’s consultation](#) on the Bill, the office of the Lord President of the Court of Session confirmed that the Lord President is happy to perform the function recommended in the Angiolini review. It stated that “The Lord President concurs it is important police misconduct complaints are adjudicated by an independent legally chaired panel, and that panel members are appointed independently”.

392. Lady Elish Angiolini told the Committee that it is particularly important for there to be an independent chair for serious complaints “because officers should have that protection”. Lady Angiolini said that “Being a police officer is a privileged and important office and, if officers are going to be removed from it, they need sufficient protections”.¹⁶⁰

393. In its [written submission to the Committee](#), HMICS agreed with the Angiolini review’s recommendation that hearings should be chaired by a legally qualified member appointed by the Lord President. The Chief Inspector stated that independent panels would “improve public trust and confidence in the independence and transparency of such hearings by removing the SPA from proceedings”, and “provide reassurance to the senior officer concerned that there is reduced scope for any prior workplace conflicts, relationships or pre-conceived notions to influence the outcome”. HMICS considered that, on balance, the risk of having one police officer on the panel “would be mitigated by the presence of the legally qualified chair and other panel member(s)” and would be “outweighed by the advantages of the panel being provided with up-to-date expertise of Scottish policing”.

394. In its [written evidence](#), Amnesty International UK, said that an independent panel presents an opportunity to ensure that there is representation from a diverse range of backgrounds and experiences, saying that the regulations “should ensure that the panels will include representation from a diverse range of backgrounds and experiences including minoritized groups and human rights experts”.

The appeals process

395. Currently any police officer may appeal to the Police Appeals Tribunal (PAT) against a decision to dismiss or demote them. The Bill intends to extend this provision for senior officers to any decision to take disciplinary action.

396. In its [written evidence](#), the Scottish Police Federation stated its opposition to the introduction of a different appeals system being introduced for senior ranks only, saying that—

“The same system for all ranks is paramount in having a fair appeals process and parity should be allowed no matter what rank is being looked at. This has always been the ethos behind the current regulations and should continue with whatever comes next”.

397. **The Committee welcomes the proposal for an independent panel to consider senior officer conduct cases and for there to be an appeals process to the Police Appeals Tribunal against any decision to take disciplinary action, and not just where there is dismissal or demotion. However, the Committee did not hear a significant amount of evidence about these proposals or the reasons for their introduction.**

398. **The Committee asks the Scottish Government for its view on the point raised by the Scottish Police Federation about the proposal to change the appeals process only for senior officers and the lack of parity for non-senior officers.**

399. **The Committee asks the Scottish Government to confirm that the Police Appeals Tribunal will be transferred to the Scottish Courts and Tribunals Service prior to the enactment of the Bill.**

Gross misconduct hearings to be held in public

400. The Committee heard conflicting views about whether the Scottish Government should introduce regulations to allow for gross misconduct hearings to be held in public.

401. The Policy Memorandum confirms that, whilst this is not a provision in the Bill, “there will be provisions made in Regulations for gross misconduct hearings to take place in public and for officers to attend interviews when requested to do so as part of investigations”. It also states that “mitigations such as online hearings are possible”.

402. The Angiolini review recommended that gross misconduct hearings should be held in public, where possible, with appropriate safeguards and reasonable adjustments provided for vulnerable witnesses. Lady Angiolini concluded that the balance of an officer’s right to privacy was outweighed by the public interest.¹⁶¹

403. Lady Elish Angiolini explained to the Committee that she is in favour of misconduct hearings being held in public, as they are in England and Wales, as—

” “We ask a great deal of the police, but they have enormous power and privilege. Where there is abuse, it is good for proceedings to be open ... A number of other professional proceedings also take place in a public setting”.
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404. In its [written evidence](#), Amnesty International UK stated that the Bill has “missed an opportunity to address the lack of public access to misconduct hearings”, saying that—

“Regulations for hearing gross misconduct hearings in public should be consulted on and implemented without delay”.

405. Chief Superintendent Rob Hay said that the ASPS does not see what would be gained from misconduct hearings being held in public. He warned that such a process risks officers having to disclose personal information in public which can include “sometimes quite tragic information, sometimes medical information”. Chief Superintendent Hay said that “It would be fundamentally wrong to force officers to recount that in public”.¹⁶³

406. David Kennedy confirmed that the SPF is opposed to misconduct hearings being held in public. Mr Kennedy described this approach as “a public flogging of an individual”, adding that the current conduct regulations allow a complainant to attend a misconduct hearing, saying that—

” “Ultimately, under the current regulations, if a complainant wishes to be at a misconduct hearing, they can ask to be there and the chair can allow them to be there. They can be there right until the point that the officer receives the finding and the disciplinary outcome”.¹⁶⁴

407. David Malcolm said that whilst the proposal is not applicable to staff, Unison’s view is that public misconduct hearings would “infringe on the right to privacy, which is a fundamental human right”.¹⁶⁵

408. HM Chief Inspector of Constabulary, Craig Naylor, told the Committee that he is in favour of gross misconduct hearings being held in public, as it is important for the process to be available to the public, and for the outcome to be published in the press. Mr Naylor said—

” “My view is that this is about transparency and assurance for the communities that we serve that, when something goes wrong that meets the gross misconduct standard, action is not only taken but seen to be taken”.¹⁶⁶

409. In Victim Support Scotland’s [supplementary written evidence](#), feedback from a family supported by their Support for Families Bereaved by Crime Service indicated that they were not permitted to attend the misconduct proceedings. It states that—

“The current regulations also did not permit the family (interested parties) to be present at or involved in the Conduct proceedings. Therefore, at no time was the family able to have knowledge of the outcome that was reached regarding the remaining 12 officers. The entire process caused additional and significant trauma on the family”.

410. In a response to a written parliamentary question ([S6W-20884](#)) around the holding of gross misconduct hearings in public, reference is made to section 8 of the Bill, procedures for misconduct: senior officers. This might suggest that the intention is that the introduction of public hearings for gross misconduct might only apply to senior officers.
411. The Cabinet Secretary acknowledged that there were a range of views on this issue, telling the Committee that the Scottish Government will continue to engage and consult with policing partners, and “take the opportunity that we have in the time that we have to consider the impact of public hearings south of the border”.¹⁶⁷

- 412. The Committee heard conflicting evidence on the merits of gross misconduct hearings being held in public. Members of the Committee also hold opposing views on this matter. We recommend that the Scottish Government sets out the case for public hearings in its response to this report and provides clarification of the meaning of “in public”.**
- 413. If gross misconduct hearings are to be held in public, we agree with Lady Angiolini’s recommendations that there should be appropriate safeguards put in place for vulnerable witnesses, and that the Chair should have discretion to restrict attendance as appropriate, whilst ensuring that as much of the hearing is held in public as possible.**

PARTS 9 TO 16: FUNCTIONS OF THE POLICE INVESTIGATIONS AND REVIEW COMMISSIONER

Proposals in the Bill

414. The provisions under this heading concern the functions of the Police Investigations and Review Commissioner. They amend the 2006 Act. PIRC is an office holder and is independent of Police Scotland and the SPA.
415. Section 9 clarifies what the term “person serving with the police” means in relation to PIRC’s investigation of a person serving with the police who may have committed an offence, as well as the circumstances of any death involving a person serving with the police which the procurator fiscal has asked PIRC to investigate.
416. Section 10 amends the relevant provisions in the 2006 Act which specify who may make a relevant complaint to PIRC. It provides clarification that constables can make a complaint about an act or omission that adversely affected them in their personal capacity, as opposed to their capacity as a person serving with the police.
417. Section 11 amends the circumstances in which PIRC can carry out a complaint handling review (CHR). The provisions allow PIRC to do this without a request from the complainer, Police Scotland or the SPA, if the Commissioner finds it in the public interest to do so. It also includes a requirement for the SPA and Police Scotland to respond to the Commissioner’s recommendations, within the timescales set out in PIRC’s report.
418. Section 12 provides PIRC with a power to take over consideration of, or call-in, complaints being dealt with by the Chief Constable or the SPA, under certain circumstances. This could be if PIRC has reasonable grounds to believe that the appropriate authority is not handling, or has not handled, the complaint properly, and it is in the public interest for the Commissioner to consider the complaint.
419. Section 13 enables PIRC to audit the SPA and the Chief Constable’s arrangements for the investigation of information provided in whistleblowing complaints. PIRC would also be able to make recommendations or give advice on the arrangements for handling such complaints, in a published report.
420. Section 14 extends the powers of PIRC to allow the Commissioner to investigate serious incidents or allegations of potential criminality involving police officers of forces from other parts of the UK who are carrying out policing functions in Scotland, where directed to do so by the appropriate prosecutor.
421. Section 15 provides the Commissioner with a bespoke power to review the practices and policies of the police generally, and not just in relation to a particular incident.
422. Section 16 provides for the Scottish Ministers to make regulations allowing PIRC to access Police Scotland’s conduct and complaints electronic storage system, or an

SPA electronic storage system, if required. This would be achieved by creating a legal obligation on the SPA and the Chief Constable to provide access to the system.

Investigations into matters involving persons serving with the police

423. The Angiolini review found that the term “person serving with the police” was not clearly defined in legislation and that this caused uncertainty in determining whether the person’s actions or omissions, which might constitute criminal offences, could be investigated. The review recommended that this be put beyond doubt, explaining that—

“The moot point is whether this should be interpreted as being a person serving at the time of the current investigation, or a person serving at the time of the act or omission (but since retired). There has also been uncertainty over whether “person serving with the police” means a police officer when they are off duty, or a police officer only if they are on duty”.¹⁶⁸

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

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

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

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

Views on the proposals in the Bill

Definition of a person serving with the police

426. The evidence received by the Committee indicates that there is general agreement about the need to clarify the definition of “a person serving with the police”.

427. In its [written evidence](#), Police Scotland indicated that they support the proposal to extend this power to officers who have left the police service, saying that—

“At present, the PIRC’s powers cease to have effect when an officer retires or resigns from the service which presents issues if PIRC are part way through conducting an investigation and no longer have the power to continue to investigate and report to COPFS”.

428. In its [written evidence](#), the SPF referred to extending PIRC’s powers to investigate officers who have “left the service, did not become an officer until after the conduct took place or was not on duty at the time of the relevant incident”, as “a step too far”.
429. The accompanying documents to the Bill indicate that the term “a person serving with the police” refers only to a police officer’s actions or omissions, which might constitute criminal offences. However, this term could be interpreted as including police staff.
430. **The Committee welcomes the provisions, as they will assist PIRC in undertaking investigations into those who, at the time of an act or omission which might constitute a criminal offence, were serving with the police.**
431. **The Committee seeks clarifications from the Scottish Government about whether the use of the term ‘person serving with the police’, means that these provisions will also apply to police staff.**

Investigations into matters involving persons serving with the police

432. The Angiolini review received evidence that Section 33A(b)(ii) of the 2006 Act is ambiguous in that it is unclear whether the term “the circumstances of any death involving a person serving with the police” encompasses the death of a serving police officer. The review recommended that “The 2006 Act should be amended to put this beyond doubt”.¹⁶⁹
433. The Policy Memorandum indicates that the intention of these provisions is to allow PIRC to investigate “a death that the procurator fiscal is legally obliged to investigate under section 1 of the Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016, and where a person serving with the police has been involved, this will apply “whether or not the circumstances occurred in the course of the person’s duty, employment or appointment”.
434. The evidence received by the Committee indicates that there is some confusion about whether these provisions apply only to the death of a person where it *involves* a police officer or whether they also apply to the death *of* a police officer.
435. In their written submissions [Police Scotland](#) and the [SPF](#) both referred to PIRC being given a power to investigate the death of a person serving with the police. However, in its written evidence, the [SPA](#) referred to “a death involving a person serving with the police”.
436. In its [written evidence](#) to the Committee, PIRC confirmed that it had received confirmation from the Scottish Government’s Bill team regarding the scope of these provisions, as the provisions “suggest that PIRC is to have responsibility to investigate deaths of serving police officers as opposed to deaths occurring following contact with police officers”. The Commissioner said—

“However, we have confirmed with the Bill team that there is no intention that the PIRC will have a duty to examine all deaths of serving officers as opposed

to deaths of persons who have had contact with police officers or staff. It is for Crown Office and Procurator Fiscal Service (COPFS) to instruct PIRC in such matters”.

437. While not explicitly referenced in the accompanying documents, the Scottish Government Bill team advised that there was not a need to change the legislation as it could already apply where the person who died was a person serving with the police.

438. In their written evidence, [Police Scotland](#) and the [SPA](#) both raise a question about whether there is a conflict with the requirement for PIRC to investigate a death “whether or not the circumstances occurred in the course of the person's duty, employment or appointment”, and the requirements of the Fatal Accidents and Sudden Deaths etc (Scotland) Act 2016. The SPA said—

“However, sections 1 and 2(3) of the 2016 Act require the procurator fiscal to investigate only those accidents occurring while the person was acting in the course of their employment or occupation. The reference to “required” in amended section 33A(b)(ii) is therefore potentially confusing”.

439. In its [written evidence](#), the SPF indicated that “The investigation of deaths of serving police officers would only seem appropriate if there was an inference that the officer had died due to an issue with the service”.

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

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

Complaints made by persons serving with the police

Proposals in the Bill

442. Section 10 of the Bill amends the provisions in the 2006 Act which specify who may make a relevant complaint to PIRC. It changes the term “member of the public”, to “person”.

443. The Policy Memorandum explains that this is to “clarify that constables can make a complaint about an act or omission that adversely affected them in their personal capacity, as opposed to their capacity as a person serving with the police”.

444. This means that those who can complain will include police constables who were off-duty when the act or omission occurred. The Policy Memorandum confirms that a “relevant complaint does not include matters which amount to a criminal offence, an act or omission witnessed by a person serving with the police, and complaints about police constables’ terms and conditions”.
445. The amendments to the 2006 Act also provide that members of Police Scotland or SPA staff will be able to make complaints about acts or omissions that occurred during their working hours or outside of their working hours.
446. The Angiolini review heard that the general approach taken by PIRC is that “police officers who make complaints about matters occurring on duty are not regarded as ‘members of the public’ for the purposes of the 2006 Act”. The review concluded that it would “seem logical that an off-duty police officer who receives a poor quality of service from Police Scotland should have the same entitlement to complain and seek redress as any other citizen”.¹⁷⁰

Views on the proposals in the Bill

447. The evidence received by the Committee indicates that there is support for providing clarity that people serving with the police can make a complaint about the service they received, when they are off-duty.
448. In its [written evidence](#), HMICS stated that “This will clarify that officers and staff can expect the same rights as other members of the public”.
449. In its [submission](#), the SPA supports the provisions, but asks whether “relevant complaint” is an appropriate term to describe complaints made by members of the public. The SPA explains that, in its experience, the term has caused confusion, as it has been interpreted as meaning “that some complaints are “relevant”, while others are “irrelevant””. They suggest changing the term to “public complaint”.
450. In its [written submission](#), PIRC requested clarification as to whether “a relevant complaint can include a complaint regarding an act or omission witnessed by a person serving with the police if witnessed not in their capacity as a person serving with the police”.
451. In its [written evidence](#) to the Committee, CRER indicated that the provisions raise questions about how PIRC would determine those who are ‘adversely affected’ in a personal capacity. They recommended that “Support must be given to those who are making the complaint, especially if there is a discriminatory element to their complaint”.
452. The Cabinet Secretary for Justice and Home Affairs told the Committee that—
- ” “If officers and staff experience poor service in a personal capacity, the bill clarifies that their complaint to Police Scotland will be able to be reviewed by the PIRC. That will give constables and staff an external body to go to”.¹⁷¹
453. **The Committee welcomes the provisions in the Bill, as they provide clarity that off-duty police officers and staff have the same rights as other members**

of the public.

454. The Committee asks the Scottish Government to clarify whether the Bill's intention is that only acts or omissions which directly affect people, and not those which are witnessed by a person serving with the police in their personal capacity, will be defined as a relevant complaint.

455. The Committee asks the Scottish Government to consider whether the term "relevant complaint" is sufficiently understood by members of the public and, if it is not, consider changing the term to "public complaint".

Complaint handling reviews

Proposals in the Bill

456. Section 11 of the Bill enables PIRC to carry out a complaint handling review without a request having to be made by the complainer, Police Scotland or the SPA, if it is in the public interest to do so. It enables PIRC to make recommendations in its complaint handling review report for the SPA and Police Scotland, and requires them to respond to them within eight weeks or within the timescales set out in the report, setting out what they have done, plan to do, or providing an explanation why nothing has been done.
457. The Explanatory Notes indicate that "The PIRC may, if the PIRC considers it appropriate to do so, publish the response to its recommendations".
458. The Angiolini review recommended that PIRC "be vested with a statutory power to make recommendations in addition to the existing powers to direct reconsideration of complaints". The review also recommended that "there should be a statutory duty, subject to a public interest test, on the Chief Constable to comply with recommendations unless there are sound overriding operational or practical reasons for not complying".¹⁷²

Views on the proposals in the Bill

Policing bodies to respond to the PIRC's recommendations

459. There was general agreement with these provisions, in the evidence received by the Committee. Some issues were raised about the pressure that might be exerted on PIRC to carry out certain complaint handling reviews, previous experiences of a lack of transparency in communications by PIRC, and the need for a requirement that these new processes respect the confidentiality of complainers.
460. The Commissioner, Michelle Macleod, told the Committee that "The bill would provide us with some more teeth" with regards to the implementation of PIRC's recommendations. Ms Macleod said this is welcome as there is an expectation from

the public that PIRC's recommendations are enforced. Ms Macleod clarified that "Currently, we have no sanction if the police choose not to implement recommendations".¹⁷³

461. Witness A [told the Committee](#) that these provisions are welcome, as when PIRC "investigates something and finds a flaw then that flaw must be addressed". He described the process of a recommendation for Police Scotland by PIRC "highlighting that flaw, saying what needs to be done to address it, and providing a timeline to report back to the PIRC", as "a very good idea".
462. Fiona McQueen, SPA, told the Committee that the Bill's requirement that the SPA and Police Scotland respond to recommendations made by PIRC in complaint handling reviews does not fully implement Lady Angiolini's recommendation "that the authority and Police Scotland should be under a duty to comply with recommendations, subject to a public interest test". Ms McQueen stated that "We support the implementation of Lady Elish's recommendation in full".
463. Robin Johnston added that the SPA takes the view that a duty to comply with recommendations "would enhance independence in the handling of the most serious complaints about police officers in Scotland".¹⁷⁴
464. In its [written submission](#), Police Scotland indicated their support for the provisions, but highlighted a risk that these new powers may lead to additional complaint handling reviews being conducted. Police Scotland added that the requirement for them to provide a written report within set timescales, means that "there will be an additional financial and resource demand to Police Scotland". They indicated that they would welcome work with stakeholders "to develop a fuller understanding of the resource implications of these proposals".
465. Deputy Chief Constable Alan Speirs told the Committee that Police Scotland welcomed the proposal for it to respond to PIRC's recommendations within specific timescales "if it adds to the picture of transparency".¹⁷⁵

Transparent reporting of outcomes

466. The Committee received evidence about a lack of transparency by PIRC in reporting the outcomes of its complaint handling reviews.
467. Kate Wallace told the Committee that the perception of the role of PIRC from a victim's perspective is "a challenge", this is because Victim Support Scotland "continually see victims having a very negative experience". This includes the "length of time that the process takes, the communication with victims, and a real lack of understanding as to how PIRC came to a decision having reviewed the handling of a complaint". Ms Wallace stated that—
- ” "... if we went out and asked people who have been supported by VSS about their experience of the PIRC, the responses would not be positive ... I am not aware of a single case where the victim felt that the way that they were dealt with by the PIRC was satisfactory".¹⁷⁶
468. In its [written evidence](#), Victim Support Scotland highlighted that where a complaint

review is conducted without a complainer requesting it, PIRC must respect the “privacy and confidentiality of the complainer”, and inform them if the “complaint they made is to be subject to a review that will enter the public domain”. They added that PIRC should fully co-operate with the Victims and Witnesses Commissioner, if established.

469. In its [written submission](#), Amnesty International UK recommended that the proposed new powers for PIRC in relation to complaint handling reviews and calling-in of relevant complaints, could be strengthened by the inclusion of—

“... a presumption that these documents would only be withheld from public scrutiny in exceptional circumstances e.g. to protect the safety of an individual. This could be an important step towards increasing transparency and public trust as currently very limited information is published on PIRC’s website regarding the outcome of Complaint Handling Reviews and Investigations”.

470. In its [submission](#), the Coalition for Racial Equalities and Rights questioned whether PIRC, in its current form, “would be appropriate to handle racist incidents of its own volition despite it being in the public interest”. They recommended that if PIRC is to carry out reviews, that “all reporting must be done in a transparent manner”.

471. **The Committee welcomes the additional powers for PIRC to call in complaints, a requirement for policing bodies to respond to PIRC’s recommendations and the provisions which enable the reporting of outcomes. These measures improve the transparency and robustness of the police complaints process and have the potential to improve public trust and confidence in the handling of police complaints.**

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

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

Call-in of relevant complaints

Proposals in the Bill

474. Section 12 of the Bill provides PIRC with the ability to take over the consideration of a police complaint in certain circumstances. This could be following a complaint

handling review or when requested to do so by Police Scotland or the SPA. PIRC could also do so of the Commissioner's own volition or at the request of the complainer, following consultation with the authority which dealt with the complaint initially, if the Commissioner has reasonable grounds to believe that the appropriate authority is not handling, or has not handled, the complaint properly and it is in the public interest for the Commissioner to consider the complaint.

475. The Bill also enables PIRC, on completion of the Commissioner's consideration of the complaint, to produce a report of that consideration detailing the conclusions, reasons, proposed actions and recommendations. PIRC can also publish its report if the Commissioner considers it appropriate to do so.
476. The Bill also outlines the steps that PIRC must take after calling-in and taking over the consideration of a complaint, such as making statutory recommendations and placing an obligation on the appropriate authority to respond to them.
477. Where the report includes recommendations in relation to the complaint, the appropriate authority must, within eight weeks or such period as is specified in the report, provide a written response setting out what it has done, proposes to do, and if nothing has been done, provide the reasons for that.
478. The Policy Memorandum states that the Bill clarifies that the Commissioner can call-in a complaint at any stage of the complaint handling review and enables PIRC "to review the complaint handling following a request from the complainer before deciding whether to call it in". The aims of these provisions are "to address any concerns from the complainer around a lack of progress in the handling of their complaint and ultimately improve the efficiency of the process".

Views on the proposals in the Bill

479. The evidence received by the Committee indicated that there was general agreement with the introduction of these new powers for the Commissioner.
480. Craig Naylor confirmed that HMICS is in favour of this provision as it could provide greater "transparency and improved outcomes for victims and people who make complaints".¹⁷⁷
481. Mr Bill Johnstone told the Committee that the ability of PIRC to call in a complaint and investigate it independently, could improve public confidence in the police complaints system, saying that—

” “If a member of a deceased's family complained about a poor-quality investigation into the death, they could make a complaint—and it is, I expect, the kind of complaint that would be given consideration for call-in”.¹⁷⁸
482. The [written response](#) from Family's United highlighted that this is an important provision for those who make complaints. They said that—

“In our experience we had seen that Police initially did not investigate a complaint, therefore PIRC could not investigate it, it then took about a year to get it to PIRC and PIRC in turn took a year. In that time the officer retired!”

483. In its [written evidence](#) to the Committee, Police Scotland welcomed the proposal and requested further consideration of the practicalities “to minimise duplication of investigation and to ensure a fair and streamlined service to the public”.
484. The SPA, in its [written submission](#), supported the provisions, but is seeking clarification on “whether or not a complainer who is dissatisfied with the PIRC’s handling of a “called-in” complaint has any further recourse by way of an appeal”.
485. Katharina Kasper told the Committee that the power of PIRC to call-in complaints would provide the SPA complaints and conduct committee with “important data”, saying that-
- ” “As our colleagues from the PIRC explained to this committee last week, they look at whether a complaint has been handled to a reasonable standard but they do not necessarily reinvestigate the matter. The ability to call in significant complaints could be helpful”. ¹⁷⁹
486. In its [submission](#), ASPS questioned the expansion of the role and powers of PIRC, asking how “will this be resourced and paid for”, and “How will the effectiveness of this be measured?”.
487. In its [written evidence](#) to the Committee, PIRC said it had secured an undertaking that it will have the discretion as to which complaints to call in. The Commissioner sought this assurance due to a concern that the power to call in complaints may create a process whereby every complainer seeks an automatic review of any decision with which they are dissatisfied. This would have a significant impact on PIRC’s resources. The Commissioner said that—
- “PIRC has concerns – already raised in response to the Financial Memorandum of the Bill - that there is the potential for PIRC to become overwhelmed. To examine such complaints – even with a ‘serious’ threshold imposed – would require the creation of a standalone assessment unit and create further resource implications”.
488. The Commissioner, Michelle Macleod, told the Committee that these provisions could allow PIRC to take over investigations into the substance of non-criminal complaints, for reasons of public interest, as the ‘call-in’ provisions—
- ” “... could be used in cases where, whether through a complaint-handling review or another route, the PIRC identified that something had been handled so inadequately or badly that it should take over the complaint”. ¹⁸⁰
489. Ms Macleod clarified that at present PIRC cannot instruct the police to investigate and we cannot investigate the substance. However, “a call-in complaint would allow us to investigate the substance”. Ms Macleod cautioned that this is an area where there is the potential for PIRC to become overwhelmed by requests from “people who are unhappy with the outcomes of various cases”. ¹⁸¹
490. The Cabinet Secretary told the Committee that this provision aims to provide reassurance to the public, by enabling PIRC, when asked or of the Commissioner’s own volition, to—

” “... conduct independent investigations into the most serious non-criminal cases of complaint at any time if there is sufficient evidence that the complaint is not being properly considered by Police Scotland.”¹⁸²

491. **The Committee welcomes these new functions for PIRC, as they could improve the transparency and efficiency of the complaints handling processes.**

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

Review of arrangements for investigation of whistleblowing complaints

Proposals in the Bill

493. Section 13 of the Bill amends section 40A of the 2006 Act to enable PIRC to audit the SPA and the Chief Constable's arrangements for the investigation of information provided in a whistleblowing complaint. The Bill also enables PIRC to make recommendations or give advice to Police Scotland and the SPA on their arrangements for handling such complaints in a report, which must be published.

494. The Policy Memorandum explains that these new powers will not impact on the rights of whistleblowers, instead they will “improve the transparency of processes around how public interest matters are investigated”. The Policy Memorandum indicates that it is anticipated that this “will encourage people to speak up when they see wrong-doing”, as well as provide “an opportunity for Police Scotland and the SPA to take on board learning and address issues arising from concerns raised”.

495. The Angiolini review recommended that PIRC should be added to the list of prescribed persons in The Public Interest Disclosure (Prescribed Persons) Order 2014. Lady Angiolini explained that this amendment to UK legislation is necessary “in order that people working in Police Scotland and in the Scottish Police Authority are able to raise their concerns with an independent third-party police oversight organisation”.¹⁸³

496. The Scottish Government does not provide an explanation in the Bill’s accompanying documents as to why this recommendation is not being implemented.

Views on the proposals in the Bill

497. The evidence received by the Committee indicated that there was general support

for PIRC to be given powers to audit the SPA and the Chief Constable's arrangements for the investigation of information provided in whistleblowing complaints.

498. Lady Elish Angiolini told the Committee that, as police officers depend on each other and develop strong bonds, it is "incredibly tough" for them to be whistleblowers, adding that "They therefore need the best protection possible".¹⁸⁴
499. In its [written evidence](#) to the Committee, the SPA indicated that it "understands that the Scottish Government is to work with the UK Government with a view to PIRC being included as a prescribed person in the Order". The Authority stated that—
- "The PIRC's inclusion as a prescribed person will allow police officers, police staff and Authority staff to make conduct-related whistleblowing allegations directly to an independent third party, while maintaining the protections afforded to whistleblowers under employment legislation. It will also bring Scotland into line with arrangements in England and Wales (where the IOPC is a prescribed person) and the Republic of Ireland (where the Garda Síochána Ombudsman Commission is a prescribed person under the equivalent Irish legislation)".
500. Margaret Gribbon told the Committee that an audit function for PIRC "would not be sufficient to give whistleblowers confidence in reporting concerns", as it relies on Police Scotland to categorise a complaint as whistleblowing. Ms Gribbon provided the following recent example where this did not happen in response to a whistleblowing complaint made by a former police officer who she represented. Ms Gribbon said—
- ” “She submitted a very detailed witness statement to the PSD last year. It contained multiple allegations of breaches of the Equality Act 2010. It included criminal allegations against officers. It contained, without a doubt, 39 protected disclosures, which is the legal term for whistleblowing. However, Police Scotland did not deal with that complaint as a whistleblowing complaint. How on earth can any external body audit or review so-called whistleblowing complaints if Police Scotland does not categorise such complaints as whistleblowing complaints?”¹⁸⁵
501. Ms Gribbon said that adding PIRC as a prescribed person would "encourage people to speak up when they see wrongdoing", as "it would give a police officer the statutory right to make their whistleblowing complaints directly to the PIRC".¹⁸⁶
502. Chief Superintendent Helen Harrison told the Committee that Police Scotland is "keen to ensure that we reflect and learn from previous situations". She explained that involves encouraging people to report wrongdoing and ensuring that the investigation is allocated to the right area and team, so that "we afford the protections to that individual who has made that protected disclosure".¹⁸⁷
503. Dr Genevieve Lennon, SIPR, said that it would be "advantageous to have an independent body, whether it sat within the PIRC or somewhere else" for whistleblowers. Dr Lennon told the Committee that approach "is recognised as international best practice".¹⁸⁸

504. Kate Wallace told the Committee that Victim Support Scotland is “supportive of the PIRC’s role in handling complaints from whistleblowers”. Ms Wallace stated that “it is really important that we treat whistleblowers right in the context of having a culture of transparency, trust and accountability”, especially as public trust and confidence in the police have “decreased rapidly over recent years”.¹⁸⁹
505. In its [written evidence](#), the Coalition for Racial Equalities and Rights highlighted that, due to PIRC employing former police officers, those with negative experiences of the police “will not necessarily find PIRC trustworthy in handling whistleblowing complaints”. They suggest that “Supporting Ethnic Minority Police employees for Equality in Race (SEMPER) may be the best equipped to work with BME officers in this instance and require further resources or funding to do so”.
506. Sharon Clelland of PIRC told the Committee that PIRC is supportive of taking on responsibility for auditing the SPA and the Chief Constable’s arrangements for handling whistleblowing complaints. However, Ms Clelland indicated that PIRC does not necessarily agree with Lady Angiolini’s view that there is not a prescribed person in Scotland that people within the police service can make a protected disclosure to. She confirmed that—
- ” “There is already a list of prescribed persons, which include the Lord Advocate, the Scottish Information Commissioner, the Information Commissioner’s Office and the Investigatory Powers Commissioner’s Office”.¹⁹⁰
507. Ms Clelland explained that if PIRC was to take on this role, it would merely act as a “post box” to one of the prescribed persons, and the Commissioner is concerned that PIRC could not provide employment protection to officers or staff who make protected disclosures. She said that—
- ” “We are not in a position to do that, so if people are looking to not suffer detriment for making a protected disclosure—for example, officers who do not want to be moved post—we do not necessarily have the ability to ensure that those protections are provided”.¹⁹¹
508. Fiona McQueen confirmed that the SPA is supportive of the proposal for PIRC to become a prescribed person under United Kingdom whistleblowing legislation.¹⁹²
509. Robin Johnston said that the SPA agrees with the Angiolini review that there is “a gap in the prescribed person apparatus. That gap is the absence of a dedicated Scottish police oversight body”. Mr Johnston added that there are similar policing bodies in England, Wales and the Republic of Ireland who carry out this function.¹⁹³
510. HM Chief Inspector of Constabulary, Craig Naylor, recommended that both PIRC and the SPA be named organisations for whistleblowing. The Chief Inspector explained that this approach would bring the legislation into line with policing bodies in England and Wales, saying that—
- “My view is that we need to give people more options. For any organisation, people will have views on how effective it is, and it is better to give more rather than fewer options”.¹⁹⁴

511. The Cabinet Secretary confirmed that she is sympathetic to the Commissioner's view that PIRC should not be designated as a prescribed organisation for the purpose of whistleblowers, saying that "There are practical arguments that the commissioner is deploying effectively, in my view".¹⁹⁵

512. **The Committee welcomes PIRC being given the powers to audit the whistleblowing arrangements for Police Scotland and the SPA.**

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

Investigations involving constables from outwith Scotland

Proposals in the Bill

514. Section 14 of the Bill amends the 2006 Act to extend the powers of PIRC to allow the Commissioner to investigate serious incidents or allegations of criminality involving police officers of forces from other parts of the UK who are carrying out policing functions in Scotland, either on behalf of their own forces or on behalf of Police Scotland through the provision of mutual aid.

515. The Explanatory Notes indicate that PIRC must, when directed to do so by the Lord Advocate or a procurator fiscal, investigate—

"(a) alleged criminality by such officers allegedly committed in the course of their duties, and (b) deaths involving such officers in the course of their duties".

516. The Bill also enables the Commissioner, where requested to do so by the appropriate chief constable or officer, to investigate and report on a serious incident involving the individual which occurred in Scotland.

517. The Policy Memorandum explains that these provisions are necessary, as—

"Currently when an incident has taken place that involves an officer from another jurisdiction who was operating in Scotland at the time of the incident, and it relates to a criminal matter, it could be investigated by Police Scotland, but not the PIRC. There is no statutory provision in place for anyone to carry out an investigation of a serious incident, as envisaged under the 2006 Act, in relation to non-criminal matters".

518. The Bill provides for regulations to be introduced by the Scottish Ministers which will provide the procedure of an investigation and include a power for PIRC to prepare a report of each investigation carried out. The regulations will be subject to consultation.

Views on the proposals in the Bill

519. The evidence received by the Committee indicated that there was general support for this provision.
520. In its [written evidence](#), PIRC supported these new powers, but highlighted that there will be “resource implications particularly when there are large events in Scotland requiring mutual aid and assistance”. The Commissioner stated that—
- “This should be detailed within the financial memorandum and discussions regarding potential funding will require to be undertaken at the time that any Section 104 Order was agreed / implemented”.
521. The Financial Memorandum does not include any costs for these provisions. It states that “If there was an increase in case numbers, then it would potentially require the PIRC to increase staff numbers. This should be monitored but no additional costs have been factored in at this stage”.
522. In its [written submission](#), Police Scotland supported the proposals, saying that it would welcome “the opportunity to explore the practical application of these proposals and to further understand any reciprocal arrangements which may apply to Police Scotland officers deployed elsewhere in the UK”.
523. In its [written evidence](#), ASPS supported the proposal “in principle”, in terms of fairness and transparency. However, they questioned how “such a change may affect the willingness of chief constables to provide mutual aid”.
524. In its [written evidence](#), the SPF said that these new powers “dramatically” change PIRC’s remit, stating that “Any investigation that is a criminal nature would surely be best to be investigated by the Police”.
525. In its submission, [Victim Support Scotland](#) supported PIRC having the ability to investigate in these circumstances, saying that—
- “For individuals affected by criminal offending in Scotland, or who are the relatives of constables who have died, it is important that there is full and thorough investigation of what happened. The constable’s presence in Scotland should allow investigation from the PIRC”.
526. Mr Justin Farrell, CAAPD, told the Committee that PIRC should also be able to investigate officers from other parts of the United Kingdom who are on deployment in Scotland, to resolve the current situation where PIRC and Police Scotland could be running parallel investigations into officers. Mr Farrell said—
- “If the PIRC had the statutory power to investigate officers deployed on mutual aid or whatever the policing basis might be, that would be helpful, because it could do so against officers from elsewhere as well as Scottish officers at the same time, and we would have one investigation instead of more than one”.¹⁹⁶
527. **The Committee welcomes the proposal to enable PIRC to carry out an investigation of a serious incident involving an officer from another jurisdiction who was operating in Scotland at the time of the incident.**
528. **It is important that any criminality involving police officers from forces of**

other parts of the UK, who are carrying out policing functions in Scotland, and deaths involving such officers in the course of their duties, are fully investigated.

Review of, and recommendations about, practices and policies of the police

Proposals in the Bill

529. The Angiolini review recommended that PIRC be given a power to investigate a current practice or policy of Police Scotland if the Commissioner “believes that it would be in the public interest to do so and that this power is used to focus on broad themes or trends, or practices which might be of particular public concern”.
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530. PIRC currently has a power to carry out investigations into relevant police matters. A ‘relevant matter’ is where there is an incident in relation to which there is an indication that the SPA, Police Scotland or a person serving with the police has been involved (other than certain matters investigated under other powers).
531. The Explanatory Notes state that the provisions in section 15 give “the PIRC a bespoke power to review practices and policies of the police generally, and not just in relation to a particular incident”.
532. The Policy Memorandum explains that this power would be used at the Commissioner’s discretion “when the PIRC becomes aware of a trend, theme or practice emerging in the discharge of its other functions”. It clarifies that once this new function of PIRC is in force the “PIRC and HMICS will need to collaborate to consider who the most appropriate body is to review any practice or policy to avoid unnecessary duplication”.
533. The Bill also provides for PIRC to be able to publish reports “in such a manner as the Commissioner considers appropriate”. It also provides that the SPA and Chief Constable must give the Commissioner an initial written response to a recommendation to review a practice or policy. This is to be followed by an implementation report which details “(a) what the recipient has done in response to the recommendation since receiving the recommendation, and (b) anything else that the recipient proposes to do in response to the recommendation”.

Views on the proposals in the Bill

534. There were mixed views on the proposed new powers for PIRC to review the policies and practices of Police Scotland. A key issue raised was how PIRC’s new role would work alongside the role of HMICS to look into the state, effectiveness and efficiency of Police Scotland and the SPA.

Review of policies and practices

535. In evidence provided by those with experience of the police complaints system, the Committee heard about some specific policies and practices that Police Scotland could improve.

536. Witness A **said that** he was not able to access any of the people within Police Scotland who were investigating his complaint. He recommended that Police Scotland allocate a support officer to the person who is making the complaint. He said that—

“They could relay the progress of the investigation back to the complainer. This would take the burden off the investigating officer, as well as providing a single point of contact from a welfare perspective”.

537. Phillip Chapman of PIRC told the Committee that PIRC are aware of how distressing the police complaints process can be, and confirmed that for investigations of deaths involving the police—

” “We have systems and practices in place in terms of family liaison officers, when there are families and next of kin who need to be kept up to date”.¹⁹⁸

538. Stephanie Bonner told the Committee that she was not provided with a family liaison officer when her son, Rhys, went missing or after she was informed that he had been found and his death was ruled as unexplained. Mrs Bonner said that being provided with a family liaison officer would have made “a big difference” to her and her family.¹⁹⁹

539. The Committee asked the Commissioner, Michelle Macleod, whether the new powers for PIRC would enable members of the public to raise issues of Police Scotland’s policies or practices directly with PIRC or HMICS, such as its policy on providing family liaison officers. Ms Macleod confirmed that if it was a recurring issue, then the provision would enable PIRC to consider Police Scotland’s policy on the allocation of a family liaison officer, saying—

” “If the provision is implemented, it could be either. As I said, I would always give primacy to HMICS”.²⁰⁰

Possible duplication of roles: PIRC and HMICS

540. The Committee heard evidence about the similarities of the proposed new powers for PIRC to the existing statutory functions of HMICS, and the potential for confusion and duplication. There were differing views on how this might be addressed.

541. Section 85 of the 2012 Act places a duty on PIRC and HMICS to “co-operate and co-ordinate activity with each other with a view to improving the carrying out of their respective functions in relation to the Authority and the Police Service”, and to make arrangements with a view to “(preventing any unnecessary duplication in relation to any inspections, investigations, inquiries or examinations carried out, or to be carried out, by them in relation to the Authority or the Police Service”.

542. HM Chief Inspector of Constabulary, Craig Naylor, told the Committee that HMICS does not agree with the introduction of these new powers for PIRC. Mr Naylor explained that HMICS are “the experts in the scrutiny of policies, procedures and practices”, and PIRC “is designed to investigate complaints and to conduct complaints handling reviews”. The Chief Inspector highlighted the risk of an overlap of powers, saying that—

” “If the personalities change and there is not such a good relationship, we could end up with a conflict between the two organisations that we are inspecting and not have clarity of whose responsibility it is to improve policing in Scotland”.²⁰¹

543. Mr Naylor also questioned whether PIRC “has that capability or has the resources to conduct reviews into policy and procedures when they are busier than ever”.²⁰²

544. In its [written evidence](#), Police Scotland stated that the existing powers granted to HMICS are “adequate and provide appropriate management and oversight towards organisational practice and policy”. Police Scotland added that if PIRC is to be given these new powers, there will be financial implications for Police Scotland to “assist the Commissioner in such reviews and to produce a written Implementation Plan etc within prescribed timescales”.

545. In its [written evidence](#), the ASPSP raised a similar concern, stating that “the current governance framework around practice and policies should remain the preserve of the SPA and HMICS”.

546. In its [submission](#), the SPF highlighted that any recommendation regarding practices and policies “should never be allowed to interfere with the operational independence of the Chief Constable”.

547. The Commissioner, Michelle Macleod, told the Committee that PIRC could add value to the review of Police Scotland’s policies and practices by focussing on those operational issues which are the subject of multiple complaints. Ms Macleod clarified that prior to undertaking a review of a policy or practice, PIRC would check whether HMICS had the capacity to look at the issue. The Commissioner said—

” “On where we could add some value, HMICS is a relatively small team with limited capacity. It has quite a full programme and, sometimes, it is asked to do work at short notice by the cabinet secretary if something is high profile. HMICS tends to be very strategic, so it will look at culture, diversity and other organisational issues, such as vetting, on which it has done a recent inspection.

Mainly through the complaint handling side, we will see repeat complaints about certain areas— they tend to be operational areas”.²⁰³

548. The Cabinet Secretary explained to the Committee that the role of HMICS is to provide “close scrutiny, commentary and recommendations on whether policy and procedures are appropriate and in the right domain”, whereas PIRC’s role is “often more concerned with the application of existing policies and procedures”.

549. The Cabinet Secretary confirmed that “PIRC is well placed to highlight any gaps and measures that are needed and to inform partners of any vital learning”. Ms Constance added that she would give consideration to the proposal by the Chief

Inspector of Constabulary, Craig Naylor, that the Bill should include a provision “to give the PIRC the power to refer particular matters to HMICS should that be appropriate”.²⁰⁴

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

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

Publication of reports

552. In its [written evidence](#), CRER welcomed PIRC being able to provide recommendations in response to individual complaints, saying that “transparency is key to building public confidence”. They suggested that a timeframe for a response should be set and that—

“The body which issues the recommendations should also have the power to review and hold Police Scotland and the SPA to account should there be non-compliance. CRER would recommend that every report be published openly, rather than allowing PIRC to determine the appropriateness of it”.

553. In its [written submission](#), Victim Support Scotland supported these measures as a means to put “increased emphasis on improvement around the practices and policies of Police Scotland or the SPA”, as well as to provide individual complainers with a recorded impact. VSS views the requirement for a written response from Police Scotland and the SPA as “essential”. However, they noted that in order for the public to feel safe making a complaint to PIRC they should be “informed wherever possible if the complaint they made is to be subject to a review that will enter the public domain” and that their privacy and confidentiality should be respected.

554. In its [submission](#), Family’s United described this role for PIRC as “positive”, and recommend that “there must be provision for sanctions if SPA or CC do not deliver an effective solution within an adequate timescale. Otherwise this will just be empty rhetoric”.

555. The Cabinet Secretary confirmed that these provisions provide PIRC with the ability to make recommendations to Police Scotland or the SPA, for those recommendations to be published, and for the Chief Constable to give an initial response and a progress update. Ms Constance said that with regards to timescales “I think that an initial response to recommendations should be made within eight weeks but a progress update can be given within 12 months.”²⁰⁵

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

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

Provision of information to the Commissioner

Proposals in the Bill

558. Section 16 amends the 2006 Act to provide a power for the Scottish Ministers to make regulations authorising or requiring the SPA or the Chief Constable to provide information and documents to PIRC, including access to the electronic storage systems on which they are stored.
559. This will allow PIRC to see information about the handling of complaints as they are being dealt with. It is designed to assist PIRC in meeting their statutory requirements to audit the police complaints handling system and to review the handling of individual complaints.
560. The Policy Memorandum states that this enabling power will allow the Scottish Ministers to “make provision allowing the PIRC to have remote access to Police Scotland’s complaints management database which holds information and documents that PIRC must review in order to meet their statutory functions”. It explains that—

“It will require the Chief Constable to allow remote access to the system. The regulation making power would also allow regulations to be made in relation to accessing the SPA’s systems, should this be deemed necessary in the future”.

Views on the proposals in the Bill

Impact on the time taken to respond to complaints

561. The Committee heard from those with experience of the police complaints system, that the inability of PIRC to have timely access to relevant information from Police Scotland, had negatively impacted on the time taken to respond to their complaints.
562. Stephanie Bonner told the Committee that she agreed with PIRC having access to Police Scotland’s complaints handling database. Mrs Bonner stated that it took Police Scotland “the best part of a year to investigate one complaint, and then it took PIRC the best part of the next year to review the complaint”. Mrs Bonner said—

” “It was clear that the PIRC did not have access to all the information that it needed, and it repeatedly had to contact the police for specific documents. The PIRC was clearly delayed by the situation and was dependent on the police in relation to timescales. That left me waiting and prolonged my pain and distress”.²⁰⁶

563. Mrs Bonner added that this new process would require robust oversight, as Police

Scotland “might be more guarded in what they put on the database if they know that the PIRC can access it”.²⁰⁷

564. Mr Bill Johnstone told the Committee that he had a similar experience with PIRC’s lack of access to information held by Police Scotland leading to a delay. Mr Johnstone said that—

” “When you first go to the PIRC, it has to respond to you in a short time period, which is something like 30 days. The PIRC will come back to you and say, “We’ve got your complaint and this is our response. We are waiting for the documents from the police.” Therein lies the problem, because the process is left open-ended depending on the documentary evidence or whatever that the police cherry picks to send to the PIRC and depending on how long it wants to play it out before the evidence gets to the PIRC”.²⁰⁸

565. Margaret Gribbon told the Committee that in the case of former police officer, Rhona Malone, the professional standards department did not log her complaints on its Centurion database. Therefore, the investigation that is meant to follow on from this information being input to the database, did not happen.²⁰⁹

566. The Commissioner, Michelle Macleod, told the Committee that PIRC having access to the information on Police Scotland’s Centurion database that it is legally entitled to, would speed up the complaint handling process. Ms Macleod said—

” “Once we say that we would like the police to give us information to deal with a complaint, we give them 15 days to get it to us, but, if we had access to such information, we could get it straight away, which would take 15 days off the process. Once we have that system up and running, it will help considerably with timescales”.²¹⁰

567. Justin Farrell, CAAPD, clarified that as the Centurion database contains information on all complaints against the police, and CAAPD only has a remit for access to information on non-criminal complaints, it is not necessary for the Crown Office to have access to the database.²¹¹

Necessary safeguards

568. Those representing police officers and superintendents questioned why it was necessary for PIRC to have direct access to Police Scotland’s complaints database and highlighted that if the Commissioner was to be given this power, safeguards would need to be put in place.

569. In its [written evidence](#), the SPF said that “We can see no reason why PIRC having remote access to Police Scotland complaint management database would be needed and again process with checks and balances would surely have to be in place to make sure that access to this system is properly audited”.

570. In its [written evidence](#), ASPS indicated that “ASPS is not supportive of remote access being granted where the scope and purpose is not clearly defined”.

571. Police Scotland, in its [written evidence](#), supported PIRC being given access to

electronic databases which hold information it may require, as long as “appropriate governance arrangements and robust information security and data protection measures” are in place and the access is “fully auditable”.

572. In its [written evidence](#), HMICS also supported the Commissioner having direct access to audit and review Police Scotland’s files, calling it “a positive development in terms of transparency and efficiency”. HMICS highlighted that “it is important that the legislation takes due consideration of security (including vetting levels of those with access), regular audit and data protection”.
573. Victim Support Scotland indicated support in its [submission](#), but emphasised that “any access to information must be done alongside full respect of the rights and data protection of individual complainers or anyone else affected by the complaints”.
574. In its [written evidence](#) to the Committee, Amnesty International UK said that these new powers present the Commissioner with an opportunity to “monitor Police Scotland’s human rights compliance”, which in turn will enable the publication of “analysis of equality evidence, disaggregated by protected characteristics”. They also indicated that the data could be used “to inform decision-making on investigations in the public interest”. For example, it could be included in PIRC’s quarterly report to the SPA’s Complaints and Conduct Committee.
575. At the [SPA Complaints and Conduct Committee’s meeting](#) of 6 June, Police Scotland confirmed that the latest upgrade to Centurion had taken place and that diversity information can now be captured and provided to the SPA.
576. The Cabinet Secretary confirmed that these provisions aim to “improve efficiency, transparency, independence and public confidence in the police complaints process”, by paving the way for “PIRC to independently and remotely have direct access to audit and review files in Police Scotland’s complaints database”.²¹²
577. **The Committee welcomes that the SPA and the Chief Constable must provide information and documents to PIRC, including access to Police Scotland’s electronic complaints handling system, on which they are stored. This has the potential to reduce the time taken to deal with complaints.**

578. **The Committee seeks clarification from the Scottish Government on the oversight measures which will be in place to ensure that all complaints are added to the Police Scotland database.**

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

580. **The Committee welcomes that the latest upgrade to Police Scotland’s Centurion database has taken place, which means that diversity information can now be captured and provided to the SPA.**

Financial costs - sections 9 to 16

581. The Committee considered the estimated costs for the functions of the Police Investigations and Review Commissioner provisions.
582. The Financial Memorandum indicates that the costs for police bodies to implement the provisions for investigations into matters involving persons serving with the police, and complaints made by persons serving with the police, will be minimal.
583. The FM indicates that the majority of additional costs for PIRC that can be estimated are for the implementation of the provisions enabling PIRC to call-in relevant complaints, recommendations about handling of complaints and the review of a practice or policy of Police Scotland. The Financial Memorandum assesses that PIRC will require the following additional staff to implement the provisions—
- “... a stand-alone team consisting of 1 x Head of Complaints (£88,123), 2 x Senior Investigators (£134,622) and 5 x Grade B2 investigators (£153,639). This equates to £376,384 recurring based on 2022 – 2023 pay scales”.
584. The Commissioner, Michelle Macleod, raised concerns with the Committee about the potential costs of calling-in relevant complaints if PIRC becomes overwhelmed, as well as the costs to investigate serious incidents or allegations of criminality involving police officers of forces from other parts of the UK who are carrying out policing functions in Scotland. The Commissioner indicated that these costs could increase significantly if there are large scale police operations, where mutual aid is provided. PIRC provided the example of the 26th UN Climate Change Conference of the Parties (COP26) held in Glasgow in 2021.

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

PART 17: GOVERNANCE OF THE POLICE INVESTIGATIONS AND REVIEW COMMISSIONER

Advisory Board to the Commissioner

Proposals in the Bill

586. Section 17 of the Bill amends the 2006 Act to enable the Commissioner to establish and maintain an advisory board. The Board's purpose is to advise the Commissioner about matters relating to the governance and administration of the office of Commissioner. The members of the Board are to be individuals appointed by the Scottish Ministers, and a decision to appoint a member to the Board or to terminate a membership of the Board is to be made independently of the Commissioner.
587. The Angiolini review recommended in its [preliminary report](#) that—
- “The PIRC should have the support of a new statutory Board of members appointed through the Scottish public appointments process whose role would be to scrutinise the work of the organisation, review the performance of the Commissioner and offer supportive advice and expertise”.
588. The Angiolini review provided the following update in its final report in relation to this recommendation—
- “This recommendation is dependent on changes to legislation. In the meantime, the Commissioner has confirmed that she is planning to transform the Audit and Accountability Committee into a more formal Board structure with non-executive members being appointed through a transparent public appointments process”.²¹³
589. The Angiolini review also recommended that PIRC be redesigned as a Commission, with the Commissioner supported by two Deputy Commissioners. The Commissioner would be appointed by HM The Queen, on the nomination of the Scottish Parliament and be made accountable to the Scottish Parliament through the Scottish Parliamentary Corporate Body.²¹⁴
590. This recommendation is not taken forward in the Bill. The Policy Memorandum provides the following explanation—
- “Following the publication of the Review's Preliminary report in 2019, the PIRC took steps to strengthen the organisation's governance structure by appointing new permanent staff members with relevant expertise, including legal expertise, to fulfil deputy functions, and to support the work of the Commissioner. It is therefore not considered necessary at this time to create additional statutory positions”.

Views on the proposals in the Bill

Establishment of an Advisory Board

591. In PIRC's [written evidence](#), the Commissioner stated that PIRC's Audit and Accountability Committee's remit and responsibilities mirror the functions that would fall to an Advisory Board, and it is envisaged that the Committee "could transition into an Advisory Board."

592. The Commissioner, Michelle Macleod, told the Committee that the Audit and Accountability Committee had transformed into a more formal Board structure with non-executive members being appointed through a transparent public appointments process. Ms Macleod said that, while she did not think that an organisation of the size of PIRC required an advisory board—

"We will certainly work with the bill team and the Scottish Government, and we will ultimately transform or transition the audit and accountability committee into a statutory advisory board".²¹⁵

Establishment of a Commission

593. On Lady Angiolini's recommendation to appoint two Deputy Commissioners, Ms Macleod indicated that temporary deputies, as well as a temporary commissioner was not the right approach. The Commissioner explained that—

"The title of deputy commissioner is fine but under the model that was suggested to me, the deputy commissioners would be appointed for a contracted period, which I do not think fits: it would destabilise the management team to bring people in who then move on every three to five years".²¹⁶

594. In its [written evidence](#), Amnesty International UK stated that the proposal to create a Commission accountable to the Scottish Parliament—

"is in accordance with the 2009 opinion of the Council of Europe's Commissioner for Human Rights that each Police Ombudsman or Police Complaints Commissioner should be appointed by and answerable to a legislative assembly or a committee of elected representatives that does not have express responsibilities for the delivery of policing services".

595. In its [written evidence](#), the SPF said that the an advisory board to PIRC, appointed by the Scottish Ministers, would need to be independent, and asked—

"... would this be sufficient to allow them to investigate and deal with complaints that will undoubtedly come in against the PIRC if their powers are increased to what can only be described as a second investigatory Police Service".

596. In follow-up [correspondence](#) to the Committee, the Cabinet Secretary for Justice and Home Affairs explained that the—

"Presiding Officer highlighted a number of governance issues that caused concern to the Parliament, linked to the PIRC being accountable to a different

person (the Lord Advocate) for criminal matters, and the PIRC not being accountable to the Parliament for operational matters”.

597. The Cabinet Secretary confirmed that the Scottish Government’s assessment is that “PIRC can be held to account through the Scottish Ministers, who are ultimately accountable for the activities of the PIRC and its use of resources, and who are accountable to the Scottish Parliament”.

Membership

598. Stephanie Griffin told the Committee that the Equality and Human Rights Commission recommends that PIRC ensures “that there is a range of diverse experiences on the board, as that might help Scottish ministers meet their PSED (public sector equality duty) obligations, such as a need to foster good relations between groups with protected characteristics”.²¹⁷
599. In its [written evidence](#), CRER supported the establishment of an advisory board for PIRC, dependent on—
- “... the specifics of membership, powers and responsibilities. The new Board, if formed, should be as transparent as possible, with all minutes and decisions published. All work of the Board should be subject to Freedom of Information”.
600. The Cabinet Secretary told the Committee that a statutory advisory board to advise PIRC on governance and administrative matters would “strengthen the PIRC’s decision making”.²¹⁸
601. **The Committee welcomes the provisions enabling the Commissioner to establish and maintain an advisory board.**

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

603. **The Committee notes the view of Lady Angiolini that PIRC should be changed to a Commission (Angiolini review final report recommendation 34) and be made accountable to the Scottish Parliament (Angiolini review final report recommendation 35). The Committee notes the view of the Cabinet Secretary, and does not take a view on the Angiolini review recommendations at this stage.**

Suggested legislative changes

604. The written evidence received by the Committee included some specific requests for legislative changes for the Scottish Government to consider. These were changes that could potentially be incorporated in the Bill, as well as changes to the

conduct regulations for senior and non-senior police officers. The Committee took evidence on some of these requests, which are covered in the relevant sections of this report. All of the requests are listed below.

605. In [correspondence](#) to the Committee, Police Scotland requested that consideration be given to making legislative changes to address the following issues—

“To introduce accelerated misconduct proceedings for cases where; (i) the factual evidence is incontrovertible and; (ii) that evidence is incontrovertibly gross misconduct; and (iii) dismissal is mandated in the public interest”.

“At present, there is no provision within the PSoS (Conduct) Regulations 2014 for a case to be presented to a Chair of a Gross Misconduct Hearing. This requires an urgent update to provide the Deputy Chief Constable (DCC) with the right to legal representation to present a case”. This is to address the inequality of arms in representation in gross misconduct hearings.

“An amendment to Regulation 7 of the PSoS Regulations 2013 and Regulation 9 of the PSoS (Conduct) Regulations 2014 should be made to make it the default position that misconduct proceedings “must proceed without delay”. This is to address potential issues in cases where there are outstanding or possible criminal proceedings.

“There must be a mechanism for removing an individual who cannot maintain their vetting from Police Scotland”.

“... explicit legislation which provides express statutory powers to support the organisation’s ability to:

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

606. In its [written evidence](#), PIRC requested that the following issue be addressed—

“Lady Angiolini highlighted the lack of parity of powers available to PIRC in Crown directed investigations. It was her recommendation that this lack of parity be addressed and identical powers – such as those found within Regulation 5 [of the Police Investigations and Review Commissioner (Investigations Procedure, Serious Incidents and Specified Weapons) Regulations 2013] – be created to apply in Crown directed investigations as for investigations carried out under Section 33A(c) and 33A(d) [of the 2006 Act]. (Page 452, para 30.86). PIRC concurs that this inconsistency should be rectified in the manner proposed in Lady Angiolini’s Report and submits that S41F [of the 2006 Act] should also apply to Crown directed investigations.

PIRC does not accept that the application of S41F to Crown directed investigations – nor the application of Regulation 5 of the 2013 Regulations – would be problematic in terms of ECHR nor that it would erode the protection

against self-incrimination. Such provisions would apply to witnesses only”.

607. In its [written evidence](#), Amnesty International UK indicated that there is no consistent, standardised information published on a designated part of Police Scotland and the SPA’s websites concerning Independent Advisory Groups (IAGs). In its submission, Amnesty provides a list of the essential criteria for IAGs that should be built into regulations under the new Bill.

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

PARTS 18 TO 20: FINAL PROVISIONS

609. Sections 18 to 20 of the Bill make general provisions for a delegated power for Scottish Ministers to make ancillary provision by regulations, for commencement and short Title.

Section 19: Commencement

610. Section 19 provides that the final provisions in sections 18, 19 and 20 of the Bill come into force on the day after Royal Assent, and that other provisions of the Bill come into force such as the Scottish Ministers may by regulations appoint.
611. The [Delegated Powers Memorandum](#) states that “This will enable transitional arrangements and impacts on the organisations to be commenced in a practicable way”.

GENERAL PRINCIPLES OF THE BILL

612. The Committee is content to support the general principles of the Bill and recommends to the Parliament that they be agreed to.

613. However, there are two members of the Committee, Katy Clark and Pauline McNeill, for whom their support at stage 1 is dependent on the provision of an updated Financial Memorandum at stage 1.

ANNEX A: ORAL AND WRITTEN EVIDENCE

Oral evidence

614. The Committee took oral evidence on the Bill between 17 April and 29 May 2024. The table below sets out the meetings at which oral evidence was taken and which witnesses gave evidence. All oral evidence taken in public sessions is available in the Official Report.

615. The table also sets out the record of the informal session the Committee undertook with an individual who wished to share their experiences with the Committee in private.

| Link to the Official Report | Witness who gave evidence to the Committee |
|---|---|
| Read the note of the informal evidence session of 17 April 2024 | <ul style="list-style-type: none"> • Witness A |
| Read the Official Report of Wednesday 17 April 2024 | <ul style="list-style-type: none"> • Stephanie Bonner • Bill Johnstone • Magdalene Robertson |
| Read the Official Report of Wednesday 24 April 2024 | <ul style="list-style-type: none"> • Margaret Gribbon • Ian Clarke |
| Read the Official Report of Wednesday 8 May 2024 | <ul style="list-style-type: none"> • Stephanie Griffin, Equality and Human Rights Commission • Dr Genevieve Lennon, Scottish Institute of Policing Research • Kate Wallace, Victim Support Scotland • Chief Superintendent Rob Hay, Association of Scottish Police Superintendents • David Kennedy, Scottish Police Federation • David Malcolm, Unison Police Staff Scotland Branch |
| Read the Official Report of Wednesday 15 May 2024 | <ul style="list-style-type: none"> • Michelle Macleod, Police Investigations & Review Commissioner • Phillip Chapman, Police Investigations & Review Commissioner • Sharon Clelland, Police Investigations & Review Commissioner • Justin Farrell, CAAPD, Crown Office and Procurator Fiscal Service |
| Read the Official Report of Wednesday 16 May 2024 | <ul style="list-style-type: none"> • Rt Hon. Lady Elish Angiolini KC, Chair, Independent Review of Complaints Handling, Investigations and Misconduct in Relation to Policing |
| Read the Official Report of Wednesday 22 May 2024 | <ul style="list-style-type: none"> • Fiona McQueen, Scottish Police Authority Board • Katharina Kasper, Scottish Police Authority • Robin Johnston, Scottish Police Authority • Deputy Chief Constable Alan Speirs, Police Scotland • Chief Superintendent Helen Harrison, Police Scotland • Nicky Page, Police Scotland |
| Read the Official Report of Wednesday 23 May 2024 | <ul style="list-style-type: none"> • Craig Naylor, HM Inspectorate of Constabulary in Scotland |
| Read the Official Report of Wednesday 29 May 2024 | <ul style="list-style-type: none"> • Cabinet Secretary for Justice and Home Affairs and Scottish Government Officials |

Written evidence

616. The Committee undertook a public call for views between 26 September and 8 December 2023. The Committee received 45 written submissions, as follows.

21 submissions from named organisations (including 5 supplementary submissions)

Amnesty International UK/Amnesty Scotland

Association of Scottish Police Superintendents (ASPS)

Criminal Allegations Against the Police Division (CAAPD)

Coalition for Racial Equality and Rights (CRER)

Equality and Human Rights Commission (EHRC)

Family's United

HM Inspectorate of Constabulary in Scotland (HMICS)

HM Inspectorate of Constabulary in Scotland (supplementary)

Police Investigations & Review Commissioner (PIRC)

Police Scotland

Police Scotland (supplementary 1)

Police Scotland (supplementary 2)

Scottish Biometrics Commissioner

Scottish Community Safety Network

Scottish Institute for Policing Research (SIPR)

Scottish Police Authority (SPA)

Scottish Police Authority (supplementary)

Scottish Police Federation (SPF)

UNISON Scotland

Victim Support Scotland

Victim Support Scotland (supplementary)

21 submissions from named individuals (including 2 supplementary submissions)

Derek Bolton

Robert Claase

Ian Clarke

Richard Cockbain

James Hotchkiss

Colin Frank Jackson

Martin Jones

David Mitchell

James MacGregor

Professor Denise Martin

Andrew Currie-Mclean

June and Hugh Mcleod

June and Hugh Mcleod (supplementary)

Sally McNaught

Lynette Morrison

Lynette Morrison

Alex O'Kane

Alex O'Kane (supplementary)

Carrie Robinson

Suzanne Ross

Mary Walker

3 submissions from anonymous individuals

[Response 1061418060](#)

[Response 205726028](#)

[Response 441134020](#)

Supplementary written evidence provided by witnesses giving oral evidence

617. The Committee requested and received various items of follow-up or supplementary information from those witnesses who gave oral evidence. This supplementary information relates to various issues which arose during their evidence sessions. They are-

- Cabinet Secretary for Justice and Home Affairs – [Follow-up to 29 May 2024 evidence session](#)
- Police Scotland – [Follow-up to 22 May evidence session](#)
- Police Scotland – [The Work of Police Scotland's Professional Standards Department \(PSD\)](#)
- Police Scotland – [Non-Disclosure Agreements, Duty Restrictions and Suspension from Duty](#)
- Scottish Police Authority – [Non-Disclosure Agreements](#)
- Scottish Police Authority – [Parallel Criminal / Misconduct Proceedings](#)
- Scottish Police Authority – [Complaints and Conduct Committee, Lady Angiolini Review Recommendations and Officers on Suspension and Restricted Duties](#)

Other Committees

618. The Finance and Public Administration Committee wrote to the Criminal Justice Committee regarding its consideration of the Financial Memorandum for the Bill on [16 April 2024](#) and [16 May 2024](#).

619. The Criminal Justice Committee [wrote to the Cabinet Secretary for Justice and Home Affairs](#) on 25 April 2024. The [Cabinet Secretary responded](#) on 1 May 2024.

620. The Finance and Public Administration Committee also [wrote to the Cabinet Secretary for Justice and Home Affairs](#) and the [Presiding Officer](#) on 16 April 2024. The [Cabinet Secretary responded](#) on 22 April 2024 and [20 May 2024](#). On 4 June 2024, the [Presiding Officer responded](#).

- 1 Criminal Justice Committee, Official Report, 16 May 2024, cols 1 and 14.
- 2 Unpublished evidence. Available from the Committee.
- 3 Criminal Justice Committee, Official Report, 23 May 2024, col 3.
- 4 Criminal Justice Committee, Official Report, 8 May 2024, cols 36 and 37.
- 5 Criminal Justice Committee, Official Report, 8 May 2024, col 2.
- 6 Criminal Justice Committee, Official Report, 24 April 2024, cols 24, 25 and 30.
- 7 Criminal Justice Committee, Official Report, 8 May 2024, cols 30 and 31.
- 8 Criminal Justice Committee, Official Report, 8 May 2024, cols 10, 13 and 15.
- 9 Criminal Justice Committee, Official Report, 8 May 2024, cols 2, 3 and 10.
- 10 Criminal Justice Committee, Official Report, 17 April 2024, col 21.
- 11 Criminal Justice Committee, Official Report, 17 April 2024, col 29.
- 12 Criminal Justice Committee, Official Report, 8 May 2024, col 4.
- 13 Criminal Justice Committee, Official Report, 22 May 2024, cols 16 to 18.
- 14 Final Report: [Independent Review of Complaints Handling, Investigations and Misconduct Issues in Relation to Policing](#) [November 2020].
- 15 Criminal Justice Committee, Official Report, 8 May 2024, cols 10 and 19.
- 16 Criminal Justice Committee, Official Report, 8 May 2024, col 20.
- 17 Criminal Justice Committee, Official Report, 24 April 2024, col 6.
- 18 Criminal Justice Committee, Official Report, 17 April 2024, col 6.
- 19 Criminal Justice Committee, Official Report, 17 April 2024, col 20.
- 20 Criminal Justice Committee, Official Report, 17 April 2024, cols 28 and 29.
- 21 Criminal Justice Committee, Official Report, 24 April 2024, col 24.
- 22 Criminal Justice Committee, Official Report, 8 May 2024, col 9.
- 23 Criminal Justice Committee, Official Report, 8 May 2024, cols 10 and 11.
- 24 Criminal Justice Committee, Official Report, 17 April 2024, col 10.
- 25 Criminal Justice Committee, Official Report, 17 April 2024, col 34.
- 26 Criminal Justice Committee, Official Report, 10 April 2024, col 13.
- 27 Criminal Justice Committee, Official Report, 22 May 2024, col 38.
- 28 Criminal Justice Committee, Official Report, 22 May 2024, cols 30 and 36.

- 29 Criminal Justice Committee, Official Report, 23 May 2024, cols 3 and 13.
- 30 Criminal Justice Committee, Official Report, 22 May 2024, cols 45 and 46.
- 31 Criminal Justice Committee, Official Report, 29 May 2024, cols 3, 4 and 12.
- 32 Criminal Justice Committee, Official Report, 29 May 2024, col 2.
- 33 Criminal Justice Committee, Official Report, 29 May 2024, col 22.
- 34 Criminal Justice Committee, Official Report, 22 May 2024, cols 7 and 8.
- 35 Criminal Justice Committee, Official Report, 22 May 2024, col 46.
- 36 Criminal Justice Committee, Official Report, 29 May 2024, col 13.
- 37 Criminal Justice Committee, Official Report, 8 May 2024, cols 22, 23 and 30.
- 38 Criminal Justice Committee, Official Report, 15 May 2024, col 10.
- 39 Criminal Justice Committee, Official Report, 22 May 2024, col 8.
- 40 Criminal Justice Committee, Official Report, 22 May 2024, col 46.
- 41 Criminal Justice Committee, Official Report, 23 May 2024, col 5.
- 42 Criminal Justice Committee, Official Report, 8 May 2024, col 11.
- 43 Criminal Justice Committee, Official Report, 29 May 2024, col 14.
- 44 Criminal Justice Committee, Official Report, 29 May 2024, col 28.
- 45 Criminal Justice Committee, Official Report, 29 May 2024, col 15.
- 46 Final Report: [Independent Review of Complaints Handling, Investigations and Misconduct Issues in Relation to Policing](#) [November 2020].
- 47 Criminal Justice Committee, Official Report, 15 May 2024, col 10.
- 48 Criminal Justice Committee, Official Report, 15 May 2024, col 11.
- 49 Criminal Justice Committee, Official Report, 16 May 2024, col 3.
- 50 Criminal Justice Committee, Official Report, 16 May 2024, col 58.
- 51 Criminal Justice Committee, Official Report, 8 May 2024, cols 21 and 22.
- 52 Criminal Justice Committee, Official Report, 8 May 2024, col 23.
- 53 Criminal Justice Committee, Official Report, 22 May 2024, cols 19 and 20.
- 54 Criminal Justice Committee, Official Report, 22 May 2024, col 15.
- 55 Criminal Justice Committee, Official Report, 29 May 2024, col 11.
- 56 Final Report: [Independent Review of Complaints Handling, Investigations and Misconduct Issues in Relation to Policing](#) [November 2020].

- 57 Criminal Justice Committee, Official Report, 8 May 2024, col 38.
- 58 Criminal Justice Committee, Official Report, 8 May 2024, col 38.
- 59 Criminal Justice Committee, Official Report, 16 May 2024, col 8.
- 60 Criminal Justice Committee, Official Report, 15 May 2024, col 12.
- 61 Final Report: [Independent Review of Complaints Handling, Investigations and Misconduct Issues in Relation to Policing](#) [November 2020] - *recommendation from the preliminary review report included in the final report (p 234)*.
- 62 Written Response from the Cabinet Secretary for Justice and Home Affairs to Parliamentary Question [S6W-26900](#) by John Swinney MSP (29 April 2024).
- 63 Criminal Justice Committee, Official Report, 8 May 2024, col 18.
- 64 Criminal Justice Committee, Official Report, 17 April 2024, col 31.
- 65 Criminal Justice Committee, Official Report, 23 May 2024, col 16.
- 66 Criminal Justice Committee, Official Report, 29 May 2024, col 5.
- 67 Criminal Justice Committee, Official Report, 24 April 2024, col 6.
- 68 Criminal Justice Committee, Official Report, 8 May 2024, col 25.
- 69 Criminal Justice Committee, Official Report, 8 May 2024, cols 32 and 33.
- 70 Criminal Justice Committee, Official Report, 8 May 2024, cols 28, 31 and 32.
- 71 Criminal Justice Committee, Official Report, 8 May 2024, cols 41 and 42.
- 72 Criminal Justice Committee, Official Report, 22 May 2024, col 40.
- 73 Criminal Justice Committee, Official Report, 22 May 2024, col 14.
- 74 Criminal Justice Committee, Official Report, 15 May 2024, col 21.
- 75 Criminal Justice Committee, Official Report, 17 April 2024, col 5.
- 76 Criminal Justice Committee, Official Report, 17 April 2024, cols 12, 14 and 21.
- 77 Criminal Justice Committee, Official Report, 24 April 2024, cols 1 and 2.
- 78 Criminal Justice Committee, Official Report, 24 April 2024, col 7.
- 79 Criminal Justice Committee, Official Report, 8 May 2024, col 14.
- 80 Criminal Justice Committee, Official Report, 17 April 2024, cols 29 and 30.
- 81 Criminal Justice Committee, Official Report, 16 May 2024, col 11.
- 82 Criminal Justice Committee, Official Report, 22 May 2024, cols 13 and 15.
- 83 Criminal Justice Committee, Official Report, 22 May 2024, cols 11 and 26.

- 84 Criminal Justice Committee, Official Report, 22 May 2024, cols 28, 29 and 35.
- 85 Criminal Justice Committee, Official Report, 22 May 2024, cols 49 and 50.
- 86 Criminal Justice Committee, Official Report, 22 May 2024, col 49.
- 87 Criminal Justice Committee, Official Report, 23 May 2024, cols 18 and 19.
- 88 Criminal Justice Committee, Official Report, 29 May 2024, col 5.
- 89 Criminal Justice Committee, Official Report, 29 May 2024, col 27.
- 90 Final Report: [Independent Review of Complaints Handling, Investigations and Misconduct Issues in Relation to Policing Final Report](#) [November 2020].
- 91 Criminal Justice Committee, Official Report, 15 May, cols 41 and 42
- 92 Criminal Justice Committee, Official Report, 22 May 2024, cols 2 and 6.
- 93 Criminal Justice Committee, Official Report, 17 April, cols 16 to 19
- 94 Criminal Justice Committee, Official Report, 17 April, cols 26 and 27
- 95 Criminal Justice Committee, Official Report, 24 April, col 14
- 96 Criminal Justice Committee, Official Report, 8 May, col 20
- 97 Criminal Justice Committee, Official Report, 8 May, col 15
- 98 Criminal Justice Committee, Official Report, 8 May, col 26
- 99 Criminal Justice Committee, Official Report, 8 May, col 26
- 100 Criminal Justice Committee, Official Report, 8 May, col 27
- 101 Final Report: [Independent Review of Complaints Handling, Investigations and Misconduct Issues in Relation to Policing](#)
- 102 Criminal Justice Committee, Official Report, 29 May, col 27
- 103 Criminal Justice Committee, Official Report, 15 May, col 12
- 104 Criminal Justice Committee, Official Report, 15 May, cols 11 and 12
- 105 Criminal Justice Committee, Official Report, 15 May, col 12
- 106 Criminal Justice Committee, Official Report, 8 May, cols 29 and 30
- 107 Criminal Justice Committee, Official Report, 22 May, cols 34 and 35
- 108 Final Report: [Independent Review of Complaints Handling, Investigations and Misconduct Issues in Relation to Policing](#).
- 109 Criminal Justice Committee, Official Report, 24 April 2024, cols 23 and 28.
- 110 Criminal Justice Committee, Official Report, 15 May 2024, col 35.

- 111 Criminal Justice Committee, Official Report, 22 May 2024, col 16.
- 112 Criminal Justice Committee, Official Report, 8 May 2024, col 51.
- 113 Criminal Justice Committee, Official Report, 8 May 2024, col 51.
- 114 Criminal Justice Committee, Official Report, 8 May 2024, col 51.
- 115 Criminal Justice Committee, Official Report, 23 May 2024, col 6.
- 116 Criminal Justice Committee, Official Report, 15 May 2024, col 22.
- 117 Criminal Justice Committee, Official Report, 15 May 2024, col 57.
- 118 Criminal Justice Committee, Official Report, 15 May 2024, col 22.
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