



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

Final Report

November 2020

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Foreword

In June 2018 the then Cabinet Secretary for Justice and the Lord Advocate invited me to conduct an independent review of complaints against the police in Scotland. The Review commenced in September 2018 and I published my preliminary report in June 2019. As I observed then, several years have now passed since the creation of radical, new policing structures for Scotland. I was asked by the Ministers to review the effectiveness of the new systems for dealing with complaints against the police in Scotland, how well such complaints are investigated and the processes reviewed. The Review has also provided a significant opportunity to contribute to work on matters of profound public interest in a key area of human rights.

The way any organisation responds to complaints and the character of its internal culture are both important indicators of the maturity, health and effectiveness of that organisation. This can be observed in the commercial context as well as in public entities. Listening and responding effectively to complaints and, crucially, learning the implications of what those complaints indicate are excellent mechanisms for improving the quality of the service provided.

As the nature of interactions with individual members of the public by police officers are often unwelcome to those who are the subject of the police interest, the direct comparison with a commercial organisation determined to please its customers does however have some limitations. Indeed, it is highly likely that in executing their duty with absolute propriety, police officers will inevitably make a significant number of members of the community very unhappy.

The approach to dealing with complaints against the police therefore needs to take into account the nature and context of many encounters between the police and some members of the public. As many of those interactions will also engage the fundamental human rights of citizens, the significance of dealing fairly and timeously with complaints is critical for the member of the public, the officer against whom the complaint is made and the wider public interest.

Where the complaint against an officer is made by another officer or member of staff of Police Scotland the internal mechanisms for investigating and dealing with the complaint also need to move swiftly, proportionately and fairly. The complaint must also be subject to prompt independent investigation when any inference of criminality is present. How members of Police Scotland behave towards each other in their professional context has an important public interest dimension. The culture and behaviours of those in supervisory positions is particularly critical in setting the tone and character of the culture of the department or station in question. If officers behave badly towards each other, the prospect of fair treatment to members of the public is greatly diminished. How effectively these matters are dealt with has important implications for recruitment and retention of the right people.

My mandate from the Ministers was to make recommendations that will help to strengthen public confidence in policing in Scotland. This final Report incorporates and develops the interim recommendations I made last June to ensure that complaints against the police are dealt with as effectively and fairly as possible. Since then, each of the organisations examined by me has taken significant steps to implement those interim recommendations and this report reflects the progress that has been made.

This Report also presents a further set of wide-ranging recommendations and observations. It seeks to ensure that the future accessibility and effectiveness, culture, powers, obligations, structures, legislation, regulations, guidance and practice are all fit for a diverse and forward-looking community in Scotland which strives to secure the human rights of all.

Despite the very different responsibilities and natural tensions between and among the four separate organisations involved in dealing with complaints against the police, it is crucial that relationships are professional, respectful, focused on continuous improvement of policing in Scotland and on securing the rights of those they serve. It is also critical that, where necessary or desirable, the independence and impartiality of the investigative and decision-making processes are assured and the processes prompt. During this review I have received tremendous co-operation and assistance from Police Scotland, the Scottish Police Authority and the PIRC.

Although not part of this review, I also received the same co-operation from the Crown Office and Procurator Fiscal Service.

During the ongoing COVID-19 crisis the Review continued uninterrupted, relying more extensively on remote meetings and telephone calls.

Over the last two years I have received detailed written submissions in response to my call for evidence from the public for which I am very grateful. I met with many members of the public who had experience of making complaints against the police, including one tragic case which related to events many years ago. I also met police officers and former police officers with experience of being the subject of a complaint or who had raised an internal complaint of misconduct against a colleague. I held several focus groups and meetings with members of the public and those who represent ethnically diverse communities. I met officers from the LGBTI community, and Black, Asian and minority ethnic officers and those representing women officers. I also held a small focus group with senior journalists. These were all extremely helpful to me.

I had the benefit of meeting large groups of police officers from junior and senior ranks as well as the Scottish Police Federation and I met with senior police representatives of the Republic of Ireland, Northern Ireland and England. I also heard the experiences of the heads of the independent bodies established to investigate complaints against the police in these countries. I owe a great debt of gratitude to all those I met in ensuring I secured a rounded understanding of the complex and difficult issues involved in this important aspect of social justice.

In 2017 I was asked by the then Home Secretary to carry out a review of deaths in police custody in England and Wales. In my report of that Review I observed that we ask a lot of those who police us in the 21st century. Recent tragedies in Glasgow and Croydon demonstrate this vividly. The need to interact and sometimes intervene in the lives and freedom of members of the public is a daily occurrence for the police. Such duties involve the power and obligation to intervene where criminal conduct is suspected or where the welfare or life of that individual or of others is at serious risk,

as well as in many other emergency settings. The powers that flow from those duties are immense in their potential impact on citizens. They are regulated by a complex framework of laws and regulations to prevent abuse or negligence in the exercise of those powers and onerous responsibilities.

How those powers are exercised is also governed by the competence and integrity of the individual police officer as well as the wider police service within which he or she serves. In addition to law, training and guidance on how officers should approach encounters that may lead to intervention or detention, the community relies on the professionalism, wisdom, ethics and courage of police officers. This is particularly so in the approach to incidents which may result in harm to the officers or others. These are often situations from which most in the community would wish to remove themselves immediately for their own personal safety. Where death or serious injury occurs for those detained by the police and, in other cases, where it is alleged the member of the public was subjected to torture, inhuman or degrading treatment or punishment or that the detention was unlawful, human rights considerations come into play and the state is obliged to carry out effective, timely and independent investigations into those allegations. In those that result in death, the inquiry must also be held in public and the investigation and the inquiry should allow effective participation in the process by the next of kin of the deceased.

There is however a much wider set of complaints against the police which may involve other types of allegations of criminality. Such complaints should also be the subject of immediate consideration, investigation or oversight by a prosecution service independent of the police. Others should also be drawn to the attention of the prosecutor as soon as possible to allow the prosecutor to determine who should carry out the investigation and to maintain independent oversight of the case.

In other instances members of the public who interact with the police may have complaints about the conduct or efficiency of officers or the way the police service responded to their concerns. The latter represent the vast bulk of complaints and are principally directed at the quality of the service provided, including allegations of rudeness, delay or ineffectiveness. These complaints are generally identified for a process which aims to be user-friendly and capable of as swift and proportionate a

response as possible by the police organisation itself. Such decision-making must be subject to regular, thorough and independent supervision, audit and checks. On occasions however such failings may have had serious consequences and an independent investigation is also necessary. Where a member of the public is not happy with the way their complaint has been handled, they may seek an independent review of the complaint handling from the Police Investigations and Review Commissioner.

It can be seen therefore that the notion of a complaint against the police covers a very wide range of events, behaviours and conduct that can be very distinct from each other in character. There may also be occasions, however, where a combination of different categories of complaint can arise from any given situation. Similarly, the character of the complaint is not always apparent to those first to receive the intimation and further information needs to be sought or investigation undertaken before decisions are made about the route the complaint should take.

This variation in the nature of, and appropriate response to, complaints presents significant challenges for the police and appropriate agencies charged with supervising or investigating such matters; more so for any member of the public wishing to make a complaint. It was put to me in evidence for this Review that, "the current arrangements for handling complaints about the police are overly complex, lack clarity and can be open to a range of different interpretations". In my preliminary report last year I agreed with this assessment. For example, very few people are aware that if they wish to make a complaint of criminal behaviour by a police officer they can do so directly to the independent Procurator Fiscal division responsible for investigating allegations against the police, known as CAAP-D.

Over the last year it has become apparent just how inaccessible the options available to the public remain. While Police Scotland have taken steps to address my criticisms about the accessibility of their website, more needs to be done. There need to be publicly available joint sources of guidance which assist the member of public to understand their options and to navigate the responsibilities of all of the agencies, rather than relying on an agency-by-agency fragmented approach.

Easy access to the system and support for those with a learning or other disability, language issues or mental health problems needs to be given much greater weight as does the profound reluctance of many immigrants to Scotland to ever contemplate complaining against the police in Scotland because of their experiences of police culture in their former home country and/or their feeling of vulnerability about their status here. There is therefore an urgent need to reach out to these communities to tackle that culture of fear, mistrust and, more widely, provide options for different ways for the public to complain. Those options must recognise that communication by e-mail or attending at a police station are not, on their own, likely to be user-friendly for a significant number of people who might otherwise feel more at ease complaining. Likewise, the systems need to demonstrate a greater degree of humanity, not always relying on e-mails or formal letters alone but permitting interaction with another human being who is open, professional and empathetic.

For many who would wish to complain, the availability of support through that process is also crucial and the impact of its absence, profound. The ability to complain through a third-party organisation and to receive support through the process can make a huge difference.

The vast bulk of non-criminal or quality of service complaints should properly be investigated by the police service itself but it is critical that those processes are clear, transparent and trusted. If, after the changes I recommend have been properly embedded and operated, there is an evidence-based lack of confidence in how complaints are processed by Professional Standards, then the role of initial receipt of all such complaints should transfer to the PIRC for appropriate categorisation, allocation or action. This would create a more bureaucratic and slower system which would also be costly to fund but public confidence in the integrity of the system is crucial.

Independent supervision and audit are also critical. In those cases rightly requiring independent investigation, the police must also provide the fullest co-operation and assistance to allow timely and effective action. The effectiveness of the relations among and between each of the four organisations charged with these responsibilities in Scotland is also crucial to success of the process. While the

interaction of these organisations requires a degree of autonomy, and in respect of the COPFS and PIRC, independence from the police, independence does not equate to isolation, which undermines the independence of an organisation.

In order for the independence of organisations to be maintained and enhanced, and for checks and balances to be effective, there must be regular and meaningful interaction at all levels of these agencies. There must also be mutual respect and an atmosphere of genuine co-operation. Since the publication of my preliminary report last June I have observed a sea-change in the relationships among the agencies with a significant improvement in their interactions, joint learning and co-operation. This is very much to be welcomed but the structures, powers and accountability of those agencies also require some fundamental changes to strengthen the system further and enhance public confidence. I have therefore proposed several major changes to this end.

Throughout this Review I had the benefit of a very hard-working and outstanding Secretariat seconded to me from the Scottish Government.

The quality of the advice, debate and support I have received from the Secretary to the Review, Ian Kernohan, has been superb and his wisdom, extraordinary. Ian and his colleagues, Paul Allen and Jenny Coltman have made this onerous task much lighter because of their huge commitment, excellent research and analysis and the effective co-ordination of so many groups and witnesses to the Review. Paul was called back to the Scottish Government in March because of the need to support the response to COVID-19 and I am very grateful to Ian and Jenny for shouldering the very substantial extra workload since then. They are all a credit to the Civil Service. I am also very grateful to Maureen Bryson who transcribed the evidence to the Review with great skill and cheerfulness and to Amanda Moss BEM, my brilliant Executive Assistant in Oxford, who liaised with the Secretariat, co-ordinated my diary and ensured I had the right papers throughout.

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and Borders Police, Ronald Clancy QC and Allan Rennie, Trinity Mirror's former Managing Director and Editor in Chief in Scotland, provided me with expertise, sage counsel and time, all of which they gave most generously.

A handwritten signature in black ink that reads "Elish Angiolini". The signature is written in a cursive style with a prominent initial "E".

Elish Angiolini

11 November 2020

Acknowledgements

This Independent Review examined complaints handling, investigations and misconduct issues in relation to policing in Scotland. Such a wide-ranging subject matter could not have been scrutinised successfully without the invaluable assistance of so many individuals who took the time to assist and support me and the Review Secretariat.

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I held a focus group with senior journalists and I am grateful to John McLellan of the Scottish Newspaper Society, Richard Neville of DC Thomson Media and Euan McGrory of the Edinburgh Evening News for being willing to discuss with me issues related to media and social media.

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Chief Executive Officer of the Policing Authority; the Deputy Inspector of the Garda Inspectorate, Hugh Hume; the Director of Governance at the Department of Justice, John O'Callaghan; and Assistant Commissioner David Sheehan of An Garda Síochána.

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A handwritten signature in black ink, reading "Elish Angiolini". The signature is written in a cursive style with a large initial "E".

Elish Angiolini

11 November 2020

Executive summary

1. The ability of an individual citizen to make a complaint about Police Scotland, or any of its officers and staff, and to receive an explanation, apology, or remedy is a valuable and significant form of accountability to the public in a modern democracy.

2. My Terms of Reference from the Cabinet Secretary for Justice and the Lord Advocate incorporate principles that should underpin and guide any complaints system:

- fairness to all those who make or are the subject of a complaint or allegation;
- essential accountability both of individual public servants and of those organisations which have any role in holding them and their parent organisation to account;
- transparency, which makes systems easy to understand and facilitates public, parliamentary and media scrutiny while respecting both the necessary confidentiality of any disciplinary process and the privacy of individuals and their families;
- proportionality in the response and the resource committed to operating the systems and in the handling of individual cases to ensure best value for the public; and
- effectiveness and efficiency in dealing with serious and sensitive matters expeditiously; and, critically, protecting the human rights of all the people involved.

Learning culture

3. The Scottish Police Authority (SPA) and Police Scotland have stated that they are committed to improving policing services provided to the public. Understanding and accepting that if you are defensive about complaints you are unlikely to improve as an organisation should underpin that commitment. Valuing complaints and

transforming them into successful outcomes should be a key part of strengthening the learning culture. Complaints are a great source of intelligence to any organisation and the majority of complaints received by Police Scotland will tell it something about how it is perceived, how it is performing or what quality of service it is delivering. That is valuable feedback that should be analysed and used as management information to inform continuous improvement.

4. In order that the process of making a complaint can continue to inform a learning culture in this way Police Scotland must demonstrate a maturity and wisdom in how it responds to its people making mistakes, as they inevitably will. I encourage Police Scotland to address a range of fundamental cultural issues including engendering an organisational and individual willingness to apologise when that is appropriate. Apologising sincerely does not diminish how an individual's abilities or character are perceived but rather is a demonstration of their willingness to learn and develop.

Code of Ethics

5. I commend the non-statutory Police Scotland Code of Ethics which is based on the values of integrity, fairness and respect. The Code sets very clear standards and expectations for all members of the service. In particular, I welcome its recognition of the commitment to respect for human rights, a commitment that is also reinforced in each constable's declaration on taking office. The importance of the Code to the culture and practice of everyone in policing in Scotland cannot be overstated and therefore it should be given a basis in statute.

Criminal allegations, deaths in custody and serious injuries in custody

6. All serious criminal allegations against the police, all deaths in police custody or following police contact and serious injuries which occur in police custody should

be reported forthwith to the independent Procurator Fiscal. All other allegations against the police which infer criminality should be reported to the Procurator Fiscal within 48 hours of receipt to ensure that the Procurator Fiscal can give appropriate oversight and direction to the police or instruct the Police Investigations and Review Commissioner (PIRC) to carry out an independent investigation. This early referral must be done to maximise the scope for capturing or preserving evidence. This is particularly important in cases which allege a breach of Convention Rights.

7. Following my preliminary report recommendation, the Crown Office and Procurator Fiscal Service and Police Scotland now have revised procedures and practice for reporting of all cases where there is an inference of criminality or perception on the part of the complainer of criminality to ensure that they are being suitably assessed and categorised. To test that improved process, I have recommended that the PIRC should carry out an annual audit of Police Scotland's complaint handling processes to provide assurance that potential Article 3 (Prohibition of torture, inhuman or degrading treatment or punishment) cases and Article 5 (Unlawful detention) cases are being correctly identified and reported forthwith to COPFS.

8. The European Court of Human Rights has made clear the importance of the victim involvement principle in dealing with the most serious complaints. Meaningful victim involvement and constructive engagement with complainers is a fundamental requirement for a fair and effective system and the complainer should be consulted and kept informed of developments throughout the process. Participation in the investigation process through liaison with the investigating body and regular communication can protect the complainer's interests without prejudicing the interests of the officer against whom the complaint is made.

9. Where a person dies in police custody or following police contact, Article 2 of the European Convention on Human Rights (ECHR) is engaged. In Article 2 cases, in order to facilitate their right to effective participation in the whole process, I recommend in this report that there should be access for the immediate family of the deceased to free, non-means tested legal advice, assistance and representation

from the earliest point following the death and throughout any subsequent Fatal Accident Inquiry or Public Inquiry.

The case for structural change

10. This Review recommends a set of wide-ranging and significant improvements to the system in Scotland and a suite of new powers for the PIRC that would strengthen independent investigation and oversight of complaints against the police.

11. In the course of the Review I carefully considered the Northern Irish model for oversight of complaints where all complaints go in the first instance to the independent Police Ombudsman for Northern Ireland (PONI). This system of oversight of all complaints and independence in Northern Ireland was designed for the particular history and exceptional circumstances that exist there.

12. Even there, approximately 10% of the complaints they receive are passed to the Police Service of Northern Ireland (PSNI) for informal resolution. PONI maintain oversight of the informal resolution process. A complaint is not suitable for informal resolution unless the complainant gives consent, and it is not a serious complaint.

13. My current view is that replication of the system in Northern Ireland is not required or proportionate for Scotland. This is provided that the right to report an allegation of criminality about the police direct to the independent Procurator Fiscal is actually made known to the public in such a manner that increases significantly the public's knowledge of this right. At present, very few members of the public appreciate that there is in fact an independent system already in place in Scotland.

14. The practice of COPFS directing and overseeing investigations into criminal allegations against the police has existed for many years. The thorough and independent investigation of such allegations is essential in a democratic society. The Criminal Allegations Against Police Division of COPFS was created to provide a

high level of consistency of practice and decision-making in these cases across Scotland.

Frontline resolution of complaints

15. In 2018-19 Police Scotland received 5,919 complaints. Police Scotland's Standard Operating Procedure makes clear that frontline resolution is only suitable for complaints which are 'non-criminal, non-serious and non-complex' and can be resolved without investigation other than familiarisation with the circumstances of the incident. In 2018-19 39.8% of all complaints against Police Scotland were resolved by Professional Standards Department (PSD) Frontline Resolution and 8.5% were resolved by Divisional Frontline Resolution.

16. Frontline resolution is an appropriate and proportionate response where the matter is not serious, not complex and non-criminal, and where an apology, an explanation, or local action or assurance is sufficient remedy for the member of the public making the complaint.

17. In order to ensure greater public confidence in the process, I have recommended that there should be no participation by local police officers or the line managers of those complained about in the frontline process itself. The notion of 'frontline' should refer to the early and effective response to non-serious quality of service complaints which can be dealt with swiftly by PSD officers, not members of the local division. While the line manager may have an important role in addressing the issues arising from a complaint about quality of service once the complainer has had an explanation, apology or other remedy, it is not appropriate for them to be involved in the investigation or adjudication of the complaint.

Police Investigations and Review Commissioner - Accountability

18. The new set of powers that I recommend for the PIRC represents a significant increase in the responsibilities of the Commissioner and her staff, and that is why I am also recommending that her accountability arrangements be strengthened at the same time.

19. In order to ensure a collegiate approach to decision-making in the most serious cases and appropriate supervision of decision-making in such cases, PIRC should be re-designated as a Commission comprising one Police Investigations and Review Commissioner and two Deputy Commissioners. None of these offices should be held by a former police officer. The PIRC should be made accountable to the Scottish Parliament and should be appointed by HM The Queen on the nomination of the Scottish Parliament. The PIRC should not be accountable to the Parliament for criminal matters, for which the Commissioner is accountable to the Lord Advocate, and not for operational matters or decisions, in which she acts independently. This 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.

Police Investigations and Review Commissioner – New powers

20. The statutory function of the preliminary assessment of misconduct allegations made against senior police officers should be transferred from the Scottish Police Authority (SPA) to the 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.

21. The PIRC should take on responsibility for the key stages of the senior officer misconduct proceedings i.e. receipt of complaints/allegations, preliminary

assessment, referral to the Procurator Fiscal of criminal allegations and, where appropriate, referral to an independent legally chaired panel where there is a subsequent disciplinary hearing. The PIRC should also be given a power to present a case at a senior officer gross misconduct hearing.

22. The PIRC should be given a statutory power to call in an investigation of a complaint if there is sufficient evidence that Police Scotland has not dealt with a complaint properly and where the Commissioner assesses that it would be in the public interest to carry out an independent re-investigation. The PIRC should also have an additional power to investigate a current practice or policy of Police Scotland if she believes that it would be in the public interest to do so; this power should be used to focus on broad themes or trends, or practices which might be of particular public concern. The PIRC should have the power to recommend suspension of a senior officer if she believes that not suspending the officer may prejudice an effective misconduct investigation.

23. Suspension should not happen before temporary redeployment to alternative duties or an alternative location has been considered. Such a statutory suspension condition in relation to all ranks of constable would help to ensure that suspension is not used precipitately either by Police Scotland, or by the Scottish Police Authority in respect of police officers.

24. The PIRC should have appropriate access to the Police Scotland Centurion complaints and conduct database for the purposes of contemporaneous audit of complaints and to help facilitate early PIRC awareness of criminal allegations. There should also be regular triage meetings between PIRC and Police Scotland to ensure consistency and accuracy of approach to decision-making.

Whistleblowing

25. The PIRC should be a prescribed person in whistleblowing legislation 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.

Police culture

26. Police Scotland is a young but now established national organisation with a stable leadership team. This is a good opportunity to reflect on the culture of the new service, address any long-standing issues and consider how everyone in the organisation can help to change that culture for the better.

27. Police Scotland's Executive team should consider in depth and review the criteria and competencies that it uses to assess police officers' readiness for promotion. Those are the attributes that are perceived to be of importance to the organisation, that should reflect its values of integrity, fairness and respect and that should mould its management culture.

28. How members of Police Scotland behave towards each other in their professional context has an important public interest dimension. The culture and behaviours of those in supervisory positions is particularly critical in setting the tone and character of the culture of the department or station in question. If officers behave badly towards each other, the prospect of fair treatment to members of the public is greatly diminished. How effectively these matters are dealt with has important implications for recruitment and retention of the right people.

29. Throughout this report I emphasise the crucial importance of living up to professional standards, ensuring a balance between confidentiality and transparency, declaring conflicts of interest, ensuring appropriate levels of independence in investigation, giving early consideration to mitigating factors and

having systems that accord with principles of natural justice. Achieving all of that depends to a large degree on the culture or cultures that exist across the service.

30. One of the themes of this report is that officers, staff and managers within Police Scotland should consider what other less formal avenues are open to them before seeking recourse to statutory procedures. Police Scotland as an organisation should also seek to promote a more flexible and constructive approach to how it deals with behavioural issues in the early stages and invest more in prevention rather than in cure. I have also recommended altering the statutory definition of 'misconduct' in order to raise the threshold for matters which should go down the statutory route.

31. Scottish policing should adopt a Reflective Practice Review Process that builds on the spirit of existing Scottish guidance and takes into account any valuable elements of English and Welsh best practice. The purpose of the Reflective Practice Review Process recently introduced in England and Wales is to allow low-level conduct, mistakes or performance issues that can be handled in a more proportionate and constructive way to be dealt with without recourse to formal disciplinary proceedings or performance procedures. It is regarded as a normal line-management/performance-related conversation between the reviewer and the participating officer, so there is no formal representation of parties. Reviewers are required to consider the fullest circumstances of what has occurred, including any operational, welfare or wider factors or personal circumstances that affected behaviour.

32. Effective management, coaching and mentoring are important elements in improving the culture of an organisation. I heard significant evidence of the depletion of the sergeant rank across Police Scotland and of the absence of appropriate role models to provide support and guidance. Police Scotland should consider the workload of the sergeant rank at the front line and the supervisory ratio of sergeants to constables in order to create sufficient capacity for management, coaching and mentoring duties.

Inclusion, diversity and discrimination

33. In order to encourage confidence in the police and a willingness to interact with them, a police service should be representative of the whole of the society that it serves and its members should be drawn from diverse sections of that society.

34. Much of the evidence presented to me by some serving officers from Black and Asian minority ethnic communities was a chastening reminder that in the police service and in the wider community attitudes have not changed as much as they should have since 1999 - the year of the Macpherson report of the Stephen Lawrence Inquiry - or as much as we may like to believe that they have.

35. The Review heard evidence that although there was a drive to recruit officers from the Black, Asian and minority ethnic communities, the experiences of some recruits had caused them to leave the profession, often within three to five years. The Review was told during a focus group that ethnic minority officers were leaving because of the culture of the police and the way they were treated.

36. I was also deeply concerned to hear about the experiences of officers and staff about discrimination experienced by female police officers and staff and by LGBTI officers and staff.

37. If the culture of Police Scotland is to change and become more inclusive throughout all parts of the organisation it has to allow new recruits to help shape that culture rather than simply conform to what they find when they join. An inclusive organisation will build an environment where everybody feels comfortable and can thrive by being themselves in the workplace and feel valued for who they are as well as what they contribute.

38. I accept that the Police Scotland Executive team acknowledge the presence of discriminatory attitudes and behaviours within Police Scotland and are committed to dealing with it but in the light of the very worrying evidence that I have received, I

consider that issues related to discrimination and their impact on public confidence in Police Scotland should be the subject of a broader, fundamental review of equality matters by an independent organisation.

Accessibility and communication

39. Complaining against the police is a serious act and, if they wish to do so, members of the public should be supported in making a complaint. Helping them to exercise their right to complain requires creating a complaints system that is accessible, receptive, comprehensible, speedy, and fair; it also requires that every person who has a part in delivering that system communicates well with the members of the public to whom they are providing the service. In short, it should be easy to complain, easy to get a response and easy to learn the lessons.

40. Accessibility is an element of the system that needs to be significantly strengthened in order that all those who have a legitimate complaint to make can do so easily and can choose the route that best suits their capabilities and capacity. Encouraging direct engagement and supporting those who wish to complain indirectly through a third party are not incompatible; there are compelling arguments in favour of the provision of both options.

41. The practice of both Police Scotland and the PIRC is to conduct nearly all communication by letter or by e-mail. I met with a number of families and individuals whose accounts of their experiences were particularly harrowing but where the organisational response did not seem to recognise that the nature of their cases was such that what they needed was to see the human face of the organisation, or to be able to speak to someone face to face, or to hear a human voice. In such circumstances those operating the system should be able to demonstrate greater empathy and humanity towards members of the public. Human interactions can build relationships and prevent misconceptions, misunderstandings and pre-empt lengthy correspondence. The range of technology now readily available through

telephony and video-conferencing could also facilitate more personal interactions with the public.

42. Many minority communities in Scotland originate from jurisdictions where the police have low accountability and there have been significant instances of brutality and corruption. It is understandable therefore that mistrust exists, not borne out of the experience of communities with Police Scotland but deriving from individuals' experiences in their country of origin, often meaning that they do not want to deal with the police in Scotland. Against that kind of background and perception, it is all the more important that police officers demonstrate through day-to-day community engagement the different policing culture that exists here and what policing by consent means in practice. The benefits of community policing to public confidence, building relationships, reporting of crime and helping the police keep communities safe cannot be overstated.

43. I recommend that Police Scotland should have discussions with a number of the third-party reporting centres for hate crime, including those representing minority groups, and secure their agreement to offer third-party support for those who wish to make a complaint against the police.

44. It is clear that in order for all communities in Scotland to feel confident about accessing the complaints process, there is further work to be done in improving community relations and understanding different cultures and backgrounds. Community policing has a key role to play in that work.

Misconduct proceedings

45. Introducing independent consideration and determination of a complaint against a senior officer, along with independent investigation by the PIRC, together with hearings chaired by an independent legally qualified person would serve to increase public confidence in the senior officer misconduct process.

46. Gross misconduct hearings for all ranks of police officer should be heard by an independent panel. Each panel should have an independent legally qualified chair appointed by the Lord President, an independent lay member also appointed by the Lord President and a policing expert.

47. Holding all police officer gross misconduct hearings in public will ensure greater transparency. This would align policing in Scotland with other professions where gross misconduct hearings are held in public, such as doctors, dentists, accountants and lawyers. The Chair should have discretion to restrict attendance as appropriate but the aim should be to ensure that as much of a hearing is held in public as possible.

Former police officers

48. I have taken evidence from a number of individuals and families who had very strongly-held views on the question of jurisdiction over former police officers. The common perception was that police officers who were guilty of serious wrongdoing could escape justice by retiring or resigning before, during or after an investigation, and that this had the effect of forcing the termination of the statutory misconduct proceedings.

49. I believe there is a strong public interest in dealing fully and thoroughly with police officers' gross misconduct after they have left the police service and no longer hold the important office of constable. 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 and, if appropriate, their names added to Police Barred and Advisory Lists which I also recommend should be maintained for Scotland. The public would expect no less and the compelling first-hand evidence that I heard on this subject has confirmed my view.

Post-incident conferral

50. I have previously made clear my position on post-incident conferral by police officers in my 2017 report on Deaths and Serious Incidents in Police Custody in England and Wales to the then Home Secretary.

51. This is a particularly important issue where police officers are involved in a major or fatal incident which may be traumatic and in which they will undoubtedly be required to provide evidence. In the case of a death in custody or following police contact, or in certain other circumstances, unless there are reasonable grounds to suspect criminal activity about the actions of an officer or officers, each individual officer should be interviewed as a witness as soon as practicable after the event and without reference to or conferral with other police officers or other witnesses. If during the course of the investigation information becomes available which changes the investigating officer's understanding of the situation and he or she is forming a suspicion about the conduct of the police officer being interviewed, the police officer should be cautioned immediately and the interview should become one subject to the usual rights of any individual suspected of criminal conduct.

52. I have considered whether the current position is sufficiently clear to police officers, and to the public who have a legitimate expectation that police officers will give every assistance after a serious incident. That assumption of co-operation should be put beyond doubt in the primary legislation, including in the wording of the constable's declaration. Where such an incident is being investigated by the PIRC, the investigators should also have a power, where it is necessary and proportionate, to compel police officers to attend within a reasonable timescale for interview.

53. Early separation of officers, other than in pressing operational circumstances, is the best way to ensure non-conferral in practice, give transparency to the process and preserve the integrity of each individual's evidence. This is both in the interests of the individual police officers themselves and in the public interest in order to safeguard public confidence in the integrity of their evidence. It is also standard practice when dealing with groups of witnesses who are not police officers. Civilian witnesses are separated as a matter of course to prevent the contamination of

evidence. In any group of people there is a danger of group-think that could contaminate or colour evidence inadvertently or otherwise. The interests of one officer present in a group may also be quite distinct from, and in conflict with, another's interests.

54. Where an officer considers, or is advised, that he or she should have legal advice or representation immediately after a serious incident it is important to be aware that the individual officers may have conflicting or different interests from each other.

55. Following a death or serious incident police officers may be traumatised and need support in the immediate aftermath. They should have their welfare needs addressed and have support from colleagues as necessary, including their staff association, but support should not, so far as possible, come from colleagues who were also witnesses of fact at that critical point in time. This approach will help to preserve the integrity of evidence, protect the rights of all those involved and the welfare of the police officers.

Scrutiny, delays and time limits

56. I do not consider that it would be appropriate to put into statute detailed time limits and targets for dealing with complaints but the existing time limits should be reviewed and published in the imminent PIRC statutory guidance. Performance against these targets should be measured and reported on regularly. The Chief Constable should publish annually Police Scotland's performance in dealing with complaints against the time-scales set out in the statutory guidance. I recommend that the Scottish Police Authority Complaints and Conduct Committee scrutinise that performance and hold Police Scotland to account where the targets are not being achieved.

57. The SPA Complaints and Conduct Committee should conduct more rigorous scrutiny of Police Scotland. That scrutiny function should be reported on in the SPA

annual report, drawing out particular trends, highlighting improvements or concerns and using complaints data as an indicator of communities' satisfaction or dissatisfaction with policing services.

58. The PIRC should also publish its performance against challenging targets for complaint handling reviews and investigations in the Commissioner's annual report.

Local scrutiny committees

59. I would encourage elected members in local scrutiny committees to consider what enhanced police complaints information might indicate about general public confidence in the police as well as the experience of specific communities.

Complaints about the police service is an area for local scrutiny that is specifically provided for in the primary legislation and that could be developed further where the committees, partnerships or boards have the appetite, time and resource.

Audit, research and analysis

60. Audit Scotland have stated that independent, reliable and high-quality audit improves the use of public money and helps ensure the services on which we rely are as effective and efficient as they can be. That principle applies equally to the audit work carried out in relation to police complaints. That work requires to be co-ordinated. There should be a clearly delineated hierarchy of audit functions that eliminates duplication of effort. Each level of analysis, measurement or research should inform the next relevant level.

61. Learning from research and analysis that identifies recurring themes, geographical or other patterns can enhance Police Scotland's ability to put in place preventative policy or practice measures. It can also highlight potential or actual discriminatory behaviours and the types of complaints made by particular

communities within Scotland. The opportunity it offers is to help to shift the current system from being a fundamentally reactive one to a more responsive and preventative one, reduce the volume of future complaints and contribute to an increase in public confidence.

Police training

62. It is critical that those involved in complaints handling should be immersed in best practice, fully understand and apply both the letter and the spirit of the statutory guidance, be empathetic with members of the public, manage their expectations and appreciate the power of apology. From the evidence provided by Police Scotland it is clear that they have now taken steps to increase the breadth and depth of the training that they provide in the area of complaints and conduct to probationers, line managers and practitioners.

63. All Police Scotland officers and staff should receive training on unconscious bias, equality legislation and diversity; this should be updated throughout their career, with the opportunity for refresher courses at regular intervals.

64. Police Scotland officers, and staff in certain roles, should receive regular training inputs and support on how to deal effectively with individuals who display mental ill-health symptoms or related behaviours.

Guidance

65. Guidance should be developed and updated across all the relevant organisations, so that all learning and development has a consistent basis, and so that there is no ambiguity regarding the interpretation of regulations. In the interests

of transparency all the guidance related to public complaints arrangements should be published in an easily accessible place.

Body-worn video cameras

66. Much of this report is concerned with the response to complaints but many complaints can be prevented by good psychology, empathetic engagement, a trauma-informed approach and using techniques that de-escalate aggression and create a safer environment for everyone.

67. Given the inherent risks to both officers and those detained in the event of the use of physical force, the ability to de-escalate circumstances which may lead to a violent encounter are paramount in the skillset of the individual officer. Compliance with an officer's instruction can be achieved through a hierarchy of approaches. Persuasion, calming techniques and negotiation, known collectively as de-escalation, may have a more effective impact in securing such compliance than directive commands that escalate tension and the probability of resistance.

68. Reducing complaints by better policing methods is highly desirable. Rather than mainly reacting to complaints when they occur, the policing bodies should be taking preventative actions and adopting policies that will contribute to a reduction in their number. That is why I recommend that Police Scotland should accelerate its plans to expand the use of body-worn video technology.

Protecting vulnerable people

69. The issue of mental health should be of paramount importance for the police service. Mental health issues are commonplace in all areas of society, so Police Scotland needs to look after every person in the service and has to understand better the people and communities they serve.

70. Dealing with members of the public who have mental ill-health or are vulnerable in other ways represents a significant challenge faced by police officers in how they deal with a range of situations. A significant amount of officers' time is taken up dealing with mental health crises faced by members of the public. Police Scotland recognise that the vulnerability and mental ill-health of individuals places a growing demand on policing and acknowledge that they are not always the right service to provide people with the help that they need.

71. Mental health professionals play a crucial role working alongside police officers. The Scottish Ambulance Service (SAS), Police Scotland and NHS 24 are taking forward a proposal to improve the care pathway for people suffering from mental illness, mental distress or poor mental wellbeing who present to Police Scotland and/or SAS by increasing access for police officers and SAS staff to designated mental health professionals within NHS 24 and working to provide enhanced mental health triage. The intention is to reduce the volume of police call-outs and attendance at A&E departments.

72. Early intervention, advice and referral should ease the burden on the police service but it is inevitable that A&E will still have to deal with some individuals who are in crisis. I therefore believe that A&E facilities should be designed to be able to deal safely with mental health care and acute crises

73. HMICS, along with the appropriate health inspection or audit body, should conduct a Review of the efficiency and effectiveness of the whole-system approach to mental health.

Custody

74. Independent Custody Visitors should, as a matter of course, check with custody officers and with detainees that a third party has been notified that the individual has been detained.

Welfare support for police officers and staff

75. Police officers do a difficult and often dangerous job in Scottish society. Given the very challenging nature of the role, the police service has an important duty of care to its officers and staff.

76. Police officers and staff must be valued, supported and carefully debriefed when, in the course of their duties, they have experienced something which was particularly traumatic or difficult. Such experiences are common for frontline police officers and the service must pay particular attention to their welfare needs and the effects of both regular trauma, confrontation or anger in the course of their duties as well as particular issues that can be derived from a major disaster or exceptional incident.

77. The evidence gathered throughout the Review suggests a lack of recognition that some individuals' behaviours may be attributable to the environment in which police officers operate and a need for underlying causes of those behaviours to be identified and addressed at the earliest opportunity before they manifest themselves in performance or conduct issues.

78. The evidence from the Call for Evidence, focus groups and the diversity staff associations suggests that support for officers who have been the subject of a complaint is inadequate. Lack of information and delays can lead to stress and anxiety that can and does have a detrimental effect on officers' family life. There needs to be frequent and clear communication regarding the progress of the complaint against subject officers.

Cross-border jurisdictional issues

79. Since my preliminary report was published, a cross-agency group, also involving the Home Office and the Police Ombudsman for Northern Ireland, has been established to consider cross-border jurisdictional issues. The fundamental issue that they are examining is how the actions of police officers who are on duty and temporarily deployed to other nations of the United Kingdom can be investigated. Whatever legislative or administrative arrangements are put in place to clarify how complaints and allegations of misconduct are investigated they should be based on the fundamental principles that the location of the incident determines which body or bodies have jurisdiction and the duty to investigate; that any criminal proceedings that arise from a constable's actions or inactions during the incident will take place in the jurisdiction in which the incident in question took place; and that any misconduct proceedings arising from the incident should be governed by the regulations in place in the constable's home jurisdiction and dealt with by the appropriate authority there.

November 2020

Chapter One - Introduction

Terms of Reference and purpose of the Independent Review

1.1 The Terms of Reference for this Independent Review, which commenced in September 2018, are set out in full at Annex B and state that the purpose of the Review is 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.

1.2 A significant number of issues have been identified where clarification and amendment of the governing legislation is required in the light of application and practice.

Methodology

1.3 On 13 December 2018 an initial call for evidence was published online and contributions invited by 13 March 2019. I published my preliminary report with a number of interim recommendations in June 2019. Over the course of the Review I have undertaken over 90 interviews with individuals, held over 30 meetings and organised nine focus groups. This engagement, and the responses to the call for evidence, have contributed to a substantial body of evidence.

1.4 The four principal organisations in the system responsible for dealing with complaints in Scotland are Police Scotland, the Scottish Police Authority (SPA), the

Police Investigations and Review Commissioner (PIRC) and the Crown Office and Procurator Fiscal Service (COPFS). I am very grateful to members of those four organisations for their contributions to the Review, and to the Chair of the SPA, the Chief Constable, the Police Investigations and Review Commissioner and the Crown Agent for facilitating the participation of their colleagues. The review does not include the responsibilities of the Lord Advocate in this field but I have included a number of observations about the interactions of COPFS with the other three organisations and the public. During the course of this Review Her Majesty's Inspectorate of Prosecution confirmed their intention to inspect the role of the Criminal Allegations Against Police Division of COPFS, known as CAAP- D.

Secretariat

1.5 The Independent Review Secretariat can be contacted here until the end of 2020:

Independent Review of Complaints Handling, Investigations and Misconduct
Issues in relation to Policing
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Principles that underpin police complaints arrangements

1.6 The Terms of Reference incorporate principles that it is suggested should underpin and guide any complaints system: fairness to all those who make or are the subject of a complaint or allegation; essential accountability both of individual public servants and of those organisations which have any role in holding them and their

parent organisation to account; transparency, which makes systems easy to understand and facilitates public, parliamentary and media scrutiny while respecting both the necessary confidentiality of any disciplinary process and the privacy of individuals and their families; proportionality in the response and the resource committed to operating the systems and in the handling of individual cases to ensure best value for the public; effectiveness and efficiency in dealing with serious and sensitive matters expeditiously; and, critically, protecting the human rights of all the people involved.

1.7 The European Court of Human Rights has also made clear the importance of the victim involvement principle in dealing with such complaints. Meaningful victim involvement and constructive engagement with complainers is a fundamental requirement for a fair and effective system and the complainer should be consulted and kept informed of developments throughout the process. Participation in the investigation process through liaison with the investigating body and regular communication can protect the complainer's interests without prejudicing the interests of the officer against whom the complaint is made. As the Commissioner for Human Rights said in his 2009 opinion¹, adherence to the victim involvement principle will, "enhance independence by ensuring that the complainant's interests are not marginalised by the interests of a powerful police service".

1.8 Additionally, the level of the independence of the investigation of complaints against the police becomes increasingly critical as the seriousness of the complaint increases. The types of issues that may be encompassed in the phrase, "Complaints against the police", are extraordinarily wide-ranging. A complaint may be made about the quality of police service provided by the police as an organisation. A complaint may relate to the alleged actions or inactions of an individual officer or several officers as well as inferring wider issues about the police as an organisation. The categories are not mutually exclusive. The need for independence and impartiality in the investigation process becomes more or less acute depending on the nature and the substance of the complaint being made. In

¹ <https://rm.coe.int/opinion-of-the-commissioner-for-human-rights-thomas-hammarberg-concern/16806daa54>

certain circumstances there is a legal requirement for independence in the investigation or oversight. This includes allegations against the police where it can be inferred from the nature of the complaint that the individual's rights under Article 2 (Right to life - death at the hands of State agents) or Article 3 (Prohibition of torture - inhuman or degrading treatment or punishment) or Article 5 (Right to liberty and security - unlawful detention) are engaged².

1.9 There is, however, a vast raft of quality of service complaints which are most effectively and usefully dealt with by the police organisation itself in order to respond effectively and swiftly, accelerate learning and promote improvements in the systems and services that the police are providing. In this context there is a need for a learning culture, as opposed to a punitive approach to complaints. This is seen as vital to organisations if they are to improve service and learn from failings.

1.10 'From sanctions to solutions'³ is a document which was published by the Police Complaints Commissioner for Scotland, Professor John McNeill in 2011 and it remains the statutory guidance for police complaints handling in Scotland. The Chapman Report⁴ was an Independent Review of the Police Disciplinary System in England and Wales published in 2014. The consistent philosophy that underpins both of these documents is that police services need to learn from complaints if they are to improve their service to the public and enhance public confidence in those services. An emphasis on finding solutions rather than focusing on an exclusively punitive approach to failures also characterises the approach they advocate.

Public expectations of police officers and the role of a constable

1.11 In the United Kingdom the power of the police to fulfil their functions and duties is dependent on public approval of their existence, actions and behaviour, and on their ability to secure and maintain public respect. This longstanding concept of

² [Harris, O'Boyle and Warbrick: Law of the European Convention on Human Rights, \(4th edition\)](#)

³ https://pirc.scot/media/1211/pccs_statutory_guidance_web.pdf

⁴ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/385911/An_Independent_Review_of_the_Police_Disciplinary_System_-_Report_-_Final....pdf

policing by consent is reflected in Peel's principles which stated that a relationship should be maintained with the public at all times that, "gives reality to the historic tradition that the police are the public and the public are the police; the police being only members of the public who are paid to give full-time attention to duties which are incumbent on every citizen in the interests of community welfare and existence"⁵. This fundamental principle is also inherent in the declaration made by every Scottish police officer:

"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".

1.12 We the public ask a huge amount of police officers; we give them powers over us including the power to deprive citizens of their liberty; we hold them to account often very publicly; we put them in positions of great vulnerability, both physically and constitutionally; we do not allow them to withdraw their labour; we rely on them when we are in trouble; and we ask them to do things on our behalf that we would never contemplate doing ourselves.

1.13 As I said in my 2017 report⁶ for the then Home Secretary on Deaths and Serious Incidents in Police Custody in England and Wales: "the vast majority of police officers conduct themselves with integrity at all times, often during very challenging conditions. However, when things do go wrong, the public have a right to expect that the actions of police officers are properly investigated, and where there have been failings on the part of the police, that these will be dealt with appropriately". The 'Fundamental rights-based Police training' manual⁷ published by the European Union Agency for Fundamental Rights⁸ rightly observes,

⁵ https://www.college.police.uk/What-we-do/Ethics/Ethics-home/Documents/Code_of_Ethics_ReadingList.pdf

⁶ Independent Review of Deaths and Serious Incidents in Police Custody, Home Office:

<https://www.gov.uk/government/publications/deaths-and-serious-incidents-in-police-custody>

⁷ https://fra.europa.eu/sites/default/files/fra-2013-fundamental-rights-based-police-training_en_0.pdf

⁸ <https://fra.europa.eu/en/about-fra>

“The trust and confidence of the public are a necessary prerequisite for effective police work. Effective training is not possible if certain sections of the population do not feel that the police protect and respect them.” (page 62)

1.14 We expect police officers in the 21st century to be equipped with the skills to reduce, so far as possible, the threat of harm and danger to themselves and others arising from the perceived potential for violence and from other breaches of their human rights. Emotional intelligence, intellectual acuity, integrity and empathy should be in play, along with physical competence. We expect them to be exemplary individuals, or as the Chapman Report⁹ put it: “The majority of police officers are good people. But they must be better than good – they must be ‘exemplary’”.

1.15 Where it is alleged that police officers have fallen short of their obligations or breached the rights of members of the public, decisions within the system of investigations must be fair, transparent, swift and effective. Decisions not to instigate disciplinary action where complaints have been made against an officer must be transparent in order to safeguard public confidence, and to give greater certainty to the police themselves. Officers need to know as soon as possible if they are to face disciplinary action but often they may be left in uncertainty over many months or years due to the length of investigations.

1.16 This Review has received evidence of delay of that kind at various points in the system and arising in different organisations. Where such processes have been instigated any delays may leave officers in a state of anxiety due to the duration of the investigation. Where an officer has been suspended as a result of an allegation the impact on the officer and his or her family can be profound. It is also the case that those who have complained against the police suffer greatly from lengthy and extended investigations.

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/385911/An_Independent_Review_of_the_Police_Disciplinary_System_-_Report_-_Final....pdf

Public expectations of the complaints system

1.17 The ability of an individual citizen to make a complaint about Police Scotland, or any of its officers and staff, and to receive an explanation, apology, or remedy is a valuable and significant form of accountability to the public in a modern democracy.

1.18 Police officers, as office-holders in a position of privilege and power, have a higher duty to account for their actions. The public have a legitimate expectation that they will be listened to, get fair treatment, be given clear explanations, receive timely responses and, where they have been wronged, sincere apologies and, if relevant, action. They also need to be assured that police officers and support staff will be held accountable for their actions where the complaint is upheld.

Chapter Two - Background

2.1 In 2012 the Scottish Parliament passed the Police and Fire Reform (Scotland) Act which, amongst other things, paved the way for the establishment of both a single Police Service of Scotland (Police Scotland) and a single Scottish Police Authority (SPA) to which the Chief Constable became accountable. The statute also provided for the transformation of the office of Police Complaints Commissioner for Scotland (PCCS) into the office of Police Investigations and Review Commissioner (PIRC). In addition, it updated and expanded the functions of Her Majesty's Inspectorate of Constabulary in Scotland (HMICS) to include making "such other inquiries as they think fit about the state, efficiency and effectiveness of the Authority and the Police Service".

2.2 When the Act came into force the role of the Scottish Government changed. A new set of relationships was established between Scottish Ministers and the new public bodies. The SPA is accountable to Scottish Ministers; the Chief Constable is not. Scottish Ministers appoint the Chair and board members of the SPA, they provide SPA with grant in aid to fund their budget and Police Scotland's budget, they have a power of direction¹⁰ (as yet unused) over the SPA, and they approve the appointment of the Chief Constable. In relation to the PIRC, it is Scottish Ministers who appoint the Commissioner and directly fund the organisation.

2.3 The independent role of the Lord Advocate as head of the systems of prosecution and investigation of deaths in Scotland was not altered by police reform. It remains the case that the Lord Advocate (or the appropriate Procurator Fiscal) can direct the Chief Constable in the investigation of crime.

2.4 Prior to 1 April 2013 when Police Scotland and the SPA came into being, policing in Scotland was based on a structure of eight regional constabularies which were accountable to eight police authorities. Those eight authorities were part of local government structures and comprised elected members. The Scottish Crime and Drug Enforcement Agency had a specialist Scotland-wide remit and was

¹⁰ <http://www.legislation.gov.uk/asp/2012/8/section/5>

accountable, for non-operational matters, to the Scottish Police Services Authority and through them to Scottish Ministers. The Association of Chief Police Officers (Scotland) (ACPOS), which represented the views of the chief constables and developed national policing policy, ceased to exist after 2013.

2.5 For a jurisdiction the size of Scotland with a small population and a diverse geography, the prospect of improvement of efficiency and effectiveness represented the rationale for police reform. The Scottish Government described police reform as being about protecting and improving local services, creating more equal access to specialist support and national capacity, and strengthening the connection between police services and communities.

2.6 The draft legislation was put together rapidly, the passage of the Bill was completed by the Scottish Parliament in a relatively short period of time and the implementation period for the changes was compressed and challenging. In these first years of Police Scotland and the SPA a number of high-profile issues and problems were the subject of intense media and public scrutiny and the atmosphere around the fledgling force appeared at times to be febrile.

2.7 In the area of complaints and investigations the turbulence of the post-reform period reached its peak in 2017 when two senior officers were investigated by the PIRC. It is important to have a resilient system that is driven by certain procedures and not short-term imperatives. It is important that the system is not shaped by a crisis and accompanying media interest in specific cases; but a system that looks to the long term and is grounded in sound practice, sensible procedures and co-operative working by those operating the essential checks and balances upon which it is built.

Chapter Three - Legal and ethical framework

3.1 Prior to police reform in 2013 allegations of non-criminal misconduct were generally investigated within each constabulary, or in certain instances by another constabulary when another chief constable could be asked to provide an external investigation. This external investigation was particularly important in the case of senior officer conduct matters. In the case of senior officers, the regulations¹¹ specified that any investigating officer should be “a chief constable of a police force in Scotland other than the force of which the senior officer is a member”. In 2012 the Police and Fire Reform (Scotland) Act amended the Police, Public Order and Criminal Justice (Scotland) Act 2006 and provided for a new centralised approach to investigating significant matters. In addition to its central provisions mentioned above, the 2012 Act gave the Police Investigations and Review Commissioner (PIRC) wide-ranging powers to investigate serious incidents involving the police, senior officer conduct, and, when directed to do so by the Crown Office and Procurator Fiscal Service, criminal allegations against police officers or deaths involving the police.

3.2 The PIRC is an office-holder and organisation independent of the police. It also has the responsibility for reviewing how Police Scotland handle complaints, auditing Police Scotland’s complaint handling arrangements and researching and identifying trends. This centralised approach was tested in the full glare of publicity in 2017 and 2018 when the PIRC carried out separate independent investigations into allegations and complaints against two of Police Scotland’s most senior officers¹².

3.3 Following commencement of the primary legislation in 2013, the Scottish Parliament approved a suite of regulations authorised by the Act governing the duties, performance and conduct of police officers. Unlike most other public servants, police officers’ conditions of service and many other related matters are set out in regulations made under the Act. These arrangements reflect the unique

¹¹ <http://www.legislation.gov.uk/uksi/1999/1074/regulation/5/made>

¹² Police Scotland has 14 senior officers who hold the office of constable: one Chief Constable, 3 Deputy Chief Constables and 10 Assistant Chief Constables.

nature and historical development of the role of the constable. Police officers are Crown servants who hold the office of constable and are not employees in the normal sense. Some aspects of employment law apply to police officers but these have to be considered alongside the relevant police regulations which have primacy. Police constables generally do not have access to the Employment Tribunal (Employment Rights Act 1996, Section 200¹³), however, certain EU law provisions do apply to them, so the Employment Tribunal does have jurisdiction to consider certain discrimination-type claims. This was clarified in a UK Supreme Court case¹⁴ in 2017 which confirmed a right of access to some constables to the Employment Tribunal to challenge decisions made by misconduct panels.

3.4 Prior to the police reforms of 2013, the Scotland Act 1998 and the Human Rights Act 1998 came into force requiring the Lord Advocate and the Scottish Ministers to act compatibly with Convention Rights and in particular, in the current context, with Articles 2, 3, 5 and 8 of the European Convention on Human Rights.

3.5 It has been suggested by the Scottish Human Rights Commission that there should be explicit reference to Convention Rights in all appropriate Scottish legislation for the purpose of emphasising their importance, although those rights are effectively implied by virtue of the Scotland Act 1998 and Human Rights Act 1998. The Human Rights Act requires provisions in legislation to be interpreted in a way that is compatible with ECHR. In the case of Acts of the Scottish Parliament, if that interpretation is not possible, the provision can be struck down by the courts as outwith the competence of the Scottish Parliament or 'ultra vires' the powers conferred in the Scotland Act.

3.6 The question of whether the Scottish Parliament wishes to make explicit provision to badge every Scottish statute with a specific acknowledgment that it has to be construed in this way is a matter for the Scottish Parliament to consider. I understand that at least four Acts of the Scottish Parliament have given some degree of recognition to international human rights treaties (these are the

¹³ <https://www.legislation.gov.uk/ukpga/1996/18/section/200>

¹⁴ <https://www.supremecourt.uk/cases/docs/uksc-2016-0041-judgment.pdf>

Children and Young People (Scotland) Act 2014; the Community Empowerment (Scotland) Act 2015; the Land Reform (Scotland) Act 2016; the Social Security (Scotland) Act 2018). There is however a drafting presumption that legislators will draft only for a substantive purpose. These other Acts deal with the different issue of how to give effect to rights in international treaties that have not been incorporated in Scots law in the same way as the European Convention on Human Rights.

3.7 Policing is undoubtedly an area in which Convention Rights are central to its purpose and, if Parliament considers it appropriate, any amendment to the primary legislation could reflect their importance by explicit reference to the Convention Rights but this would be a significant departure from parliamentary drafting practice. Absence of such explicit reference does not imply that Convention Rights are not at the heart of the legislation.

3.8 The relevant provisions of primary and secondary legislation dealing specifically with complaints against the police are included in Annex C. That statutory framework is supported by various sources of guidance and procedures.

3.9 It is evident from the work undertaken during the Review and from previous statements by principal stakeholders that the legislation is not as clear as it could be in respect of a number of important matters. These issues are dealt with in detail in the Legislative changes chapter at page 432.

3.10 The framework that sets out standards of police officer and staff behaviour includes the Convention Rights incorporated in the Human Rights Act 1998, Police Scotland's Code of Ethics¹⁵ and, in the case of all ranks of constable, statutory provisions including the Standards of Professional Behaviour¹⁶, as well as the existing relevant statutory and common law provisions of Scottish law. Police officers must comply with the law of Scotland and, when serving outwith Scotland, with those of other jurisdictions. (The Standards of Professional Behaviour are also reproduced at Annex D. These are replicated in the equivalent regulations for senior

¹⁵ <https://www.scotland.police.uk/about-us/code-of-ethics-for-policing-in-scotland/>

¹⁶ The Police Service of Scotland (Conduct) Regulations 2014
<http://www.legislation.gov.uk/ssi/2014/68/schedule/1/made>

officers, the only difference being a reference to “other senior officers” rather than “other constables”.)

Codes of Ethics

3.11 Police Scotland’s Code of Ethics is replicated in full at Annex F. In the Jurisdictions chapter at page 296 I describe the equivalent systems in place in England and Wales, Northern Ireland and the Republic of Ireland. As summarised below, each of those 3 jurisdictions has in place a statutory Code of Ethics for policing.

3.12 Police Scotland’s Code of Ethics does not have any statutory basis and I believe that it should. That position was supported by the Scottish Human Rights Commission in its written evidence¹⁷ to the Scottish Parliament Justice Committee’s Post-Legislative Scrutiny of the Police and Fire Reform (Scotland) Act 2012 Inquiry in 2019:

“The Act makes no provision for a code of ethics for the Scottish Police Service. The Commission notes the Code of Ethics for Policing in Scotland, and welcomes that it explicitly deals with human rights and police officers’ obligations under the HRA.

Recommendation: The Commission believes the Act should make provision for an ethics code to be placed on a statutory footing.”

England and Wales

3.13 Section 39A of the Police Act 1996¹⁸ (as amended by the Anti-social Behaviour, Crime and Policing Act 2014¹⁹) gives the College of Policing in England and Wales a power to issue, with the approval of the Secretary of State, codes of practice. In 2014 the College issued as a code of practice the Code of Ethics²⁰

¹⁷ https://www.parliament.scot/S5_JusticeCommittee/Inquiries/PFR-SHRC.pdf

¹⁸ <https://www.legislation.gov.uk/ukpga/1996/16/section/39A>

¹⁹ <https://www.legislation.gov.uk/ukpga/2014/12/contents/enacted>

²⁰ https://www.college.police.uk/What-we-do/Ethics/Documents/Code_of_Ethics.pdf

(A Code of Practice for the Principles and Standards of Professional Behaviour for the Policing Profession of England and Wales).

3.14 The Code of Ethics applies to the police forces maintained for the police areas of England and Wales and relates specifically to chief officers in the discharge of their functions. It was produced by the College of Policing in its role as the professional body for policing in England and Wales.

3.15 The College website describes the Code of Ethics in this way:

“The Code of Ethics has been produced by the College of Policing in its role as the professional body for policing. It sets and defines the exemplary standards of behaviour for everyone who works in policing. We are committed to ensuring that the Code of Ethics is not simply another piece of paper, poster or laminate, but is at the heart of every policy, procedure, decision and action in policing. Evidence tells us that simply having a Code of Ethics is not enough to reduce unprofessional behaviour - it needs to be talked about as an everyday business consideration. If the public don't have the confidence to trust the police to be fair, acting ethically and in their best interests, they are less likely to assist the police in upholding the law. The Code of Ethics is about self-awareness, ensuring that everyone in policing feels able to always do the right thing and is confident to challenge colleagues irrespective of their rank, role or position.”

3.16 The Code of Ethics is also used to define “practice requiring improvement” in The Police (Conduct) Regulations 2020²¹. Practice requiring improvement is defined there as underperformance or conduct not amounting to misconduct or gross misconduct. I comment on this approach to dealing with such conduct in the Evidence from other jurisdictions chapter at page 296.

²¹ https://www.legislation.gov.uk/uksi/2020/4/pdfs/uksi_20200004_en.pdf

Northern Ireland

3.17 The schedule to the Police (Conduct) Regulations (Northern Ireland) 2016 sets out in full the 10 Articles of the Police Service of Northern Ireland's statutory Code of Ethics. The preamble²² to the Code begins:

“Policing is an honourable profession that plays an important part in the maintenance of a just and fair society. The people of Northern Ireland have the right to expect the Police Service to protect their human rights by safeguarding the rule of law and providing a professional Police Service.”

3.18 All serving police officers within the Police Service of Northern Ireland are required to comply with the Code of Ethics. Where an allegation of misconduct against a police officer is made, the standards against which the officer will be measured are those contained within the Code of Ethics.

3.19 Section 52²³ of the Police (Northern Ireland) Act 2000 places a duty on the Northern Ireland Policing Board to publish a Code of Ethics for the purpose of (a) laying down standards of conduct and practice for police officers and (b) making police officers aware of the rights and obligations arising out of Convention Rights (within the meaning of the Human Rights Act 1998).

3.20 The Board is also required to assess the effectiveness of the Code and revise it as necessary. The Board carries out human rights monitoring work to assess, amongst other things, the effectiveness of the Code of Ethics.

Republic of Ireland

3.21 The Garda Síochána Act 2005, as amended in 2015, places a duty on the Policing Authority to establish a Code of Ethics that includes (a) standards of conduct

²² <http://www.legislation.gov.uk/nisr/2016/41/schedule/made/data.xht?view=snippet&wrap=true>

²³ <https://www.legislation.gov.uk/ukpga/2000/32/contents>

and practice for members, and (b) provisions to encourage and facilitate the reporting by members of wrongdoing in An Garda Síochána²⁴. The Act also places a duty on the Garda Commissioner to take such steps as are necessary to ensure that all members (police officers) have read and understood the Code of Ethics and that a record is kept of the steps so taken in relation to each member.

3.22 The Code²⁵ has regard to the Policing Principles set out in the Act. Those principles are (a) that policing services are to be provided (i) independently and impartially, (ii) in a manner that respects human rights, and (iii) in a manner that supports the proper and effective administration of justice; and (b) that effective and efficient policing is dependent on securing the confidence, support and co-operation of local communities and engaging with those communities.

3.23 The Code sets out nine standards of conduct and practice for everyone in An Garda Síochána, each with a number of accompanying commitments. The Code states that the Policing Authority will review it at least every three years and may revise it as appropriate. The Authority oversees the implementation and embedding of the Code.

Scotland

3.24 The absence of a general reference to ethics or a specific reference to a Code of Ethics from the founding legislation for the Scottish Police Authority and the Police Service of Scotland (i.e. the Police and Fire Reform (Scotland) Act 2012) is in my view a significant omission.

3.25 I commend the non-statutory Code of Ethics which is published on Police Scotland's website. Based on the values of integrity, fairness and respect, it sets very clear standards and expectations for all members of the service. In particular, I

²⁴ *An Garda Síochána* is the Irish Gaelic name for the Republic of Ireland's police service.

²⁵ https://www.policingauthority.ie/assets/uploads/documents/Code-of-Ethics-for-the-Garda-Sochna_1.pdf

welcome its recognition of the commitment to respect for human rights, a commitment that is also reinforced in each constable's declaration on taking office.

3.26 The importance of the Code to the culture and practice of everyone in policing in Scotland cannot be overstated and its influence and primacy should therefore be reflected in statute. How that is achieved is a matter for the Scottish Parliament but the other jurisdictions that I have visited do offer some alternative approaches that could be considered. Drawing on those models, I recommend that primary legislation should make provision for the Scottish Police Authority and the Chief Constable to be under a duty jointly to prepare, consult widely on, and publish the Code of Ethics, and to have a power to revise the Code when necessary. The legislation should provide that Scottish Ministers, HM Inspectorate of Constabulary in Scotland, COPFS, the staff associations and the trade unions should be included in the consultees on the Code and that it should be laid in final form in the Scottish Parliament.

3.27 In the Scottish Police Authority chapter at page 176 I comment on the important role of SPA Complaints and Conduct Committee and on the developing role of Police Scotland's regional, national and independent ethics advisory panels (EAPs). In that chapter I also note that it is the SPA Policing Performance Committee which considers any proposed changes to operational policing which may have particular public interest, ethical or human rights implications. It is for the Authority to consider with Police Scotland the practicalities of how to fulfil the new duties that I am recommending but I take the view that this is an example of where it could usefully and practically exercise its leadership and accountability functions.

3.28 Recommendation: 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.

Chapter Four - Complaints handling process, investigations and misconduct

4.1 There are several distinct processes in Scotland for dealing with the behaviour and conduct of police officers and support staff.

4.2 The internal arrangements within Police Scotland cover welfare, performance, grievance, complaints and conduct. Complaints and conduct matters are managed and investigated by Police Scotland's Professional Standards Department (PSD) in liaison with local police divisions.

4.3 Complaints and conduct matters across the service as a whole are also overseen by the Scottish Police Authority (SPA). The SPA is not part of the police; it was created by the Scottish Parliament in 2013 in order to hold the Chief Constable to account and to create separation between Scottish Ministers and Police Scotland.

4.4 Non-criminal allegations of misconduct by officers of the rank of Assistant Chief Constable and above are dealt with by the Scottish Police Authority which can ask the independent Police Investigations and Review Commissioner (PIRC) to investigate the allegations and report back. If the allegation is of a criminal nature the SPA must report the matter to the Procurator Fiscal. The SPA's Complaints Handling Procedures²⁶ state that, "where the SPA considers that it can reasonably be inferred that a senior officer may have committed a criminal offence it must refer the matter to the appropriate prosecutor". Similarly, any allegation of a breach of Articles 2, 3 or 5 against a senior officer must be reported forthwith to the Procurator Fiscal for independent investigation by the Procurator Fiscal or by the PIRC under direction of the Lord Advocate.

4.5 Any member of the public can make a complaint to Police Scotland about the police service or about an individual officer and, if they are not satisfied with how their complaint was handled, they can ask the PIRC to review that. Complaints about senior officers will be referred to the SPA who, apart from the investigation by the PIRC, are currently responsible for the whole process.

²⁶ <https://www.spa.police.uk/about-us/complaints/how-to-make-a-complaint/>

4.6 Members of the public can report to Police Scotland any allegation of criminality by a member of the police service or, if they are not comfortable going to the police, can report the matter direct to the Crown Office and Procurator Fiscal Service (COPFS). COPFS is independent of the police and investigates allegations of criminal conduct.

4.7 If at any time a constable or employee of Police Scotland is engaged in alleged criminal behaviour on duty, such behaviour should be reported to the Crown Office and Procurator Fiscal Service by Police Scotland, by the SPA in the case of senior officers, or by a member of the public. On-duty allegations are dealt with by the Crown Office's Criminal Allegations Against Police Division (CAAP-D); allegations of off-duty criminality are reported to the local Procurator Fiscal who may consult with CAAP-D if the allegations are relevant to the officer's capacity as a police officer. CAAP-D will independently consider all on-duty allegations and may carry out further inquiry themselves or instruct the PIRC or Police Scotland. In all cases the investigation will be under the direction and control of the Crown.

How do I make a complaint about the police?

4.8 Any member of the public who wants to make a complaint about the police can call Police Scotland on 101, or send them a letter or e-mail, or attend at a police station to complete a complaint form, or they can complete the same form online²⁷. Where the complaint relates to a senior officer (Assistant Chief Constable, Deputy Chief Constable or Chief Constable) the current procedure is that they should contact (by letter, e-mail, telephone or online) the SPA²⁸ which has statutory responsibilities for holding the Chief Constable to account and, currently, for assessing the conduct of senior officers. The SPA also has the power to suspend or discipline them.

²⁷ Police Scotland's online complaints page and guide: <https://www.scotland.police.uk/about-us/police-scotland/complaints-about-the-police/how-to-make-a-complaint/>

²⁸ SPA's complaints guide: <https://www.spa.police.uk/about-us/complaints/how-to-make-a-complaint/>

4.9 Where, at the conclusion of the process a member of the public is not satisfied with the way in which Police Scotland or the SPA has handled their complaint, they can ask the PIRC to carry out a complaint handling review (CHR). The PIRC is responsible for carrying out independent reviews of the way in which complaints about the police have been handled by Police Scotland or the SPA. The PIRC is also responsible for ensuring that the SPA, Police Scotland, and other police bodies, have suitable systems in place for handling complaints.

4.10 As can be seen from the above, the provision which exists for members of the public to make complaints about the police in Scotland is complex. In the preliminary report I noted that the Police Scotland website was challenging to navigate, the online complaints form was not sufficiently prominent and that it was not always easy to understand where responsibilities lie or which avenue should be pursued. It is still the case that, depending on the circumstances of the incident and the nature of the complaint or allegation, there may be a role for Police Scotland, the SPA, COPFS or the PIRC in how the complaint should be taken forward. In the event that the complaint is of a highly sensitive nature, there is no indication of the route the individual may take. These issues are discussed in the Accessibility and communication chapter at page 282 and in the COPFS chapter at page 268.

4.11 In terms of standards of customer service, complainers should reasonably expect to receive a sincere apology and any appropriate remedy when that is justified; know that they will be listened to respectfully; and be given a clear and candid explanation of the causes of any failing or perceived failing. They are also entitled to have their telephone calls returned promptly, and to be kept advised both of progress and of what steps will be taken to address the issue. The public have a legitimate expectation that they will receive fair treatment at all times; police officers and support staff also have a right to be treated fairly when being held accountable for their actions.

4.12 Every complaint is important to the complainer. The recipient of the complaint should be receptive and from the start the premise should be that the complaint is taken at face value, will be dealt with politely, with an open mind and from an impartial standpoint.

4.13 This Review’s remit encompasses a broad range of police and public behaviours. No one response covers all the potential circumstances that might generate complaints, require to be investigated, or be defined as misconduct. It is therefore self-evident that we need a nuanced and careful approach to dealing with them. The table below illustrates that diversity and the possible overlaps between categories of behaviour by officers or support staff while on duty.

Category	Example	Proportionate response
Public complaint	Rudeness by an on-duty officer	Investigation and resolution
HR issue	Unauthorised absence	Line management/HR action
Internal grievance	Unfair treatment by line manager	Bilateral discussion and resolution, which failing grievance procedure
Organisational failing	Insufficient local police presence	Consideration by local Divisional Commander or Force Executive
Individual failing	Failure to follow up a call	Remedial action by line manager and individual, and in some cases HR
Poor performance	Failure to complete paperwork	Line management action and individual improvement action
Misconduct	Failure to obey an instruction	Misconduct proceedings
Gross misconduct	Sexual impropriety on police premises	Misconduct proceedings or COPFS and the courts
Corruption	Abuse of position for personal gain	For COPFS and the courts
Other criminal offence	Assault by an on-duty officer	For COPFS and the courts
Whistleblowing	Internal reporting of a health and safety risk	Whistleblowing procedure including statutory protections for reporter

4.14 It is impossible to classify precisely the vast range of possible circumstances and human behaviours and interactions in a simple tabular form because the real world is not like that. There are many overlaps between these categories; categorisations may change as evidence emerges or people change their views or

recollections; criminality can encompass a number of the other categories; the distinction between human error and wrong-doing is not always clear; and individuals' motivation to make a complaint can vary enormously.

4.15 Elsewhere in this report I suggest that changes to increase public understanding of how to make a complaint about the police should be implemented. There is also an imperative for Police Scotland to improve police and support staff understanding of their own internal complaints system, which matters belong within that system and which properly belong elsewhere. The evidence suggests that very often minor matters follow a complaints route when they should be resolved through discussion, mediation or management action. In some other instances conduct is wrongly categorised, for example as excessive force when the allegation would, if proved, amount to assault.

4.16 Policing by its very nature often involves situations of stress, conflict and disagreement. Whatever the circumstances, it is in the public interest that each instance is dealt with in a proportionate, timely and effective manner.

4.17 A large proportion of complaints by the public are about quality of service. This is something that is recognised and constantly addressed by Police Scotland. However, it can be difficult for the public to see this as a failure in the more abstract concept of service delivery, and they are more likely to focus on the individual frontline police officer and thus, unfairly complain about that individual officer rather than the apparatus above him or her that results in his or her inability to provide an adequate response.

Chapter Five - Scottish Parliament Justice Committee Post-Legislative Scrutiny Inquiry

5.1 On 25 March 2019 the Justice Committee of the Scottish Parliament published a report on its Post-Legislative Scrutiny Inquiry into the Police and Fire Reform (Scotland) Act 2012²⁹.

5.2 This important report included a recommendation in relation to police complaints that:

“Police Scotland review its complaint handling processes to ensure that it is able to provide data on how it categorises and investigates complaints, and that the SPA review its oversight and audit processes to ensure that they can effectively determine whether Police Scotland’s complaints handling processes are being implemented correctly.”

5.3 I support this recommendation and have more to say on this subject in the Audit chapter at page 335.

5.4 In autumn 2018 the Committee heard oral evidence, which generated a great deal of media coverage, suggesting mis-categorisation by Police Scotland of complaints, including allegations of assault by police officers being wrongly categorised as excessive force. In its report the Committee commented:

“The Committee notes the concerns expressed about the level of discretion that Police Scotland has to categorise and investigate complaints in the first instance and that some serious complaints have been inappropriately recorded. It has been suggested that the term ‘serious incident’ within the regulations be amended to a potential breach of articles 2 and 3 of the European Convention on Human Rights. The Committee considers that this is an issue that should be addressed.” (paragraph 336)

5.5 The suggestions of mis-categorisation are a matter of serious concern. Allegations of excessive force or assault engage Article 3 of the European Convention on Human Rights³⁰ and any early decision as to what the allegation of

²⁹ <https://sp-bpr-en-prod-cdnep.azureedge.net/published/J/2019/3/25/Report-on-post-legislative-scrutiny-of-the-Police-and-Fire-Reform--Scotland--Act-2012---The-Police-Service-of-Scotland/JS052019R9.pdf>

³⁰ Treaty ETS No. 005, Convention for the Protection of Human Rights and Fundamental Freedoms <https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/005>

the conduct amounts to in this context should be taken independently of the police. It is crucial for Police Scotland to understand how such mis-categorisations of complaints come about and to make any necessary changes in practice to deliver the right and appropriate procedures, founded on clear and well understood definitions and training.

5.6 In November 2018 the Crown Office and Procurator Fiscal Service (COPFS) instructed Police Scotland to submit a sample of cases for review by its Criminal Allegations Against Police Division (CAAP-D). This allowed a retrospective review of a representative sample of complaint cases that have been characterised by Police Scotland as complaints of excessive force and/or unlawful detention. COPFS also instructed Police Scotland to report all cases to CAAP-D where they propose to categorise the complaint as one of excessive force.

5.7 In 2019 COPFS informed the Review that they were committed to working closely with the PIRC to identify further categories of cases that may be referred to them at an early stage for investigation and report. In the PIRC chapter at page 205 I comment in detail on the types of case that should be independently investigated by the PIRC.

5.8 With the agreement of the Crown Agent, the Review was authorised to view the CAAP-D sample of allegations of excessive force. In the sample I examined, regional variations in Police Scotland's practice were evident. I believe that further, regular audits should be undertaken and evidence gathered by PIRC to examine consistency and correctness of approach.

5.9 Given the importance and sensitivity of such allegations I recommended in my preliminary report that all such allegations of excessive force should continue to be reported immediately by Police Scotland Professional Standards Department (PSD) to CAAP-D for instruction and investigation by the independent Procurator Fiscal or by PIRC on the direction of the Procurator Fiscal of CAAP-D.

5.10 Following my recommendation, CAAP-D and Police Scotland Professional Standards Department (PSD) agreed to revise the procedures and practice for

reporting cases to ensure that allegations were being suitably assessed and categorised by PSD. Built in to those arrangements there is now a process whereby CAAP-D provides advice and guidance in respect of any case where PSD is uncertain about categorisation, or in any case where there was an inference of criminality or perception on the part of the complainer of criminality.

5.11 In May 2020 CAAP-D provided me with an update on the outcome of the review that they had carried out of all the ‘excessive force’ categorised cases of complaints made in March 2020. CAAP-D reviewed all of the ‘assault’ and ‘excessive force’ categorised complaints that had been received by Police Scotland within the period 2 March 2020 and 3 April 2020. I am grateful to CAAP-D for sharing with me the data from that review. CAAP-D reviewed 47 cases comprising 21 assault categorisations and 26 excessive force categorisations. CAAP-D agreed with all the police categorisations and also agreed with the PSD proposals as to how the investigation should proceed.

5.12 CAAP-D reported that the results, “demonstrate that the current processes in place for the categorisation, and early referral to CAAP-D, of appropriate ‘excessive force’ complaints is robust and working well”. This review by CAAP-D was valuable and should be repeated on a regular basis.

5.13 I welcome the steps being taken by COPFS and CAAP-D to address my recommendation, however my concern about the independence of the investigation of alleged assaults by police officers persists. The majority of such allegations are investigated by PSD who may refer the matter for divisional inquiry. The current processes do allow CAAP-D to instruct an investigation by the PIRC but such referrals by CAAP-D are not common. The Chief Constable may also refer direct to the PIRC a serious incident involving the police (which may include a person sustaining a serious injury) and request that the PIRC investigate the incident.

5.14 CAAP-D’s practice, where there are elements of the case that suggest that an additional element of independence and impartiality is necessary or desirable, is to refer the matter to the PIRC to carry out separate and distinct investigation. During

2020 a small number of cases have been instructed in this way even though the matter had initially been investigated and reported to CAAP-D by PSD.

5.15 The scarcity of PIRC referrals in relation to assault allegations may be justified by the nature of the allegations but it does contribute to the public perception, expressed in evidence to my Review and described elsewhere in this report, of the police investigating the police.

5.16 In the PIRC chapter at page 205 I recommend that where the terms of the complaint made allege a possible breach of ECHR³¹ Article 3 Convention Rights by a police officer or of Article 5 (Unlawful detention) and therefore that a crime may have been committed, the Crown Office and Procurator Fiscal Service should always instruct the PIRC to carry out an independent investigation rather than directing Police Scotland to investigate. I also recommend in the PIRC chapter at page 205 that the PIRC should carry out an annual audit of Police Scotland's complaint handling processes in order to provide assurance that potential Article 3 and Article 5 (Unlawful detention) cases are being correctly identified and reported forthwith to COPFS.

Preliminary report recommendation: Given the importance and sensitivity of such allegations it is recommended that all such allegations of excessive force should continue to be reported immediately by PSD to CAAP-D for instruction and investigation by the independent Procurator Fiscal or by PIRC on the directions of the Procurator Fiscal of CAAP-D.

5.17 Recommendation: The Criminal Allegations Against Police Division (CAAP-D) of COPFS should repeat on a regular basis the review that they carried out of all the 'assault' and 'excessive force' categorised complaints that had been received by Police Scotland in the month of March 2020.

³¹ Treaty ETS No. 005, Convention for the Protection of Human Rights and Fundamental Freedoms <https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/005>

Chapter Six - Themes emerging - Evidence from members of the public, serving police officers and former police officers

Evidence from members of the public

6.1 The Review interviewed at length several members of the public who had experience of the police complaints process and had interacted with Police Scotland, the Police Investigations and Review Commissioner and, in some instances, the Crown Office and Procurator Fiscal Service. Their evidence has given me an invaluable insight into how the system has operated in a cross-section of more serious cases. I also received many submissions from members of the public as well as former and serving police officers. I am very grateful to them all for their evidence. There are common themes that emerged from those who came forward.

6.2 In 2019-20 Police Scotland received 6,278 complaints. There are two important points to be made about the total number of complaints: 1) that it represents a small proportion of the overall number of interactions that Police Scotland has with members of the public every year; 2) of those who complain, around 4%³² subsequently seek a complaint handling review by the PIRC; and 3) that some members of the public choose not to complain for a variety of reasons. Some of those reasons are explored elsewhere in this report.

6.3 I am very grateful to the individuals who did come forward for sharing their often traumatic and upsetting experiences with me. They did that in the full knowledge that I was not in a position to reconsider their case or to act in any way on their behalf, but they did so in order that systems could be improved and so that others might have a better experience.

6.4 The situations that brought these individuals into contact with the processes differed, however there were similarities in their experiences. The first part of this section summarises some of the views expressed and the themes that emerged.

³² PIRC received 258 applications for complaint handling reviews in 2018-19 and 291 applications in 2017-18.

6.5 In order to try to capture as many views as possible on the complaints process, the Review issued an online call for evidence on 13 December 2018. I am very grateful to all those individuals who took the time to contribute evidence to the Review. All individuals were able to express their views freely in their responses. The second part of this chapter summarises some of the main issues raised by serving and former police officers.

Accessibility

6.6 It was claimed that the process is criteria-led rather than people-centred and characterised by officers treating it as a paper exercise, where they “just wanted to tick boxes”. The complainers described the system as one which was designed to discourage someone who is dissatisfied with the police from making a complaint because of the bureaucratic nature of the system. A number of those who complained about a police officer had the officer’s line manager attend their home and in one instance the complainer considered that the officer’s engagement with them conveyed discouragement from making the complaint. It was claimed by the complainer that emotional blackmail was used in suggesting that pursuing the complaint would have a severe detrimental effect on the subject police officer’s career and that they were a good police officer. Complainers described how, if they persisted, they were made to feel that they were being a nuisance.

6.7 One complainer said that the process of making a complaint now was more accessible than it had been previously. It was felt that Police Scotland’s website had previously been difficult to navigate, but that this had been remedied to some extent. The website is more accessible than it was when I published my preliminary report. An update on my preliminary recommendation about making it easier to find information on Police Scotland’s website about how to complain is in the Accessibility and communication chapter at page 282.

Lack of independence

6.8 Many complaints were dealt with locally by the divisional police but it was felt by complainers that it might have felt more impartial if an officer from the Professional Standards Department had dealt with the complaint, namely someone who was removed from the situation and who would not know the officers involved personally. It was also felt that a complaint dealt with by officers from the police station situated in the same locality as the complainer could be intimidating and may not appear wholly impartial. In one extreme case involving a number of issues the individual concerned found that each issue always found its way back to the same local police station, or indeed to the same police officer, even where that police station and one of its officers was the original source of their dissatisfaction. They came out of the whole experience with the feeling that there was no independent investigation and nowhere for them to go because the PIRC lacked teeth.

6.9 For some participants there was a feeling that all senior managers in the organisations know each other, and that it appeared “quite incestuous”.

Failure to investigate or to investigate independently

6.10 A number of aggrieved complainers told the Review that what prompted their evidence was the initial failure by the police to investigate an alleged crime or a failure to investigate an alleged crime independently. That evidence is a commentary on both the criminal justice system and the complaints system but it is significant that such failures were often a trigger for subsequent complaints about police actions or inactions.

Understanding the process

6.11 Members of the public felt that officers were sometimes too process-driven regarding complaints. Whether face to face or in e-mail correspondence, the use of jargon or legalistic language was unhelpful, and in some cases added to their

distress, especially when things were not clearly explained to them. It was suggested that clear guidance and instruction on process and on what they needed to do should be offered as the majority of members of the public would not be familiar with the process and may well be in a distressed state. I comment in the Accessibility and communication chapter at page 282 on the benefits of empathy, hearing a human voice or seeing a human face rather than reliance on written documents.

The attitude of police officers

6.12 The attitude of local officers tasked with dealing with the complaint was often described as being defensive, when they should have been dealing with members of the public in the context of objective fact-finding and adopting an impartial and open-minded attitude to that process. It was put to the Review that sometimes officers treated complainers as though they were “the accused” in the manner that statements were taken.

6.13 Some individuals claimed they had examples of officers denying that conversations had taken place, that e-mails had not been sent or that reports had not been written up during the complaints process.

6.14 Individuals provided instances of police officers being obstructive, e.g. not following up crime reports, not taking witness statements, and not dealing with an individual complainer because the lead officer was on leave.

6.15 Individuals felt that they had no right to challenge any decision made and the attitude adopted by one officer had been, “If you don’t like it go to the PIRC.”

Body-worn video cameras

6.16 There was support for the use of body-worn video cameras. The benefit was described succinctly by one complainer, that if a person has no grounds to complain that should be clear from the video evidence. The police officer who has done nothing inappropriate or wrong can show the body-worn video camera evidence and that should resolve the matter, while on the flipside the public also have protection because the footage may substantiate their complaint. The case for much greater use of body-worn video cameras by Police Scotland is set out in the Capturing best evidence and reducing complaints chapter at page 417.

Delays

6.17 Another major issue for complainers, as it was for police officers who had made internal complaints or who had been the complained about, was the time taken to reach a conclusion. A recurring concern for the members of the public was that they weren't properly updated on progress and had to chase up Police Scotland or the PIRC on more than one occasion, with some complaints taking more than two years to complete.

6.18 On one occasion where the timescale was for the complaint to be completed within 56 days, it took more than a year to conclude. One individual felt that the timescales were skewed in favour of the police and cited a complaint where it took the police 130 days to come back with a response, whereas the complainer was subsequently given only seven days to respond.

6.19 It was also suggested, by more than one person, that complaints were "kicked into the long grass", in order for the officers in question to have resigned before there was a resolution. When asked about whether officers who face misconduct proceedings should be accountable after their resignation or retirement, the complainers interviewed thought that they should be. In the Time limits chapter at page 421 suggest that the Scottish Police Authority, the Chief Constable and the Police Investigations and Review Commissioner all have critical roles in holding their

respective people to account for delays in the system. I also deal with accountability following resignation or retirement in the Former police officers chapter at page 168.

Written records

6.20 A number of individuals who were interviewed thought that there was a reluctance on the part of the police officers who attended in response to their complaint to put anything in writing.

Views on the Police Investigations and Review Commissioner

6.21 Members of the public also spoke of their experience of dealing with the PIRC organisation. One of the main criticisms was that, in the context of reviewing the way the police had handled a complaint, the members of PIRC were wholly reliant on what the police had given them, and in their experience did not seek any further evidence from the complainer. It was felt that if the staff of PIRC were only asking the police for what had happened and concluded, then they were not really carrying out an independent assessment. Some members of the public complained that no one from the PIRC entered into any dialogue with them or went to see them about their case. Everything was done by letter or e-mail. Some interviewees thought that personal interaction would have been a more human approach and more effective in certain circumstances.

6.22 It was also suggested by members of the public that the police did not take the PIRC seriously because the PIRC could not enforce the recommendations that they made to Police Scotland. It was felt that the PIRC did not have any teeth, and that if they were to make a difference then they needed to be seen to be wholly independent from the police and operate as a third-party organisation that could be trusted by the public and officers alike.

6.23 For some members of the public, some serving police officers and some former officers, the knowledge that the PIRC is partly staffed by former police officers

discouraged them from believing in the PIRC's independence; it was feared that the PIRC investigators' association with former colleagues might influence their judgement.

Apology

6.24 Individuals recognised that police officers make mistakes and that making errors is part of human nature but believed that when they do fail they should be prepared to apologise. They considered that apologising does not diminish the officer's character but that lying to cover up errors was dishonest and not acceptable. As one member of the public put it:

"I think that's critical for police, that they learn to apologise for mistakes. If they make a mistake they apologise. It doesn't diminish their abilities. Just because you say, 'Oh, I'm sorry I made a mistake' doesn't mean I go, 'Oh well, you're not fit to be a police officer'."

6.25 This was also echoed in many of the responses to my call for evidence. Many complainants, both serving police officers and members of the public, indicated that they would welcome an apology and an opportunity to discuss the impact of the subject officer's conduct rather than the instigation of a misconduct investigation or disciplinary proceedings.

6.26 That evidence is consistent with research³³ carried out for the Independent Office for Police Conduct (IOPC) in England and Wales in 2018-19. Respondents were asked how important or unimportant it would be for each of nine things to happen as a result of their complaint.

³³https://policeconduct.gov.uk/sites/default/files/Documents/statistics/IOPC_public_perceptions_tracker_annual_report_summary_201819.pdf

6.27 The nine outcomes sought are listed below in order of their frequency in the responses.

1. The police officers involved learned from the complaint
2. The police force involved learned lessons to avoid similar complaints in future
3. The standards in police forces improved
4. A change in attitudes of police officers and staff
5. I received an apology from the police
6. A change in police culture
7. The public were made aware of any learnings
8. A police officer got punished
9. I received payment in compensation

6.28 The Home Office guidance on conduct³⁴ encapsulates the relationship between apology and public confidence: “Acknowledging mistakes, expressing contrition and being open and honest about when things have gone wrong, as well as considering the impact on members of the public, has a significant role in maintaining public confidence.”

6.29 The power of apology can be enormous in any walk of life and should be used by the police service where appropriate. However, the more informal approach of apologising is not appropriate in all cases. For example, where a police officer errs on multiple occasions and has apologised each time, the underlying behaviour clearly needs to be addressed.

6.30 Apologising sincerely does not diminish how an individual’s abilities or character are perceived but rather is a demonstration of their willingness to learn and develop. A blame culture does not encourage a learning culture and Police Scotland must be mature in how it responds to its people making mistakes.

34

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/863820/Home_Office_Statutory_Guidance_0502.pdf

Mediation

6.31 Some respondents commented on the lack of provision for mediation or scope to adopt a restorative justice based approach which, in many cases, would provide a more satisfactory outcome for complainers and indeed, may be more effective in terms of learning, development and prevention of future misconduct on the part of the subject officer. However, it may be the case that Police Scotland are compelled to take formal action because of previous behaviour or misconduct of which the complainer is unaware.

6.32 In the preliminary report I recommended that Police Scotland should encourage appropriate use of mediation and should consider the importance of providing all officers involved in frontline resolution with training in mediation and customer handling. The statutory guidance issued by PIRC, and currently under review, 'From sanctions to solutions'³⁵ is explicit on the benefits of mediation:

"Mediation

208. This can be helpful to all parties in cases where the complainer's feelings are a primary focus of the complaint. The use of a confidential and informal meeting can produce a resolution that: sets and satisfies expectations; addresses the real issues without becoming bogged down in process; is reached quickly, proportionately and with little expense.

209. Mediation usually involves both parties meeting with a neutral mediator, who will use their training and experience to guide the discussion, optimise both parties' needs and allow an outcome to be reached that both parties are happy with."

Communications

6.33 There was a recurring theme amongst the participants that they felt it was important that they were listened to sincerely and taken seriously. For some they could not escape the conclusion that they were simply not believed, and this was deeply frustrating.

³⁵ https://pirc.scot/media/1211/pccs_statutory_guidance_web.pdf

6.34 In some cases, no direct line of communication was given, and complainers had been told to contact 101 for further information.

Whistleblowing

6.35 One complainer believed that there should be a trustworthy, separate entity for whistleblowers, staffed with the best people with the highest integrity who would not be rubbing shoulders with the people that they are supposed to investigate. I deal with Whistleblowing in detail at page 158.

Call for evidence

6.36 In order to try to capture as many views as possible the Review issued a call for evidence in 2018 and individuals were able to express their views freely in their responses. Respondents included serving or retired police officers as well as members of the public, and some of the themes that were raised were very similar. The main issues captured were:

- Delays in the complaints process
- Lack of impartiality
- Absence of communication from Police Scotland investigators
- Lack of consistency
- Criticism of individual Federation representatives' lack of knowledge of the process
- Absence of communication from the PIRC
- Lack of professionalism by the PIRC
- The need for the welfare of staff during and after the process to be addressed, especially their mental wellbeing
- Officers feeling that they were guilty until proven innocent
- Officers unclear whether they should provide a statement
- Officers sometimes not being informed of the outcome of enquiries
- Officers being told there is a complaint against them but not being given any further information that would enable them to establish their defence

6.37 The main issue raised in written submissions was the length of time it takes Police Scotland to conduct an investigation. It was felt that the time taken was often disproportionate to the matter being investigated and that this had a significant impact on officers who had been placed on restricted duties (e.g. one officer for six years, another for two years out of three years' service). COPFS and CAAP-D were also accused of taking too long. Officers were frustrated that they were not allowed to contact COPFS directly for an update.

6.38 The issue of transparency, and lack of information or updates on complaints from Police Scotland and COPFS was also of significant concern, mostly from officers who had been complained about. Officers complained that often they are not aware that a complaint has been made against them. However if they are aware, the nature of the complaint is not always disclosed timeously which in turn leads to the concern that officers are not provided with an opportunity to defend themselves.

6.39 Police officers and members of the public both commented that the current process of police investigating the police is not transparent and that officers under investigation (either by PSD or the PIRC) are treated as "guilty until proven innocent". Some also felt that when they are under investigation, police officers are not afforded the same protections as the public.

6.40 A number of written respondents cited a lack of welfare or support from senior or line management, compared to one respondent who felt supported at superintendent level. Nine respondents also stated that there was little or no support from the Scottish Police Federation (SPF), compared to two who did feel supported by the SPF.

6.41 The lack of support and time taken for investigations to be completed led to a significant number of respondents (mainly officers) stating that it caused them stress or anxiety, had led to depression, and had adversely affected family life.

6.42 Some respondents also thought that malicious complainers, when accusations were proven to be false, should be held to account.

6.43 Another view was that all complaints should be investigated independently, with PIRC being suggested by three respondents.

6.44 The points made below in response to the call for evidence by serving or former police officers are illustrative of their accounts:

“Police Scotland are stretched at the best of times and I’m astonished that any enquiries relating to operational police officers being placed on restricted duties is not dealt with as a matter of priority and concluded timeously.”

“Officers should be able to raise genuine concerns and/or grievances over treatment they have been subject to during an investigation without repercussions.”

“I was a serving police officer up until [] and the last 3 months of service was an ultimate low in what had been unblemished service. The way in which I was treated by Police Scotland was absolutely disgraceful and left a bitter taste upon retiral.”

“In my view, what has happened here is something that I have come across before in my service happening to other officers, which is a tendency by senior management, from sergeant rank and up, to purposely and insincerely agree with persons making complaints against the police, in the hope that the individual would be content with a ‘yes, we were wrong, I will speak to the officers and give them corrective advice’, and that this show of false humility will sufficiently appease the person to no longer pursue their complaint.”

“Being informed that a tribunal is merely to assess your punishment says a lot about the process and needs to be seriously reconsidered. Providing officers with an opportunity to defend themselves before being threatened with tribunals would go a long way to gaining trust in a system which has been broken for a long time.”

“The organisation should treat their own officers with the same respect [as complainers], meet with them, explain the complaints procedure and their individual complaint to them and answer any questions the officers have.”

“There is a total lack of concern and/or accountability for their [officers’] wellbeing and, irrefutably a prevailing attitude that an officer is guilty before any decision has been made.”

“This ongoing investigation has placed unimaginable stress on my family and I as well as raising questions regarding the future of my career. Not knowing whether or not I will be keeping my job due to an unfounded allegation and having to support my family is absolutely terrifying.”

“I appreciate the work that Professional Standards and the PIRC do however the process and the lack of urgency is in immediate need of review.”

“I see no reason why allegations made against police officers are not investigated and concluded within 6 months or at least have reports submitted to the necessary bodies within this time. Waiting over 15 months to complete a relatively straightforward enquiry is unacceptable.”

6.45 Contributions from members of the public, serving police officers and former police officers have been extremely valuable to me in building the body of evidence for my Review. Their contributions and the themes emerging from their evidence are contained in the relevant chapters of this report.

Chapter Seven - Police Scotland

7.1 Police Scotland's stated purpose is to improve the safety and wellbeing of people, places and communities in Scotland; and its stated values are integrity, fairness and respect. It is the second-largest police service in the UK, comprising 13 local policing divisions, each headed by a local police commander at Chief Superintendent rank who is charged with ensuring that local policing in each area is responsive, accountable and tailored to meet local needs. Local policing is supported by a number of national specialist divisions and corporate services.

7.2 The Chief Constable is the head of the service and is supported by a Force Executive comprising 3 Deputy Chief Constables, 10 Assistant Chief Constables, a Deputy Chief Officer and 4 Directors. The DCC for People and Professionalism has a wide-ranging portfolio that includes people and development, legal services, corporate communications, professional standards and complaints and conduct. The Professional Standards Department is headed by a Chief Superintendent who reports to the ACC for Professionalism and Assurance.

7.3 In response to my preliminary report Police Scotland have now established a Complaint Handling Review Working Group (CHRWG) to address those recommendations specific to Police Scotland. Good progress has been made against a number of my recommendations in that report and that progress is recorded below in the relevant sections and also in the summary at Annex A.

Professional Standards Department of Police Scotland

7.4 The Professional Standards Department (PSD) was established in April 2013 to improve efficiency and consolidate professional standards functions across Police Scotland. PSD receives complaints, records and assesses them, allocates them for local or specialist investigation, supports the determination process, records organisational and individual learning and notifies the complainers of the outcome. PSD draws to the attention of the Assistant Chief Constable for Professionalism and

Assurance any allegation where there is a reasonable inference of conduct of a criminal nature or a breach of Convention Rights so that it can be passed forthwith to the specialist Procurator Fiscal in the Criminal Allegations Against Police Division (CAAP-D) of COPFS. The Police Service of Scotland (Conduct) Regulations 2014³⁶ place a duty on the Deputy Chief Constable to refer a matter to the Procurator Fiscal - who is entirely independent of the police - where it can be reasonably inferred that a criminal offence has been committed by a police officer.

7.5 PSD's objectives are to:

- Support Police Scotland in the delivery of a service, compliant with the requisite code of ethical practice.
- Ensure service delivery is achieved in line with the values of integrity, fairness, respect, professionalism and honesty.
- Ensure public trust and confidence is secured in the service, which is provided by Police Scotland.
- Reduce complaints through a programme of prevention and learning.
- Address concerns proactively through organisational learning, training and promoting personal responsibility.
- Robustly investigate complaints in relation to the service which is provided to the communities of Scotland.

7.6 In 2016 PSD evolved into the current national functional model which is based in 3 regional hubs (east, north and west). The structure of PSD includes the functions of the Complaints Assessment and Resolution Units (CARUs), National Gateway Assessment Unit (NGAU), Investigations, Misconduct, Partnerships and Support, Vetting and the Anti-Corruption Unit (ACU).

7.7 The four superintendents for Misconduct, Support and Partnerships, Investigations West and Investigations North and East report to the Chief Superintendent Head of PSD. The geographical deployment of officers in hubs is designed to provide the ability to give independence to investigations if and when

³⁶ <https://www.legislation.gov.uk/ssi/2014/68/regulation/9/made>

required within the context and supervision of a national department. Where required, Police Scotland's specialist units, such as Road Traffic, the National Rape Taskforce or Domestic Abuse Taskforce, can assist with complaints investigations.

7.8 Police Scotland received 6,278 complaints in 2019-20 (5,919 in 2018-19). The most common on-duty allegation categories are Irregularity in Procedure, Incivility and Excessive Force. Around 23% of complaints related to quality of service, for example lack of police presence or the time taken to respond to a call. Between 1 April 2019 and 31 March 2020 PSD carried out 313 preliminary assessments (compared with approximately 500 in 2018-19) of reports of alleged misconduct on the part of police officers. These ranged from minor matters through to those assessed as gross misconduct and which related to conduct both on and off duty. These have resulted in 58 reports being assessed as either gross misconduct or meriting a misconduct investigation. In 2019-20 11 misconduct hearings and 8 misconduct meetings took place, compared to 21 and 11 in 2018-19.

7.9 The figures above are taken from Professional Standards Department's quarterly performance report³⁷ to the Scottish Police Authority Complaints and Conduct Committee. These reports aid the Committee's scrutiny and, in the interests of transparency, are published every quarter on the SPA website so that members of the public can access information about complaints against the police, misconduct, organisational learning and the activities of PSD. Up until 2019 these reports gave comparisons of figures between the current year and the previous year only. I welcome the publication this year of long-term trend data for the overall number of complaints and recommend that such long-term data should also be published in other categories, for example, in relation to the nature of complaints, and in particular those alleging criminality, such as assault or attempting to pervert the course of justice.

7.10 In order for any organisation to learn about its performance from the complaints it receives, other than in those very high-profile or serious cases, there is

³⁷ <https://www.spa.police.uk/spa-media/5bvdee2w/repc-20200105-item-8-police-scotland-professional-standards-quarterly-performance-rpt.pdf>

a clear need to understand the number, nature and profile of the complaints. Last year Police Scotland received 6,278 complaints. While Police Scotland holds basic statistical data on the numbers of complaints it receives, its IT systems do not collate information on the gender, ethnicity or other aspects of the profile of those complaining or about the nature of the complaint in such a way as to facilitate readily analysis or research. As with other IT systems within the justice system, the systems are operational, case-based facilities which are not conducive to research.

7.11 While sampling may be carried out, the manual nature of the task makes the task onerous and time-consuming and any implications uncertain without wider analysis. If the lessons learned from complaints are to be used to improve service and thereby help reduce complaints, then Police Scotland needs to be provided with the wherewithal to fund the IT to analyse and research the implications complaints have for the proper delivery of its obligations. Such software would also assist the Scottish Police Authority, PIRC and Her Majesty's Inspectorate of Constabulary in Scotland in the execution of their respective responsibilities.

7.12 The priority attached to the various demands for updating IT systems or software are a matter for the Chief Constable and the current economic climate would not give any basis for optimism:

“Our fleet, estate and Digital, Data and ICT strategies will require significant additional investment over the next five years in order to meet the desired outcomes for the public, our people [and] to meet the objectives of the National Performance Framework.

The 2020-21 capital funding settlement, despite increasing year on year remains lower than requested in the SPA's spending review submission and will not allow for new technology investment in 2020-21.

As with revenue funding, the SPA has no certainty over its future capital and reform funding levels. Much of the operational and change activities within this plan requires initial financial investment to deliver service improvements as well as financial savings. The availability of funding may be a barrier to the successful delivery of the change activities in this plan.”

(Police Scotland's Annual Police Plan 2020-21³⁸)

³⁸ <https://www.scotland.police.uk/spa-media/obva4ntn/annual-policing-plan-2020-21.pdf>

7.13 It would also be valuable to the Scottish Police Authority Complaints and Conduct Committee and the public to understand more about the diversity and ethnicity of people who make complaints. I comment on this in more detail in the Inclusion, diversity and discrimination chapter at page 130.

7.14 In the Republic of Ireland, the Garda Síochána³⁹ Ombudsman Commission's (GSOC) annual report⁴⁰ includes charts that illustrate the profile of people who complained to them in 2018. The data covers eleven different characteristics. This is a valuable exercise that should be considered by Police Scotland and the Scottish Police Authority as means of enhancing their understanding of public attitudes and concerns.

7.15 As the central points for managing Police Scotland's complaints caseload, PSD's three regional Complaints Assessment and Resolution Units (CARUs) receive, assess and endeavour to resolve non-serious complaints (including quality of service complaints) direct with the complainer. Where non-serious complaints cannot be resolved in this way CARUs can allocate cases for local divisional action. CARUs can also investigate certain complaints themselves or, in more serious cases or cases alleging criminality, pass them to the National Gateway Assessment Unit (NGAU). Those inferring criminality should be sent to the independent CAAP-D Procurator Fiscal.

7.16 The NGAU also deal with referrals from other parts of Police Scotland, providing a single point of entry for internal referrals (e.g. a police officer complaining about the conduct of a fellow police officer) with the intention of ensuring that a proportionate and consistent approach is taken in respect of subsequent dissemination, guidance and investigation allocation. The internal reports are disseminated to relevant areas for investigation and/or for information purposes. Internal referrals on a variety of matters can be submitted through a number of

³⁹ *An Garda Síochána* is the Irish Gaelic name for the Republic of Ireland's police service.

⁴⁰ <https://www.gardaombudsman.ie/publications/statutory-reports/?download=file&file=3161>

reporting mechanisms and officers and staff can remain anonymous when submitting a referral. These mechanisms include Integrity Matters reports (the confidential anonymous reporting system).

7.17 The NGAU assessment considers a number of criteria to ensure referrals are not unnecessarily escalated to conduct or disciplinary processes. The NGAU can also refer a case for specialist investigation or to the Anti-Corruption Unit (ACU). Complaints which allege other types of criminal behaviour are reported to the Criminal Allegations Against Police Division (CAAP-D) Procurator Fiscal. All serious criminal allegations and deaths and serious injuries in custody should be reported forthwith to the Procurator Fiscal and all other allegations against the police which infer criminality should be reported within 48 hours of receipt to ensure that the Procurator Fiscal can give appropriate oversight and direction or instruct the PIRC to carry out an independent investigation. This early referral must be done to maximise the scope for capturing or preserving evidence. This is particularly important in cases which allege a breach of Convention Rights⁴¹.

7.18 Police Scotland have agreed with the PIRC that the Commissioner's staff should carry out an audit of the work of the NGAU, which was created in 2017. This is to be welcomed and should be carried out on a regular basis.

7.19 Four of the thirteen local police divisions have small dedicated CAP (Complaints Against the Police) Units, which liaise closely with PSD but are not part of PSD. These units co-ordinate complaints to be followed up in their local division. They receive non-serious, non-criminal complaints which have been assessed by PSD's Complaints Assessment and Resolution Units (CARUs) for local divisional action. The units will then investigate those complaints themselves or allocate the complaint to other local sergeants or inspectors to investigate.

7.20 All complaints will be recorded by PSD on the Centurion complaints and conduct database. PSD staff in CARU agree with the complainer the specifics of the

⁴¹ ECHR - Treaty ETS No. 005, Convention for the Protection of Human Rights and Fundamental Freedoms <https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/005>

complaint (known as Heads of Complaints) and assess the appropriate route for the complaint, and may allocate complaints to a local division to respond to if the matter is not suitable for resolution over the telephone. Where a complaint is initiated and resolved at a local police station, details of the complaint will be recorded and passed to PSD.

7.21 The PSD staffing profile consists predominantly of police officers at sergeant rank and above. The majority of complaints relate to the rank of constable. (Police Scotland has over 13,500 constables compared with around 2,400 sergeants.) Most roles within PSD require police officers with experience and understanding of policing and the law, but there may be scope to employ more non-police officer support staff in PSD with appropriate seniority, skills and level of knowledge of complaints handling. In the preliminary report I recommended that this was an option that Police Scotland may wish to ask HMICS to review. HMICS have since informed PSD that this is not a matter on which they have the competence to advise. I remain of the view that there are benefits in PSD having a blend of officers and support staff, particularly civilian staff with a background in complaints handling.

7.22 The Review received evidence that PSD personnel did not receive training in mediation. For the relevant officers in PSD Police Scotland should consider the importance of providing all officers involved in frontline resolution with training in mediation and customer-handling. This would ensure a consistent approach that is aligned with the objectives and the values of the organisation, including the ethos and values set out in the statutory guidance provided by the PIRC in its publication 'From sanctions to solutions'⁴².

7.23 The complaints system is only as good as the quality and competence of the people who make it work and the organisation's ethics to which they adhere. I was concerned to learn that PSD staff lacked training, particularly induction training. This represents a serious skills gap which is compounded by the absence of up-to-date guidance. It is critical that all those working in PSD fully understand their obligations

⁴² https://pirc.scot/media/1211/pccs_statutory_guidance_web.pdf

in terms of the nature of the complaint but also understand how to deal empathetically and knowledgeably with members of the public making complaints.

7.24 PSD advised that since the recent internal audit (see below) identified that “Members of PSD and officers/staff at division/department do not currently receive any training on systems, letter writing or complaint handling” they had introduced induction training for new members of PSD, and created a training module on the six stages of the complaints process, aimed at all managers in divisions.

7.25 Given the key role that they play in Police Scotland’s complaint handling and triage processes, I recommend that all officers and support staff in PSD should receive comprehensive induction training on taking up post and regular refresher development opportunities thereafter.

[Preliminary report recommendation: Police Scotland should consider the scope for employing more non-police officer support staff in PSD with appropriate seniority, skills and level of knowledge of complaints handling. This is an option that Police Scotland may wish to ask HMICS to review.](#)

Frontline resolution

7.26 The National Complaints Assessment and Resolution Units (CARUs) have teams in the North, East and West Hubs and these are the initial first points of contact in PSD with members of the public. The CARUs receive telephone calls, letters, e-mails, online complaint forms and referrals from Police Scotland’s service centres. They assess the information and log the complaint. Where the CARU identifies potential criminality from the information provided, it will be passed to the PSD Investigations team to investigate the allegations which must subsequently be notified to COPFS if it can be reasonably inferred that there is criminality.

7.27 Frontline resolution (FLR) is the process whereby complaints are resolved through a telephone conversation between the complainer and an officer in the CARU. Frontline resolution can also involve a local supervisor resolving a complaint.

In 2018-19 39.8% of all complaints were resolved by PSD Frontline Resolution and 8.5% were resolved by Divisional Frontline Resolution.

7.28 Police Scotland's Standard Operating Procedure on Complaints⁴³ makes clear that frontline resolution is only suitable for complaints which are 'non-criminal, non-serious and non-complex' and can be resolved without investigation other than familiarisation with the circumstances of the incident. In May 2020 Police Scotland provided a paper⁴⁴ to the SPA Complaints and Conduct Committee which stated that in 2019-20 41.7% of complaints were frontline resolved by PSD through explanation, assurance or apology. This is a small percentage increase on the previous year (39.8%). During the COVID-19 pandemic, the FLR rate increased to 63%, influenced by a large proportion of complaints relating to the enforcement of emergency legislation, which were resolved by explanation.

7.29 Frontline resolution is an appropriate and proportionate response where the matter is not serious, not complex and non-criminal, and where an apology, an explanation, or local action or assurance is sufficient remedy for the member of the public making the complaint.

7.30 This vital aspect of complaints should however be subject to close and regular monitoring through internal and meaningful audits of decision-making. It is also critical that the process is subject to regular external audit by the PIRC and SPA. Although it is part of the statutory responsibility of the PIRC, no such audits of frontline resolution have been carried out by the PIRC since 2014; and while the SPA have carried out regular quarterly dip-sampling these exercises had until 2019 been superficial and unsatisfactory. In the Evidence from other jurisdictions chapter at page 296 consideration is given to the suggestion by the previous PIRC, Kate Frame, that this initial complaint handling function should not remain with Police Scotland but be transferred elsewhere.

⁴³ <https://www.scotland.police.uk/spa-media/fifhh5vo/complaints-about-the-police-sop.pdf>

⁴⁴ <https://www.spa.police.uk/spa-media/5bvdee2w/repc-20200105-item-8-police-scotland-professional-standards-quarterly-performance-rpt.pdf>

7.31 In my preliminary report I suggested that directing all complaints, from the most minor to the more serious, to an enlarged independent body may be a disproportionate and bureaucratic arrangement which will create further delay for those individuals complaining about quality of service matters.

7.32 Since publishing that report I have carefully considered the Northern Irish model for oversight of complaints where all complaints go in the first instance to the independent Police Ombudsman for Northern Ireland (PONI). Although this is the case, the PONI indicated that approximately 10% of the complaints they receive are passed to the Police Service of Northern Ireland (PSNI) for informal resolution. PONI maintain oversight of the informal resolution process. The Police (Northern Ireland) Act 1998⁴⁵ provides that a complaint is not suitable for informal resolution unless (a) the complainant gives his consent, and (b) it is not a serious complaint; and that if it cannot be resolved through informal resolution PSNI should refer to matter to the Ombudsman.

7.33 I believe that the system of oversight of all complaints and independence in Northern Ireland is designed for the particular history and exceptional circumstances that exist there. This Review also recommends a set of significant improvements to the system in Scotland and a suite of new powers for the PIRC that would strengthen independent investigation and oversight here.

7.34 My current view however is that replication of the system in Northern Ireland is not required or proportionate for Scotland. This is provided that the right to report an allegation of criminality about the police direct to the independent Procurator Fiscal is actually made known to the public in such a manner that increases significantly the public's knowledge of this right. At present, very few members of the public appreciate that there is in fact an independent system already in place. Accordingly, very few individuals report their complaints directly to the CAAP-D Procurator Fiscal. I deal with the need to make this hugely important role notorious and accessible in the COPFS chapter at page 268.

⁴⁵ <https://www.legislation.gov.uk/ukpga/1998/32/section/53>

7.35 In evidence to the Review Police Scotland confirmed that they support the principle of a proportionate and effectively governed Frontline Resolution (FLR) process. Since the publication of my preliminary report Police Scotland have been working closely with key partners, specifically PIRC and the SPA, to make improvements to how FLR is utilised. It is intended that the changes being made will provide a more accountable process that records in detail the rationale regarding the application of FLR, introduce further more detailed complaint closure categories which will allow for easier audit, both internally and externally, and capture at which point in the complaints process a complaint has been completed and how it was completed.

7.36 Police Scotland monitors its systems through internal audit, including the recent audit of FLR, and has also welcomed the introduction of a yearly multi-agency audit focused on the complainer's journey to further strengthen quality assurance. This multi-agency audit, in addition to the steps I have recommended elsewhere in this report, is to be welcomed.

7.37 The service also has an internal corporate audit function that is delivered by its Risk, Assurance and Inspection (RAI) team. The RAI team were asked to assist the Professional Standards Department (PSD) in following up my recommendation that, "Frontline resolution of complaints should be subject to close and regular monitoring through regular, meaningful internal and external audits, and monitoring of decision-making". The RAI team completed an internal audit of Police Scotland's Six-Stage Complaints Handling process in November 2019.

7.38 The RAI Team audited 301 complaints cases across the three PSD regional hubs and identified inconsistencies, administrative issues and some confusion around terminology.

7.39 The key findings of the audit include:

- "There is a lack of awareness of the complaints process throughout the organisation which is preventing all complaints from being reported to PSD in line with the standard operating procedure (SOP)."

- “There is no formal process in place for complaints to be resolved by FLR following allocation to division/department. However evidence suggests contrary to process that this practice is already being conducted.”
- “There is little PSD oversight of complaints once they have been allocated to division/department.”
- “There is a lack of training available to officers and staff within PSD and those at division/department dealing with complaints.”

7.40 Identifying these issues and allowing them to be addressed in a systematic way demonstrates the benefits of carrying out an audit of this kind. The audit report makes nine recommendations and identifies another ten opportunities to improve practice, some of which are detailed administrative suggestions. In my view it provides a robust template for delivering an improved service.

7.41 Among the issues to be addressed are: the need to disseminate learning from complaints more systematically; improving communication and consistency between the 3 regional hubs; strengthening the audit trail around outcomes and feedback; ensuring Heads of Complaint are always completed; proper recording of complaints resolved by Divisional FLR; prompt notification by Divisions of complaints to PSD; clarifying the guidance on what constitutes a ‘serious’ complaint and therefore not suitable for FLR; examples of serious cases being inappropriately dealt with by FLR; information about case closure not being entered on the Centurion complaints and conduct database; inaccurate recording of outcomes on Centurion; a lack of quality assurance checks on complaints resolved by divisions; and insufficient training for PSD officers.

7.42 The audit’s comments in relation to the audit trail echo other evidence from the public. More than one individual who was interviewed by the Review thought that there was a reluctance on the part of the police officers who attended in response to their complaint to put anything in writing.

7.43 The internal audit was carried out independently of PSD but I recommend that the next follow-up audit of the six-stage process or audit of frontline resolution should be carried out by the PIRC as an independent third party.

7.44 The audit identifies very serious failings that require to be addressed as a matter of urgency. The lack of definition of what constitutes a ‘serious’ complaint and the lack of PSD oversight of complaints once they have been allocated to divisions are matters of particular concern. If all the necessary changes cannot be implemented satisfactorily and the public given confidence through those remedies, together with the major changes, checks and audits that I recommend in this report, then I suggest that very serious consideration needs to be given to transferring the initial complaints handling function to the independent PIRC. That would however be both costly and more bureaucratic and likely to lead to further delay in the system.

7.45 During the course of the Review I heard evidence from a number of members of the public and from focus groups and members of minority communities. A persistent concern by many individuals was that where a complaint was made to PSD the attendance of the local line manager of the officer or officers under complaint at the home of the complainer, often in uniform or in a marked police vehicle, was not welcomed and lacked the impartiality they had sought from PSD. A number of members of the public also felt that they had come under emotional pressure to drop the complaint from those line managers in attendance, who referred to the officer under complaint as “normally a great lad”, “a very good officer” or “acting out of character”.

7.46 If there is to be public confidence in the process, I recommend that there should be no participation by local police officers or line managers in the frontline process itself. The notion of ‘frontline’ should refer to the early and effective response to non-serious quality of service complaints which can be dealt with swiftly by PSD officers, not members of the local division. While the line manager may have an important role in addressing the issues arising from a complaint about quality of service once the complainer has had an explanation, apology or other remedy, it is not appropriate for them to be involved in the investigation or adjudication of the complaint.

7.47 It is inappropriate to involve local officers in the frontline complaints process and therefore I recommend that all frontline resolution should be carried out by the Professional Standards Department.

7.48 In my preliminary report I suggested that another possible method of ensuring confidence in the use of FLR would be to provide PIRC with the capacity to carry out concurrent supervision of decision-making through remote access to Police Scotland's complaints and conduct database, known as Centurion. This capacity would allow contemporaneous audit to ensure that FLR is used only in appropriate circumstances and is not subject to error or misuse to influence complainers in any way. The Scottish Police Authority currently has 'read only' access to Centurion for audit purposes.

7.49 The PIRC has now been in discussion with PSD about achieving the same remote access to Centurion. Centurion contains information on both conduct and complaints, which currently cannot be separated. Police Scotland has data protection concerns about providing PIRC with remote access to all parts of that information including those matters in which PIRC has no locus. PSD has offered access through PIRC investigators and officers attending at a designated police station near to the PIRC offices in the same manner as currently accessed by the SPA. The PIRC have arranged to visit the police station to ascertain how the system works and how they can retrieve data for audit purposes. I understand that the PIRC and PSD will continue to pursue the possibility of remote access in the longer term.

7.50 I recommend that Scottish Government should consider the case for giving the PIRC a specific legislative power that would enable staff to access the Centurion complaints and conduct database from its own offices so that contemporaneous audit is possible. Providing a basis in law for accessing any information relevant to the PIRC's statutory functions should ensure compatibility with GDPR and any other relevant data protection legislation.

[Preliminary report recommendation: Frontline resolution of complaints should be subject to close and regular monitoring through regular, meaningful internal and external audits, and monitoring of decision-making.](#)

Triage

7.51 Triage in the context of police complaints is the process of assessing the information provided in order to decide how serious the matters are and how they should be dealt with. It is a critical stage in the whole system which takes place prior to any investigation and includes the initial decision on whether the complaint is assessed as a quality of service issue, poor individual performance, potential misconduct, or criminal in nature. That decision can have significant ramifications for everyone involved. The Review heard evidence that these processes and practice lack flexibility and that once a complaint starts down a particular route it is seldom reconsidered when it becomes clear that it should be re-routed down a more appropriate and proportionate avenue. Complaints could escalate very quickly and disproportionately in an unhelpful way that was described as “from flash to bang”.

7.52 One witness told the Review that, “... it would be a good thing for there to be a de-escalation of the use of formal processes in handling matters which are often simply interpersonal problems within policing generally”. Another witness put it this way, “... we’re moving into conduct and performance issues too quickly because line managers, particularly sergeants, don’t have the confidence to deal with staff in the way that they should to tackle things head on”.

7.53 Part of the purpose of Police Scotland’s triage process should be to identify those matters that can be dealt with through improvement action, HR action, the grievance procedure or the new Reflective Practice Review Process that I recommend in the Evidence from other jurisdictions chapter at page 296.

[Preliminary report recommendation: Police Scotland should scrutinise complaints thoroughly on receipt so as to ensure that grievance matters that would in any other walk of life be treated in an HR context are not artificially elevated and dealt with as conduct matters.](#)

Early intervention

7.54 When any police officer is the subject of four complaints within a twelve-month period the recording of those complaints on the Police Scotland Centurion complaints and conduct database will, following investigation, trigger what is referred to by Police Scotland as 'Early intervention'. At that point the complaints procedure⁴⁶ provides that the officer will be spoken to (up until that point the officer may not have been made aware that the complaints have been made if the complaints have been resolved through frontline resolution by PSD or their line manager). The purpose of the intervention is to allow the officer to act on the feedback, review and modify their behaviour as appropriate or undertake further training. These are exactly the right steps that should be considered but I believe that 'Early intervention' that takes place at the end of a twelve-month period is a misnomer and in some circumstances these steps should in fact be considered at a much earlier stage.

7.55 Although a line manager might want to observe the officer over a period prior to intervention, there can seldom be any justification for delaying feedback for as long as twelve months. Members of the public may reasonably expect that an officer about whom they had complained would be advised of a complaint at an early stage to allow the officer to address his or her behaviour and change their approach. While acknowledging that some complaints can be spurious, malicious or vexatious, in general it is important, and in the interests of transparency and service improvement, that officers should be told about complaints against them as soon as practicable, unless there are clear operational or welfare reasons suggesting otherwise.

7.56 Police Scotland confirmed in their most recent submission to the Review that discussions commenced in December 2019 to review and strengthen the early

⁴⁶ <https://www.scotland.police.uk/spa-media/fifhh5vo/complaints-about-the-police-sop.pdf>

intervention process in order to formulate a new framework that identifies learning and any wider issues and is consistent across all divisions. A nationally consistent process has been agreed: where an officer is identified through a complaint they are notified through their supervisor before the case is closed in order to ensure any learning requirements or wider issues are addressed.

Preliminary report recommendation: Police Scotland should adjust its practice in respect of “Early intervention”. Officers should be made aware that they are the subject of a complaint against them at the earliest practicable point, provided that such early disclosure would not prejudice any investigation of a complaint.

Independent investigation

7.57 A common theme in the course of my review has been expression of concern about the concept of the police investigating the police when a complaint is made about their service or conduct. This was succinctly put by one member of the public who told me that, “... people who investigate themselves don’t tend to find themselves guilty”.

7.58 Where complaints were dealt with locally it was felt by some complainers that it might have been more impartial if an officer from Professional Standards Department had dealt with the complaint, somebody who was removed from the situation and who would not know the officers involved personally. It was also felt that having a complaint dealt with by officers from the police station situated in the same locality as the complainer could be intimidating and may not appear wholly impartial. In one extreme case (noted in the Themes emerging chapter at page 68) involving a number of issues the individual concerned found that each issue always found its way back to the same police station, or indeed to the same police officer, even where that police station or officer was the source of their dissatisfaction. They felt that there was no independent investigation and nowhere for them to go because the PIRC lacked teeth.

7.59 At the other end of the spectrum from frontline resolution, in cases involving allegations of criminality against police officers, COPFS fulfils the role of the independent investigator and can also direct the PIRC or the police to investigate on its behalf. Serious cases would be referred to the PIRC or retained within the COPFS for investigation.

7.60 The European Court of Human Rights has developed five principles⁴⁷ for the effective investigation of complaints against the police that engage Article 2 or 3 of the European Convention on Human Rights including a requirement for independence in the investigation of complaints of alleged breaches. ‘Independence’ in this context means that there should be no institutional or hierarchical connections between the investigators and the officer complained against and there should be practical independence.

7.61 The other requirements in addition to independence are:

- Adequacy: the investigation should be capable of gathering evidence to determine whether police behaviour complained of was unlawful and to identify and punish those responsible;
- Promptness: the investigation should be conducted promptly and in an expeditious manner in order to maintain confidence in the rule of law;
- Public scrutiny: procedures and decision-making should be open and transparent in order to ensure accountability; and
- Victim involvement: the complainant should be involved in the complaints process in order to safeguard his or her legitimate interests.

7.62 The principle of independence was the crux of the Court of Session judgement in the Ruddy case⁴⁸ in 2013, and was also reflected by retired Major-General Chip Chapman who expressed the view in his 2014 Independent Review of the Police Disciplinary System in England and Wales⁴⁹ that, “investigations relating to Chief Officers must be independently conducted by the

⁴⁷ <https://rm.coe.int/opinion-of-the-commissioner-for-human-rights-thomas-hammarberg-concern/16806daa54>

⁴⁸ <https://www.scotcourts.gov.uk/search-judgments/judgment?id=e3b186a6-8980-69d2-b500-ff0000d74aa7>

⁴⁹ <https://www.gov.uk/government/publications/the-police-disciplinary-system-in-england-and-wales>

IPCC and not another external Home Department Police Force to ensure transparency”.

7.63 Where a death in police custody or at the hands of the state occurs, these circumstances engage Article 2 of the Convention Rights⁵⁰. Similarly, an allegation of assault or inhuman or degrading treatment at the hands of the police could amount to a breach of Article 3. A complaint of unlawful detention also engages Article 5 rights. All of these matters must be dealt with independently of the police. It is incumbent upon the police therefore that where a complaint is made that reasonably infers conduct of a criminal nature or a breach of the Convention Rights under Articles 2, 3 or 5 these matters must be reported forthwith to the Procurator Fiscal, who is entirely independent of the police. In the case of a death in custody or following police contact, the PIRC should also be informed immediately. Likewise, any other allegations of criminality by any police officer should also be referred to the Procurator Fiscal for instruction or consideration. I comment in detail on Article 2 rights in the chapter on Complaints arising from deaths in police custody at page 394.

7.64 Independence is a fundamental principle that provides greater confidence to the public, and to any individual who is under investigation, confidence that the matter under investigation will be dealt with in an impartial way. Strengthening the independence of those charged with investigating complaints against the police where independence is a necessary component raises a number of questions. For example, the use of police officer line managers to investigate a non-criminal matter may not be impartial, either because the investigator knows the subject officer and already has a positive or negative perception or knowledge of them.

7.65 The Police Investigations and Review Commissioner is independent of the police but employs several very experienced former police officers as well as investigators from non-police backgrounds in the investigation teams. In the Complaint Handling Review Team there are no former police officers, whereas in the

⁵⁰ Treaty ETS No. 005, Convention for the Protection of Human Rights and Fundamental Freedoms <https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/005>

Investigations Teams 51% of investigators are former police officers. While these individuals are no longer police officers, members of the public have nonetheless expressed concerns about their apprehension of the degree of impartiality of such investigations. (This has been a major issue for the Independent Office for Police Conduct (IOPC) in England and Wales, but approximately two thirds of its staff in investigative roles now do not have any type of policing background.) On the other hand, serving police officers have indicated in their evidence that former police officers within the PIRC may take an overly robust disposition to the investigations they carry out by being hard on existing police officers. This aspect of the PIRC's responsibilities is discussed further in the PIRC chapter at page 205. The PIRC has a statutory duty to investigate the most serious matters, that is those referred to it by the Chief Constable or the Crown Office and Procurator Fiscal Service (COPFS). The Review took evidence from members of the public who expressed the view that where those investigations are carried out by former police officers it still feels as if the police are investigating the police.

7.66 In the preliminary report I recommended that, following the retirement of former police officers, PIRC policy should be to replace them with non-police officers. I acknowledge that reduction in the reliance on employing former police officers may take some years to achieve.

7.67 A third-party investigatory function needs to be mature, proportionate and trusted; the level of actual or perceived independence is very often a critical determining factor in gaining or losing that trust. There are degrees of independence and the more serious complaint or incident will always demand a higher degree of separation. Independence matters enormously and brings clear benefits but it is in the public interest that the systems in place also provide a proportionate and effective response.

7.68 It is sensible to deal with high-volume, low-level complaints within Police Scotland, but that has to be dependent on effective triage/assessment arrangements and robust internal and external audit. It requires regular and meaningful audit by Police Scotland, by SPA and most importantly by the PIRC. No such audits have been carried out by the PIRC since 2017 and those carried out by SPA have, until

2019, been superficial and inadequate. As noted above, the police themselves have carried out an internal audit of the six-stage complaints handling process in 2019 in response to my preliminary recommendation. I comment in more detail about this issue in the Audit chapter at page 335.

7.69 If the triage system is working correctly the current arrangement represents a reasonable system to have in place to deal with complaints as soon as possible and to allow the organisation to learn from any deficiencies in the response or behaviours of officers or in their own organisation. It is imperative that such information regarding these complaints is used to allow the organisation to improve with a view to driving up its standards of performance and service. The creation of the Assistant Chief Constable for Professionalism and Assurance post in Police Scotland will ensure that the information gleaned from these reports is put to the greatest effect in ensuring that Police Scotland continuously improves its performance.

7.70 Where a member of the public alleges that any form of criminality has taken place and they are dissatisfied with the way that Police Scotland has dealt with the allegation, or where they have a legitimate reason not to report a crime direct to the police in the first instance, they have the right to report the alleged crime direct to the Crown Office and Procurator Fiscal Service. Where the complaint is of criminal activity by a police officer, they may go direct to the specialist Procurator Fiscal division dealing with complaints against the police, known as Criminal Allegations Against Police Division (CAAP-D).

7.71 Between the less serious and non-criminal allegations and those which are criminal as described above there is a range of incidents where the degree of independence demanded for investigation has in the past been the subject of considerable discussion and disagreement between the PIRC and Police Scotland. This debate centred on the discretion afforded to Police Scotland in how they investigate certain categories of complaint and the scope afforded to the Chief Constable on which serious incidents he will refer to the PIRC for independent investigation. Where the Chief Constable is made aware of a serious incident which may come into this category, he should as a matter of good practice consult the Commissioner before he or she decides whether to refer.

7.72 In her submissions to the Review the previous Police Investigations and Review Commissioner expressed concern that matters which appropriately should be independently investigated may be routed away from an independent PIRC investigation due to the level of discretion the police retain in dealing with complaints from members of the public. She proposed allowing all complaints by members of the public to be made to an independent body such as the PIRC; and she reiterated an earlier proposal that the minimum standard should be that within 48 hours of any allegation of criminality being made an initial report should be submitted by the police to COPFS. The PIRC also considered that within 48 hours of receipt, COPFS should indicate whether or not the matter is to be referred to the PIRC for an independent investigation.

7.73 I comment on the first structural proposal in the PIRC chapter at page 205 but at this point I consider there is merit in the second proposal by the PIRC that COPFS in its role as independent investigator should have early (that is, within 48 hours) notification of allegations of criminality against on-duty police officers so that it can determine whether and how they should be investigated. It is for the Lord Advocate to consider whether he would wish to set a deadline for the Procurator Fiscal to provide directions to the PIRC. In the PIRC chapter I also propose that the PIRC should be given direct and supervisory access to monitor the Centurion system to more readily facilitate early PIRC awareness of criminal allegations. There should also be regular triage meetings between PIRC and Police Scotland to ensure consistency and accuracy of approach to decision-making.

7.74 In their early evidence to the Review on criminal complaints against police officers, Police Scotland compare and contrast definitions related to how allegations of criminality by police officers are identified and dealt with at various stages within the overall complaints process. They highlighted the importance of consistency of interpretation, and cited three relevant documents:

- “The Lord Advocate’s Guidelines on the Investigation of Complaints Against the Police were published in 2002 however it is not clear if they are still considered ‘live’. They state: ‘Area Procurators Fiscal have a duty to investigate all complaints and allegations which are made against police

officers where it is alleged that a crime may have been committed by a police officer or officers in the course of their duty”

- “Regulation 9(1) of the Police Service of Scotland (Conduct) Regulations 2014, provides: ‘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 must refer the matter to the appropriate prosecutor”
- “Further to this, Section 33A(b)(i) of The Police, Public Order and Criminal Justice (Scotland) Act 2006 highlights it is a general function of the Commissioner: ‘where directed to do so by the appropriate prosecutor, to investigate any circumstance in which there is an indication that a person serving with the police may have committed an offence”

7.75 While acknowledging the different functions of the respective parties involved, this is an area where it would be appropriate to have consistency. In the COPFS chapter at page 268 I have suggested that COPFS may wish to consider whether the Lord Advocate’s Guidelines on the Investigation of Complaints Against the Police should be updated, and this issue could be considered in that context.

Grievance procedure

7.76 The ACAS (Advisory, Conciliation and Arbitration Service) Code of Practice on Disciplinary and Grievance Procedures⁵¹ defines grievances as concerns, problems or complaints that employees raise with their employers. Within Police Scotland support staff and officers may have issues with other members of the service which they wish to register that may appropriately be categorised as grievances. The Scottish Police Authority/Police Scotland Grievance Procedure⁵² applies to all SPA staff, Police Scotland officers and support staff. It applies to all senior officers and where a grievance concerns the Chief Executive of the SPA or the Chief Constable the matter should be referred to the SPA Board. The procedure includes scope to “consider using mediation at any stage in the procedure” and encourages discussion of concerns with line managers in order to resolve problems promptly. Since my

⁵¹ http://www.acas.org.uk/media/pdf/p/f/11287_CoP1_Disciplinary_Procedures_v1_Accessible.pdf

⁵² SPA/Police Scotland Grievance Procedure, April 2019 <https://www.scotland.police.uk/spa-media/mgadboj/grievance-sop.pdf>

preliminary report was published, Police Scotland's Complaint Handling Review Working Group (CHRWG) are also developing a bespoke mediation and customer handling training package for staff within Complaints Assessment and Resolution Units and, in consultation with PSD, within Contact, Command and Control (C3) Division. Police Scotland People and Development are also leading a review of internal mediation services.

7.77 There is a spectrum of behaviour that generates grievances and complaints and in some cases allegations about different levels or types of behaviour may be more serious and may amount to bullying or even criminal matters. There are procedures for the different categories, however there was evidence that suggested that matters were inappropriately escalated by the aggrieved parties to the complaints route when the matters in question should, appropriately and proportionately, have been dealt with under the grievance procedure. This precipitate escalation may reflect a cultural or structural reluctance to engage with the normal employment law grievance practices.

7.78 In its recent submission to the Review, Police Scotland confirmed that it is currently reviewing the management and co-ordination of Employment Tribunals, grievances and internal non-criminal complaints within the organisation, and in particular, the inappropriate escalation of what should be grievance matters. A Case Allocation Review Panel is to be introduced to provide a single and consistent point of assessment for all Employment Tribunal claims, grievances and non-criminal complaints, following initial assessment by PSD's National Gateway Assessment Unit and where potential employee relations issues have been identified. Wider work is under way to ensure all managers are trained and aware of their responsibilities and accountabilities regarding proper and early engagement with their people, to instil confidence in holding potentially difficult conversations and avoid disproportionate escalation. A pilot coaching programme commenced in November 2019 for new line managers and will be subject to evaluation.

7.79 In the first 4 years of its existence Police Scotland on average dealt with two employment tribunals per year; in 2017-18 it dealt with eight, in 2018-19 it dealt with 22 and in 2019-20 it dealt with 17. Notwithstanding the fact that the funding

arrangements for employment tribunals changed during the period in question, that number of tribunals suggests that Police Scotland is right to address its management culture and instigate preventative action.

Preliminary report recommendation: To encourage appropriate use of mediation and grievance procedures Police Scotland should raise awareness and understanding amongst all members of the service of their own internal systems and which matters belong where in order to ensure a proportionate response.

Supervisory ratios and promotion

7.80 The broad-based pyramid structure of Police Scotland makes it likely that most constables will serve their police careers as constables, and the Review heard evidence that, for those who are promoted, the average time to reach the rank of sergeant is 15 years. The rank structure and lack of opportunities - Police Scotland has over 13,500 constables compared with around 2,400 sergeants - means that promotion at all ranks is highly competitive and can be a source of frustration that drives internal grievances and complaints. This has been compounded by the reduction in the number of sergeant posts, changes to police pensions and a higher likely retirement age. Resentment around promotion could also be exacerbated by factions, favouritism or litigiousness which existed historically within different parts of policing. There is an obligation on serving police officers and support staff to resolve non-serious internal differences or disagreements in a professional and respectful way through discussion or mediation rather than by disproportionate use of formal systems.

7.81 Some evidence was provided of over-stretched line managers: sergeants facing little respite in carrying out their operational and line management responsibilities, and inspectors with increased burdens who were also asked to deal with complaints referred to them from the Complaints Assessment and Resolution Unit (CARU). Against the background of these pressures it was suggested to the Review in focus groups that there was a need to re-empower first and second-line managers to take decisions rather than always escalate matters to a more senior

rank. There was evidence of a tendency to put things on paper, formalise them and escalate them to the next level of process, when use of the Performance Regulations would represent a more appropriate response to officer behaviour based on learning and improvement rather than punishment. Over-reliance on the Conduct Regulations was seen by some contributors as disproportionate escalation.

7.82 In the Evidence from other jurisdictions chapter at page 296 I describe the 2020 Home Office guidance intended to assist with the correct assessment of any matter. That guidance makes clear that the handling of lower-level matters related to an individual's behaviour, performance or conduct, may be dealt with through a new Reflective Practice Review Process (RPRP). I recommend in the Evidence from other jurisdictions chapter that a similar process, based on new statutory guidance, should be adopted in Scotland.

7.83 In the focus group the Review was told that not all line managers understood the management of performance and how to use the Performance Regulations. There was a tendency to shy away from tackling difficult issues, giving negative feedback or telling constables that they were not ready for promotion, and a reluctance to consult HR professionals in Police Scotland to get advice on staffing issues.

7.84 In evidence to the Review, HMICS highlighted risk aversion on the part of frontline officers and supervisors caused by the complaints process, and the stress caused to subject officers:

“Unfortunately, the complaints process tends to take a long time, and officers can become risk averse and avoid taking bold but correct actions for fear of registering a complaint. Officers who are subject to complaint can find this an extremely stressful experience and this can have a significant impact on their career and wellbeing, especially if they are placed on restricted duties until the investigation is complete.”

“... officers' perceptions of complaints have started to influence operational behaviour and indeed the culture of the force. Officers have told us that supervisors have become more risk averse particularly when dealing with situations involving risk to the public, such as missing person investigations. There is a perceived concern amongst officers that if an officer makes a

mistake then a subsequent PIRC investigation will find fault with individual officers' actions ...”

7.85 Police Scotland rightly aspires to be a learning culture, rather than a blame culture, and that is the underlying ethos of ‘From sanctions to solutions’⁵³, but the systems in place, and more importantly the way that they are operated, does not always encourage that approach. There is evidence that police officers feel exposed, stressed and fearful of making a mistake that could result in disciplinary action or, at the extreme end of the spectrum, losing their job.

7.86 As one experienced officer put it in their interview with me:

“My strong view is that if something is wrong put your hands up and say it’s wrong. Don’t defend the indefensible but equally don’t throw your people under a bus just because there was a service failure or an individual called it wrong on this occasion.”

7.87 Being a police officer is a stressful profession that puts individuals into pressurised situations where they may be dealing on a daily basis with crime, violence, vulnerable people, victims, deaths and the bereaved. There is an obligation on the service and the other agencies involved to ensure that the conduct and complaints arrangements are fair, so that those at the frontline can enforce the law and take decisions in the best interests of the public with whom they are dealing, without fear of an unjustified complaint against them or their behaviour being distorted by perceptions of unfairness or excessive delay in the system.

7.88 The SPA and Police Scotland are committed to improving policing services provided to the public. Understanding and accepting that if you are defensive about complaints you are unlikely to improve as an organisation should underpin that commitment. Valuing complaints and transforming them into successful outcomes should be a key part of strengthening the learning culture. Complaints are a great source of intelligence to any organisation and the majority of complaints received by Police Scotland will tell it something about how it is perceived, how it is performing or

⁵³ https://pirc.scot/media/1211/pccs_statutory_guidance_web.pdf

what quality of service it is delivering. That is valuable feedback that should be analysed and used as management information to inform continuous improvement.

7.89 In its most recent submission to the Review, Police Scotland recognised that organisations must continually work together to identify ways to improve service provision and meet new and emerging demands, and stated that it was committed to having a positive impact on complaint handling services to the public and endeavouring to promote a culture of organisational learning across the service.

7.90 Police Scotland has now established a team within the Professional Standards function to lead on the development of preventative and awareness-raising strategies to protect, educate and support people in relation to the organisation's values and Code of Ethics. That team's role is to support the highest standards of ethical and professional behaviour and work with wider policing ethics networks to ensure Police Scotland is applying best practice. It has responsibility for co-ordinating delivery of comprehensive and consistent training associated with ethics, complaint handling, investigation and misconduct. The team has also delivered a series of presentations across Police Scotland focusing on threat, risk, harm and vulnerabilities to organisational security.

Post-incident conferral

7.91 Conferral happens when police officers or support staff who may have been involved in a serious incident come together at the conclusion of the incident to recover from the trauma of the incident and talk with each other. That is an entirely natural human response but where it happens it has a number of potential implications for the justice process and, in this context, for the complaints process. Post-incident procedures designed to manage the aftermath of a serious incident are critical because they mitigate the risk of evidence being contaminated, including the risk that in talking with each other officers who are witnesses might unknowingly influence the views of their colleagues. The perception that such interactions have happened can also have a detrimental impact on public confidence generally and the attitude and involvement of victims, families and other witnesses.

7.92 I have previously made clear my position on post-incident conferral by police officers in my 2017 report⁵⁴ to the then Home Secretary. This is a particularly important issue where police officers are involved in a major or fatal incident which may be traumatic and in which they will undoubtedly be required to provide evidence. In the case of a death in custody or following police contact, or in certain other circumstances, unless there are reasonable grounds to suspect criminal activity about the actions of an officer or officers, each individual officer should be interviewed as a witness as soon as practicable after the event and without reference to or conferral with other police officers or other witnesses. If during the course of the investigation information becomes available which changes the investigating officer's understanding of the situation and he or she is forming a suspicion about the conduct of the police officer being interviewed, the police officer should be cautioned immediately and the interview should become one subject to the usual rights of any individual suspected of criminal conduct.

7.93 Early separation of officers, other than in pressing operational circumstances, is the best way to ensure non-conferral in practice, give transparency to the process and preserve the integrity of each individual's evidence. This is both in the interests of the individual police officers themselves and the public interest in order to safeguard public confidence in the integrity of their evidence. It is also standard practice when dealing with groups of witnesses who are not police officers. Civilian witnesses are separated as a matter of course to prevent the contamination of evidence. In any group of people there is a danger of group-think that could contaminate or colour evidence inadvertently or otherwise. The interests of one officer present in a group may also be quite distinct from, and in conflict with, another's interests.

7.94 Where an officer considers, or is advised, that he or she should have legal advice or representation immediately after a serious incident it is important to be

⁵⁴ Independent Review of Deaths and Serious Incidents in Police Custody, Home Office:
<https://www.gov.uk/government/publications/deaths-and-serious-incidents-in-police-custody>

aware that the individual officers may have conflicting or different interests from each other.

7.95 Following a death or serious incident police officers may be traumatised and need support in the immediate aftermath. They should have their welfare needs addressed and have support from colleagues as necessary, including their staff association, but support should not, so far as possible, come from colleagues who were also witnesses of fact at that critical point in time. Officers have 24/7 access to the Employee Assistance Programme and through TrIM (Trauma Incident Management) can self-refer to one of Police Scotland's TrIM assessors.

7.96 This approach will help to preserve the integrity of evidence, protect the rights of all those involved and the welfare of the police officers. It is also consistent with the 2009 Opinion⁵⁵ of the Council of Europe's Human Rights Commissioner in which he stated that:

“67. The adequacy principle has been developed to ensure that police complaints investigations are effective and capable of bringing offenders to justice.

68. Adherence to the rule of law requires that a complaints investigation into the conduct of an officer must be carried out in accordance with the same procedures, including safeguards for the officer complained against, that apply for a member of the public suspected of wrongdoing.

69. Requirements of a thorough and comprehensive police complaints investigation include:

- taking a full and accurate statement from the complainant covering all of the circumstances of their complaint;
- making reasonable efforts to trace witnesses, including members of the public and police officers, for the purpose of obtaining full and accurate statements;
- where issues of criminal culpability may arise, interviewing police officers accused or suspected of wrongdoing as a suspect entitled to due process safeguards, and not allowing them to confer with colleagues before providing an account;

⁵⁵ <https://rm.coe.int/opinion-of-the-commissioner-for-human-rights-thomas-hammarberg-concern/16806daa54>

- making reasonable efforts to secure, gather and analyse all of the forensic and medical evidence;
- pursuing lines of inquiry on grounds of reasonable suspicion and not disregarding evidence in support of a complaint or uncritically accepting evidence, particularly police testimonies, against a complaint;
- investigating complaints of police discrimination or police misconduct on grounds of race, ethnicity, religion, belief, gender, gender identity, sexual orientation, disability, age or any other grounds; and
- in recognition of the difficulties involved in proving discrimination investigators have an additional duty to thoroughly examine all of the facts to uncover any possible discriminatory motives.”

7.97 In my 2017 report to the then Home Secretary⁵⁶ I recommended that “other than for pressing operational reasons, police officers involved in a death in custody or serious incident, whether as principal officers or witnesses to the incident should not confer or speak to each other following that incident and prior to producing their initial accounts and statements on any matter concerning their individual recollections of the incident, even about seemingly minor details. As with civilian witnesses, all statements should be the honestly held recollection of the individual officer”.

7.98 Officers do not need to be separated for very long, only until they have given their statement to the PIRC. Those interviews of key police witnesses do not have to be lengthy or laborious.

7.99 In 2019 the IOPC published ‘Statutory guidance to the police force on achieving best evidence in death and serious injury matters’⁵⁷. In July 2020 the College of Policing in England and Wales updated the Authorised Professional Practice guidance on ‘Post-incident procedures following death or serious injury’⁵⁸. That guidance advises that it should be read in conjunction the IOPC’s statutory guidance.

⁵⁶ <https://www.gov.uk/government/publications/deaths-and-serious-incidents-in-police-custody>

⁵⁷ <https://www.policeconduct.gov.uk/sites/default/files/Documents/statutoryguidance/statutory-guidance-section-22-guidance.pdf>

⁵⁸ <https://www.app.college.police.uk/app-content/death-or-serious-injury/?s>

7.100 In their recent submission Police Scotland stated that it did not believe that officers/staff should be separated as a matter of routine and not unless it is safe, necessary and practical to do so. They believe that there are a number of alternatives to separation that would still achieve the same desired outcome, including the potential for the use of body-worn video cameras in the suite and the introduction of independent observers.

7.101 Police Scotland is also establishing a Professional Reference Group (PRG) as a means to ensure all developments within post-incident procedures (PIP) are effectively implemented and communicated through Police Scotland. This group will provide the senior Executive (ACC Professionalism and Assurance and ACC Operational Support) with appropriate strategic oversight and direction to ensure effective PIP management and deployment. The group will also provide a mechanism to facilitate key discussions, ensure implementation of the organisational learning arising from PIP deployment and consider any proposals for changes to Police Scotland's policies, practice, procedures and training. The group will disseminate any guidance or learning provided through the National Police Chiefs' Council and the College of Policing.

7.102 Fully recorded audio/video of the conferral period would go some way towards reducing the risk of contamination of evidence but would not guarantee people would not talk to each other inappropriately or eliminate the dangers of subtle intimidation or group-think arising from more dominant members of the group.

7.103 I know that there is considerable resistance by the police to the separation of officers after an incident involving a death or serious injury. However, I have set out once again (above) the reasons why it is in the public interest, the interests of justice and the officers' own interests for separation to take place in such circumstances. I first addressed this issue in my 2017 report for the then Home Secretary on Deaths and Serious Incidents in Police Custody in England and Wales.

7.104 I believe that with thoughtful deliberation all the various interests can be protected fairly. However, if that agreed way forward cannot be successfully

navigated under the leadership of the Scottish Government then ultimately it should be for the Scottish Parliament to decide on this matter.

The obligation of a constable to assist the investigation of a death or a serious incident

7.105 Evidence to the Review has raised questions, in the context of the investigation of serious complaints, about the importance of securing evidence speedily, for example the retention period for CCTV evidence can be limited to as short a period as 28 days. It has also raised issues about delays in witness interviews and delays in the provision of operational statements or witness statements.

7.106 A constable's duties are set out in the 2012 Act (in the declaration⁵⁹ that each constable makes on taking up office), in Police Scotland's Code of Ethics, and in the statutory Standards of Professional Behaviour, all of which to some extent express or imply a statutory, ethical or procedural duty on that person to assist in the investigation of a serious incident and uphold Convention Rights.

7.107 In my 2017 report⁶⁰ on Deaths and Serious Incidents in Police Custody in England and Wales, I noted that when police officers are questioned, "there should be a duty of candour for the police to answer all questions based on their honestly held recollection of events". It could be argued that duty of candour is an obligation under Article 2 of the European Convention on Human Rights which requires parties to positively assist the state in conducting thorough and effective investigations.

7.108 I have considered whether the current position is sufficiently clear to police officers, and to the public who have a legitimate expectation that police officers will give every assistance after a serious incident. That assumption of co-operation should be put beyond doubt in the primary legislation, including in the wording of the

⁵⁹ The constable's declaration is prescribed in Section 10 of the Police and Fire Reform (Scotland) Act 2012 <http://www.legislation.gov.uk/asp/2012/8/section/10>

⁶⁰ <https://www.gov.uk/government/publications/deaths-and-serious-incidents-in-police-custody>

constable's declaration. Where such an incident is being investigated by the PIRC, the investigators should also have a power, where it is necessary and proportionate, to compel police officers to attend within a reasonable timescale for interview.

7.109 In certain incidents, different and sometimes competing Human Rights obligations of the state may be engaged. The fundamental Article 6 right of a suspect to remain silent outweighs the Article 2 obligation of the state to provide an effective investigation in the event of a death at the hands of the state or in an investigation of an alleged breach of Article 3 (Prohibition of torture - inhuman or degrading treatment or punishment) or Article 5 (Unlawful detention). Other than in those very restricted circumstances, any officer who is a witness to a serious incident should be under an obligation to assist.

7.110 It has been suggested to me that, subject to the fundamental right to silence or privilege against self-incrimination of a suspect under Article 6, consideration should be given to the creation of a duty of candour for officers in Scotland in the execution of their duty. In the preliminary report I said that I would welcome specific evidence and views from interested organisations and individuals on this particular matter to help inform my final report.

7.111 My starting point is that those in the office of constable and holding 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.

7.112 The Review sought the advice of Douglas Ross QC on the extent to which ECHR Article 2 obligations, where there has been a death at the hands of the state, are affected by the fundamental right to silence to protect against self-incrimination; and whether and to what extent a constable's obligation to assist an investigation of a death, or other serious incident, could or should be outlined in legislation in a specific statutory duty to assist, and/or in the constable's declaration.

7.113 ECHR Article 2 gives rise to three obligations on the part of the state: a duty to refrain from taking life; a duty to protect; and a duty to investigate. The duty on the state to investigate is not contained in the wording of Article 2 but has been

developed in an extensive body of case law of the European Court of Human Rights (ECtHR). A similar investigative duty has been developed by the Court in respect of complaints of breach of Article 3 (Prohibition of torture - inhuman or degrading treatment or punishment).

7.114 Part of the purpose of the duty on the state to investigate is to ensure the accountability of state agents, including police officers. The procedural duties under Articles 2 and 3 require co-operation in good faith by individual officers, and shortcomings in that regard may give rise to a breach of ECHR rights. However, the European Court of Human Rights has confirmed that the right to remain silent when being questioned by the police and the privilege against self-incrimination are generally recognised international standards which lie at the heart of the notion of a fair procedure under Article 6.

7.115 The police officer's right to silence under Article 6 is not overridden by the investigative duty placed upon the state under Article 2. Equality before the law is fundamental to the operation of the criminal law and denying the right to silence to police officers who are under suspicion of having committed an offence would breach that principle.

7.116 The primary and subordinate legislation setting out the duties of constables and Standards of Professional Behaviour do not set out in terms that constables in Scotland have a duty to assist in investigations, nor is such a duty mentioned in the Code of Ethics for Policing in Scotland but such a duty can be inferred. Except in circumstances where the right to silence applied, a constable who failed to provide a statement in respect of an incident in which he was involved as a participant or witness would be failing to assist in investigations.

7.117 The statutory duty of co-operation recently introduced in England and Wales in the Police (Conduct) Regulations 2020 makes explicit a duty to co-operate:

“Police officers have a responsibility to give appropriate co-operation during investigations, inquiries and formal proceedings, participating openly and

professionally in line with the expectations of a police officer when identified as a witness.”⁶¹

7.118 I believe that this addition to the statutory Standards of Professional Behaviour to which all police officers should adhere is helpful and that the Scottish Government should consult on making similar provision in Scottish legislation for the reasons that I have set out. That said, I think that the words “a responsibility to give appropriate co-operation” are insufficiently precise and that “a duty to assist” would be a simpler, clearer and more commonly understood formulation to adopt in the equivalent Scottish legislation. The duty should also specify ‘prompt’ participation.

7.119 The Police Investigations and Review Commissioner supports the introduction of some form of undertaking or obligation on police officers to co-operate with an investigation of a death or serious incident within a reasonable timescale. The most recent submission to the Review from the Commissioner confirmed that in two recent incidents involving PIRC investigations where the post-incident procedures were invoked, the process worked extremely well with all key police witnesses providing initial accounts under the supervision of PIRC investigators within 24 hours and thereafter providing full accounts within the designated timeframe. That level of co-operation and response is very reassuring.

7.120 As I recommended in the preliminary report the assumption of co-operation should be put beyond doubt in primary legislation, including in the wording of the constable’s declaration. I recommend that the Scottish Government should also go further and propose amendment of the Police and Fire Reform (Scotland) Act 2012 to the following effect: There should be an explicit duty of candour on the police to co-operate fully with all investigations into allegations against its officers.

Preliminary report recommendation: Subject to the fundamental right to silence or privilege against self-incrimination of a suspect under Article 6 of Convention Rights, police officers should give every assistance after a serious incident. That assumption of co-operation should be put beyond doubt in the primary legislation, including in the wording of the constable’s declaration.

⁶¹ <https://www.legislation.gov.uk/ukxi/2020/4/schedule/2/made>

Preliminary report recommendation: Where a serious incident is being investigated by the PIRC, the investigators should also have a power, where it is necessary and proportionate, to compel police officers to attend within a reasonable timescale for interview.

Malicious, vexatious or frivolous complaints

7.121 All complainers should receive an appropriate and timely response in line with their rights as members of the public in receipt of public services and Police Scotland's obligations to provide relevant information, whenever possible, in an open and transparent way.

7.122 Anyone who knowingly makes a false complaint or allegation about a police officer or member of police support staff may be prosecuted by the Procurator Fiscal for the offence of wasting police time or attempting to pervert the course of justice. (In recent years there have been two such cases arising out of complaints against the police where proceedings were taken by the Crown Office and Procurator Fiscal Service for wasting police time.) Such individuals may also be liable to civil action by the person about whom they complained. In order to deal effectively with malicious complaints all the receiving organisations should have a policy that ensures consistency in handling, and helps to mitigate potential reputational damage from false allegations. Those policies should be consistent and, in appropriate circumstances, the organisations should be able to confer about their lists of complainers who make malicious or vexatious complaints.

7.123 While Police Scotland's Unacceptable Persistent or Unreasonable Actions by Complainers Standard Operating Procedure⁶² (SOP) makes clear that, "All complainers have a right to be heard, understood and respected" it also sets out the process for restricting contact with complainers whose behaviour justifies such action.

⁶² <https://www.scotland.police.uk/spa-media/oslldmae/unacceptable-actions-by-complainers-sop.pdf>

7.124 Police Scotland state that all correspondence should be responded to fairly, honestly, consistently and appropriately, including those whose actions are considered unacceptable.

7.125 However, the SOP goes on to say that Police Scotland reserve the right, where a complainer's actions have become unacceptable, to restrict or manage access to the service. Types of unacceptable action by the complainer include aggressive or abusive behaviour, unreasonable demands and unreasonable persistence.

7.126 In extreme cases, Police Scotland can place an individual on a 'no personal contact' list. This will not impact on their right to contact the police in an emergency and regardless of their previous history they may make entirely reasonable complaints at other times. Wherever possible, Police Scotland will give a complainer the opportunity to modify their behaviour or action before a decision is taken. Complainers will be told in writing why a decision has been made to restrict future contact and what the restricted contact arrangements are. This will not exclude or restrict contact with the police for matters other than complaints.

7.127 Members of the Professional Standards Department gave evidence on how the policy was put into practice. Although individuals can behave in a vexatious way about a certain issue they might well have a genuine complaint about something else and therefore it was important for PSD to read through any new e-mail or letter thoroughly to assess if there might be any new issue arising in it that they needed to address afresh.

7.128 PSD gave evidence about collaborative, supportive work with both PIRC and COPFS on vexatious complaints. They also noted that PIRC do not encounter complainers in the same direct way as Police Scotland can do, only dealing with them on paper and therefore not necessarily realising how challenging an individual might be to deal with for PSD or the frontline police officer.

7.129 The PIRC published an updated Unacceptable Actions policy⁶³ in March 2020 and intends to liaise with Police Scotland and the SPA to ensure that the policies of the three organisations are consistent. The National Complaint Handling Development Group is currently working on aligning the Unacceptable Actions policies between the PIRC, the SPA and Police Scotland and ensuring that policies are robust and efficient. The Commissioner has stated that she would be supportive of Police Scotland adopting a more rigorous policy by expanding their definition of unacceptable behaviours.

7.130 There is a continuing debate about tackling unreasonable behaviour as opposed to dealing with the individual responsible for that behaviour. You cannot separate the two and there comes a point when seeking moderation of behaviour is insufficient and more direct intervention is necessary to protect public servants who should not be the subject of abuse, harassment or threats.

7.131 False, malicious and vindictive allegations or anonymous trolling online can have profound and devastating impacts and there is a need for people to take responsibility for their behaviours and face the consequences when they overstep the boundary of what is legitimate into what is potentially actionable or criminal.

7.132 In 2014 the Chapman Report⁶⁴ recommended that the relevant legislation in England and Wales should be amended to include a provision to tackle vexatious complainers. I understand that that recommendation has not been put into amended legislation. However, in the preliminary report I also recommended that the Scottish Government should consider the case for legislation on this subject. I welcome the joint approach that Police Scotland, the PIRC and the SPA have now agreed to adopt to ensure that their practices are consistent but if the nature and volume of malicious, vexatious or frivolous complaints does not subside then those organisations should make the case to Scottish Government for strengthening of the legislation.

⁶³ <https://pirc.scot/media/5194/unacceptable-actions-policy.pdf>

⁶⁴ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/385911/An_Independent_Review_of_the_Police_Disciplinary_System_-_Report_-_Final....pdf

Preliminary report recommendation: The Scottish Government should consider the case for amending the legislation to include a provision to deal with vexatious complainers.

Anonymous complaints

7.133 There are a number of different reasons why people make anonymous complaints. It may be because they wish to protect their privacy, it may be that they fear some form of reprisal or it may be because their complaint is spurious or malicious.

7.134 Arrangements for handling anonymous complaints should be set out in policy and, as with any other complaint, the starting point should be that the allegation should be treated with an open mind. Anonymous complaints are more difficult to investigate because the complainer cannot always be contacted or the allegation verified. The response needs to be proportionate based on an assessment of the reliability and credibility of the information provided and the individual complaining, as far as that is possible, as well as the seriousness of the allegations. Because of the very nature of anonymity these complaints require to be treated with the utmost caution because of the potential false, vexatious and defamatory nature of the allegation.

7.135 In discussion with the Police Ombudsman for Northern Ireland (PONI) the Ombudsman's view was that any anonymous complaint should not be investigated, because it is only fair that the person who is the subject of the complaint should know the identity of the person making the allegation. Furthermore, collecting and testing the credibility and reliability of evidence is difficult if the complainer is anonymous.

7.136 I believe that there may be limited circumstances in which it would be both proportionate and necessary to investigate an anonymous complaint. However, each such complaint should be carefully assessed taking into account the seriousness of the allegations made, the challenge of ascertaining the credibility and

reliability of any evidence provided and any apparent connection to other complaints made against the officer or officers concerned. Any other objective evidence that may be supportive of the allegation should, so far as possible, also be considered before a decision is taken on whether or not to commence an investigation and the extent of that investigation.

Definition of a “person serving with the police”

7.137 The Police, Public Order and Criminal Justice (Scotland) Act 2006⁶⁵ as amended by the 2012 Act uses the term “person serving with the police”, which is interpreted at Section 47 and in various provisions in Chapter 2 of the Act. These are Section 33A (Crown-directed investigations into offences or deaths), Section 41B (Serious incidents involving the police) and Section 41C (Public interest investigations by the PIRC). A longer wording that pre-dates the 2012 amendments is used in Section 34 2(f) (“Relevant complaints” and “person serving with the police”) to define a relevant complaint: “by a person who, at the time of the act or omission, was a person serving with the police”.

7.138 The use of the phrase “person serving with the police” has caused uncertainty. 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.

7.139 There are varying views about whether (and in what circumstances) the legislation does or does not preclude the PIRC from investigating the pre-retirement actions or omissions of retired officers which might constitute criminal offences and, if so, whether this was the policy intention. The relevant provision is Section 33A(b)(i) of the 2006 Act, as inserted by Section 62 of the 2012 Act: “The Commissioner's general functions are ... (b) where directed to do so by the

⁶⁵ <https://www.legislation.gov.uk/asp/2006/10/contents>

appropriate prosecutor - (i) to investigate any circumstances in which there is an indication that a person serving with the police may have committed an offence;".

7.140 The previous Police Investigations and Review Commissioner in her evidence to the Review suggested that to remove the ambiguity, "the legislation be amended to provide clarity and express provision that the PIRC can undertake investigations into those who, at the time of the act or omission, were serving with the police." I support this proposal and believe that the position should be put beyond doubt in the legislation.

7.141 It has been put to the Review that this ambiguity over the meaning of a "person serving with the police" can also lead to differential treatment of on-duty and off-duty officers and so, for example:

- If an officer is alleged to have committed a criminal offence while off duty, they will invariably be reported to the local Procurator Fiscal and then investigated by their local police colleagues (instead of being referred at the outset to COPFS/PIRC for potential independent investigation).
- If a mixed group of on-duty and off-duty officers are alleged to have been involved in wrongdoing, it may be that investigations into the former can be conducted by PIRC while a separate investigation into the latter has to take place in parallel.

7.142 I repeat my earlier recommendation that the Scottish Government should amend the relevant provisions of the Police, Public Order and Criminal Justice (Scotland) Act 2006 at the earliest opportunity to put beyond doubt the definition of a "person serving with the police".

[Preliminary report recommendation: The Scottish Government should amend the relevant provisions at the earliest opportunity to put beyond doubt the definition of a "person serving with the police".](#)

Recommendations in relation to Police Scotland

7.143 Recommendation: Other than for pressing operational reasons, police officers involved in a death in custody or serious incident, whether as principal officers or witnesses to the incident should not confer or speak to each other following that incident and prior to producing their initial accounts and statements on any matter concerning their individual recollections of the incident, even about seemingly minor details. As with civilian witnesses, all statements should be the honestly held recollection of the individual officer.

7.144 Recommendation: The quarterly Police Scotland performance report to the SPA Complaints and Conduct Committee should identify five-year trends.

7.145 Recommendation: Police Scotland and the Scottish Police Authority should consider expanding the collection of diversity data and the publication of information in order to enhance their understanding, and public understanding, of attitudes and concerns in different communities.

7.146 Recommendation: All officers and support staff in Police Scotland's Professional Standards Department (PSD) should receive comprehensive induction training on taking up post and regular refresher development opportunities thereafter.

7.147 Recommendation: The next follow-up audit of the six-stage complaint handling process or audit of frontline resolution should be carried out by the PIRC as an independent third party.

7.148 Recommendation: The Scottish Government should amend the relevant provisions of the Police, Public Order and Criminal Justice (Scotland) Act 2006 at the earliest opportunity to put beyond doubt the definition of a "person serving with the police".

7.149 Recommendation: It is inappropriate to involve local officers in the frontline complaints process and therefore all frontline resolution should be carried out by Professional Standards Department.

7.150 Recommendation: The Scottish Government should propose amendment of the Police and Fire Reform (Scotland) Act 2012 to the following effect: There should be an explicit duty of candour on the police to co-operate fully with all investigations into allegations against its officers.

7.151 Recommendation: Police Scotland should consider the workload of the sergeant rank at the front line and the supervisory ratio of sergeants to constables in order to give create sufficient capacity for management, coaching and mentoring duties.

7.152 Recommendation: 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.”

7.153 Recommendation: The Scottish Government should consider the case for giving the PIRC a specific legislative power that would enable staff to access the Centurion database from its own offices so that contemporaneous audit is possible. Providing a basis in law for accessing any information relevant to the PIRC’s statutory functions should ensure compatibility with GDPR and any other relevant data protection legislation.

Chapter Eight - Policing culture

8.1 At one level Scotland's distinctive policing culture derives from the historical context within which Scottish policing has operated: in a separate jurisdiction and legal system, the unique role of the Lord Advocate, the ethos of the Scottish Police College where all new recruits complete their probationary training and the traditions of the pre-reform forces, constabularies and agencies. At another level the culture of Police Scotland is shaped by the men and women who serve in it and their public service values, their sense of fairness, morality and solidarity, their common sense, and their desire to help the community, the victim, the bereaved and the vulnerable. Such values motivate them to become police officers or support staff in the first place. Many of the strengths of our policing organisations are down to that motivation to fulfil a unique and privileged role in society. Police Scotland's Code of Ethics⁶⁶, based on the values of integrity, fairness and respect supports that culture by setting very clear standards and expectations for all members of the service.

8.2 Policing culture is not monolithic and there are variations across Scotland. The cultures of the eight regional forces still exert a strong influence, not least because the majority of the officers now serving in Police Scotland began their policing careers with those pre-reform forces.

8.3 The tone and culture of policing comes from the top: in the case of Police Scotland from the Chief Constable and the Force Executive; for the SPA it means the Chair, Chief Executive and Authority members; and in the case of the PIRC it stems from the Commissioner and her senior management team. Those leaders are critical in creating a constructive atmosphere between Police Scotland, the SPA and the PIRC, and those relationships are one of the mechanisms which should facilitate the effective operation of the checks and balances within the oversight and scrutiny arrangements. Police Scotland is a young but now established national organisation with a stable leadership team. In the preliminary report I suggested that this was a good juncture to reflect on the culture of the new service, address any long-standing

⁶⁶ <https://www.scotland.police.uk/about-us/code-of-ethics-for-policing-in-scotland/>

issues and consider how everyone in the organisation can help to change that culture for the better.

8.4 A number of cultural factors affect how police officers and support staff engage with the public and interact with each other in the workplace. The police service has always been structured around a command and control hierarchy, strict discipline, adherence to lawful instructions from a senior rank and rules that are often set out in statute. As a result, the culture is formal, deferential and respectful of rank.

Culture, conduct and complaints

8.5 A number of individuals and organisations touched on questions around culture in their evidence and offered valuable insights.

8.6 One senior official who gave early evidence to the Review described the culture around conduct and complaints in Police Scotland in this way:

“I think it’s primarily a line management issue rather than an HR issue. I think it’s about a cultural issue and it comes from the top. It’s about the culture which is set by the senior team as a whole about standards of behaviour and about ethics and values and tolerance of uncomfortable conversations, and people’s preparedness to hold difficult conversations which are necessary as a normal part of line management rather than giving it to the Authority to sort out, or someone else, which at times can be a way of avoiding dealing with the issue directly.”

8.7 In one evidence-gathering interview a senior serving officer told the Review that:

“I think what we haven’t done is we haven’t given line managers, inspectors and sergeants in particular, the skills to deal with some of these issues and to resolve them and to accept that a grievance sometimes means that not everybody’s happy; that can be an outcome.”

8.8 In their response to the Review's call for evidence the Scottish Public Services Ombudsman offered a pragmatic view of the elements that are critical to the success of any complaints process, namely:

- a culture of valuing complaints and willingness to learn from complaints, established by consistent and supportive leadership, with appropriate governance structures in place;
- an emphasis on frontline resolution which is backed up by training and support to empower frontline staff to resolve complaints early; and
- evidence-based conclusions with fully explained reasoning for findings.

8.9 Throughout this report I emphasise the crucial importance of living up to professional standards, ensuring a balance between confidentiality and transparency, declaring conflicts of interest, ensuring appropriate levels of independence in investigation, giving early consideration to mitigating factors and having systems that accord with principles of natural justice. Achieving all of that depends to a large degree on the culture or cultures that exist across the service.

8.10 During the course of this Review I have formed the view that that Police Scotland's command and control culture, which is essential to operational effectiveness, is a significant contributing factor in fashioning an internal approach to the disciplinary system that kicks in early and quickly, while other processes involving HR and the grievance procedure are underused. No one should be surprised that when looking into conduct within their ranks police officers tend to behave like police officers and revert to using their professional investigatory skills but that can often be disproportionate to the circumstances.

8.11 The evidence suggests that often cases that are pursued as conduct issues should have been dealt with through the grievance procedure, many pursued as grievance should actually have been sorted out through mediation, and some which used a formal mediation mechanism might simply have been handled in a conversation between an individual and their line manager.

8.12 The Police Scotland culture can also have a significant bearing on interactions with members of the public who may have a particular perception of the police or a fear of the police which puts them off complaining because of the perceived likely response or consequences. It is important that police officers at all levels are cognisant of that power imbalance when they are responding to a complaint from a member of the public. Individuals who are interacting with the public need to have an understanding of their own power as well as empathy and emotional intelligence. On the other hand, the system needs to recognise that being complained about as a police officer is a serious matter that can have serious effects on the individual and long-term consequences.

8.13 I discuss in detail some of these crucial cultural issues as they affect officers, staff, members of the public and minority groups in the Inclusion, diversity and discrimination chapter at page 130.

Leadership and management culture

8.14 As I make explicit in the Officer and support staff welfare chapter at page 402, Police Scotland should be striving for a supportive line management and mentoring culture in which everyone feels able to ask for help whenever they need it without hesitation and to get that help without conditions. In policing, some level of complaints from the public is inevitable. It is an occupational hazard but when complaints are received the culture should be one of valuing them for the insight they offer and the potential for learning and self-awareness that they provide.

8.15 I recommend that Police Scotland's Executive team should consider in depth and review the criteria and competencies that it uses to assess police officers' readiness for promotion. Those are the attributes that are perceived to be of importance to the organisation, that should reflect its values of integrity, fairness and respect and that should mould its management culture.

[Preliminary report recommendation: Police Scotland is a young but now established national organisation with a stable leadership team. This is a good opportunity to](#)

reflect on the culture of the new service, address any long-standing issues and consider how everyone in the organisation can help to change that culture for the better.

8.16 Recommendation: Police Scotland's Executive team should consider in depth and review the criteria and competencies that it uses to assess police officers' readiness for promotion.

Chapter Nine - Complaints in the context of inclusion, diversity and discrimination

Introduction

9.1 The way any organisation responds to complaints and the character of its internal culture are both important indicators of the maturity, health and effectiveness of that organisation. This can be observed in the commercial context as well as in public entities. Listening and responding effectively to complaints and, crucially, learning the implications of what those complaints indicate are excellent mechanisms for improving the quality of the service provided.

9.2 How members of Police Scotland behave towards each other in their professional context also has an important public interest dimension. The culture and behaviours of those in supervisory positions is particularly critical in setting the tone and character of the culture of the department or station in question. If officers behave badly towards each other, the prospect of fair treatment to members of the public is greatly diminished. How effectively these matters are dealt with also has important implications for recruitment, retention and promotion of the right people.

9.3 In gathering evidence for the Review I met many people who offered evidence about how the culture of Police Scotland affects the way the organisation responds to members of the public when they make complaints and how it treats its own officers and staff. This chapter records some of the views that were expressed by members of the public, officers and staff about issues related to inclusion, diversity and discrimination and comments on how those issues should be addressed.

9.4 During the Review I met with a number of Police Scotland's Black, Asian and minority ethnic officers and I have considered their evidence very carefully. I also met representatives of the diversity staff associations for women officers and staff and for LGBTI officers and staff.

9.5 The evidence suggests that some officers and staff experience discriminatory conduct, attitudes, behaviours and micro-aggressions, both internally and externally, in the course of their duties. We heard that many of these incidents go unreported even though some of these behaviours constitute misconduct and that there was a reluctance in those Black, Asian and minority ethnic officers to report for fear of being characterised as “playing the race card”.

9.6 I was deeply concerned to hear about the experiences of officers and staff from Black, Asian and minority ethnic communities, as I was to hear about discrimination experienced by female police officers and by LGBTI officers.

9.7 In the context of complaints handling it was important for the Review to consider how Police Scotland, and the complaints process as a whole, supports and responds to the needs of the diverse communities it serves and the needs of different groups within and outwith the police service. In order to gain a better understanding of the issues, I met with a range of groups representing minority communities within Scotland and with officers from minority communities. I also held evidence-gathering meetings and discussions with BEMIS⁶⁷, the Coalition for Racial Equality and Rights⁶⁸ (CRER), the Scottish Women’s Development Forum⁶⁹ (SWDF), the Scottish LGBTI Police Association⁷⁰ and SEMPER Scotland⁷¹. I am very grateful to all the individuals who gave up their time to discuss the complaints system and to share with me their often very personal experiences. I am also very grateful to Police Scotland’s National Independent Strategic Advisory Group⁷² (NISAG) with whom the Review met on two occasions.

⁶⁷ <https://bemis.org.uk/> BEMIS is an umbrella body supporting the development of the ethnic minorities voluntary sector in Scotland and the communities that this sector represents.

⁶⁸ <https://www.crer.scot/> CRER is a Scottish strategic racial equality charity focused on working to eliminate racial discrimination and harassment and promoting racial justice.

⁶⁹ The SWDF’s aim is to assist and support Police Scotland and the Scottish Police Authority to provide a positive working environment which enables everyone to reach their full potential.

⁷⁰ <https://www.lgbtipolice.scot/> The Scottish LGBTI Police Association exists to advance LGBTI equality, inclusion and support throughout policing in Scotland and within the communities Police Scotland serves.

⁷¹ <http://www.semperscotland.org.uk/> SEMPER Scotland is the primary staff association that exists to support and represent all minority ethnic employees on issues of equality in race. SEMPER stands for Supporting Ethnic Minority Police employees for Equality in Race.

⁷² NISAG is comprised of Community Advisors who have an in-depth knowledge of a specific diversity area, or a number of areas, and who provide independent advice and guidance at a strategic level on those areas to Police Scotland.

9.8 The evidence suggests, alarmingly, that many individuals who come into contact with Police Scotland are reluctant to make a complaint for a number of different reasons. They may belong to minority groups, may not speak English as their first language or may be nervous about the repercussions of engaging further with the police. That reluctance may mask the extent of dissatisfaction with the service provided by the police. It is crucial that Police Scotland take steps to understand and overcome that reluctance and to remove barriers to making complaints as far as possible for this significant part of the community in Scotland. In the Accessibility and communication chapter at page 282 I make recommendations on how the system can be made more accessible.

9.9 It was evident from my focus groups with representatives of community organisations and with Black, Asian and minority ethnic police officers that there were recurring themes emerging from the experiences of different minority groups and communities; these themes in turn affected how individuals within the police service felt they were treated, as well as how communities felt about the police. I deal with each of the main issues in this section.

9.10 In the report⁷³ by Sir William Macpherson of The Stephen Lawrence Inquiry published in February 1999 Sir William wrote that:

“Unwitting racism can arise because of lack of understanding, ignorance or mistaken beliefs. It can arise from well-intentioned but patronising words or actions. It can arise from unfamiliarity with the behaviour or cultural traditions of people or families from minority ethnic communities. It can arise from racist stereotyping of black people as potential criminals or troublemakers. Often this arises out of uncritical self-understanding born out of an inflexible police ethos of the “traditional” way of doing things. Furthermore such attitudes can thrive in a tightly knit community, so that there can be a collective failure to detect and to outlaw this breed of racism. The police canteen can too easily be the breeding ground.”

9.11 Much of the evidence presented to me was a chastening reminder that in the police service and in the wider community attitudes have not changed as much as

⁷³https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/277111/4262.pdf

they should have since those words were written, or as much as we may like to believe that they have.

Community relations and attitudes to the police

9.12 The Review held a focus group with representatives of a wide range of different minority ethnic communities in Scotland. Participants indicated that communities differ from each other as do their issues and that within those communities there is also considerable diversity. In general, the participants felt there was a lack of understanding by Police Scotland of their communities and gave numerous examples of the effects of that disconnect. In certain communities there was a cultural or historical lack of trust in the police based on the manner of policing in other parts of the world. This resulted in a deep-seated lack of trust and fear for many people which made it almost impossible for many in those communities to contemplate making a complaint to the police. The review was told that in some cultures people do not complain about any public services. Any such reluctance to engage is of grave concern not only in relation to complaints against the police but also because it is likely to undermine the prospects of members of these communities reporting crime against themselves or assisting the police in other ways.

9.13 Many minority communities in Scotland originate from jurisdictions where the police have low accountability and there have been significant instances of brutality and corruption. It is understandable therefore that mistrust exists, not borne out of the experience of communities with Police Scotland but deriving from individuals' experiences in their country of origin, often meaning that they do not want to deal with the police in Scotland. Against that kind of background and perception, it is all the more important that police officers demonstrate through day-to-day community engagement the different policing culture that exists here and what policing by consent means in practice. The benefits of community policing to public confidence, building relationships, reporting of crime and helping the police keep communities safe cannot be overstated.

9.14 One serving police officer also told the Review that some members of the LGBTI community in Scotland had a similar reluctance in coming to the police for help because of mistrust.

9.15 CRER offered an excellent example of constructive engagement with minority communities. Police Scotland was one of the contributors to a local community planning partnership event which any member of the public could attend. People from minority communities attended and gave examples of bad experiences they had with the police. The officer who contributed remained after the event and sat with members of the community, spent time listening to them and took their telephone numbers for follow-up. CRER's view was that before that event none of those individuals would have thought to complain about the police. What was emphasised to me was how significant the presence of community police officers was in addressing the fears and perceptions that many in these communities held. The loss of community police officers around Scotland was viewed as a very regressive development and made it more unlikely that members of these communities who had benefited from the presence of community officers would now continue to engage with the police. Making it easier to submit complaints may also assist members of minority communities in developing the confidence to do so. In addition to the fundamental need to achieve greater trust in these communities, making the complaints system user-friendly and accessible is also vital and I deal with this in the Accessibility and communication chapter at page 282.

9.16 BEMIS also told the Review that there was a complete lack of awareness in diverse communities of how to complain about the police and that an awareness-raising initiative was needed.

9.17 BEMIS's view, based on research that it had carried out, was that the formation of Police Scotland in 2013 had led to a significant reduction in the number of community police officers and that this had resulted in a deterioration in community relations. The Review was told by one community representative that there is a need for outreach into communities, not as one-off exercise but sustained over a long period of time. One organisation that acted as a third-party reporting centre believed that Police Scotland should be more visible and accessible to

communities through community centres and places of worship. Community representatives felt that learning about different communities and cultures should not be an internal police training exercise but rather a process based on regular interaction with those communities. That cultural awareness would help the police to treat people with more respect, to work in partnership with families and to understand their background. Trust depended on the everyday actions of the local police. Taking the community with you and simply enabling people to talk to the police is fundamentally important.

9.18 Particularly disturbing was the suggestion in the discussion with CRER that there is a lack of faith in some families who have lived in Scotland for many years that anything will be done if a complaint is made and a genuine worry on the families' part that whoever you encounter in Police Scotland may have a racial bias.

9.19 The Review was told by a serving police officer that there was only one non-white person working in public protection in Glasgow, when what was really needed was a good knowledge of different cultures and an understanding of issues such as human trafficking.

9.20 The Review was told at the meetings with NISAG and CRER that refugees and asylum seekers can mistrust the police because they are perceived to be part of the state's immigration enforcement machinery. Some refugees who had been misinformed by other refugees believed that any interaction with the police could have an impact on their immigration status. The consensus in the focus group was that when interacting with the police or when the police are intervening in a situation many people tend to avoid getting involved because they fear it could jeopardise their visa status and future citizenship options.

9.21 The focus group participants felt that Police Scotland should work to eliminate the fear of complaining and the lack of trust in the police. A number of examples were given to illustrate the experience of diverse communities. These included examples of complaints that could not be pursued or petered out because no complaint reference number had been given out, or because only one individual officer could deal with the complaint. The Review was told that in some instances

there was no indication of how long it would be before a reply to a complaint was received. Concern was raised about who has access to a complaint when it is recorded on the Police Scotland computer system and whether any other sections of the police have access to the complaint details; knowing such information could make a difference to complainer confidence. The COVID-19 pandemic had highlighted digital poverty within Black, Asian and minority ethnic communities, therefore offering online forms for complaints is insufficient.

Third-party reporting

9.22 The Police Scotland website makes clear that if a member of the public prefers to be represented by another person (e.g. by a solicitor, an elected representative, community group or some other organisation) in making a complaint they may do so. It offers Citizens Advice Scotland and the Scottish Refugee Council as examples.

9.23 Police Scotland also recognise that in some cases victims and witnesses of hate crime do not feel comfortable reporting the matter directly to them and may be more comfortable reporting incidents to someone with whom they are familiar. Police Scotland work in partnership with a wide variety of partners who perform the role of third-party reporting centres for hate crime. These partners have been trained to assist people in submitting a report to the police and can make such a report on their behalf. Examples of third-party reporting centres range from housing associations to victim support offices and voluntary groups.

9.24 The Review took evidence from a number of organisations who perform the third-party reporting role. There are about 500 third-party reporting centres in Scotland to whom hate crime can be reported. CRER noted that it would be hard to find anyone who would provide support for someone in making a complaint against the police. Notwithstanding that, it was CRER's view that it would be better if individuals felt able and were encouraged to go direct to the police to make a complaint. In the best of all possible worlds people would not be scared to complain directly to the police but the evidence suggests that many members of minority

communities are, and therefore systems have to be designed to take into account and overcome that reluctance.

9.25 During the focus group one representative told the Review that third-party reporting was a necessary option because many in their community viewed the complaints process as quite complicated and inaccessible. They felt that the police were not there for them and would only complain through a third party.

9.26 I strongly believe that accessibility is an element of the system that needs to be significantly strengthened in order that all those who have a legitimate complaint to make can do so easily and can choose the route that best suits their capabilities and capacity. Encouraging direct engagement and supporting those who wish to complain indirectly are not incompatible; there are compelling arguments in favour of the provision of both options.

9.27 I recommend in the Accessibility and communication chapter at page 282 that Police Scotland should have discussions with a number of the third-party reporting centres for hate crime, including those representing minority groups, and secure their agreement to offer third-party support for those who wish to make a complaint against the police.

Public confidence

9.28 In my 2017 report on Deaths and Serious Incidents in Police Custody⁷⁴ in England and Wales I said that community confidence and trust in the police had been undermined in the Black, Asian and minority ethnic community and could only be rebuilt with a real effort to learn from institutional mistakes. The picture in Scotland is different but the factors that can engender a lack of trust in the police and the steps that police services need to take to build public confidence are the same.

⁷⁴https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/655401/Report_of_Angiolini_Review_ISBN_Accessible.pdf

One of those steps is to deliver an accessible, encouraging and responsive system for dealing swiftly and fairly with complaints against the police.

9.29 The Review was told that, as well as the imported attitudes that some communities bring from their different cultural experiences of other police services abroad, lack of trust in the police in Scotland had been compounded by the resource issues and the reduction in community policing that I describe above and which followed the creation of Police Scotland.

9.30 Representatives from diverse communities also told the Review that cultural awareness training had been provided to Police Scotland, and that there were good examples of engagement with Police Scotland in areas such as domestic abuse. These are important steps in the right direction, however it is clear that in order for all communities in Scotland to feel confident about accessing the complaints process, there is further work to be done in improving community relations and understanding different cultures and backgrounds.

Recruitment and retention of officers and staff

9.31 In order to encourage confidence in the police and a willingness to interact with them, a police service should be representative of the whole of the society that it serves and its members should be drawn from diverse sections of that society. In this context it is worth quoting again Peel's principles⁷⁵ which stated that a relationship should be maintained with the public at all times that "gives reality to the historic tradition that the police are the public and the public are the police; the police being only members of the public who are paid to give full-time attention to duties which are incumbent on every citizen in the interests of community welfare and existence".

⁷⁵ https://www.college.police.uk/What-we-do/Ethics/Ethics-home/Documents/Code_of_Ethics_ReadingList.pdf

9.32 As at 31 March 2020 Police Scotland had 253 police officers who self-classify as BME⁷⁶ out of a total of 17,693 officers. The service had 87 staff who self-classify as BME out of a total of 5,455. The overall proportion of female police officers was 32%.

9.33 The Review heard evidence that although there was a drive to recruit officers from the Black, Asian and minority ethnic communities, the experiences of some recruits had caused them to leave the profession, often within three to five years. The Review was told during a focus group that ethnic minority officers were leaving because of the culture of the police and the way they were treated.

9.34 One officer told the Review that they had to raise a formal complaint as a result of racial abuse received from colleagues, that they received no support or protection, that the guidance they were given and personal development was poor and that they felt as though they had been “tricked” into joining the service in order to “tick a box”. They described feeling abandoned and how line managers did not know what to do with them.

9.35 During my focus group discussion, I asked the officers if they would recommend a career in the police to other people from a Black, Asian or minority ethnic background. All but one stated that they would not recommend joining the police. The officer who said that they would recommend someone to join explained that they were hopeful of change and people from an ethnic minority background were needed in the service; it was a great job full of satisfaction but the system and culture needed to change. On the subject of promotion, that officer commented pointedly that it was easier for a person from a Black, Asian or minority ethnic background to become a doctor than to become a sergeant in the police.

9.36 Some contributors believed that racism was more prevalent within the service than within the community and that racist attitudes are also imported with some new recruits; Police Scotland therefore had to acknowledge that training is needed to

⁷⁶ BME - Police Scotland use terminology based on Equality and Human Rights Commission guidance.

address any racist, bigoted or misogynistic attitudes that exist and to move beyond stereotypes in some recruits' thinking.

9.37 A representative from SEMPER Scotland told the Review that Police Scotland should ensure a culture where Black, Asian and minority ethnic officers and staff were comfortable inside the service; this was not about positive discrimination or quick fixes. They recognised that it had taken a lot of effort to recruit people into the service but Police Scotland could not track the attrition rate of officers leaving; there was no exit interview process, so Police Scotland do not find out why they are leaving. The Review was told that this should be a matter of public concern not least because each recruit's two-year training programme was a significant investment of public money.

Culture

9.38 One of the main issues that can impede greater diversity within any organisation is its culture. Cultural values and how they are lived make a fundamental difference to how large organisations function and feel to people. I describe the positive and negative effects of traditional policing culture in the Policing culture chapter at page 125. In the context of inclusion, diversity and discrimination I am well aware of the impact of canteen culture, humour and machismo behaviour within policing. Some of those impacts on individuals have been brought home to me in stark terms in much of the evidence that I have been given by serving police officers during the Review. As one serving officer put it: how you treat people should be a significant part of police competencies and if you treat the people inside the organisation badly, the likelihood is that you will also treat people outside the organisation badly.

9.39 Canteen culture has been defined as “racist and sexist attitudes shared by many ordinary workers within an organisation, especially attitudes that the organisation officially disapproves of”⁷⁷. One of the witnesses quoted in the

⁷⁷ Cambridge English Dictionary

Macpherson Report, in referring to the Metropolitan Police Service, stated that there was the impression, “that there was far too much ‘canteen culture’ of racism within the police force. Officers feel that it is appropriate to say things within the confines of their own ranks and without action being taken by people to put a stop to it”⁷⁸.

9.40 The 2014 dissertation ‘The enduring quality of police canteen culture/subculture in a changing police landscape’⁷⁹ refers to the notion of ‘habitus’ where people encounter long-standing traditions and behaviours which are handed down through the generations. The author believes that individuals unconsciously submit to subtle pressure to fit in with patterns of how things are done and over time their thinking is shaped by these enduring patterns. However, if an organisational culture is to be dynamic and successful it needs to give individuals space in order for them to negotiate their own position within a range of cultural choices.

9.41 There are ways of assessing the culture of an organisation such as employee surveys and cultural audits. One SEMPER Scotland member told me that there was an issue with the Police Scotland staff survey because the organisation was risk-averse; an open conversation would be a good way for management to get feedback but Police Scotland was “scared to have a dialogue” and didn’t want criticism. The response to the survey results should be a constant drive for improvement but tended to be focused on quick wins. Another member highlighted that there was no aspect of culture or pride in the survey or any question along the lines of ‘Do you feel that you belong?’.

9.42 It is important to understand the character of the culture in which people are working and the nature of their behaviour towards each other. Police Scotland should use its staff survey to elicit a better understanding of the experience of officers and staff and should follow that up with focus groups of officers and staff with senior officers.

⁷⁸ Paragraph 36.20 of the Macpherson Report

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/277111/4262.pdf

⁷⁹ Ewart, D H, ‘The enduring quality of police canteen culture/subculture in a changing police landscape’

9.43 If the culture of Police Scotland is to change and become more inclusive throughout all parts of the organisation it has to allow new recruits to help shape that culture rather than simply conform to what they find when they join. An inclusive organisation will build an environment where everybody feels comfortable and can thrive by being themselves in the workplace and feel valued for who they are as well as what they contribute.

Training

9.44 Although I deal with training matters for Police Scotland, the Police Investigations and Review Commissioner (PIRC) and the Scottish Police Authority (SPA) in the Training chapter at page 348, it is important to note that the evidence to the Review suggests diversity and unconscious bias training need to be provided more widely, regularly and consistently across Police Scotland. It was felt by some participants in the focus group that the diversity training provided is superficial and only factors in descriptions of different communities, which in turn can lead to unhelpful stereotyping, rather than exploring and explaining racial and other biases; that there needs to be a shift away from concentrating on one-off training courses, and greater emphasis on continuous improvement and refresher sessions. SEMPER Scotland also argued that all members of misconduct hearings and Police Appeals Tribunals should receive mandatory training in unconscious bias and noted that currently no allowance is made by panels for mitigating circumstances which relate to discriminatory behaviour, for example for those officers who have been the subject of racial abuse.

9.45 The September 2020 report⁸⁰ by HM Inspectorate of Constabulary in Scotland (HMICS) recommended that Police Scotland should ensure that diversity training is provided and mainstreamed into leadership courses at all levels as a matter of urgency. The report said:

⁸⁰https://www.hmics.scot/sites/default/files/publications/HMICS%20Thematic%20Inspection%20of%20Police%20Scotland%20Training%20and%20Development%20-%20Phase%201_0.pdf

“Diversity training was previously provided as part of leadership courses at all levels. The discontinuation of most leadership courses has created a gap in relation to diversity training provided to senior members of the organisation.”

“The issue of diversity in policing, specifically the recruitment, retention, development and promotion of under-represented groups, is one that HMICS will concentrate on as a priority in the next phase of inspection of Training and Development.”

Support and change needed within Police Scotland

9.46 The Review was told in a focus group of Black, Asian and minority ethnic officers that senior leadership in Police Scotland overall was good but that there was no one from a minority ethnic background in a senior role. It was also suggested to me by one voluntary group that having greater Black, Asian and minority ethnic representation within the Scottish Police Authority (SPA), the Police Investigations and Review Commissioner (PIRC) and the Crown Office and Procurator Fiscal Service (COPFS) would increase public confidence.

9.47 In discussion with the Scottish Women’s Development Forum (SWDF) the Review was also told that it was clear there had been a lot of positive change at the top of the organisation. The Assistant Chief Constables were all committed to equality of opportunity and so are the young recruits to the service. However, there was still quite a way to go at the sergeant and inspector level and they were important influencers. There was some change but it was slow and there was still underlying sexism and differing degrees of machismo culture in different parts of the service; some male officers struggled to cope with having a female manager.

9.48 The Review was told by a SEMPER Scotland member that there was a lot of commitment from the top about changing the organisation but at the bottom and in the middle there was no change, and that Police Scotland “need to be seen to be doing it, not doing it to be seen”.

9.49 It was felt by minority ethnic officers that they could face complaints from the public or internally but those complaints would be investigated by people who had little understanding of racial matters, and that when they complain of internal racism the finding is always 'not found'. Worryingly, the Review was told by officers that "a bit of name-calling was expected". In the more serious misconduct cases often the racial element was "dropped" by PSD on the basis that "it's just part of how we talk" and because people don't want the extra work involved. The Review was also told that frequently the organisational response was to move people rather than deal with the issue. (The Review was subsequently given a categorical assurance by Police Scotland that pursuing an allegation of racist behaviour was non-negotiable and would only be dropped where there was no evidence.)

9.50 Whenever and wherever they are reported, any discriminatory behaviours which constitute a breach of the Standards of Professional Behaviour should be robustly pursued and be dealt with under the conduct procedures.

9.51 Some officers believed that discrimination had increased, and that greater diversity amongst line managers would never be achieved if recruits were not supported, well treated and nurtured. Another officer stated that Police Scotland now had a greater proportion of women line managers than previously because there was a political will to make that happen, and that there needs to be a similar political will if diversity is to increase amongst managers.

9.52 It was felt that white officers receive better assessments from their divisional commanders than Black, Asian and minority ethnic colleagues, possibly, they felt, because they do not have as good a network. It was also felt that there is a pattern of inspectors failing to deal with racism within their teams because they were approaching retirement. Despite the very clear definition of racism in law, some line managers were often quick to close down any suggestion that an incident might involve racism.

9.53 During the focus group the Review was told that Black, Asian and minority ethnic officers are the subject of more complaints from the public than other officers and it was felt the onus tended to be on the officer to defend themselves when a

complaint was made. A more extensive support network and more understanding from senior officers would be helpful. It was also noted that currently there is a lack of Black, Asian or minority ethnic officers in the Professional Standards Department.

9.54 A representative of the Scottish LGBTI Police Association told the Review that LGBTI officers can be treated differently; there was a lack of understanding with supervisors and relationships with colleagues can be affected. It was “pot luck” if you got supportive colleagues on your team. Supervisors might be scared of saying the wrong thing.

9.55 The Review was told that in one recent year Police Scotland dealt with seven discrimination cases against the organisation but that there was a lot of under-reporting of discrimination, particularly among women and Black, Asian and minority ethnic officers. In some cases people would feel, “I’ve seen what happened to X” and not report something. The Review was told that some officers were reluctant to make a complaint for fear of being accused of “playing the race card”. Women did not come forward with issues that they should have reported because they were concerned that they would be “marked out” for doing so.

Scottish Police Federation

9.56 The Review heard evidence from different groups that they felt that the Scottish Police Federation (SPF) did not represent all its members equally and that they did not represent Black, Asian and minority ethnic officers well. They were described as lacking empathy for minority groups and reliant on other support groups in relation to race issues.

9.57 In evidence an officer told the Review that she had not felt able to go to the SPF for help. She noted that the SPF represented “both sides” in internal complaints and that there was a lack of information for people who were the subject of a grievance; HR told them to go to the SPF, but not everyone is a member of the SPF.

9.58 The 2019 Scottish Police Authority/Police Scotland Grievance procedure states that: “You have the right to bring someone with you to any formal meetings e.g. disciplinary, grievance, capability etc. This could be a work colleague or a representative of: a Trade Union, Staff Association, Scottish Police Federation or Association of Scottish Police Superintendents.”

Racial abuse from the public

9.59 In the officer focus group the Review was told that there is no support system within Police Scotland to deal with the aftermath of an incident where an officer is subjected to racial abuse on duty. Racial abuse is based on the perception of the person who is subjected to it. The following are some of the disturbing comments that were made by participants in the focus group:

“You can take the uniform off after a shift, but can’t change your colour when you go out into the community.”

“The nail that sticks out gets hammered and every ethnic minority officer is a nail.”

“My line manager offered services after a racial incident but fundamentally the culture is too machismo to allow space for people to ask for help.”

“I don’t remember the names of the people whose lives I saved, I do remember the names of those who made death threats.”

“... people had nowhere to turn and there was no one who could understand or feel your pain, so you take your experiences home.”

9.60 Officers also talked about their experience of racial abuse within the service. They told the Review that much of the abuse goes under the radar and that ethnic minority officers experience micro-aggressions from some colleagues. Other officers would sometimes make excuses for colleagues by commenting, “they’re just like that”.

Capturing ethnicity data

9.61 A proper understanding of issues related to race depends to some degree on having data that allows analysis, research and learning. This was an issue I addressed in my 2017 report on Deaths and Serious Incidents in Police Custody⁸¹ in England and Wales and which is relevant to the recording of complaints against the police in Scotland.

9.62 A number of people who gave evidence to my 2017 Review considered that race and ethnicity should automatically be considered as a factor in any investigation where these characteristics are present, unless proven otherwise. The then IPCC's own sample of data involving complaints made following the use of force, showed that there were significant gaps in England and Wales in the police service's recording of the ethnicity of those on whom force was used. Ethnicity was not recorded in a quarter of complaints about the use of force. I have been advised by the Home Office that this has now been addressed.

9.63 In relation to those making complaints against the police in Scotland there is a similar situation where Police Scotland does not capture ethnicity. To understand patterns and underlying issues it is vital that Police Scotland have demographic information. They also need to recognise that racism is not always overt and can be subtle.

9.64 Police Scotland have confirmed that neither the ethnicity of the member of public making the complaint nor the ethnicity of the police officer(s) involved is recorded on the Centurion complaints and conduct database within Professional Standards Department (PSD). While Centurion does have an 'Ethnicity' recording field, Police Scotland policy has been not to record this unless the complaint is about discriminatory behaviour; as a result, there is very limited data available.

9.65 Police Scotland have advised the Review that they do recognise the need for meaningful data on complaints and misconduct in order that they can better understand any disproportionality in disciplinary and misconduct outcomes for Black,

⁸¹https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/655401/Report_of_Angiolini_Review_ISBN_Accessible.pdf

Asian and minority ethnic officers and staff. They are liaising with the Independent Office for Police Conduct (IOPC) and the National Police Chiefs' Council (NPCC) in an effort to understand the position in England and Wales and build on any learning from there.

9.66 As a result of research carried out by IOPC and NPCC, police forces in England and Wales have, with effect from 1 June 2020, begun to ask officers who are the subject of investigations to self-classify their ethnicity. This data collection is voluntary, with subject officers being able to elect not to share their ethnicity data, however it is mandatory for Investigating Officers to ask for this information. Police Scotland may consider adopting this approach as a step to improving ethnicity data and improving understanding of any disproportionality based on race in its decision-making.

9.67 Police Scotland acknowledge the advantages of having access to data which would provide an overview of the specific ethnic groups affected by crime, as this would provide greater understanding of the trends and the impact of harms. While they record data on hate crime, it is not possible to extract data which provides an accurate profile of other crimes affecting different groups.

9.68 In the focus group one officer also said that true scrutiny of complaints data required more detail than just categorising a complaint as 'quality of service' and proposed that the complaint statistics should be broken down and more thoroughly analysed. I agree.

9.69 In the Republic of Ireland, the Garda Síochána⁸² Ombudsman Commission's (GSOC) annual report⁸³ includes charts that illustrate the profile of people who complained to them in 2018. The data covers 11 different characteristics. This is a valuable exercise that should be considered by Police Scotland and the Scottish Police Authority as a means of enhancing their understanding of public attitudes and concerns.

⁸² *An Garda Síochána* is the Irish Gaelic name for the Republic of Ireland's police service.

⁸³ <https://www.gardaombudsman.ie/publications/statutory-reports/?download=file&file=3161>

9.70 The Police Investigations and Review Commissioner (PIRC) confirmed in her most recent submission to the Review that the use of diversity monitoring forms was discussed by the Strategic Oversight Group⁸⁴ (SOG). At its meeting it was agreed that there would be benefit in Police Scotland, COPFS, the SPA, and the PIRC reviewing existing policies in relation to diversity monitoring forms and the capture and use of data on protected characteristics and, if possible, aligning their approaches. PIRC will consider the best way to make use of such data to assist in informing working practices and to identify any gaps in the community where they might need to highlight their role.

Guidance on discrimination for investigators

9.71 In my 2017 report on Deaths and Serious Incidents in Police Custody⁸⁵ in England and Wales for the then Home Secretary I said that racial stereotyping may or may not be a significant contributory factor in some deaths in custody. However, unless investigatory bodies operate transparently and are seen to give all due consideration to the possibility that stereotyping may have occurred or that discrimination took place in any given case, families and communities would continue to feel that the system is stacked against them.

9.72 PIRC and Police Scotland should ensure that discrimination issues are considered as an integral part of their work. A systematic approach should be adopted across both organisations and, in all cases, investigators should consider if discriminatory attitudes have played a part.

9.73 I have raised with the Commissioner the question of guidance available to PIRC investigators. She has confirmed that PIRC does not currently have any specific guidance for investigations on race and discrimination but is planning to

⁸⁴ The Strategic Oversight Group brings together senior leaders from COPFS, the SPA, the PIRC and Police Scotland.

⁸⁵ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/655401/Report_of_Angiolini_Review_ISBN_Accessible.pdf

adapt the IOPC's 'Guidelines for handling allegations of discrimination'⁸⁶ for their own use.

9.74 Police Scotland and the Scottish Police Authority's guidance for all officers and staff is contained primarily within their Equality, Diversity and Dignity standard operating procedure⁸⁷ (SOP). Police Scotland is also committed to the National Police Chiefs' Council's (NPCC) Plan of Action for inclusion and race equality in policing⁸⁸.

Part-time and flexible working

9.75 The Scottish Women's Development Forum (SWDF) told the Review that there had been some very serious examples of discrimination related to part-time and flexible working. They believed that there was now some improvement in the system but there was still too much emphasis on organisational need. Contributors to the discussion felt that there was no flexible thinking in the organisation and that could make a big difference. We were told that Police Scotland was "patriarchal, obsessed with core hours and generally slow to change its culture".

9.76 The Review heard evidence that flexible working and part-time working could be the cause of a grievance where there was a lack of willingness or perceived lack of willingness to accommodate a request. The Scottish LGBTI Police Association told the Review that there needed to be changes made to the grievance procedure because officers and staff felt that if they submitted a grievance there could be consequences for them and ultimately they would suffer. There was also a lack of trust that if a complaint was made internally anything would be done about it.

9.77 SWDF described a perceived lack of consistency depending on the identity of the individual line manager. SWDF was campaigning for reasons to be given where

⁸⁶ <https://www.policeconduct.gov.uk/research-and-learning/key-areas-work/discrimination>

⁸⁷ <https://www.scotland.police.uk/spa-media/3lka0za4/equality-diversity-and-dignity-sop.pdf>

⁸⁸ <https://news.npcc.police.uk/releases/update-on-the-plan-of-action-for-inclusion-and-race-equality-in-policing>

officers were not being permitted to work flexibly. Some women felt unsupported or not empowered to ask for flexible working but flexible working should be open to everyone. The SWDF representatives told the Review that there were some unhelpful, unspoken attitudes towards hours worked, flexible working and caring responsibilities. There was inconsistency of practice across Police Scotland, the roll-out of best practice was not implemented well and the organisation did not have good mechanisms for sharing good practice.

SEMPER Scotland proposal for A Fairer, More Inclusive Police Service

9.78 I am aware from the evidence provided by SEMPER Scotland that they believe that closer partnership working between Police Scotland and internal support groups on equality issues is imperative. To that end they have recently submitted to Police Scotland a set of proposals for a fairer, more inclusive police service. Most of those proposals extend beyond the remit of my Review but I do strongly support the recommendations (a) that the composition of panel members for disciplinary hearings should be more diverse and (b) that unconscious bias training be rolled out in phases beginning this year. In the Training chapter at page 348 I recommend that all police officers and staff should receive training on unconscious bias, equality legislation and diversity and that this should be updated throughout their career, with the opportunity for refresher courses at regular intervals.

Police Scotland policy on workforce diversity, inclusion and equality in policing

9.79 In a paper⁸⁹ submitted to the August 2020 meeting of the Scottish Police Authority, Police Scotland outlined work being carried out by the service on diversity, inclusion and equality. The paper states that they are striving to increase the diversity of their workforce through ensuring that their systems and processes for

⁸⁹ <https://www.spa.police.uk/spa-media/c4kin05m/rep-b-20200813-item-5-workforce-diversity-inclusion-and-equality-in-policing.pdf>

recruitment, progression and retention hold no barriers to those from under-represented groups. They have an ambition as a service to have a workforce that is broadly reflective of the social demography of Scotland. Equality and diversity employment monitoring is undertaken annually by Police Scotland. They are aware from this data that there is more work to be done in order for their workforce to be more representative of Scottish society.

9.80 Police Scotland's People and Development Annual Delivery Plan for 2020-21 states that they will:

- undertake research to identify the barriers to under-represented groups joining Police Scotland;
- identify, monitor and publish robust data to meet all external requirements and to inform internal decision-making/focus and investment;
- consult on, and agree a new recruitment system that mitigates unconscious bias and includes an anonymised process; and
- deliver bespoke development programmes to increase promotion opportunities for under-represented groups – especially Black, Asian and minority ethnic groups and females.

9.81 Police Scotland's Positive Action Team (PAT) was established in 2017. Their original remit was exclusively to promote the organisation to those from an ethnic minority background; however, the team has widened their reach to support recruitment across other protected characteristics including sex and sexual orientation. The Positive Action Team further supports other priority areas within the organisation, such as remote and rural recruitment efforts, and Police Scotland's obligations in supporting serving and former members of the armed forces. The Positive Action Team has monthly meetings with all the diversity staff associations.

9.82 The Positive Action Team also runs the Introduction to Policing Programme (ITPP) race diversity events. These are designed to support members of minority ethnic communities to learn more about policing through awareness events and ongoing support through the recruitment process. The ITPP commenced in 2017 and initially offered attendees a four-day programme at the Scottish Police College.

Following feedback and evaluation, the length, structure and location of the event has been revised to increase accessibility and is now a one-day event which was hosted in a variety of locations around Scotland. This has enabled local policing divisions to become involved, with contributions from local officers, which helps to provide an accurate reflection of the nature of policing in each area.

9.83 The Positive Action Team hosted a dedicated LGBT+ recruitment event in October 2019. The event was widely publicised on social media and attracted highly positive support from LGBT+ colleagues who provided contributions on the day from their personal experiences. The event attracted 44 attendees, from which Police Scotland received 20 subsequent applications.

9.84 Women in Policing (WIP) recruitment events held in Inverness and Aberdeen in October 2019 offered prospective female candidates the opportunity to hear from a variety of officers in specialist and non-specialist roles across the organisation. This was in an attempt to demystify and dispel any fears or uncertainties about the requirements of policing. 65% of attendees at the WIP events have pursued an application, with the overall number of female recruits in 2018-19 and 2019-20 rising from 33% to 40%.

9.85 I was reassured by the evidence provided by Police Scotland and the Chief Constable of the organisation's commitment to equality and the steps that it is taking to address discriminatory attitudes and behaviours, agree a new recruitment system that mitigates unconscious bias, and deliver bespoke development programmes to increase promotion opportunities for under-represented groups.

Attitudes and behaviours

9.86 Discriminatory attitudes and behaviours do exist in Scotland and they also exist in Police Scotland; that was evident in the discussions that I have had over recent months. The evidence presented to the Review in relation to complaints and misconduct matters is that discriminatory attitudes and behaviours are present within Police Scotland, as they are in many organisations, and that such attitudes and

behaviours are also exhibited by some members of the public in the way they treat police officers.

9.87 The question to be addressed and the challenge to be met is how the police service should root out such attitudes. Eliminating discrimination and changing outdated attitudes is doubly important for Police Scotland because it relies on the trust and confidence of the public in order to do its job and it relies on members of the public to step forward and volunteer to serve in its ranks and, importantly, to remain in its ranks.

9.88 I was told by one voluntary organisation that there is a perception among minority communities that the police are racist. That has to be addressed and what is required is a genuine change in behaviours and attitudes. There will always be a canteen culture, not all of which is harmful, but there is a responsibility on every person in Police Scotland to ensure that any sub-culture reflects the organisation's values of integrity, fairness and respect, and that where it contributes to a racist, misogynistic or emotionally damaging environment it has to reform.

9.89 In order to facilitate change an organisation has to be open and self-aware about what it is really like to work there. In one meeting I was told that the issue was more about the culture than about the leadership and that culturally Police Scotland would sooner admit to incompetence than admit to discrimination. Any such defensiveness has to be overcome and, at all levels, managers, officers and staff need to be prepared to hold their hands up and acknowledge where discriminatory behaviour or attitudes and unconscious bias exist.

9.90 Instant results are seldom possible and seldom sustained. Changing the culture is a long game but it is worth investing time, effort and resource now to lay solid foundations for a process of change that is absolutely essential. Police Scotland, the staff associations, the trade unions and the diversity staff associations all have a part to play and the SPA have an important role in holding the Chief Constable to account for progress in this area.

9.91 I was deeply concerned to hear about police officers leaving the police because of their experiences of not feeling included, valued or listened to. Talking about the British television industry in his 2020 MacTaggart lecture⁹⁰, the eminent broadcaster David Olusoga said:

“There is a brutal answer to the question why is there a lack of black controllers, black company owners and black commissioners - the people we need right now, to bring their experiences, their stories, their viewpoints, and those of the communities they come from into our industry. That answer is that we had them - and we lost them. They left because our industry failed to support their careers and nurture their talents.”

9.92 The risk to the police service and to Scotland as a whole is that the same happens to the enthusiastic, intelligent and public-spirited people from our minority communities who join Police Scotland: that they are lost to the service because of a lack of support, nurture and equal treatment. If the retention issues can be addressed and reversed Police Scotland could create a virtuous circle where enthusiastic and fulfilled recruits become the best possible salespeople and ambassadors for the organisation because they tell their friends and family about the great careers they have.

⁹⁰ <https://www.broadcastnow.co.uk/home/david-olusoga-mactaggart-lecture-in-full/5152544.article>

Conclusion in respect of inclusion, diversity and discrimination

9.93 Taking into consideration all the evidence that I have heard and read, I have commented on where the issues that fall within my remit can be addressed. Having a wider evidence base in order to understand and address the issues and the harm caused by discrimination is of critical importance to Police Scotland and to the public and deserves comprehensive examination.

9.94 I therefore recommend that where inclusion, diversity and discrimination issues affect public confidence more broadly they merit further detailed examination and should be the subject of a separate and urgent review.

9.95 I accept that the Police Scotland Executive team acknowledge the presence of discrimination and are committed to dealing with it but in the light of the very worrying evidence that I have received, I consider that issues related to discrimination and their impact on public confidence in Police Scotland should be the subject of a broader, fundamental review of equality matters by an independent organisation.

Recommendations in relation to inclusion, diversity and discrimination

9.96 Recommendation: Police Scotland should make use of staff surveys to enhance their understanding of the experience of all minority groups in the service and senior officers should make more use of face-to-face meetings and focus groups with members of these groups to gain a more acute understanding of the impacts of discrimination, prejudice and unconscious bias.

9.97 Recommendation: Police Scotland should implement, where it is in their gift, the SEMPER Scotland proposal that the composition of panel members for disciplinary hearings should be more diverse.

9.98 Recommendation: Appropriate support for anyone in Police Scotland who is the subject of internal or external discrimination should be enhanced.

9.99 Recommendation: In the light of the very worrying evidence that I have received, I consider that issues related to discrimination and their impact on public confidence in Police Scotland should be the subject of a broader, fundamental review of equality matters by an independent organisation. That review should take into account HMICS's proposed inspection of Training and Development that is to concentrate on the recruitment, retention, development and promotion of under-represented groups.

9.100 Recommendation: Police Scotland should develop its diversity data collection and analysis to inform a proper understanding of issues related to discrimination so that progress can be made and those issues addressed. The service should consider what it can learn from how this is done by the Police Ombudsman for Northern Ireland and the Garda Síochána Ombudsman Commission respectively.

Chapter Ten - Whistleblowing by police officers and support staff

10.1 The term “whistleblowing” relates to a worker who reports a certain type of wrong-doing where it is in the public interest for that wrong-doing to be disclosed. Reports must be dealt with confidentially by the body which receives them. Workers can choose to report openly or can do so anonymously. Anonymity may make it more difficult for the individual to receive legal protections, for them to receive support from the employer or for the investigator to obtain further information. The worker is protected by law if they report on any of the following actions:

- a criminal offence
- someone’s health and safety is in danger
- risk or actual damage to the environment
- a miscarriage of justice
- the organisation is breaking the law
- they believe someone is covering up wrong-doing

10.2 In my preliminary report I said that the whistleblowing processes would be examined in detail and further evidence taken from relevant stakeholders on how these processes work in practice and that further consideration would be given to this matter. I invited views on whistleblowing generally, and specifically on the question of whether a policing body, such as the Police Investigations and Review Commissioner (PIRC), should have prescribed status as the IOPC does south of the border.

10.3 The Employment Rights Act 1996⁹¹ (as amended by the Public Interest Disclosure Act 1998⁹²) provides that a whistleblower can raise their concerns outside their organisation or employer to a “prescribed person” such as a suitable regulator or inspector. Employment law is a matter that is reserved to the Westminster

⁹¹ <https://www.legislation.gov.uk/ukpga/1996/18/contents>

⁹² <https://www.legislation.gov.uk/ukpga/1998/23/contents>

Parliament. The UK Government publishes online the full list⁹³ of prescribed persons.

10.4 In their evidence to the Review, Police Scotland stated that it is good practice to create an open, transparent and safe working environment where staff feel able to speak up. Police Scotland published its first whistleblowing guidance in June 2017, using a soft-launch approach with no awareness training provided to officers or staff at that time. Police Scotland confirmed in their early written submission to the Review that, “The number of matters considered under the auspices of whistleblowing is extremely low”.

10.5 In March 2019 Police Scotland published up-to-date guidance in order to allow officers and staff to report concerns, or whistleblow. In February 2019 Protect (Whistleblowing Advice) Ltd⁹⁴ were awarded a contract to provide an independent advice line on behalf of Police Scotland for whistleblowing matters. Officers have access to specific whistleblowing report forms. Police Scotland’s publication of new whistleblowing guidance in 2019, was accompanied by a communication programme and an e-learning package. In March 2020, a mandatory whistleblowing intranet module was introduced for officers and staff with an associated communication plan. The Assistant Chief Constable for Professionalism and Assurance is the Police Scotland Whistleblowing Champion.

10.6 Enhancing protection for whistleblowers within policing could be achieved by prescribing in legislation another Scottish third-party reporting body or person. In England and Wales the Independent Office for Police Conduct (IOPC) is such a prescribed body, but in Scotland the PIRC is not. In her evidence to this Review the previous Commissioner suggested that, “to facilitate independent investigations of appropriate whistleblowing concerns, legislative amendment could be made to provide the PIRC with ‘prescribed person’ status and legislative powers to independently investigate these matters”.

⁹³<https://www.gov.uk/government/publications/blowing-the-whistle-list-of-prescribed-people-and-bodies--2/whistleblowing-list-of-prescribed-people-and-bodies>

⁹⁴ Protect is a registered charity. It is also registered as a company limited by guarantee in England. https://protect-advice.org.uk/?gclid=EAIaIQobChMIzrbtuNjS7AlVwevtCh3AfAR7EAAYASAAEgLAID_BwE

Evidence to the Scottish Parliament Justice Committee on whistleblowing

10.7 Whistleblowing within policing was considered and discussed by the Scottish Parliament Justice Committee during its Post-Legislative Scrutiny of the Police and Fire Reform (Scotland) Act 2012⁹⁵. In written evidence to the Committee in 2018, UNISON Police Staff Scotland (UPSS), the largest trade union branch for police staff in Scotland said:

“It is our view that challenges and criticism of the service have been stifled and there are limited pathways to pursue complaints and concerns about the operation of the service for police staff.”⁹⁶

“... positive changes to whistleblowing guidance which offer greater protections to those raising concerns have been very slow to materialise. We also favour the expansion of independent scrutiny bodies to hear employee complaints concerning their service as we do not think there is currently sufficient balance or impartiality.”⁹⁷

10.8 In their oral evidence to the Committee on 6 November 2018 the Scottish Human Rights Commission (SHRC) also touched on the importance of having an external mechanism. Diego Quiroz, Policy Officer at SHRC told the Committee that “When there is no confidence in the internal mechanisms, the whistleblower can go directly to external parties”⁹⁸. However, as I pointed out in my preliminary report, there is no external policing body prescribed for this purpose in Scotland.

Police Scotland whistleblowing guidance and arrangements

10.9 Police Scotland produced an initial whistleblowing guidance document in June 2017, which set out Police Scotland’s responsibilities and response to whistleblowing and provided details of the reporting mechanism for submitting concerns. That

⁹⁵ <https://www.parliament.scot/parliamentarybusiness/CurrentCommittees/108179.aspx>

⁹⁶ https://www.parliament.scot/S5_JusticeCommittee/Inquiries/PFR-UPSS.pdf

⁹⁷ https://www.parliament.scot/S5_JusticeCommittee/Inquiries/PFR-UPSSsupplementary.pdf

⁹⁸ <http://www.parliament.scot/parliamentarybusiness/report.aspx?r=11762&mode=pdf>

guidance was updated in 2019 and is available to all officers and staff on the Police Scotland intranet. In general terms, a whistleblower should have no self-interest in the issue being raised and the document highlights that personal grievances and complaints are not usually covered by whistleblowing and can be addressed through other processes.

10.10 Police Scotland expressed its aim as to provide an environment where employees feel confident to raise concerns when they reasonably believe that wrongdoing is being or has been done. Its general aim is to promote a healthy workplace culture built on openness and accountability. The extracts below are taken from the current guidance:

- The principles apply to all police officers, special constables, police staff, contractors and agency staff.
- Whistleblowing is viewed by Police Scotland as an important source of information that may highlight serious risks to the effectiveness and efficiency of the organisation, with individuals often being best placed to identify deficiencies and problems at the earliest opportunity.
- All staff have a positive obligation to question the conduct of colleagues that they believe falls below expected standards and, if necessary, challenge, report or take action against such conduct.
- Police Scotland will support and protect all whistleblowers. It is recognised that individuals with a protected characteristic may in some circumstances need extra safeguards or support to protect them.
- There may be times where the whistleblower feels unable to raise their concern internally within the organisation. In such circumstances it is possible to raise a concern with another body.
- The individual raising the concern will, where appropriate be allocated a single point of contact. This person shall maintain contact with the whistleblower and provide support and updates as appropriate.
- The Scottish Police Authority shall also be provided with a quarterly update report. Where issues of confidentiality allow, and in the interests of transparency, this report will be made available to staff associations and trade union representatives.
- If an individual is unsure whether or how to raise a concern, or they want confidential advice at any stage, they may contact their trade union, staff association or the Employee Assistance Programme. An independent

whistleblowing advice line is also available, providing confidential, expert advice.

- In addition individuals may wish to contact ACAS or Citizens Advice Scotland who offer specific advice relating to whistleblowing.

10.11 Police Scotland told the Review that the improvement in knowledge and awareness within PSD has led to stronger support for divisions, enhanced information-sharing, accountability and consistency in the management of whistleblowing matters across the organisation.

10.12 In February 2017 Her Majesty's Inspectorate of Constabulary in Scotland (HMICS) conducted an Assurance Review of Police Scotland's Counter Corruption Unit. As a consequence, the National Gateway Assessment Unit (NGAU) was established by Police Scotland to serve as a single point of entry for all internal referrals or concerns raised involving police officers or members of police staff and to ensure consistent assessment. NGAU is situated within PSD.

10.13 Matters referred to the NGAU can include issues related to conduct, performance, discipline, integrity and behaviour. Referrals can be submitted through a variety of reporting mechanisms and officers or members of police staff can elect to remain anonymous when raising a concern. Part of the assessment is whether any referral should be dealt with as whistleblowing. The criteria for that assessment are set out in the legislation and are that the worker making the disclosure (the whistleblower) holds a reasonable belief that: they are acting in the public interest; and that the disclosure tends to show past, present or likely future wrongdoing falling into one or more of the six categories listed in paragraph 10.1 above.

10.14 NGAU staff have received training by Protect which has enabled early identification of potential whistleblowing matters within the organisation, which are flagged to senior management timeously for assessment/consideration.

10.15 A whistleblowing e-learning training package was developed to provide better awareness to all employees and managers. Professional Standards Department and Protect co-hosted a 'What is Whistleblowing?' CPD (continuing professional

development) event at the Scottish Police College where all divisions and staff associations were represented.

Background information on Protect

10.16 In 2019 a contract was awarded by Police Scotland to Protect (Whistleblowing Advice) Ltd which provides an independent advice line delivering confidential, expert advice to officers, staff and managers. During the Review I met with senior staff from Protect to gain an insight into its activities generally and its role in relation to Police Scotland's whistleblowing arrangements specifically.

10.17 Protect is a UK whistleblowing charity which aims to stop harm by encouraging safe whistleblowing. It operates a free, confidential advice line that supports more than 3,000 whistleblowers across the UK each year. It works with organisations supporting, advising and training teams on improving their 'speak up' arrangements. 'Speak up' is a broad term which includes whistleblowing. Protect also conducts research, informs public policy and campaigns for better legal protection of whistleblowers.

10.18 Protect's core business consists of advice to contracted clients and also a general service available to the UK public through their website or by telephone. Protect employ lawyers who are able to provide legal advice on individuals' rights. Protect could communicate on the behalf of a caller but they discourage it.

10.19 The contract provides support that was customised for Police Scotland and includes self-help kits, training and a unique Freephone number that officers and staff in Police Scotland can call for advice.

Evidence from the Police Investigations and Review Commissioner

10.20 The view of the previous Police Investigations and Review Commissioner was clearly articulated in her submission in response to my call for evidence in which she made the following points:

“Several concerns have been publicly expressed by some within Police Scotland that they do not feel confident to raise matters of concern and whistleblow on colleagues, senior staff, the Professional Standards Department and the Anti-Corruption Unit, for fear of reprisals.”

“Currently, the Police Service of Scotland has sole responsibility for investigating concerns raised by whistleblowers within its organisation.”

“The problem therefore remains that there is no independent scrutiny of matters raised by whistleblowers within Police Scotland.”

10.21 The current Commissioner has suggested to the Review an alternative approach:

“By their nature, many issues raised under whistleblowing relate to working procedures, policies and conditions and fall more naturally to be dealt with by Police Scotland and the SPA. Rather than being a prescribed organisation, providing a statutory duty/right for the PIRC to audit all whistleblowing reports made to Police Scotland would enable PIRC to have an oversight of referrals under the whistleblowing policy and provide public assurance that they were being appropriately handled.”

10.22 That alternative approach has merit and I agree that the PIRC should have an audit role, however, that would not be sufficient to address the fundamental need to give potential whistleblowers the confidence that they can report wrong-doing to an external third party.

10.23 As one Police Scotland whistleblower put it to the Review:

“They’re trying to get me to help them with their cases, with their problems, but they’re frightened to even speak.

“What you need to do is, I believe you need to absolutely ensure, set up a body, an independent whistleblowing group for Scotland, but it absolutely has

to be staffed with the best people with the highest integrity who will literally dot the i's and cross the t's and will not be rubbing shoulders with the people that they are supposed to investigate.”

The Scottish Police Authority

10.24 The original whistleblowing procedures were approved by the Scottish Police Authority (SPA) in May 2017 and covered both Police Scotland and the SPA. This policy was reviewed and a new whistleblowing policy⁹⁹, specifically for the SPA, was approved by SPA in March 2020. The SPA policy applies to all SPA Corporate and Forensic Services employees as well as secondees, contractors and agency staff working within SPA Corporate and Forensic Services. Police Scotland is working alongside the SPA to ensure consistency across both organisations.

10.25 The SPA's aim is to facilitate an organisational culture where people feel comfortable raising concerns. It seeks to work alongside, rather than duplicate, current day-to-day channels for raising concerns and its whistleblowing policy was developed based on an assessment of good practice, previous internal audit recommendations and lessons learned from previous cases.

10.26 In November 2019 one SPA member was appointed as the SPA Whistleblowing Champion on behalf of the SPA Board with responsibility to oversee the independence and effectiveness of the whistleblowing policy.

Whistleblowing in policing in England and Wales

10.27 In England and Wales the Independent Office for Police Conduct (IOPC) is a prescribed person in relation to matters relating to the conduct of a person serving with the police. The Policing and Crime Act 2017 Act¹⁰⁰ contains provisions which

⁹⁹ <https://www.spa.police.uk/spa-media/gvclkohi/rep-b-20200318-item-10a-spa-whistleblowing-policy.pdf>

¹⁰⁰ <https://www.legislation.gov.uk/ukpga/2017/3/contents/enacted>

have not yet been commenced which relate to the IOPC's powers to investigate concerns raised through whistleblowing.

10.28 In March 2016, the College of Policing in England and Wales published national whistleblowing guidance entitled Reporting Concerns¹⁰¹. This sets out the standards of support whistleblowers should expect to receive and best practice, including the right to receive feedback and to be consulted on certain issues, and the right to an independent review. That guidance is due for review pending commencement of changes to the legislation in England and Wales.

Conclusion in respect of whistleblowing

10.29 Whistleblowing should always have a positive purpose. It is one of the building blocks of an open culture which recognises that employees have a better knowledge of what is going on in their organisation than managers do and encourages them to speak up when they see wrong-doing.

10.30 It is good practice for employers to ensure that what merits protection in the public interest is carefully assessed and that those whistleblowing concerns are treated separately from individual grievances. I commend Police Scotland for their action to raise awareness, provide training and give clarity around what constitutes whistleblowing, and for their initiative in making available the expert advice of Protect.

10.31 Having weighed up the evidence, I believe that the absence of a prescribed independent third-party person to whom whistleblowers in policing can report wrongdoing is a significant gap that should be filled. Ideally concerns should be raised internally in the first instance so that the organisation can act quickly on those concerns but there may be many valid reasons why an individual would want to be able to report wrong-doing to an external body.

¹⁰¹ https://www.college.police.uk/News/College-news/Pages/reporting_concerns.aspx
<https://www.college.police.uk/What-we-do/Ethics/Documents/ReportingConcerns.pdf#search=reporting%20concerns>

10.32 When I met with Protect, they made the point to me that independence and accountability should be designed into the system. The internal arrangements in place within Police Scotland appear to be in line with best practice apart from the inability for officers and staff to disclose information outwith the service to an appropriate prescribed person. In my view the PIRC is the organisation that is best placed to fulfil that crucial role because of its existing expertise, its understanding of policing and its ability, potentially, to make connections with other investigations. In view of the sensitivity of whistleblowing, one of the PIRC Deputy Commissioners that I have recommended in the PIRC chapter at page 205 should be the nominated recipient of whistleblowing reports.

Recommendations in relation to whistleblowing

10.33 Recommendation: The Police Investigations and Review Commissioner should be added to the list of prescribed persons in The Public Interest Disclosure (Prescribed Persons) Order 2014¹⁰² 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.

10.34 Recommendation: Whistleblowing can be an indicator of what is happening within an organisation and therefore Police Scotland should review and audit its whistleblowing arrangements and data on a regular basis.

¹⁰² https://www.legislation.gov.uk/uksi/2014/2418/pdfs/uksi_20142418_en.pdf

Chapter Eleven - Former police officers - Police Barred and Advisory Lists

11.1 Currently in Scotland where there is an allegation of misconduct and the subject officer resigns or retires in the course of the investigation or proceedings, those proceedings come to a halt.

11.2 In England and Wales, where an officer resigns or retires during gross misconduct proceedings those proceedings can continue until a conclusion is reached. Where there is a finding of gross misconduct the officer's name will be added to the Police Barred List which prevents them from being appointed by another police service, force or other policing body in England and Wales.

11.3 The Police Advisory List is a vetting tool for policing employers which contains information about individuals who have resigned or retired during an investigation into a matter that could have resulted in their dismissal, or who leave before such an allegation comes to light. Individuals remain on the list until the investigation has concluded and an outcome has been determined

11.4 In my preliminary report, I stated that there was a strong ethical and presentational case for adopting Barred and Advisory Lists, similar to those which exist in England and Wales by virtue of Policing and Crime Act 2017¹⁰³ which amended the Police Act 1996¹⁰⁴.

11.5 Since my preliminary report was published in June 2019 I have taken evidence from a number of individuals and families who had very strongly-held views on the question of jurisdiction over former police officers. The common perception was that police officers who were guilty of serious wrongdoing could escape justice by retiring or resigning before, during or after an investigation, and that this had the effect of forcing the termination of the statutory misconduct proceedings.

¹⁰³ <https://www.legislation.gov.uk/ukpga/2017/3/contents>

¹⁰⁴ <https://www.legislation.gov.uk/ukpga/1996/16/contents>

11.6 Jurisdiction over former police officers is not an issue in relation to actions which might be criminal in nature. The criminal justice process is unaffected by an individual's resignation or retirement from the police service.

11.7 The Barred List and the Advisory List are managed and maintained by the College of Policing¹⁰⁵ in England and Wales and cover all forces within that jurisdiction. The lists contain information related to former police officers, former special constables or former police staff who have been dismissed or are under investigation in England and Wales for gross misconduct, gross incompetence, unsatisfactory performance or unsatisfactory attendance. The intention of the Barred List is to ensure that those who do not meet the high standards required of the police service are not able to continue to work within policing.

The Police Barred List

11.8 The Barred List covers officers, special constables and police staff members who have been dismissed and gives reasons for their dismissal. The unpublished but publicly searchable version of the list contains information about officers and special constables who have, in essence, been 'struck off' and cannot work again in the policing profession (that is, individuals who were dismissed from positions within policing, or who were subject to a finding that they would have been dismissed following proceedings). The legislation requires that only police officers and special constables who are dismissed for Gross Misconduct are placed on the publicly searchable version of the Barred list. They only remain on the public version for five years from the date they were published. Police staff are not included.

11.9 The legislation in England and Wales also permits the College of Policing to disclose information contained on the Police Barred List to any person where it considers that to be in the public interest.

¹⁰⁵ <https://www.college.police.uk/News/Newsletter/January-2018/Pages/Barred-and-Advisory-lists.aspx>
<https://www.college.police.uk/What-we-do/Ethics/integrity-and-transparency/Barred-List/Pages/Barred-List.aspx>

11.10 The Barred List is available to the public to search on the College website and, subject to certain exemptions, all police officers and special constables who are put on the list are included on the public version. Individuals will remain on the non-public version of the Barred List indefinitely, unless they win an appeal against their dismissal or make a successful review application.

11.11 The circumstances and type of proceedings determine the minimum period a name remains on the Barred List:

- Gross misconduct – for life but can be reviewed after 5 years
- Gross incompetence – for life but can be reviewed after 3 years
- Unsatisfactory performance (including unsatisfactory attendance) – names will remain on the list for 12 months before they are automatically removed

11.12 The College of Policing need to be notified by a police service or force within 5 working days of dismissal to put a name on the Barred List. For gross misconduct individuals are allowed to request a review after five years on the Barred List. The College of Policing ultimately makes the final decision on whether or not a name can be removed from the list.

11.13 The names of police staff members and those officers dismissed under the Performance Regulations do not appear on the public element of the Barred List but are included on the version that is accessible to policing employers.

11.14 There are set criteria for the non-publication of names e.g. vulnerability of the individual, ongoing criminal investigations or national security. Publication decisions are based on evidence provided by the relevant authority to the College of Policing. Relevant authorities can seek a review of any decision. Individuals are given a copy of what is on the record about them on the list; any information that a service or force sends to the College should also be sent to the individual.

The Police Advisory List

11.15 As mentioned above, the Advisory List, which is not published, is used as a vetting tool by policing employers. It contains information about individuals who resign or retire during gross misconduct investigations or proceedings that have not yet been resolved. Usually this takes 12 months or less but names stay on the list until a determination is made. An individual needs to wait for a determination to see whether or not their name then goes on the Barred List. The relevant Home Office guidance¹⁰⁶ describes the Advisory List in this way:

“22.2 The police advisory list is intended to act as a vetting tool for forces and other specified law enforcement bodies in order to flag up individuals who are currently under investigation for conduct matters which could lead to dismissal, or designated volunteers who have had their status withdrawn. Whilst it does not act as an absolute bar on employment or appointment within policing, it does provide an additional level of accountability.”

11.16 At the conclusion of an investigation, an individual is either transferred from the Advisory List to the Barred List (if he or she receives a finding of dismissal) or is simply removed from the Advisory List (if there is a lesser finding or no disciplinary proceedings are brought).

11.17 Vetting checks based on intelligence include consultation with the Police National Database (PND). A record showing that a person is subject to the Barred or Advisory Lists is known as a flagstone record¹⁰⁷. This record will be marked on PND if a name is on the Barred or Advisory Lists. There is a vetting ‘community’ across all UK police services and forces consisting of all their vetting departments. Police Scotland’s vetting unit is part of the Professional Standards Department.

11.18 Police Scotland can access the Barred List which is publicly available to search and should routinely check this as part of their vetting process. They do not have access to the Advisory List. Currently Police Scotland is unable to access the

¹⁰⁶https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/86382/0/Home_Office_Statutory_Guidance_0502.pdf

¹⁰⁷ A record showing that a person is subject to the barred or advisory lists.

full/private lists. The legislation does not currently allow for any dismissals from Police Scotland to be added to the lists.

11.19 The Police Service of Northern Ireland (PSNI), the States of Jersey Police, British Transport Police, Civil Nuclear Constabulary, Ministry of Defence Police and Border Force have Information Sharing Agreements with the College of Policing in relation to the lists.

The evidence

11.20 I took evidence about jurisdiction over former police officers for gross misconduct allegations in the course of many interviews. Many of the individuals I asked about the Barred and Advisory Lists thought that the inclusion of Police Scotland would be a positive move that would be consistent with natural justice and provide a consistent approach across jurisdictions. Concluding both the investigation and any subsequent gross misconduct hearing was favoured, as this would give the former officer the chance to give their side of the story, ensure that justice was seen to be done and allow lessons to be learned.

11.21 In their submission to the Review the Scottish Police Federation observed that:

“... there is nothing which prevents any investigation into alleged misconduct continuing after an officer (of any rank) leaves the service. There may be practical reasons the Police Service of Scotland or Scottish Police Authority choose not to do so but that doesn't denude them of actual ability.”

11.22 The alternative view from the Scottish Police Authority was that because all statutory misconduct proceedings are governed by the relevant conduct regulations, and that because these regulations only apply to constables (of any rank), they did not therefore apply to those who no longer held the office of constable:

“... it is the case that under the current regulations in Scotland all misconduct proceedings 'fall' if the officer concerned resigns or retires from the police service. This contrasts with recent changes to the position in England and

Wales in which, in certain circumstances, disciplinary proceedings can still be taken forward.”

11.23 This ambiguity could be put beyond doubt by the Scottish Parliament in primary legislation as it has been in England and Wales.

11.24 Commenting on the position in respect of senior officers who have retired or resigned while under investigation, HM Inspectorate of Constabulary in Scotland made the point that:

“... this is unsatisfactory for those who come forward to make complaints, as well as for those who are the subjects of complaint.”

Conclusion in respect of former police officers

11.25 I consider that there is a strong public interest in dealing fully and thoroughly with police officers’ gross misconduct after they have left the police service and no longer hold the important office of constable. 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.

11.26 With respect to former police officers, the legislative framework and arrangements for gross misconduct proceedings now in place in England and Wales offer a model which I have considered carefully. Those arrangements, which do not have retrospective effect, cover former police officers in circumstances where:

- the officer ceased to be a police officer after the allegation came to the attention of the relevant body;
- the allegation came to the attention of the relevant body within 12 months of the person ceasing to be an officer; or

- the allegation came to the attention of the relevant body more than 12 months after the person ceased to be an officer and the Director General of the Independent Office for Police Conduct (IOPC) has determined that the taking of disciplinary proceedings would be reasonable and proportionate.

11.27 I recommend that the model in England and Wales should be adopted in Scotland.

11.28 Under these arrangements in England and Wales, where an allegation of gross misconduct comes to light more than 12 months after the person ceased to be an officer, proceedings can commence and continue to a conclusion but that category of case is intended to cover only the most serious and exceptional cases of gross misconduct likely to do damage to public confidence in policing. In such cases it is the Director General of the IOPC 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, inefficiency or effectiveness, the impact of the allegation on public confidence in the police, and the public interest.

11.29 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.

11.30 The use of Barred and Advisory Lists should be adopted by policing in Scotland. The value of such an innovation and the mitigation of risk to the public sector would be likely to be enhanced if legislation allowed the existing lists to have cross-border and UK-wide application.

Preliminary report recommendation: The Scottish Government should introduce Barred and Advisory lists and should engage with the UK Government to ensure compatibility and learn from their experience.

Recommendations in relation to former police officers

11.31 Recommendation: The Scottish Government should develop proposals for primary legislation that would allow, from the point of enactment, gross misconduct proceedings in respect of any police officer or former police officer to continue, or commence, after the individual ceases to hold the office of constable.

11.32 Recommendation: In gross misconduct cases, for all ranks, the Police Investigations and Review Commissioner should determine if it is reasonable and proportionate to pursue disciplinary proceedings in relation to former police officers 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.

11.33 Recommendation: The Scottish Government should engage with the UK Government with a view to adopting Police Barred and Advisory Lists, to learn from experience south of the border and to ensure compatibility and reciprocal arrangements across jurisdictions.

Chapter Twelve - Scottish Police Authority

12.1 The Scottish Police Authority (SPA) is a creature of statute established in 2013 to support, oversee and hold to account Police Scotland. It is a separate entity from Police Scotland but does have responsibility for recruiting senior police officers. The SPA is governed by a Board of up to 15 non-executive public appointees, appointed by Scottish Ministers. The Board is supported by an Executive team which consists currently of approximately 33 staff in 47 posts. The civilian Chair of the Authority is accountable to Scottish Ministers.

12.2 The SPA was established by the Police and Fire Reform (Scotland) Act 2012. The Act sets out the five key functions of the Authority:

- to maintain the Police Service
- to promote the policing principles
- to promote and support continuous improvement in the policing of Scotland
- to keep under review the policing of Scotland
- to hold the Chief Constable to account for the policing of Scotland

12.3 The SPA also has a number of statutory responsibilities in relation to 'relevant complaints' under Section 41 of the Police, Public Order and Criminal Justice (Scotland) Act 2006 as amended. Specifically, the handling of complaints about:

- the SPA itself;
- staff members of the SPA; and
- senior police officers of the rank of Assistant Chief Constable, Deputy Chief Constable and Chief Constable.

12.4 The SPA also currently performs functions under the Police Service of Scotland (Senior Officers) (Conduct) Regulations 2013¹⁰⁸ (the 2013 Regulations). These include the preliminary assessment of "misconduct allegations" about senior

¹⁰⁸ <https://www.legislation.gov.uk/ssi/2013/62/contents/made>

officers, the appointment of panels to determine misconduct hearings, and the determination of appeals against the decisions of those panels.

12.5 The 2012 Act requires the SPA to “keep itself informed as to the manner in which relevant complaints are dealt with by the chief constable with a view to satisfying itself that the arrangements maintained by the chief constable under subsection (1) are suitable” (Section 60(3) of the 2012 Act). The SPA does this through:

- dip-sampling complaints received by Police Scotland;
- receiving automatic notification of complaints made against officers and staff of the Anti-Corruption Unit for further independent review;
- working with the PIRC on reviewing audits; and
- receiving and reviewing reports into Police Scotland’s own complaints handling performance.

12.6 Early evidence given to the Review suggested that the relationship described at the third bullet above was not working as it might. I suggested therefore that there should be more effective co-operation and interaction between the SPA and PIRC in their oversight and review of Police Scotland’s complaint handling arrangements.

12.7 Over the last 12 months the level of co-operation and interaction has improved with the Complaints and Conduct Committee arranging a meeting with the PIRC in order to understand their priorities and approach, PIRC staff accepting an invitation to attend a meeting of the Committee, and interaction both at the National Complaint Handling Development Working Group (NCHDWG) and at a workshop with Police Scotland. Both the SPA and PIRC are also involved in discussions around a draft Memorandum of Understanding between the SPA, the PIRC and Police Scotland. I commend both organisations for this increased interaction and look forward to further development of the relationship in the future.

12.8 The SPA is the legal employer of all support staff within Police Scotland and the SPA itself (including SPA Forensic Services). The Authority carries out some

'employer' functions in respect of senior officers, although like all other constables they are office-holders rather than employees. Unlike other constables, senior officers have a fixed tenure agreed on appointment which may be extended by the Authority. Those 'employer' functions include recruitment and selection, appointment, termination of contract, performance, suspension and, in the case of the Chief Constable, grievance and leave of absence.

12.9 Although the SPA is the legal employer of all support staff in the Authority, Police Scotland and SPA Forensic Services, it only has a small HR capacity and relies on Police Scotland HR staff to provide the bulk of HR services. The Head of HR Governance in the SPA is able to draw on advice from the Director of People and Development in Police Scotland. There is evidence that that imbalance in capacity has affected the SPA's ability to deal with some complex and challenging employment issues, and this has been a contributory factor to the tendency, also seen within Police Scotland, to escalate to conduct procedures issues which are truly HR matters.

12.10 Complaints against senior officers (Assistant Chief Constable and above) are not dealt with by Police Scotland but by the SPA to whom the Chief Constable is accountable, and which currently has the statutory duty to deal with complaints against all senior officers.

12.11 Complaints against senior officers are not uncommon. Great scrutiny and vulnerability come with such authority and complaints can stem from public dissatisfaction with the actions or inaction on part of the organisation, or of the office-holder or from an internal source such as an aggrieved subordinate or an anonymous source. There is also ample scope for those engaged in organised crime to create disruption through malicious anonymous complaints against senior officers. Processes for dealing with complaints against senior officers must therefore be robust, timely and fair.

12.12 In its early evidence to the Review, the SPA noted that "almost as many complaints and conduct cases assessed by the SPA relate to complaints from within the police service (46%) as come from members of the public (54%)".

SPA governance and decision-making in relation to complaints

12.13 When the SPA was established in April 2013, a complaints handling team was set up to support the Authority's statutory functions and to put in place written complaints handling procedures. The Complaints and Conduct Committee, comprising members of the Board of the SPA (and SPA officials) oversaw this work, commissioned dip-sampling of Police Scotland's complaint handling and took steps to develop accessibility for complainers. Complaints cases were presented to the Committee, which generally met on a quarterly basis, for discussion and decision based on the recommendations of the SPA Complaints Team.

12.14 At the end of 2016, the SPA Complaints and Conduct Committee was stood down following publication in March 2016 of a Governance Review of the SPA¹⁰⁹ carried out by its then Chair. As a result, decisions in relation to complaints cases were delegated to the Chief Executive, with full SPA Board involvement on an 'ad hoc' basis.

12.15 The SPA experienced a challenging, unstable and disruptive period between 2013 and 2017 with numerous changes of Chair and Chief Executive, while facing hostile media scrutiny and dealing with a high level of complaints against senior officers. The experiences of the Authority during that period indicate that it was perhaps too small and fragile an organisation to deal effectively with the crucial responsibilities that it has. In her 2018-19 Annual Audit Report¹¹⁰ on the Authority the then Auditor General for Scotland recommended that, "Detailed plans to build the capacity and capability of the Scottish Police Authority corporate function are urgently required to enable it to operate as envisaged by the legislation". Evidence that I have gathered for my Independent Review supports the impression of an organisation that needs to be strengthened, and I am aware that the Chair and the Chief Executive are working towards that end.

¹⁰⁹ <https://www.spa.police.uk/spa-media/bx4fk234/doc-20160323-af-review-of-governance-in-policing-final.pdf>

¹¹⁰ https://www.audit-scotland.gov.uk/uploads/docs/report/2019/aar_1819_spa.pdf

12.16 In early evidence to the Review, the SPA advised that following the appointment of the previous Chair in December 2017, a number of improvements to their handling of complaints were set in train including:

- the re-establishment of the Complaints and Conduct Committee in January 2018;
- the introduction of a lead Director to support the Complaints and Conduct Committee's activities and requirements, a requirement for all Committee decisions to be supported by professional written advice and legal opinion when required, and for all decisions to be properly recorded; and
- introduction of quarterly meetings between senior officials within SPA, Police Scotland, COPFS and PIRC (known as the Quad meeting) to identify and address any strategic or system-wide issues.

12.17 The SPA's early evidence also confirmed that a number of other improvement actions had been implemented to strengthen their complaint handling procedures:

- additional training undertaken by the SPA Complaints Team;
- a joint working group with Police Scotland to review and improve the complaint handling procedures across all complaints received by the SPA, including misconduct allegations, 'relevant complaints', internal grievance matters and whistleblowing;
- Director-level triaging and supervision of complaints on at least a monthly basis;
- a new reporting format to the Committee to allow for more streamlined case assessment; and
- a substantial reduction in the number of complaints awaiting determination.

Preliminary assessment of alleged misconduct

12.18 For conduct on or after 1 April 2013, Regulation 8¹¹¹ of the Police Service of Scotland (Senior Officers) (Conduct) Regulations 2013 currently requires the SPA to undertake a ‘preliminary assessment’ where a misconduct allegation about an officer of assistant chief constable rank or above comes to its attention.

12.19 The Regulations do not otherwise specify what action should be taken in support of that preliminary assessment. Nor is it clear whether the assessment relates simply to whether what has been received in writing libels a relevant complaint or a more active process of evaluating the substance of the complaint through preliminary enquiries. An assessment is not the same as an investigation but it is obvious that the term has created uncertainty and insecurity as to just what steps the SPA can legitimately take without trespassing into the territory more properly occupied by the jurisdiction of the PIRC. This gap in the drafting can lead to problematic differences in interpretation and expectation – between and within supervisory organisations, as well as amongst complainers and subject officers – as to who does what, when, and why. (The Oxford English Dictionary definition of ‘preliminary’ is initial, and ‘assessment’ is defined as evaluation, judgement, or appraisal, all of which are qualitative actions.)

12.20 Against this background, it is perhaps not entirely surprising that the PIRC’s 2017 Audit of SPA Complaints¹¹² noted that, between 1 April 2015 and 31 March 2017, having “received 14 complaints about senior officers that should, in the view of the audit, have been progressed as potential misconduct allegations against senior officers”, the SPA Complaints Department “only referred 7 of those 14 cases to the Complaints and Conduct Committee/CEO”. Further, the audit also indicated that “in 8 misconduct allegations, the SPA’s Complaints Department did not carry out sufficient enquiries to establish details of the misconduct allegations to enable or assist the SPA with a preliminary assessment”.

¹¹¹ <http://www.legislation.gov.uk/ssi/2013/62/regulation/8/made>

¹¹² <https://pirc.scot/media/4447/spa-audit-report-2017.pdf>

12.21 Evidence was provided about the challenges that the SPA faces in discharging effectively the role currently assigned to it in relation to the preliminary assessment of misconduct allegations against senior officers. The challenges are in:

1) identifying at the outset whether any particular referral constitutes a 'relevant complaint' (as per the 2006 Act's definition¹¹³), or a misconduct allegation, or both, or neither (such an identification is required early on, in order to determine which further process to follow); and

2) in identifying the scope of the information that the SPA can properly take into account, and the sources from which that information can properly be obtained, at this 'preliminary' stage – too little and there may be a risk of ill-judged or premature decisions, too much and there may be a risk of pre-empting or prejudicing subsequent investigations.

12.22 Further challenges stem potentially from the perceived familiarity – for good or ill – of the SPA members and senior officials with the senior police officers within its remit, and the relatively limited resources of the SPA Complaints and Conduct Team, both of which I comment on elsewhere in this report.

12.23 The challenges, significant in themselves, appear to be exacerbated by the SPA's sense of being overshadowed in some measure by the knowledge that their decisions are subject to review and audit by PIRC and concern that the PIRC's yardstick is not necessarily clear and fully understood.

12.24 In her early evidence to this Review Her Majesty's Chief Inspector of Constabulary in Scotland said that:

"The conduct regulations for senior officers are silent on how the SPA will undertake its preliminary assessment of a misconduct allegation and there is no provision to appoint an investigator or commence an investigation until after the preliminary assessment has been made. HMICS believes clarity is required on the activity that constitutes 'preliminary assessment'."

"HMICS does not believe that the SPA currently has the skills, experience or knowledge to undertake the assessment role for chief officer complaints to the standard required. A review of the SPA's capability in this area is required and other options, such as immediate referral to the PIRC, should be considered."

¹¹³ <http://www.legislation.gov.uk/asp/2006/10/section/34>

12.25 In the preliminary report I suggested that for the longer term, there may be a case for removing the preliminary assessment function from the SPA, although with appropriate safeguards to ensure that the SPA has sufficient information about allegations to enable it to discharge its wider statutory functions. I also suggested that the preliminary assessment of senior officer conduct, to the agreed higher standard proposed below, could be carried out by senior PIRC staff but be decided by the Commissioner or one of the two Deputy Commissioners proposed in the PIRC chapter at page 205.

12.26 I recommend that the statutory preliminary assessment function should be transferred from the SPA to the 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. The assessment should be carried out by the Commissioner or a Deputy Commissioner.

12.27 Implementing this change in responsibilities would require legislation and take time but for the more immediate future, it is imperative – and I recommend – that PIRC should work collaboratively with the SPA to agree and embed a proportionate and effective approach to preliminary assessment (for Regulation 8 of the senior officer conduct regulations). That approach should be one which takes account of the important aim (explicitly recognised in previous Regulations and arguably implicit in the latest ones) of weeding out allegations which, on the basis of relatively routine fact-checking, can reasonably be inferred to be unfounded, frivolous or trivial in nature. It should be a fact-checking process that assesses objectively and readily verifiable facts supporting or undermining the credibility and reliability of the information provided rather than an investigatory process, and it should consider if any allegation may be malicious or vexatious.

12.28 The SPA is not an investigating body and does not have the necessary capacity to carry out investigations. Insofar as possible, because they are undertaken for similar purposes, the approach to preliminary assessments by Police Scotland under Regulation 10 of the Police Service of Scotland (Conduct)

Regulations 2014¹¹⁴, in respect of more junior officers, and preliminary assessments under Regulation 8 of Police Service of Scotland (Senior Officers) (Conduct) Regulations 2013¹¹⁵ should be consistent. In all cases, the fact-checking involved in preliminary assessment should avoid prejudicing any subsequent investigation.

12.29 The preliminary assessment to be made is currently defined in regulations as, “whether the conduct which is the subject matter of the misconduct allegation would, if that conduct were proved, amount to (a) misconduct, (b) gross misconduct, or (c) neither”. It is recommended that any future process for preliminary assessment should also require the relevant authority to take into account whether the allegation is made anonymously, is sufficiently specific in time and location, and whether it appears, on the face of the allegation, to be either vexatious or malicious. The relevant authority should then take a decision, in the public interest, taking account of all of the above factors, on whether the matter (if it relates to a senior officer) should be referred to the PIRC or, if it relates to an officer of a rank below assistant chief constable, whether an investigating officer should be appointed. This approach should be reflected in the legislation and guidance on officer conduct.

Preliminary report recommendation: Any process for preliminary assessment of senior officer misconduct should require the relevant authority both to take into account whether the allegation is made anonymously, is specific in time and location, or whether it appears, on the face of the allegation, to be either vexatious or malicious. Scottish Government should consider amending the conduct regulations to reflect this process.

Preliminary report recommendation: Complaints against senior officers should be prioritised and dealt with, by both the PIRC and the SPA, as speedily as is reasonable, because of the destabilising impact a prolonged investigation can have.

¹¹⁴ <http://www.legislation.gov.uk/ssi/2014/68/regulation/10/made>

¹¹⁵ <http://www.legislation.gov.uk/ssi/2013/62/contents/made>

Misconduct proceedings, Police Appeals Tribunals and independent legally qualified chairs for gross misconduct hearings

12.30 Police Scotland's senior officers form a small group of 14 officers above the rank of chief superintendent. The members of this group are in regular contact with members and officials of the SPA at meetings of the Board of the Authority and its committees. The SPA, by its nature, also consists of a small group of members and executives. Regular engagement is right and proper and an essential part of the current accountability arrangements whereby it is the statutory function of the SPA to hold the Chief Constable to account for the policing of Scotland. However, the regularity of that contact and the familiarity of senior police officers with board members and senior officials could lead to actual or perceived partiality, or antipathy, when it comes to disciplinary matters in which any of those same officers might be involved as the officer under complaint, a supporter to a subject, or a witness.

12.31 The key stages of the senior officer misconduct proceedings (both misconduct and gross misconduct) should in future be removed from the responsibility of the SPA and made subject to consideration by an independent legally chaired panel whose Chair and members appointed are by the Lord President. The Lord President should be consulted on this matter. The members of the panel should consist of a legally qualified chair, an expert in senior policing and a lay person. The process should follow the steps specified below:

- 1) receipt of the complaint/allegation by the PIRC (where the SPA receives such a complaint or allegation it should be redirected immediately to the PIRC);
- 2) meaningful preliminary assessment and scrutiny of the complaint (within a strict deadline) by the Commissioner or a Deputy Commissioner.
- 3) prompt referral to COPFS by the PIRC in the case of a criminal allegation for instruction;
- 4) an independent investigation by the PIRC investigations team of the allegations, which should remain confidential unless or until a 'prima facie' case is established;

- 5) referral by the Commissioner (or a Deputy Commissioner) to an independent legally chaired panel with a Chair and members appointed by the Lord President;
- 6) determination by the panel as to whether, in the light of the PIRC's investigation report and opinion, there is a case to answer of misconduct or gross misconduct and, if there is;
- 7) a preliminary hearing to be held by the independent, legally chaired panel to identify any evidence that is not in dispute and can be agreed, and any other matter which can be resolved prior to the formal hearing of the alleged misconduct;
- 8) a hearing by the panel to consider the evidence, to determine the matter and, if proven, to decide the appropriate disciplinary action;
- 9) a right of appeal to a Police Appeals Tribunal with three legally qualified members appointed by the Lord President against any decision of the panel; and finally
- 10) the implementation of the disciplinary action by the SPA as the 'employer' of the senior officer.

12.32 The panel should consist of independent people from other organisations or jurisdictions, and the Lord President should be consulted by the Scottish Government about the proposal that he should appoint a suitably legally qualified individual to chair the panel, a lay person to serve as the independent lay member and the senior expert in policing. The lay person should be someone capable of understanding complex disciplinary issues.

12.33 In England and Wales a panel of three people is required to conduct misconduct hearings for all officers and misconduct meetings for senior officers. The panel includes a legally qualified person as the chair, an officer of the rank of superintendent or above and an independent lay person. The inclusion of the lay person allows a further independent and impartial view at the hearing from outside of policing. In a senior officer hearing HM Chief of Constabulary, or an inspector nominated by HMCIC, takes the place of the superintendent or above on the panel.

12.34 Stages 6, 7 and 8 described in the preceding paragraphs should be carried out by the independent three-person panel, while the role of the SPA would be limited to stage 10. The appeal stage (9 above) would be conducted by a Police Appeals Tribunal (PAT) with 3 legally qualified members appointed by the Lord President.

12.35 After the gross misconduct hearing chaired by an independent legally qualified person there should be only one route of appeal and that should be to a Police Appeals Tribunal, as at present. This recommendation is subject to the Police Appeals Tribunals being transferred into the Scottish Courts and Tribunals Service (SCTS). Scottish Government policy is to transfer all Scottish tribunals into the SCTS. Under the current arrangements the SPA run the tribunal, provide the secretarial support and pay the members who hear the cases. The transfer from the SPA to the SCTS of the function of supporting a Police Appeals Tribunal represents an important separation of duties and is scheduled for April 2021.

12.36 Police Appeals Tribunals comprise three legally qualified persons appointed by the Lord President. Hearings are generally heard in public unless the tribunal, with the consent of the parties, directs that the hearing, or a part of it, is to be heard in private. On those occasions where the tribunal decides to sit in private it may admit to the hearing other persons as it considers appropriate and must admit any person who has a statutory right to attend i.e. a legally qualified representative of the appellant or the respondent.

12.37 I believe that the principle of having an independent legally qualified chair for a misconduct hearing should also be extended to gross misconduct hearings for non-senior officers, that is, the rank of chief superintendent and below.

12.38 In the preliminary report I invited views on whether the SPA should be responsible for deciding misconduct cases against senior officers or decided by an independent panel. The Review subsequently wrote to a number of interested organisations and I am grateful to them for their helpful responses. Those organisations were in the main broadly supportive of the introduction of independent legally qualified chairs for gross misconduct hearings as a means of enhancing

public confidence but differed in their views on the extent and manner in which they might be utilised.

12.39 The Association of Scottish Police Superintendents agreed with the proposition and in their response pointed out that:

“Where close working relationships exist, there may be conflict/compromise in providing an independent perspective when dealing with conduct matters. If this is considered relevant for “Senior Officers” and the Scottish Police Authority (SPA), ASPS would suggest it is more prevalent when dealing with matters of conduct for Chief Superintendents which must be heard by an independent Deputy Chief Constable.”

12.40 On this point HMICS’s response echoed the ASPS position:

“One of the drivers for the introduction of the independent panels for senior officers, specifically to negate the actual or perceived impact of familiarity between the parties, applies to a lesser extent for non-senior officers. Certainly for constables, sergeants, inspectors and chief inspectors, the current system of a police officer at superintending rank or above chairing a misconduct hearing ensures sufficient seniority and separation between chair and the subject officer. Less so for officers of the rank of superintendent or chief superintendent who find themselves the subject of misconduct proceedings, where a hearing would be chaired by an assistant chief constable or above. In Police Scotland, as one national police service with one senior officer team, all the assistant chief constables and deputy chief constables are likely to have had professional dealings with most chief superintendents and many superintendents.”

12.41 HMICS also commented on lay involvement:

“If the issue is less about the potential influence of familiarity between parties, and more about the perception of a process where decisions about misconduct are made entirely within the police chain of command, it would be possible to introduce some form of independent representation on the panel. The panel could still be chaired by a police officer senior in rank to the subject officer, but joined by someone from an organisation separate from the police, who would not need to be legally qualified. Another way of achieving the same aim would be to ensure any misconduct appeals are independently assessed.”

12.42 The SPF response focused on the principle of equality for all ranks:

“The SPF maintains that there should definitely be a role for lay person participation in gross misconduct hearings. We consider this is true for all ranks. We further consider that the lay appointees should be drawn from a wide pool (albeit with some experience in misconduct procedures in other areas), either private or public sector. We also wish it recorded that the newly modified police appeal tribunal membership carries our confidence as a final arbiter (save judicial review) in the process.”

12.43 Police Scotland’s view was that extending the use of independent legally qualified chairs to junior officers may not be proportionate:

“... in respect of the provisions contained within the Senior Officer Regulations 2013, Police Scotland would be broadly supportive of the appointment of Legally Qualified Chairpersons for misconduct proceedings. It is widely recognised that the close working relationship with SPA Board members would be potentially challenging to ensure transparent independence and impartiality.”

“... the rationale supporting the appointment of LQC [legally qualified chairs] for senior officers is less relevant in instances relating to junior officers and in the majority of cases those officers holding the rank of Constable or Sergeant.”

12.44 There were differing views on whether the SPA should retain any involvement in the misconduct process, either at the preliminary assessment stage, the hearing stage or the appeal stage. I take the view that a clear separation of functions is essential to demonstrate the necessary structural independence. As the PIRC pointed out in her response:

“... the dual assessment role of the SPA and the Commissioner results in some duplication, a lack of clarity and inevitably introduces some delay.”

12.45 A senior officer in Police Scotland told the Review that:

“... there are real issues with [misconduct] process, there are real issues with what people’s understanding of their role is and there are real issues with proportionality and fairness to subject officers.”

12.46 The SPA submission said that:

“... the SPA’s primary concern is to ensure that the complaints and conduct system commands confidence and trust within the police service and among the public. The SPA therefore does not seek to maintain its current role in the conduct process, if alternative arrangements exist which would increase the degree of independence in the process, and secure greater public confidence.”

12.47 The Authority recognised the degree of structural independence in the current arrangements and although they had no doubt about their actual impartiality, acknowledged that “the proposed arrangements would ensure full structural independence”.

12.48 The Authority also raised the question of which body should handle ‘relevant complaints’ about senior officers, which they defined broadly as non-criminal complaints made by members of the public. The issue of what amounts to a ‘relevant complaint’ has been the subject of some confusion and is dealt with in the PIRC chapter at page 205.

12.49 Any ‘relevant complaint’ about a senior officer should be assessed by the PIRC. Where it relates to potential misconduct it should be dealt with as such; where it does not relate to potential misconduct but should instead be dealt with under the grievance procedure or other HR process, then it should be passed to the SPA to deal with. The SPA would continue to be the recipient of complaints about its own members and staff.

12.50 Independent legally qualified chairs of gross misconduct hearings have been part of the landscape in England and Wales for a number of years. The Home Office told the Review that there has been an acceptance that hearings are now a more transparent and professional part of the process. The Metropolitan Police Service told the Review that in their experience gross misconduct hearings chaired by independent legally qualified chairs result in fewer dismissals of police officers compared to the previous arrangements where such hearings were chaired by commanders.

12.51 Having considered all the responses, I believe that introducing independent consideration and determination of a complaint against a senior officer, along with

independent investigation by the PIRC, together with a hearing comprising a legally qualified chair, an independent lay person and an independent senior expert in policing all appointed by the Lord President would serve to increase public confidence in the process.

12.52 As I make clear in the Legislative changes chapter at page 432, a similarly independent panel should be constituted for gross misconduct hearings for non-senior ranks, with a legally qualified chair appointed by the Lord President, an independent lay person appointed by the Lord President and a police officer of at least two ranks above the subject officer appointed by the Chief Constable. Panels must be seen to have a sufficient degree of impartiality in the process and it is certainly the case that the policing member should not previously have worked with the subject officer.

12.53 For all gross misconduct hearings the Lord President should appoint the lay member from a pool of persons recruited through a publicly advertised process. The lay member should always be someone capable of understanding complex disciplinary issues. The Lord President should be consulted on this matter.

12.54 For officers of assistant chief constable rank and above, the policing member should be a senior expert in policing; that policing member should be appointed by the Lord President. The Lord President should also be consulted on this matter.

12.55 For officers of chief superintendent rank the policing member should be a senior officer from a police service or force other than Police Scotland or a retired senior officer or an Inspector of Constabulary; that policing member should not previously have worked with the subject officer and should be appointed by the Chief Constable.

12.56 For officers of ranks up to and including superintendent the policing member should be a serving officer at least two ranks higher than the constable who is the subject of the gross misconduct allegation; that policing member should not previously have worked with the subject officer and should be appointed by the Chief Constable.

12.57 Given the overwhelming public interest and private interest in fair and expeditious investigation, complaints against senior officers should be prioritised and dealt with, by all parties, as speedily as is reasonable, not because senior officers who are a subject officer should be accorded some special status but because of the destabilising impact a prolonged investigation can have on the leadership of Scotland's police service and public confidence in the same.

12.58 The other important distinction to be made in relation to senior officer misconduct proceedings is that the current arrangements involve a small number of senior officers who are in regular contact with a small number of SPA members. That is less of an issue for non-senior officers within the police service, although I do accept the case made by ASPS that the likely familiarity between chief superintendents and senior officers makes finding a disinterested individual to chair misconduct proceedings more difficult. Having independent legally qualified chairs of panels for all gross misconduct cases goes some way to meeting this concern.

12.59 All panels must be seen to have a sufficient degree of impartiality in the process and the policing member should not previously have worked with the subject officer.

12.60 The SPA should have no substantive role in senior officer misconduct proceedings. I deal with changes to the structure and composition of gross misconduct hearings for non-senior officers, including specific arrangements for chief superintendents, in the Legislative changes chapter at page 432.

12.61 The significant change that I have proposed in having independent legally qualified chairs of panels hearing all gross misconduct cases would have a resource implication for the overall justice budget, with additional demands on Police Scotland and the PIRC. However, those costs would relate only to a relatively small number of gross misconduct hearings in any given year and are outweighed by the benefits of increased independence, transparency and public confidence.

12.62 While the SPA would have no substantive role in senior officer misconduct proceedings it would continue to have responsibility for a range of ‘employer’ functions in relation to senior officers including recruitment and selection, appointment, contract letters, termination of contract, performance, suspension and, in the case of the Chief Constable, grievance and leave of absence.

The Scottish Police Authority Complaints and Conduct Committee

12.63 I described the work of the Complaints and Conduct Committee in the preliminary report and comment in more detail on its audit role in the Audit chapter at page 335. The Committee’s Terms of Reference are included in the SPA Corporate Governance Framework¹¹⁶. Those Terms of Reference include functions some of which I am recommending should pass to the PIRC. However, I believe that the two functions below are the significant responsibilities that the Committee should focus on in future:

“(iii) Monitor the handling of relevant complaints by the Authority [SPA] and Police Scotland, seeking information on themes or trends as appropriate, with a view to the Committee satisfying itself that the arrangements maintained by the Authority [SPA] and Police Scotland for the handling of relevant complaints are suitable.”

“(ix) Critically examine reports from HMICS, PIRC, and any other information provided by Police Scotland in relation to complaints about the police, and ensure that appropriate improvement plans are implemented or remedial action is taken within agreed timescales.”

12.64 The governance of complaints handling is clearly an important element of the system and central to that governance is the role of the Committee. The Committee is the group which leads in fulfilling the Authority’s statutory duties in relation to senior officer misconduct (currently) and complaints handling, including holding the Chief Constable to account for having suitable complaints handling arrangements in place.

¹¹⁶ <https://www.spa.police.uk/spa-media/nuidfvh0/doc-20200325-spa-our-structure-and-governance-v6-updated-march-2020.pdf>

12.65 As part of the evidence-gathering for the Review I commissioned an independent assessment, based on the published Committee papers and minutes, of how the Committee fulfils that important role. The minutes studied covered the period between 22 August 2013 and 16 May 2019. The analysis was carried out by Charlotte Triggs OBE, a former senior policy adviser and lawyer with the Crown Prosecution Service in England and Wales. I am very grateful to her for this work in support of the Review.

12.66 Since the analysis was completed, I have also reviewed the more recent minutes and the Committee's published written updates to the full SPA Board. I am grateful to the Chair of the Committee for also granting me access to the minutes, which are not published, of the Committee's business taken in private session. Committee meetings are split between sections which are open to the public and private sections which mainly consider individual conduct cases.

12.67 The Committee's scrutiny work should be an excellent resource to support continuous improvement. The independent assessment, based on the published minutes, was that as an instrument of governance the Committee appeared to be passive. I have discussed the work of the Committee with the Chair and members and I am aware that they recognise, and for some time have been acting on, the need to be more proactive in the Committee's scrutiny of Police Scotland. I know that the members are committed to that important role and I am reassured by the evidence of the change of approach adopted by the Committee since it was re-established in 2018.

12.68 Where there is evidence of delays scrutiny needs to be done rigorously and the style of governance needs to be testing. If investigations are subject to lengthy delays then Police Scotland should be held to account for those delays by the Committee through their scrutiny of the data and reports given to them by Police Scotland's Professional Standards Department (PSD). In England and Wales the regulations require the relevant investigating body to provide a written explanation to the Police and Crime Commissioner (or other local policing body) if an investigation is not completed within 12 months.

12.69 The Police Investigations and Review Commissioner is not accountable to the SPA but where there is evidence of excessive delays in PIRC investigations having an effect on policing in Scotland the Committee should be raising the matter with the Commissioner.

12.70 The SPA website offers a superficial presentation of the business of the Complaints and Conduct Committee which suggests that the Committee is underselling itself. What is published currently is not illuminating for members of the public and this should be enhanced. The Committee should consider using its minutes as a means of sharing with the public more of their substantive discussions, for example by recording the strategic issues discussed, the changes resulting from the Committee's scrutiny and decisions, the trends in complaints identified, the areas which should be the subject of audit and generally providing evidence to the public of how Police Scotland is being held to account in this area. This would help to increase public confidence in the system.

12.71 The approach to publication in the minutes appears overly cautious. The Committee should also consider whether the content of the minutes of the private sessions, where some strategic and policy matters may be discussed, could be included in the published minutes rather than restricted to the unpublished minutes.

12.72 I also believe that the oversight role of the Committee could be enhanced if members were able to see at first hand areas of policing activity relevant to their remit. An excellent example of this was members' attendance at a PSD Development Day at the Scottish Police College earlier this year. Where time and resources allow, the members should seek further opportunities to engage with policing in Scotland or engage with other authorities across the UK carrying out similar oversight functions.

12.73 In their submission to the Review Police Scotland described the developing role of its regional, national and independent ethics advisory panels (EAPs) which provide an opportunity for officers and staff to raise and discuss issues they feel have an ethical dilemma at their heart, with the views of panel members helping to inform the final decision. EAPs also provide an opportunity to positively influence

organisational culture by involving officers and staff in helping to shape policy. The independent EAP includes external representatives from a broad spectrum of society in Scotland with an external Chair. The Review is also aware that in 2015 the Committee on Standards in Public Life published a report, 'Tone from the top - Leadership, ethics and accountability in policing'¹¹⁷, which looked at the role of ethics committees set up by chief officers and police and crime commissioners in England and Wales.

12.74 The Scottish Police Authority and Police Scotland should consider together what role the Complaints and Conduct Committee, or the Policing Performance Committee, might have in relation to the discussion of ethical issues in policing in Scotland. (The Policing Performance Committee's terms of reference include considering any proposed changes to operational policing which may have particular public interest, ethical or human rights implications.) I also recommend in the Legal and ethical framework chapter at page 51 that Police Scotland's Code of Ethics should be given a basis in statute to reflect its significance.

12.75 In the preliminary report I noted that the SPA's regular quarterly dip-sampling exercises had previously been superficial and unsatisfactory. I am reassured that the improvement that I noted in that report has been sustained and that the dip-sampling reports¹¹⁸ considered by the Committee provide useful information on frontline resolution, trends, timescales and record-keeping, among other things, and are a valuable tool for the Committee's scrutiny function.

12.76 That scrutiny function should be reported on by the SPA in its annual report, drawing out particular trends, highlighting improvements or concerns and using complaints data as an indicator of communities' satisfaction or dissatisfaction with policing services.

¹¹⁷https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/439208/Tone_from_the_top_-_CSPL.pdf

¹¹⁸<https://www.spa.police.uk/spa-media/wolhp43j/rep-c-20191311-item-8-dip-sampling-report-ccc-v6.pdf>

Preliminary report recommendation: The range of options available to the SPA when a senior police officer is under investigation under the conduct regulations should be clarified and expanded, to provide alternatives to suspension.

Recommendations in relation to the Scottish Police Authority

12.77 Recommendation: The statutory preliminary assessment function should be transferred from the SPA to the 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. The preliminary assessment should be carried out by the Commissioner or a Deputy Commissioner.

12.78 Recommendation: PIRC should work collaboratively with the SPA to agree and embed a proportionate and effective approach to preliminary assessment (for Regulation 8 of the senior officer conduct regulations) until such time as new regulations come into effect.

12.79 Recommendation: Gross misconduct hearings for all ranks should have 1) an independent legally qualified chair 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.

12.80 Recommendation: 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. This recommendation is subject to the Police Appeals Tribunals being transferred into the Scottish Courts and Tribunals Service.

12.81 Recommendation: The SPA Complaints and Conduct Committee should hold Police Scotland to account for delays in investigations into complaints and misconduct. Where there is evidence of excessive delays in PIRC investigations having an effect on policing in Scotland the Committee should raise the matter with the Commissioner.

12.82 Recommendation: To increase public confidence in the system the SPA Complaints and Conduct Committee should consider using its minutes as a means of sharing with the public more of their substantive discussions and how Police Scotland is being held to account in this area; and consider whether some content of the minutes of the private sessions, where some strategic and policy matters are discussed, could be included in the published minutes.

12.83 Recommendation: The SPA Complaints and Conduct Committee's scrutiny function should be reported on in the SPA annual report, drawing out particular trends, highlighting improvements or concerns and using complaints data as an indicator of communities' satisfaction or dissatisfaction with policing services.

12.84 Recommendation: The Scottish Police Authority and Police Scotland should consider together what role the SPA Complaints and Conduct Committee, or the Policing Performance Committee, might have in relation to the discussion of ethical issues in policing in Scotland.

Chapter Thirteen - Scrutiny by local authority local scrutiny committees of complaints against the police

13.1 Section 45¹¹⁹ (Local authority role in policing) of the Police and Fire Reform (Scotland) Act 2012 requires local police commanders to provide the local authority with such “statistical information on complaints made about the Police Service in, or the policing of, its area” as the local authority may “reasonably require”. In my preliminary report I invited further views on a number of specific issues including the role of local scrutiny committees in relation to police complaints. The Review wrote to all Police Conveners of the local scrutiny committees seeking their views on:

- how the local scrutiny committee operates in their local authority;
- the quality of the statistical information provided to members by the local divisional commander;
- the effectiveness of the arrangements in place for scrutinising Police Scotland’s complaint handling, identifying trends and responding to local issues; and
- any changes and improvements that could be made.

13.2 Eight committees responded to that letter providing a range of detail on how the arrangements operate in their council areas. To supplement that evidence, the Review also wrote to the Chief Constable. All thirteen divisional commanders were consulted on the four questions raised and Police Scotland responded collectively.

13.3 How local scrutiny committees are structured and operate in each local authority area varies depending on the size of the authority and the extent to which they involve other partner organisations. The divisional commanders at chief superintendent level attend the relevant meetings and are responsible for providing information about their division or local authority area.

13.4 The COSLA Police Scrutiny Conveners’ Forum was established by COSLA in 2016. In August 2020 the SPA’s Policing Performance Committee considered a

¹¹⁹ <https://www.legislation.gov.uk/asp/2012/8/section/45>

paper¹²⁰ on local scrutiny that described the Forum's purpose and set out in an appendix each council's local scrutiny arrangements:

"It was set up to enhance the ability of elected members to have a meaningful role in the governance and scrutiny of policing in Scotland, and provide a mechanism for elected members to provide input into national policy issues and broader policing matters that have an impact on local communities. The Forum comprises all local authority scrutiny conveners or the equivalent political lead for police scrutiny at local authority level, supported by relevant senior officials, with additional participation from Police Scotland senior officers, the Scottish Police Authority Board and Executive Team, and Scottish Government officials."

13.5 The SPA told the review that they recognise the potential value of developing a shared evidence base on what is working well in local scrutiny, where best practice lies, and where improvement could be fostered and that there was now an opportunity through the establishment of the new SPA Policing Performance Committee, with COSLA participation, to monitor how local scrutiny is working.

Quality of information

13.6 In terms of the quality of the statistical information provided to local scrutiny committees by the divisional commander, the information provided by divisions is supplied by the Analysis and Performance Unit (APU) and/or Professional Standards Department (PSD) and generally details the number of complaints in the relevant area, the number of complaints per 10,000 incidents, and the total number of allegations (one complaint may include more than one allegation) recorded including on-duty, off-duty and quality of service.

13.7 The commanders identified the benefits of sharing the data as: ensuring transparency and accountability, promoting standards of professional behaviour, enhancing confidence in Police Scotland, allowing them to be questioned by committee members and providing an opportunity to identify issues which may not only relate to policing.

¹²⁰ <https://www.spa.police.uk/spa-media/0vkfhh4/item-5-la-scrutiny-arrangements.pdf>

13.8 One committee explained that their local divisional commander presents a detailed performance report on a quarterly basis, aligned to the priorities for the area. This is complemented by narrative content which describes activity and performance over the period.

13.9 Another committee stated that, in general, members of the committee were satisfied in respect of the statistical information provided by the local divisional commander. At all their committee meetings there is the opportunity to discuss the presented statistics and any particular trends with the local divisional and area commanders. Where additional information has been requested this has been provided either at the meeting, or directly to the elected member following the meeting or at a subsequent meeting. Police Scotland have also presented spotlight reports on two occasions giving greater insight into a particular issue relevant to the area where elected members have raised concerns. The committee was satisfied that the relationship as a community planning and community safety partner is such that Police Scotland do respond to local needs. There was a concern expressed about the role that local scrutiny committees can play when an issue contained within the local police plan is delivered by a national department within Police Scotland.

Complaint handling

13.10 One committee confirmed that they received an infographic-style police report that included a broad range of statistical information including complaints. This committee also noted that both the divisional commander and local area commander had always been happy to discuss any complaints with members collectively and individually.

13.11 Another committee reported that in previous returns to the Scottish Police Authority (SPA) as part of the SPA's annual review of policing, their Council had asked for more detailed information in respect of complaints against the police at a local level, and that consequently the quality of statistical information provided to

their local scrutiny committee had improved over time to cover various complaint categories broken down by off-duty and on-duty allegations.

13.12 One committee stated that police complaints had never specifically been included in quarterly updates until recently. The divisional commander had reviewed the format of the information supplied in consultation with council officers and police complaints data is now included. Any questions that arise from police updates have always been followed up with more detailed information from Police Scotland.

13.13 One committee stated that the value of reviewing complaints data locally would be enhanced where it could be read alongside comparable national statistics.

Changes or improvements

13.14 In respect of any improvements that could be made to the effectiveness of how the arrangements operate or to the information provided, one committee told the Review that there could be 13 styles of report presented across the 32 local authorities because divisional boundaries did not always correspond to local authority boundaries. Its view was that utilising the COSLA Police Scrutiny Convenors Forum to consider good or best practice would be beneficial in determining how information is presented and what roles local scrutiny committees could play; ultimately any changes or improvements should be flexible enough to meet the needs of local scrutiny arrangements.

13.15 One elected member who gave separate evidence to the Review suggested that there might be merit in having dedicated single-item local scrutiny committee meetings on complaints, or an obligation to discuss complaints, or a discussion across local scrutiny committees on a regional basis with members of the Police Scotland Force Executive in attendance.

13.16 Another committee thought that local elected members would benefit from having a better understanding of the role of the SPA in managing and determining complaints against senior officers and the role and functions of the Police

Investigations and Review Commissioner (PIRC). Having regular updates, particularly from PIRC, would help develop that understanding.

13.17 This committee also stated that the information presented was limited to quantitative data and qualitative information would be useful. It would be helpful to receive information on what organisational learning had been derived from complaints, how complaints had resulted in changes to systems or processes and where operational practice had been strengthened.

13.18 The local scrutiny committees of councils provide an opportunity for public scrutiny of the quality of service provided by Police Scotland in the 13 local divisions. There is scope for this mechanism to be more effective and improved in order to ensure appropriate accountability. The key to this is the provision of accessible and meaningful information by the local divisional commander and effective questioning and discussion of trends by elected members.

13.19 In their evidence to the Review, senior members of the press described a loss of value in this scrutiny process post-police reform in 2013 and a missed opportunity in relation to accountability through complaints information. This is a valuable form of local scrutiny and there is evidence that it may have diminished in the years since 2013.

13.20 I am grateful to the local scrutiny committees and to Police Scotland for their responses on this subject. Those responses suggest that practice and levels of interest in police complaints is variable. That is to be expected but I would encourage elected members to consider what enhanced police complaints information might indicate about general public confidence in the police as well as the experience of specific communities. Complaints about the police service is an area for local scrutiny that is specifically provided for in the primary legislation and that could be developed further where the committees, partnerships or boards have the appetite, time and resource.

13.21 It is somewhat surprising that committees are not asking for more information about the nature and the profile of complaints to inform their perspective on the

character of complaints against the police and trends in their local authority area. The level of detail of information that they generally have access to is in contrast to the more detailed information provided to the SPA Complaints and Conduct Committee by Police Scotland's Professional Standards Department in its published quarterly performance report¹²¹. The regional breakdown of information contained in that report would be valuable to elected members and should also be provided to local scrutiny committees.

13.22 I recommend that local scrutiny committees should consider, in consultation with Police Scotland's local divisional commanders and the COSLA Police Scrutiny Convenors Forum, what further complaints information or discussion would assist their scrutiny of the police.

13.23 Recommendation: Local scrutiny committees should consider, in consultation with Police Scotland's local divisional commanders and the COSLA Police Scrutiny Convenors Forum, what further complaints information or discussion would assist their scrutiny of the police.

¹²¹ <https://www.spa.police.uk/spa-media/4fhkaaa0/rep-c-20200820-item-8-police-scotland-professional-standards-quarterly-performance-re.pdf>

Chapter Fourteen - Police Investigations and Review Commissioner

14.1 The PIRC as an organisation tends to be defined by its functions. Its website explains that the Commissioner, who is appointed by Scottish Ministers, is independent of the police and delivers a free and impartial service. It states that the role of the PIRC is to provide independent oversight, investigating incidents involving the police and reviewing the way the police handle complaints from the public. The purpose and vision of the PIRC is, “To increase public confidence in policing through independent scrutiny of police actions and promoting continuous improvement” but even that does not fully capture the organisation’s higher purpose.

14.2 The PIRC exists because people need somewhere to go when they are dissatisfied with the police or do not have trust or confidence in the police; and because the police should be subject to professional scrutiny by an independent and impartial body. As the Council of Europe’s Commissioner for Human Rights put it in his 2009 Opinion¹²²:

“An independent and effective complaints system is essential for securing and maintaining public trust and confidence in the police, and will serve as a fundamental protection against ill-treatment and misconduct. An independent police complaints body should form a pivotal part of such a system.”

14.3 Currently the PIRC investigates crime on the instruction of the Lord Advocate, investigates deaths involving the police, conducts complaint handling reviews, audits complaints arrangements and summarises learning for the police. All these public service functions and the PIRC’s independent oversight role help to protect the public, enhance confidence in policing and ensure high standards but, as this report identifies, there are gaps in the system that the PIRC is well placed to fill. It has the people, the skills and the values of integrity, impartiality and respect that I believe will allow the organisation to ably fulfil a set of new statutory powers that I recommend in this report.

¹²² <https://rm.coe.int/opinion-of-the-commissioner-for-human-rights-thomas-hammarberg-concern/16806daa54>

14.4 The new set of powers that I recommend for the PIRC represents a significant increase in the responsibilities of the Commissioner and her staff, and that is why I am also recommending that her accountability arrangements be strengthened at the same time.

Functions of the PIRC

14.5 Section 45 of the Police, Public Order and Criminal Justice (Scotland) Act 2006¹²³ gives the PIRC the power to issue statutory guidance on the handling of complaints about the police. The current guidance, 'From sanctions to solutions'¹²⁴ was published in 2011 and was subject to minor revision in 2013 at the time of police reform. The purpose of the guidance is "to contribute to the modernising of police complaint handling in Scotland by moving from a culture of blame and sanction towards one of learning from complaints, which in turn strengthens the accountability and integrity of the police complaint handling system".

14.6 The office of the Police Investigations and Review Commissioner was created in April 2013 to provide a new independent investigatory service for certain police matters. The PIRC inherited the former Police Complaints Commissioner for Scotland (PCCS) complaint handling review functions which had operated since 2007 under the Police, Public Order and Criminal Justice (Scotland) Act 2006 and assumed the new investigatory functions prescribed in the Police and Fire Reform (Scotland) Act 2012.

14.7 The PIRC's remit also includes carrying out specific functions set out in the Police Investigations and Review Commissioner (Investigations Procedure, Serious Incidents and Specified Weapons) Regulations 2013 and the Police Service of Scotland (Senior Officers) (Conduct) Regulation 2013.

¹²³ <http://www.legislation.gov.uk/asp/2006/10/section/45>

¹²⁴ https://pirc.scot/media/1211/pccs_statutory_guidance_web.pdf

14.8 The PIRC can investigate:

- incidents involving the police, where directed to do so by COPFS. These may include any death of an individual involving a person serving with the police¹²⁵, and allegations of criminality made about police officers;
- serious incidents involving the police, at the request of the Chief Constable or the SPA, as provided for in the 2006 Act (as amended by the 2012 Act):

“A ‘serious incident involving the police’ which the Commissioner may investigate in pursuance of paragraph (c) of section 33A is –

(a) a circumstance in or in consequence of which a person has died or has sustained serious injury where -

- (i) the person, at or before the time of death or serious injury, had contact (directly or indirectly) with a person serving with the police acting in the execution of that person's duties; and
- (ii) there is an indication that the contact may have caused (directly or indirectly) or contributed to the death or serious injury;

(b) any other circumstance in or in consequence of which -

- (i) a person has otherwise sustained a serious injury at a time when the person was being detained or kept in custody by a person serving with the police; or (ii) a person serving with the police has used a firearm¹²⁶ or any other weapon of such description as the Scottish Ministers may by regulations specify;”

- allegations of misconduct by senior police officers of the rank of assistant chief constable and above, if requested by the SPA; and
- relevant police matters which the Commissioner considers would be in the public interest.

14.9 At the conclusion of an investigation, the Commissioner can recommend improvements to the way the police operate and deliver services to the public in Scotland.

¹²⁵ Section 33A(b) of the Police, Public Order and Criminal Justice (Scotland) Act 2006, as amended by the Police and Fire Reform (Scotland) Act 2012, is not clear on whether that provision encompasses the death of a serving police officer. The Legislative changes chapter deals with this need to clarify the primary legislation.

¹²⁶ Firearms for this purpose includes Taser® weapons and PAVA sprays.

14.10 The previous Commissioner in her evidence sought additional powers to investigate former police officers who at the time of the act or omission in question were serving with the police. She also suggested that the Lord Advocate's guidelines be amended to provide that the reporting of both on and off duty criminality by police officers is expedited to COPFS and/or the PIRC.

14.11 The PIRC also independently reviews the way the police and the SPA handle complaints from members of the public. If a complainer is dissatisfied with the response at the conclusion of the Police Scotland process or the Scottish Police Authority (SPA) process, they may then apply to the PIRC for a complaint handling review (CHR). Once the CHR is completed PIRC may publish the findings.

Accountability

14.12 The Police Investigations and Review Commissioner is appointed by the Scottish Ministers for a fixed term of office. The 2006 Act prescribes that the Commissioner is not a servant or agent of the Crown, and it precludes former police officers from being appointed to that office. The PIRC as an organisation is an independent Non-Departmental Public Body.

14.13 The Commissioner is accountable to the Scottish Ministers for certain matters which are set out in a Governance and Accountability Framework¹²⁷. The Framework states that "the Scottish Ministers are ultimately accountable to the Scottish Parliament for the activities of the PIRC and its use of resources. They are not however responsible for day to day operational matters". The Director General for Education, Communities and Justice in the Scottish Government is responsible for ensuring that there is continuous assessment and appraisal of the performance of the Commissioner.

¹²⁷ <https://www.gov.scot/publications/police-investigations-review-commissioner-governance-accountability-framework-document-2019/>

14.14 The Commissioner is also held accountable for financial matters by the Auditor General for Scotland. Like any other devolved Scottish public body the PIRC may be held to account by the Scottish Parliament, primarily through its committees.

14.15 The Commissioner is accountable to the Lord Advocate in respect of investigations into deaths in custody and allegations of criminality which the appropriate Procurator Fiscal directs the PIRC to carry out.

14.16 Prior to police reform the Police Complaints Commissioner for Scotland created an Audit and Accountability Committee to advise on audit, finance and risk. This remains a helpful administrative arrangement to assist the Commissioner and the PIRC senior management team. It has four members who were invited to join the Committee. The Committee's functions are providing independent oversight and scrutiny of finances; providing risk management and governance; approving the appointment of internal auditors; reviewing PIRC's annual accounts and internal audit reports. Apart from this Committee however there is no formal board or other governance mechanism within the PIRC structure.

14.17 Complaints about the PIRC as an organisation or the Commissioner are made to the PIRC in the first instance. Thereafter, if a member of the public is dissatisfied with how their complaint has been handled, any complaint of maladministration by the PIRC can be reported to the Scottish Public Services Ombudsman (SPSO). The ability to do this needs to be highlighted more prominently by the PIRC. This ultimate part of the complaints process in respect of the PIRC should be made clearer and made explicit on the PIRC website and in any relevant public information material.

14.18 The operational independence of the body which investigates and reviews the police is of paramount importance as it is in the public interest that the Commissioner and both the investigation teams and the complaint handling review team can act without fear or favour. The role of the Commissioner is central to the effective investigation of policing and crucial to public confidence in that system. The Commissioner must be independent and must be seen to be independent. The

office places heavy responsibilities on the individual appointed to hold what is a singleton post with neither Board nor peers to give support.

14.19 COPFS may direct the Police Investigations and Review Commissioner or the Professional Standards Department of Police Scotland to undertake further investigations into allegations of criminality. Whichever course is taken, the investigation remains under the direction and control of COPFS, consistent with the fundamental principle that the responsibility for overseeing and investigating any allegation of criminality rests with the Lord Advocate and COPFS as independent public prosecutor.

14.20 In considering evidence to this Review I formed the view that the accountability and support arrangements for the PIRC should be clarified and strengthened. In reaching this view I have taken into account written evidence from HMICS that PIRC accountability is "... an area of weakness with the current arrangements. It is not clear to whom the PIRC is accountable for the progress or quality of its work".

14.21 In the preliminary report I asked for views on a number of options that could help clarify accountability, reduce the involvement of Scottish Ministers, strengthen support and make the PIRC more accountable for matters for which the PIRC is not otherwise accountable to the Lord Advocate. These options were:

- The PIRC could be made accountable to the Scottish Parliamentary Corporate Body in the same way that independent parliamentary commissioners appointed by the Parliament are accountable to and scrutinised by the relevant parliamentary committee. The Scottish Parliament would have to be consulted on this matter.
- The PIRC could be made accountable to the Lord Advocate for non-criminal matters in the same way that the office of Commissioner is accountable to the Lord Advocate for criminal matters and the investigation of deaths involving the police. The Lord Advocate would have to be consulted on this matter.
- Given the sensitivity of the office of Commissioner the role could be strengthened and supported by the creation of two additional part-time Deputy Commissioners with relevant legal expertise and experience who are not former senior police officers.

- The PIRC should be made accountable to 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.

14.22 The Review wrote to key stakeholders seeking their views on these proposals. The consensus from responses was that a change to the structure to include a statutory Board and the creation of two part-time deputy Commissioners would be positive changes.

14.23 I believe that the Commissioner should have no role in the appointment of the PIRC statutory Board members, all of whom should be independent persons. 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.

14.24 As I set out in the Evidence from other jurisdictions chapter at page 296, the advantages of having more than one Commissioner were evident from my discussion with the Garda Síochána Ombudsman Commission's (GSOC) three Commissioners, one of whom is the Chairperson of the Commission. Decisions made by the Commission are very much 'Commission' decisions and that collective approach mitigates the risk of particular focus on one individual and strengthens the assurance of a balanced approach. One of the three Commissioners was appointed after an international competition and brought extensive experience of working in law enforcement in another jurisdiction.

14.25 Adopting a similar model in Scotland would strengthen the independence and governance of the PIRC organisation and create the opportunity to bring in expert legal or other knowledge and allocate specific functions, including statutory functions, to each of the Deputy Commissioner roles. The Commissioner has also suggested that one of the Deputies might possibly fulfil the role of the Accountable Officer.

14.26 Crown Office and Procurator Fiscal Service (COPFS) noted that the role of the Lord Advocate in holding the PIRC to account corresponds to those aspects of the work of the PIRC that reflect the Lord Advocate's constitutional role as head of the systems of prosecution and investigation of deaths. They did not consider that it would be appropriate for the Lord Advocate to assume an oversight role for other areas of the PIRC's work. This position was also reflected in other stakeholders' responses; they took the view that the role of the Lord Advocate should not be extended to cover non-criminal matters save for deaths which may engage Article 2 of the Convention Rights which may be criminal or otherwise.

14.27 I also recommend the re-designation of PIRC as a Commission comprising one Police Investigations and Review Commissioner and two Deputy Commissioners, the creation of a statutory Board and the necessary appointment arrangements should all be enshrined in primary legislation. Given the sensitivity of the office of the Commissioner, and in order to ensure a collegiate approach to decision-making in the most serious cases and appropriate supervision of decision-making in such cases, the role should be strengthened by the appointment of two Deputies with relevant legal expertise or other relevant experience who are not former senior police officers.

Preliminary report recommendation: 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.

Parliamentary accountability

14.28 In his 2009 Opinion¹²⁸ concerning independent and effective determination of complaints against the police the Council of Europe's Commissioner for Human Rights stated that:

¹²⁸ CommDH(2009)4 <https://rm.coe.int/opinion-of-the-commissioner-for-human-rights-thomas-hammarberg-concern/16806daa54>

“The IPCB [independent police complaints body] must be transparent in its operations and accountable. 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.” (paragraph 36)

14.29 The Scottish Parliamentary Corporate Body’s (SPCB) role as set out in the Scotland Act 1998 determines that the SPCB is to provide the Parliament with the property, staff and services it requires and also to undertake any additional role provided by the Parliament. The latter is normally by way of legislation and is the mechanism by which the SPCB supports the current independent office-holders.

14.30 Professor John McNeill, the previous Police Complaints Commissioner for Scotland (PCCS) and first holder of the office of the PIRC told the Review that he “... would have favoured the PIRC ‘Ombudsman’ role reporting to the Scottish Parliament. The PIRC was a solitary position with no Board to support the role”.

14.31 In discussion with the Police Ombudsman of Northern Ireland (PONI), the PONI told the Review that she believed that parliamentary accountability was one of the best models as alignment with the parliament reinforces the perception of impartiality.

14.32 As part of my consultation on this subject I wrote to all the Commissioners and Ombudsmen in Scotland to seek their views on how parliamentary accountability works in practice and I am grateful to them all for giving me the benefit of their experience. The views that they have expressed confirmed my view that accountability to the Scottish Parliament enhances the independence of the office-holder in comparison with other public office-holders who are appointed by the government of the day.

14.33 In practice, accountability is delivered through a variety of mechanisms depending on the founding legislation, the office-holder, the nature of the organisation they lead and the parliamentary committee or committees with which they are required to engage.

14.34 Strategic plans, Annual Reports and Accounts audited by external auditors or by Audit Scotland are laid before Parliament. The audited accounts provide the relevant Committee with assurance about governance, adherence to accounting rules and legislation such as freedom of information, data protection and whistleblowing.

14.35 Formal evidence sessions in committees held in public allow MSPs to routinely ask questions of office-holders, offer support, make suggestions, challenge, obtain information and seek reassurance that they are discharging their overall responsibilities efficiently, prudently and transparently.

14.36 It was put to me that the public nature of parliamentary accountability (as opposed to Ministerial accountability) is important in terms of independence in holding public services to account, as it removes any direct link from government control and, if adopted in relation to the PIRC, would send a strong message about the value the Scottish Parliament places on the public accountability of the PIRC.

14.37 I agree that independence is critical to the effectiveness of the execution of the PIRC's functions and that the public reporting of their work is critical to transparency and accountability; it follows that demonstrating that independence and that accountability provides assurance to the wider public.

14.38 The Scottish Police Authority (SPA) noted that making the PIRC accountable to the SPCB rather than to the Scottish Ministers would bring it into line with other oversight bodies but questioned whether the PIRC's functions – which relate specifically to policing functions rather than Government functions – are such that accountability to the SPCB is necessary. They also noted that the PIRC is ultimately accountable to the Parliament under present arrangements.

14.39 The Scottish Police Consultative Forum (SPCF) is a consultative and advisory body which fulfils the requirement for such a forum under the Police and Fire Reform (Scotland) Act 2012. It is a proactive body to promote efficient and effective policing in Scotland and, for the guidance of Ministers, discusses any policing matters which fall outside the remit of the Police Negotiating Board. SPCF did not support

accountability to the SPCB and considered that it may be perceived as being too close to the political sphere.

14.40 The Scottish Chief Police Officers' Staff Association stated that at the time of the reform of policing in Scotland the Scottish Government made it clear that one of the aims of reform was to distance policing in Scotland from the political control and influence which was previously perceived to have been involved in the former system of governance. They believed that involving the SPCB would be contrary to the aims of reform and would potentially give the impression that the body which is tasked with dealing with the most significant complaints against the police in Scotland is politically controlled. In the Association's view whoever was tasked with oversight of the PIRC should have the capacity to review the performance of the Commissioner and potentially review decisions made in respect of complaints.

14.41 Police Scotland acknowledged that under the current arrangements the Commissioner may be called before the Justice Committee to give evidence but believed that accountability to SPCB would be a significant move that could draw politicians into routine scrutiny and oversight of the Commissioner, including potentially operationally sensitive matters.

14.42 There are some finely balanced arguments on this subject around how to achieve the optimum balance of independence, accountability and the absence of political control, and some widely differing views on whether the PIRC should be accountable to the legislature or to the executive. In either case the governance arrangements should be designed to ensure that the Commissioner's operational independence and decision-making autonomy, and the Lord Advocate's independent role in respect of criminal matters and deaths investigation, are protected.

14.43 My view is that the PIRC's accountability needs to be made absolutely transparent to the public and that ultimately there should be a greater measure of accountability to an elected body. The body that is representative of the population at large and is best placed to fulfil the role is the Scottish Parliament through the SPCB and the committees of the Parliament all of which are constituted on a proportional cross-party basis. That increased transparency through the Parliament

would bring with it added protection against speculation or misreporting about the way that the accountability relationship operates.

Statutory powers on complaint handling

14.44 One of the statutory functions of the Police Investigations and Review Commissioner (PIRC) is to carry out complaint handling reviews of non-criminal complaints against the police. After a relevant complaint has been dealt with by Police Scotland or dealt with by the Scottish Police Authority, the Commissioner may, at the request of a complainer or the appropriate authority, carry out a review of the manner in which the complaint has been dealt with.

14.45 The 2006 Act, as amended by the 2012 Act, provides that the Commissioner must draw up a report of any complaint handling review including conclusions, reasons and any action proposed by the Commissioner.

14.46 After completing a review of the handling of a complaint the Commissioner may direct Police Scotland or the SPA to reconsider a complaint. The Commissioner may also require that reconsideration of the complaint be carried out under PIRC supervision. The person appointed to carry out the reconsideration must be someone who has no previous involvement and, in the case of a supervised reconsideration, must comply with any requirements imposed by the Commissioner as to how the reconsideration should be carried out.

14.47 The Commissioner does not have the power to overturn a decision on a complaint or to instruct Police Scotland or the SPA to do so. PIRC's complaint handling reviews often include recommendations that are relevant to the specific complaint and may also include generic recommendations relevant to Police Scotland or SPA practice. The Commissioner may also issue guidance to Police Scotland or the SPA, and regularly does so in the form of learning points which are made public on the PIRC's website.

14.48 We received early evidence that the use of reconsideration directions by the PIRC had increased with the intention of ensuring a higher level of compliance by Police Scotland. Up until 2019 the PIRC took the view that this change in practice had been necessary because too many of their non-statutory recommendations were not being implemented. This change in PIRC practice has had a resource implication for Police Scotland who noted that it was “causing significant additional enquiry”.

14.49 The previous Commissioner suggested that the primary legislation, Section 35(3) of the 2006 Act, be amended to clarify that the actions proposed in a complaint handling review report may include recommendations as well as reconsideration directions. I support this suggestion as a means of ensuring action on complaint handling review recommendations and learning points, without the highly labour-intensive requirements of a direction, and in my preliminary report I recommended that the Commissioner, or potentially a Deputy Commissioner, should be vested with a statutory power to make recommendations.

14.50 In evidence to the Review, the previous Commissioner also suggested that all complaints about the police should go to an independent organisation in the first instance. This suggestion was supported by the Law Society of Scotland in its evidence: “There appears to be a case possibly for the creation of a single investigatory body (such as an Ombudsman) that can independently deal with all police complaints raised by members of the public”. In the preliminary report I said that I was unconvinced at that stage about such a fundamental change in functions and structures.

14.51 I recommend that should remain the case for now but the position should be kept under review by Scottish Ministers. Serious breaches of Convention Rights do merit independent investigation but referring all complaints about quality of service matters to the PIRC is not necessary and would not be an effective use of scarce public resources.

14.52 Since publishing my preliminary report I have carefully considered the Northern Irish model for oversight of complaints where all complaints go in the first

instance to the independent Police Ombudsman. I believe that it stands alone as an example of exceptionally strong oversight of complaints and independence designed for the particular and exceptional circumstances that exist in Northern Ireland. This Review recommends a set of improvements to the system and a suite of new powers for the PIRC that would strengthen independent investigation and oversight in Scotland. If those are implemented, and if, after a reasonable passage of time, those changes have not secured appropriate improvement, then Scottish Ministers should consider afresh whether they want to move to a PONI model where all complaints go to an independent body in the first instance. My current view is that such a radical change is not necessary or proportionate at present.

14.53 I comment elsewhere in the report on ensuring effective triage, the possibility of direct and supervisory monitoring of the Centurion system by the PIRC, the identification of potential criminality or breaches of Convention Rights, the crucial importance of independent oversight and how all those elements can be strengthened. These can be achieved under the current structures along with the improvements that I have recommended.

Proposed changes to the powers of the PIRC

14.54 In their own words, the role of the PIRC is to provide independent oversight, investigating incidents involving the police and reviewing the way the police handle complaints from the public. Their main aim is to secure public confidence in policing in Scotland. The Review received evidence from members of the public on a number of topics related to the PIRC.

14.55 It was suggested that the police did not take the PIRC seriously, because the PIRC could not enforce the recommendations that they made to Police Scotland. It was felt that the PIRC did not have any teeth, and that if they were to make a difference then they needed to be “wholly independent and operate as a third-party organisation that could be trusted by the public and police officers alike”. In the preliminary report I recommended a power for the PIRC to make statutory recommendations and a corresponding duty on the police to implement them.

14.56 I do not believe that the PIRC organisation is toothless, but I do believe that the system as a whole could and should be enhanced by giving the Commissioner additional statutory powers. Those significant new powers, which are described below, relate to:

1. Complaints against senior police officers and allegations of misconduct.
2. Suspension of senior police officers during misconduct investigations.
3. Investigation of allegations of breaches of ECHR (European Convention on Human Rights) rights.
4. Calling in and taking over from Police Scotland the investigation of a complaint.
5. Investigation of current practices or policies of Police Scotland in the public interest.
6. Implementation of recommendations from complaint handling reviews and audits.
7. Designation as a prescribed person/body to whom a whistleblowing disclosure can be made.

Complaints against senior officers and allegations of misconduct

14.57 In my preliminary report I discussed the transfer of the preliminary assessment function from the SPA to the PIRC. After reviewing further evidence I now recommend that four related functions should also be transferred to the PIRC. In the Scottish Police Authority chapter at page 176 I set out the rationale for transferring these existing functions to the PIRC.

14.58 At a misconduct hearing in England and Wales either the appropriate authority or the Independent Office for Police Conduct (IOPC) will present the case and can appoint a relevant lawyer to represent them. I recommend creating a new function and power to enable the PIRC to present a case at a gross misconduct hearing for a

senior officer where the case would be determined by a panel with an independent legally qualified chair.

14.59 PIRC should be the recipient of all complaints about senior officers. If the complaint is criminal in nature the PIRC should refer it to the specialist Procurator Fiscal in the Criminal Allegations Against Police Division (CAAP-D) of COPFS. If the complaint is non-criminal the PIRC should make the preliminary assessment, should carry out any investigation and where appropriate present the case to the independent legally chaired panel that hears the misconduct case. These stages are set out in more detail in the Scottish Police Authority chapter at page 176 and in the paragraphs below. If the complaint is a grievance¹²⁹ rather than an allegation of misconduct the PIRC should refer it to the SPA to deal with.

14.60 I believe that the key stages of the senior officer misconduct proceedings (both misconduct and gross misconduct) should in future be removed from the responsibility of the SPA and made subject to consideration by an independent legally chaired panel. The PIRC should take on the functions of receipt of complaints/allegations, preliminary assessment, referral to COPFS of criminal allegations and, where appropriate, referral to an independent legally chaired panel (Steps 1, 2, 3 and 5 below).

¹²⁹ The ACAS Code of Practice on Disciplinary and Grievance Procedures defines grievances as concerns, problems or complaints that employees raise with their employers.
http://www.acas.org.uk/media/pdf/p/f/11287_CoP1_Disciplinary_Procedures_v1_Accessible.pdf

14.61 The process should follow the steps specified below:

- 1) receipt of the complaint/allegation by the PIRC (where the SPA receives such a complaint or allegation it should be redirected immediately to the PIRC);
- 2) meaningful preliminary assessment and scrutiny of the complaint (within a strict deadline) by the Commissioner or a Deputy Commissioner.
- 3) prompt referral to COPFS by the PIRC in the case of a criminal allegation for instruction;
- 4) an independent investigation by the PIRC investigations team of the allegations, which should remain confidential unless or until a 'prima facie' case is established;
- 5) referral by the Commissioner (or a Deputy Commissioner) to an independent legally chaired panel with a Chair and members appointed by the Lord President;
- 6) determination by the panel as to whether, in the light of the PIRC's investigation report and opinion, there is a case to answer of misconduct or gross misconduct and, if there is;
- 7) a preliminary hearing to be held by the independent, legally chaired panel to identify any evidence that is not in dispute and can be agreed, and any other matter which can be resolved prior to the formal hearing of the alleged misconduct;
- 8) a hearing by the panel to consider the evidence, to determine the matter and, if proven, to decide the appropriate disciplinary action;
- 9) a right of appeal to a Police Appeals Tribunal with three legally qualified members appointed by the Lord President against any decision of the panel; and finally if the complaint is upheld
- 10) the implementation of the disciplinary action by the SPA as the 'employer' of the senior officer.

14.62 The senior officer conduct preliminary assessment should be carried out by the Commissioner or one of the two Deputy Commissioners that I propose above. The opinion on the case to answer and referral to a misconduct hearing should also be carried out by the Commissioner or a Deputy Commissioner.

14.63 In my preliminary report, I reported that evidence was provided to the Review about the challenges that the SPA faces in discharging effectively the role currently assigned to it in relation to the preliminary assessment of misconduct allegations against senior officers. The challenges are in:

1) identifying at the outset whether any particular referral constitutes a 'relevant complaint' (as per the 2006 Act's definition), or a misconduct allegation, or both, or neither (such an identification is required early on, in order to determine which further process to follow); and

2) in identifying the scope of the information that the SPA can properly take into account, and the sources from which that information can properly be obtained, at this 'preliminary' stage – too little and there may be a risk of pre-empting or prejudicing subsequent investigations.

14.64 I discuss those challenges in the Scottish Police Authority chapter at page 176 and recommend transferring the preliminary assessment function and related functions from the SPA to the PIRC, although with appropriate safeguards to ensure that the SPA has sufficient information about allegations to enable it to discharge its wider statutory functions.

14.65 At a misconduct hearing in England and Wales, either the appropriate authority or the IOPC can present the case and can appoint a relevant lawyer to represent them. The PIRC should be given a statutory power to present its case to a senior officer misconduct hearing.

Suspension of senior police officers during misconduct investigations

14.66 Any decision on the suspension of a police officer below the rank of assistant chief constable is a matter for the Chief Constable. Any decision on the suspension of a senior police officer is a matter for the Scottish Police Authority who appoint Assistant Chief Constables, Deputy Chief Constables and the Chief Constable and determine the fixed-term duration of those appointments.

14.67 Given that the investigation of senior officer misconduct is already a statutory function of the PIRC, the Commissioner should have the power to recommend to the SPA suspension of a senior officer if she or he believes that not suspending the officer may prejudice an effective misconduct investigation. That prejudice criterion is currently one of the statutory conditions - along with it being in the public interest - that must be satisfied before the SPA can suspend. The PIRC should provide supporting reasons when they make such a recommendation to the SPA that a senior officer should be suspended. Such a power to recommend suspension to the SPA should be put into the relevant secondary legislation.

14.68 I have also recommended in the Evidence from other jurisdictions chapter at page 296 that an additional statutory suspension condition for all constables should be created. In England and Wales the first statutory suspension condition that must be met before an appropriate authority can suspend an officer is:

“(a) having considered temporary redeployment to alternative duties or an alternative location as an alternative to suspension, the appropriate authority has determined that such redeployment is not appropriate in all the circumstances of the case ...”¹³⁰

14.69 That statutory suspension condition does not exist in Scottish legislation. I believe that it should be replicated in Regulations in relation to all ranks of constable to ensure that suspension is not used precipitately.

¹³⁰ <http://www.legislation.gov.uk/ukSI/2020/4/regulation/11>

Investigation of allegations of breaches of ECHR (European Convention on Human Rights) rights

14.70 I comment in detail on ECHR¹³¹ Article 2 rights in the Complaints arising from deaths in custody chapter at page 394 and note there that the independence of the initial investigation into deaths in police custody in Scotland is provided for by the PIRC under the direction of the Procurator Fiscal. Strasbourg jurisprudence suggests that the same rigorous approach should be adopted in the investigation of breaches of Article 3 (Prohibition of torture - inhuman or degrading treatment or punishment).

14.71 In his 2009¹³² Opinion concerning Independent and Effective Determination of Complaints Against the Police, the Council of Europe's Commissioner for Human Rights stated that:

“The minimum requirement is that a member state must ensure arrangements are in place to comply with the five principles [see paragraph 7.61 above] in the event that Article 2 or 3 of the ECHR is engaged. In furtherance of this aim the CPT [Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment] has strongly encouraged the creation of a fully-fledged independent investigative body.”

14.72 The first of the five principles mentioned above by the Commissioner is independence: “there should not be institutional or hierarchical connections between the investigators and the officer complained against and there should be practical independence”. I explore that fundamental principle in the Independent investigation section at page 97.

14.73 Article 5 (Right to liberty and security - unlawful detention) breaches do not necessarily require independent investigation. I have however been made aware by one witness of a case that gives a stark and worrying example of where the circumstances and the actions of Police Scotland should have been independently investigated by a third-party organisation, rather than requiring the individual to

¹³¹ Treaty ETS No. 005, Convention for the Protection of Human Rights and Fundamental Freedoms <https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/005>

¹³² <https://rm.coe.int/opinion-of-the-commissioner-for-human-rights-thomas-hammarberg-concern/16806daa54>

complain to the police, then go through a long complaint handling review process and then have to consider recourse to the courts to prove unlawful detention.

14.74 I recommend in the COPFS chapter at page 268 that where the terms of the complaint made allege a breach of Article 3 (Prohibition of torture - inhuman or degrading treatment or punishment) by a police officer, and therefore that a crime may have been committed, the Crown Office and Procurator Fiscal Service should always instruct the PIRC to carry out an independent investigation rather than directing Police Scotland to investigate it.

14.75 This is not to suggest that every use of a police baton should be independently investigated; that is neither necessary nor proportionate. Each use of a baton, or indeed a firearm or any other object, by a police officer has to be assessed against the particular circumstances in which it was used. What actions constitute reasonable use of force in one circumstance might in other circumstances, where there is no threat or risk to the officer or the public, constitute an assault.

14.76 I also recommend that where the terms of the complaint made allege a breach of Article 5 (Right to liberty and security - unlawful detention) it may, depending on the circumstances and seriousness of the case, require independent investigation. Deprivation of liberty is one of the most serious and significant powers that the state has over any individual but many instances of unlawful detention result from human error or procedural mistakes. The case that I refer to in the Custody chapter at page 372 was a very serious case of detention in police custody and prison over five days and four nights. In any case where the possibility exists that a crime may have been committed, the Crown Office and Procurator Fiscal Service should always instruct the PIRC to carry out an independent investigation rather than directing Police Scotland to investigate the matter.

14.77 I also recommend that the PIRC should carry out an annual audit of Police Scotland's complaint handling processes in order to provide assurance that Article 3 and Article 5 cases are being correctly identified and reported forthwith to COPFS.

The power to call in and take over from Police Scotland the investigation of a complaint

14.78 During the course of the Review we heard evidence from members of the PIRC complaint handling review team of their frustration where they considered the complaint had been the subject of very poor investigation by the police. These instances are rare but I believe that it would be right to give the PIRC an additional power to call in from the police the handling of the complaint in order to investigate the matter at their own hand.

14.79 The PIRC should be given a statutory power to take over an investigation of a complaint if there is sufficient evidence that Police Scotland has not dealt with the complaint properly. The PIRC should be able call in an investigation of a complaint at any point, including after the conclusion of the police process.

14.80 In making this recommendation I recognise that my proposal is a significant adjustment of powers in relation to both Police Scotland and the PIRC. It is not my intention to interfere with the constitutional position of the Chief Constable but I have had sufficient evidence to allow me to conclude that, in a small number of particularly egregious cases, the ability of the PIRC to conduct a review of Police Scotland's complaint handling process provides insufficient remedy in the context of the scale of the alleged issue that the complainer has raised. In some cases the full circumstances of the case only came to light from outwith Police Scotland because the complainer sought a complaint handling review and because staff in the PIRC recognised the serious nature of those circumstances. Such cases may be few and far between but I strongly believe that public confidence in policing would be greatly enhanced if the public had the reassurance that the PIRC as the independent third-party oversight body could, in the most serious non-criminal cases, conduct an independent investigation of a complaint. Any recommendation arising from this process would be subject to the new obligation on the Chief Constable, that I recommend below, to comply with recommendations unless there are sound, overriding operational or practical reasons for not complying with the recommendation.

14.81 Creating such a power carries a risk that every aggrieved or dissatisfied individual would simply regard this new power as an automatic right of ‘appeal’ and therefore safeguards are required to ensure that it is not misused. Principal amongst those safeguards should be a duty on the Commissioner to re-investigate only those cases where the complainer provides compelling evidence of a significant failure on the part of Police Scotland and where the Commissioner assesses that it would be in the public interest to carry out an independent re-investigation. The decision to call in an investigation should be one entirely for the Commissioner, taken independently in the public interest. The Commissioner should also be under a duty to consult the Chief Constable before taking a decision to re-investigate.

14.82 A power exists in Northern Ireland where the Police Ombudsman for Northern Ireland (PONI) may investigate matters “of his own motion”. In the absence of a complaint or a referral from the Chief Constable, the PONI can exercise a ‘call in’ power to investigate any matter “which (a) appears to the Ombudsman to indicate that a member of the police force may have (i) committed a criminal offence; or (ii) behaved in a manner which would justify disciplinary proceedings; and (b) is not the subject of a complaint, if it appears to the Ombudsman that it is desirable in the public interest that he should do so”¹³³.

14.83 The new power that I have proposed relates only to complaints which are of a non-criminal nature. Where a member of the public alleges that any form of criminality by a police officer in the execution of their duties has taken place or where they do not wish to report such an allegation to the police in the first instance, they have the right to report the alleged crime direct to the Crown Office and Procurator Fiscal Service. Where the complaint is of criminal activity by a police officer they may go direct to the specialist Procurator Fiscal division dealing with complaints against the police, known as Criminal Allegations Against Police Division (CAAP-D). This ability to report directly to the independent prosecutor a complaint of a crime by a police officer is an important safeguard in Scotland that is little known by the general public. In the COPFS chapter at page 268 I make a recommendation that it

¹³³ Police (Northern Ireland) Act 1998, <https://www.legislation.gov.uk/ukpga/1998/32/contents>

should be much better publicised and made more accessible to the public by COPFS, by Police Scotland and by the PIRC.

14.84 If the report of a complaint about the police arises in an emergency situation requiring an immediate response, the police would be required to be contacted to deal with the complaint in the first instance and the matter referred forthwith to the Procurator Fiscal for instruction. The Procurator Fiscal may instruct the PIRC to take over the investigation from the police.

Investigation of current practices or policies of Police Scotland in the public interest

14.85 The PIRC currently also has a power to undertake a public interest investigation. The Commissioner's general powers contained in Section 33A of the Police, Public Order and Criminal Justice (Scotland) Act 2006 include the power "to investigate other matters relating to the Authority or the Police Service where the Commissioner considers that it would be in the public interest to do so". Section 41C refers to a relevant police matter as being "any incident ...". As far as it can be established, that power has never been used.

14.86 It is informative to compare the absence of public interest investigations by the PIRC with the practice of the Police Ombudsman for Northern Ireland (PONI). In the Northern Ireland jurisdiction 10 public interest investigations were opened in 2017-18¹³⁴ alone. The PONI also has a separate power to investigate a current practice or policy of the Police Service of Northern Ireland if she believes that it would be in the public interest to do so. Making comparisons between jurisdictions is not always straightforward but, in this instance, it appears that the PIRC's public interest investigation power has been underutilised.

14.87 I also recommend that the PIRC should have an additional power, similar to the PONI's, to investigate a current practice or policy of Police Scotland if she

¹³⁴ <https://www.policeombudsman.org/PONI/files/0a/0a274df0-07a3-4cee-b131-b13847a566d9.pdf>

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.

Implementation of recommendations from complaint handling reviews and audits

14.88 In the preliminary report, I recommended that the Commissioner, or potentially a Deputy Commissioner, should be vested with a statutory power to make recommendations in addition to the existing powers to direct reconsideration of complaints. The corollary to that is 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 with a PIRC recommendation which the Chief Constable must intimate to the PIRC. Where the Chief Constable implements the recommendation there should be an obligation on PSD to report progress back to the PIRC on its implementation.

14.89 The Commissioner believes that such a duty on the Chief Constable to comply with recommendations, subject to a public interest test, or at least a requirement to respond to recommendations may assist in this regard. The Commissioner has suggested that such a duty could be similar to the statutory duty on those who are in receipt of recommendations by a Sheriff following a Fatal Accident Inquiry (FAI). The proposed duty would be particularly relevant for any recommendations that may flow from audits undertaken by the PIRC. The drafting of the statutory duty should make clear that it applies to PIRC recommendations from audits in addition to any arising from a complaint handling review.

Preliminary report recommendation: The Commissioner, or potentially a Deputy Commissioner, should be vested with a statutory power to make recommendations in addition to the existing powers to direct reconsideration of complaints. The corollary to that is 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 with a PIRC recommendation and

an obligation on PSD to report progress back to the PIRC. Those statutory arrangements should be supported by agreement between the PIRC and Police Scotland on how the PIRC will be kept advised of progress.

Designation as a prescribed person/body to whom a whistleblowing disclosure can be made

14.90 In my preliminary report I suggested that enhancing protection for whistleblowers within policing could be achieved by prescribing in legislation another Scottish third-party reporting body or person. In England and Wales the Independent Office for Police Conduct (IOPC) is such a prescribed body, but in Scotland the PIRC is not. I recommend in the Whistleblowing chapter at page 158 that the PIRC should be so prescribed in order that people working in Police Scotland and in the Scottish Police Authority are able to raise concerns with an independent third-party organisation and have the protections provided by the whistleblowing legislation, mainly the Employment Rights Act 1996¹³⁵ as amended by the Public Interest Disclosure Act 1998¹³⁶.

‘Relevant complaint’ and ‘member of the public’

14.91 In evidence to the Review, the SPA suggested that the policy intention of Section 34 of the Police, Public Order and Criminal Justice (Scotland) Act 2006, which created the Police Complaints Commissioner for Scotland (PCCS) and defined the functions, should be made clear: “if the intention of the 2006 Act is to exclude police officers from those who may make relevant complaints, this should be made clear in the legislation”. The functions of the PCCS are now vested in the Police Investigations and Review Commissioner by virtue of the 2012 Act and include reviewing how complaints have been handled by Police Scotland or the SPA.

¹³⁵ <https://www.legislation.gov.uk/ukpga/1996/18/contents>

¹³⁶ <https://www.legislation.gov.uk/ukpga/1998/23/contents>

14.92 Section 34 defines ‘relevant complaint’, as it relates to the Commissioner’s functions, as one that is made by:

“(a) a member of the public who claims to be the person in relation to whom the act or omission took place;

(b) a member of the public not falling within paragraph (a) who claims to have been adversely affected by the act or omission;

(c) a member of the public who claims to have witnessed the act or omission;

(d) a person acting on behalf of a person falling within any of paragraphs (a) to (c).”

14.93 Section 34 defines ‘relevant complaint’ but does not define ‘member of the public’. In some other jurisdictions ‘member of the public’ is defined in the equivalent complaints legislation to exclude police officers, or to exclude on-duty police officers.

14.94 The general approach taken by the 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, but the clarification sought by the SPA would be helpful. This is ultimately a question for the Scottish Parliament, but 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.

[Preliminary report recommendation: The Scottish Government should consider the case for amending the legislation to put beyond doubt the definition of a member of the public who may make a relevant complaint.](#)

PIRC structure and staffing

14.95 The structure of the PIRC organisation includes investigation teams, a Complaint Handling Review Team, HR professionals, Communications, Finance and Corporate Services. A striking omission is the absence of any legal support within the staff. Although the current Commissioner and the Head of Reviews and Policy are legally qualified this might not be the case in the future.

14.96 In my preliminary report, I stated that given the key role the organisation plays in the Scottish justice system, the complexity of the legal framework around complaints and investigations, the wide-ranging investigatory powers of many staff, and the level of interaction with COPFS and law enforcement agencies, the PIRC should consider the case for building legal support and advice capacity into its structure.

14.97 The Commissioner agrees that the PIRC requires more legal expertise and capacity and that the option of a legally qualified Deputy Commissioner would be of distinct benefit.

[Preliminary report recommendation: The PIRC should consider the case for building into its structure legal support and advice capacity.](#)

Composition and profile of PIRC investigation teams

14.98 I support the current policy of the PIRC to reduce reliance on the employment of retired officers as investigators. At the point at which the PIRC was establishing the investigation teams in 2012-13 it made complete sense to recruit retired police officers. The new, expanded organisation was put together very rapidly after the passage of the legislation and there was an imperative to get it up and running in time for 1 April 2013. This policy was appropriate and necessary for a new organisation taking on new investigative functions.

14.99 There are significant benefits in making good use of investigation skills and previous policing experience, but it is also true that this can be perceived as diminishing the independence of the investigation because it has the appearance of the police investigating their former colleagues in the police. There is also a risk that as policing practices change, skills will diminish, particularly in specialist areas, and therefore there is a need to maintain current skills and knowledge in those who have come from a policing background.

14.100 The process of diversifying the investigator cadre, and training recruits from outwith policing should continue and evidence was provided of PIRC investigators who come from different backgrounds and have brought relevant skills to the organisation. There will in the next five to ten years be a place for former police officers in the functions of the PIRC, however following the retirement of former police officers the aim should be to replace them with non-police officers. In the meantime, PIRC practice should be that, so far as possible, investigators avoid involvement in investigations of serving police officers with whom they have worked previously. Investigative skills are not the sole domain of the police service. They exist elsewhere and can be learned through training on and off the job. The PIRC might also consider as part of its recruitment policy whether there would be benefit in employing former Procurators Fiscal or Precognition Officers as investigators.

14.101 Currently most senior investigative personnel in the PIRC are former police officers who served in Scotland. This contrasts with the situation in England and Wales where the most senior posts within the Independent Office for Police Conduct (IOPC) must now be filled by non-police officers. As in the case of the Police Investigations and Review Commissioner, the legislation prescribes that a former police officer cannot be appointed as the Director General of the IOPC. In its one-year report, the (then) IPCC pointed out that the most senior members of its management team were all from a non-police background. The PIRC should adopt a similar policy. There are obvious benefits in drawing on the experience and expertise of those who have served with the police but it does leave the PIRC open to criticism based on the danger of unconscious bias. It is important that public confidence is not affected by the perception of a close relationship between the

investigator and those being investigated. The need for balance and the risk of loss of organisational memory suggest that any changes in staffing should be gradual.

14.102 It is neither feasible nor desirable for the PIRC to replicate the full range of specialist policing skills that exist within Police Scotland, and I support the current practice of the PIRC to draw on those specialists whenever their skills are required to conduct an investigation.

14.103 Former police officers currently make up 51% of the PIRC's investigators. PIRC reports that if the organisation was at full complement, the percentage of investigators employed who are former police officers would be 57%, or 37% of all PIRC employees.

14.104 In 2013, at the establishment of PIRC, 85% of the staff of the investigations department were former police officers. This number has been gradually managed down through the recruitment of investigators from other investigative backgrounds and through the PIRC's own investigative trainee programme. I welcome this trend and the managed process behind it. I acknowledge that the gradual shift away from employing former police officers will take some years.

[Preliminary report recommendation: 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.](#)

Diversity and discrimination

14.105 The PIRC should ensure that discrimination issues are considered as an integral part of their work. A systematic approach should be adopted across the organisation and in all cases investigators should consider if discriminatory attitudes have played a part.

14.106 I have raised with the Commissioner the question of guidance available to PIRC investigators. She has confirmed that PIRC does not currently have any specific guidance for investigations on race and discrimination but is planning to adapt the IOPC's Guidelines for Handling Allegations of Discrimination¹³⁷ for their own use.

Access to the Criminal History System

14.107 Early in the Review I heard evidence that PIRC investigators did not always find it easy to get access to relevant information from Police Scotland's Criminal History System (CHS) when they were preparing to visit witnesses. In the preliminary report, I stated that given the nature of PIRC's business this was a genuine business need and that Police Scotland should facilitate or provide access to CHS to PIRC investigators promptly as a matter of course in order to mitigate any personal safety risks PIRC officers face when interviewing certain witnesses in locations outwith official premises. PIRC have confirmed that they now been granted access by Police Scotland to the Criminal History System. I welcome that agreement between the two organisations and the implementation of my preliminary recommendation.

Access to Centurion

14.108 Centurion is the Police Scotland complaints and conduct database. I recommended in my preliminary report that the PIRC should be given appropriate access to the Police Scotland Centurion system for the purposes of contemporaneous audit of complaints and to help facilitate early PIRC awareness of criminal allegations. I also suggested that such access should be followed by regular triage meetings between PIRC and Police Scotland to ensure consistency and accuracy of approach to decision-making.

¹³⁷ <https://www.policeconduct.gov.uk/research-and-learning/key-areas-work/discrimination>

14.109 The PIRC has been in discussion with Professional Standards Department (PSD) regarding remote access to Centurion. Due to Centurion retaining information on both conduct and complaints, which currently cannot be separated, Police Scotland has data protection concerns about providing PIRC with remote access to all parts of that information including those matters in which PIRC has no locus. PSD has offered access through PIRC investigators and officers attending at a designated police station near to the PIRC offices in the same manner as currently accessed by the Scottish Police Authority (SPA). The PIRC have arranged to visit the police station to ascertain how the system works and how they can retrieve data for audit purposes. PIRC and PSD will continue to pursue the possibility of remote access in the longer term.

14.110 In the Police Scotland chapter at page 81 I recommend that the Scottish Government should consider the case for giving the PIRC a specific legislative power that would enable staff to access the Centurion complaints and conduct database from its own offices so that contemporaneous audit is possible. Providing a basis in law for accessing any information relevant to the PIRC's statutory functions should ensure compatibility with GDPR and any other relevant data protection legislation.

14.111 The PIRC has a legitimate purpose in being able to examine information that is held by Police Scotland on Centurion i.e. in order to carry out its audit function. In my view that function should be enhanced by giving the PIRC the ability to look at any complaint at any time. While I accept that any data protection concerns must be addressed, the PIRC should be able to look at anything on Centurion that is relevant. In the absence of a legislative solution, I would encourage Police Scotland and PIRC to collaborate on a practical solution and examine how PIRC staff's access could be restricted to the relevant areas of the database.

14.112 When I was given a demonstration by PSD of how the Centurion complaints and conduct database works, I formed the view that it appeared very outdated. It may be that in the longer term a modern, more sophisticated database could provide a technological solution that would allow contemporaneous audit. Police Scotland have advised that they are exploring the possibility of procuring the

latest upgraded version of Centurion. In the meantime, I would encourage PIRC and Police Scotland to find a practical solution and, as I previously suggested, to have regular triage meetings to ensure consistency and accuracy of approach to decision-making.

Preliminary report recommendation: PIRC should be given appropriate access to the Police Scotland Centurion system for the purposes of contemporaneous audit of complaints and to help facilitate early PIRC awareness of criminal allegations.

Transparency and confidentiality

14.113 The PIRC had until 2018 adopted the practice of putting into the public domain information relating to the investigations it was carrying out into the conduct of senior officers on receipt of the referral from SPA. At the point at which a referral is received by the PIRC from the Scottish Police Authority there has been no more than a preliminary assessment of the complaints or allegations. At this early stage of the investigation the need for confidentiality is important to avoid deterring or intimidating potential witnesses or subjecting officers or their families to media attention when there is still very often no evidence and certainly no 'prima facie' case in the PIRC's possession.

14.114 I raised my concern about this matter with the previous Commissioner in the early stages of the Review and this practice has since ceased. On 6 November 2018 the previous Commissioner confirmed this change of practice to the Justice Committee of the Scottish Parliament that, "In light of our experience last year, we agree that there should be confidentiality around the process and, like the SPA, have determined that in future we will not normally provide comment on senior officer misconduct investigations".

The Complaint Handling Review Team and relationships within the PIRC organisation

14.115 In the process of gathering evidence it has become apparent that as an organisation the PIRC consists of two distinct and quite disparate parts: the small Complaints Handling Review Team which existed previously and was the core function of the PCCS (Police Complaints Commissioner for Scotland) organisation, and the much larger Investigations Teams. This historical dichotomy had a number of manifestations and effects.

14.116 We heard early evidence that the CHR team is perceived to have, and often perceives itself to have, the status within the PIRC of the 'poor relation', that a lack of coherence and unity of purpose existed within the organisation and that there existed a perception within the CHR team that they were under-resourced to carry out their audit function. These matters of concern, which have since been addressed by the Commissioner and her senior management team, inevitably had a detrimental impact on staff morale and motivation in the team, compounded by a lack of obvious career development within the organisation and, until more recently, training opportunities. The impact of dealing with complaints, an inherently negative subject matter, every working day is not moderated by the wider research and audit activities which PIRC have the power to carry out but have not done since 2017.

14.117 In my preliminary report I pointed out that there was significant scope to enhance and widen the current functions of the CHR team and how it pursues its role by engaging in its statutory responsibilities of audit and research. Their focus should be on what the complainers' complaints are focused on, but they may also observe collateral issues that should go back to Police Scotland systematically and be brought to the attention of the Assistant Chief Constable and the Deputy Chief Constable on a thematic basis. At that time, too much time and effort was spent identifying every single issue at fault in the complaint handling, even those aspects of the complaint which were handled to the satisfaction of the complainer. This approach was disproportionate and could have been better directed into thematic reviews rather than reworking of a whole case by the police. Police Scotland are reviewing with PIRC, SPA and COPFS the content of complaint handling,

investigations and misconduct related Standard Operating Procedures (SOPs). The adoption of revised SOPs will assist the CHR team in focusing on the most pertinent issues raised by the complainer.

14.118 In 2015 the previous Commissioner asked Robert Gordon, then a member of PIRC's Audit and Accountability Committee, to lead a 'Review of PIRC Procedures in relation to complaint handling reviews'. The insight and conclusions of that review have much to commend them despite the passage of time. In respect of relations between the CHR team and Police Scotland the review concluded that: "... by determined and sustained effort, much could be done to build a real spirit of common endeavour without offending the need for separation and independence in the consideration of individual complaint handling reviews (CHRs)."

14.119 The tension then apparent between the two organisations was captured in this section: "PIRC reviewers argue that the police should be doing more to improve the quality of complaint handling by following their own operational and complaint handling guidance. On the other hand, the police will argue for the review activity to pay more attention to outcomes and less to procedural minutiae, to focus on materiality and proportionality and resist pedantic and bureaucratic counsels of perfection". The review also commented that: "there needs to be developed a greater sense of fitness for purpose in conducting reviews".

14.120 The 2015 Review also commented on supervision and checking of CHR work: "In comparing the management hierarchy for PIRC review work with the oversight structures for similar activities elsewhere, I was surprised by the high ratio of senior managers to review officers. I was also surprised by the limited delegated authority enjoyed by experienced review officers – again in comparison with other organisations discharging similar functions ... I consider that given the range of responsibilities PIRC discharges compared with the predecessor body, there is a need to reflect on the level of management resource devoted to review work and the scale of revising of review officers' work which seems to be undertaken, it is, of course, ultimately for the Commissioner to determine the scheme of delegation which should apply and the level of checking and quality assurance she requires".

14.121 In the then Commissioner's written evidence to the Review she explained that the functions of the CHR team are distinct from the investigation functions and, because they are more akin to complaint handling than policing, they would sit more comfortably elsewhere within the office of the Scottish Public Services Ombudsman (SPSO). The point was also made that this option was considered when the PIRC legislation was being drafted in 2011-12. I was not persuaded of the merits of this proposal. Complaint handling reviews, audits and research provide an opportunity to identify whether the categorisation and treatment of complaints is appropriate. This has been a major concern of the PIRC and has been discussed before the Justice Committee. Having this function conjoined with the investigation teams allows familiarity with the developing criminal law to be maintained in order that wrongly categorised complaints can be spotted.

14.122 Professor John McNeill, the previous Police Complaints Commissioner for Scotland (PCCS) and first holder of the office of the PIRC told the Review that:

"Towards the end of my term as PCCS, there had been a proposal to merge that organisation with the SPSO. I had not favoured that proposal because in my view complaint handling close to the source of the complaint could help the public to get quick assurance and resolution. The proposal was not pursued when the wider police reform agenda developed".

14.123 Professor McNeill also told me that, "there is a nexus between complaints and investigations and value to be gained from dealing with them within the one organisation". As I said in my preliminary report, the benefits of a transfer of these functions to SPSO are in my view outweighed by the benefits of a closer alignment of the CHR team with the investigations team and the ability and opportunity within the CHR team to recognise and highlight issues of potential criminality or liaise with the investigations team when they have not been identified and addressed by the police. For example, it is because the CHR team observed the inappropriate categorisation of conduct as excessive force, rather than as assault, that a change of practice was instituted whereby the Procurator Fiscal charged with investigating complaints against the police now sees all allegations of excessive force and unlawful detention before determining where such complaints should be directed for investigation. The CHR function is a critical part of the system which provides an appropriate and impartial check not only on handling but also on

the appropriate categorisation of complaints. The current Commissioner recognises the distinct benefits of the CHR team being co-located with the investigations teams under the PIRC umbrella and has confirmed that that core structure will remain.

Location of PIRC staff

14.124 In my preliminary report I touched on the location of the PIRC staff. A number of contributors in their evidence commented on the location of the PIRC's office which is based entirely in Hamilton in Lanarkshire. This is perceived as an operational weakness in the arrangements because of the logistical difficulties associated with attending deaths or other serious incidents which require the PIRC teams to travel long distances in response to referrals from Police Scotland or directions from COPFS. In evidence to the Review the previous Commissioner explained that investigators could travel by car to most locations in Scotland in a few hours. The PIRC operates an on-call system which provides 24-hour cover but the more distant the location from the central belt, the longer the gap before the local Police Scotland officers hand over the incident scene to the PIRC investigation team. In certain circumstances the local Procurator Fiscal may attend the scene but that is seldom the case. As stated in my report to the then Home Secretary, the first hours following a death or serious incident, referred to as 'The Golden Hour' are crucial. Not only can they fundamentally set the shape and tone of an ensuing investigation because of the importance of evidence-gathering but an individual's or a family's experience of the entire process may be coloured by the way they are treated in these crucial hours.

14.125 I therefore recommended in the preliminary report that the PIRC should consider the case for creating some measure of regional presence to enhance its capacity to respond immediately to the most serious incidents wherever they occur. I also suggested that guidance should be agreed between the PIRC, COPFS and Police Scotland about the criteria for attendance at the scenes of deaths or serious incidents by the PIRC investigator and the local Procurator Fiscal, and the handover of a potential crime scene to the PIRC by Police Scotland.

14.126 COPFS have confirmed that their staff working in local offices, particularly in more remote areas of the country, are not trained for this type of death investigation work and that the specialists working in the Scottish Fatalities Investigation Unit and the Homicide Unit, which are based in the central belt, now very rarely attend crime scenes. That is because COPFS standard practice is that any location now considered to be a possible serious crime scene will be captured on 360° film footage and fully photographed, following which the senior investigating officer and COPFS will assess the situation remotely and draw up a forensic strategy.

14.127 COPFS's view is that their staff attending a potentially very difficult scene with little or no experience or training in how to manage such a situation would not provide the reassurance necessary in such a circumstance; nor is it necessarily the case that COPFS staff could reach the location more quickly than a member of PIRC staff.

14.128 PIRC take the view that the quicker they can attend a fatality or serious incident, the more reassurance is provided. The PIRC investigation teams have a 24-hour, 365-day, on-call capability to deploy a 'post-incident' team who have the necessary skillset required to manage a potential incident or crime scene and secure evidence. PIRC also has a Memorandum of Understanding (MoU) with Police Scotland which provides that Police Scotland will secure the scene of the incident and, when necessary to preserve evidence, undertake the initial examination of the scene, with the PIRC taking over on arrival. Following notification of an incident, the locus is 'locked down' until an approach involving all parties is agreed. The PIRC scene managers will examine the actions of the police scene managers and may direct or undertake additional investigative strands.

14.129 These are crucial protocols but there remains an imperative in relation to Article 2 deaths that the independent investigating team attends the scene as promptly as possible and thereby reduces the gap before the scene handover. There are two other solutions that PIRC should consider. The UK-wide experience of the COVID-19 pandemic is that homeworking can work for many organisations and individuals; with this in mind, it may be possible in the future for PIRC to create a

regional presence by employing investigators who work from home for most of the working week. The second potential solution in rare cases would be for PIRC staff to have access to a contracted helicopter service or the Police Scotland helicopter in order for them to access remote locations as speedily as possible.

[Preliminary report recommendation: The PIRC should consider the case for creating some measure of regional presence to enhance its capacity to respond immediately to the most serious incidents wherever they occur.](#)

The title of the PIRC organisation

14.130 The previous Police Investigations and Review Commissioner suggested that the name, 'Police Investigations and Review Commissioner' was "ill-conceived as it immediately suggests to the public that the organisation is part of the police". That assertion was supported by evidence to the Review from PIRC investigators.

14.131 In the preliminary report I suggested that consideration be given to adjusting the title of the organisation. This may or may not involve primary legislation to effect the change as it would be possible for the organisation to function under a different title even if its legal name was unaltered. What matters is the public perception. The precise wording is a matter for the PIRC and Scottish Government, but it should emphasise the inherent and crucial independence of the Commissioner and give some indication of the core functions. If the number of Commissioners is to be increased, as I recommend above, consideration should be given to re-designating the PIRC as a 'Commission'.

PIRC training

14.132 I welcome the additional training that has been put in place within PIRC since the commencement of this Review. I commented in the preliminary report that much of this should have been implemented much earlier in the lifetime of the

organisation. It is clear that staff have benefited from the new provision of training. For the CHR staff to understand complaints against the police there must be significant understanding, familiarisation with real-life policing, and experience of what officers face in unregulated and sometimes frightening environments. The training that has been available to the CHR team should be extended to ensure that they have that kind of informative familiarisation, and a concerted effort made to ensure closer liaison with the Complaints and Conduct Team in the Scottish Police Authority (SPA).

14.133 PIRC are now placing more emphasis on the learning and improvement as key objectives of the complaint handling process. The PIRC statutory guidance on complaint handling, 'From sanctions to solutions'¹³⁸ is being revised to place greater emphasis on promoting a culture of embracing and learning from complaints and continuous improvement. The Training chapter at page 348 contains further comment on PIRC training.

14.134 Later in this chapter I comment on learning from outwith Scotland and that was a theme picked up in the 2015 Review led by Robert Gordon: "Experience elsewhere ... has shown that a strong focus on work flow, swift inquiry handling, case filtering and early disposal of less complex cases yields productivity improvements and enhanced staff and customer satisfaction". The previous Commissioner had met with her counterparts in other jurisdictions in the United Kingdom and that engagement and learning should be extended to other levels of the organisation.

14.135 The PIRC have commenced preliminary discussion with colleagues at the Independent Office for Police Conduct (IOPC) about developing a more joined-up continuing professional development (CPD) framework for investigators. The intention is to explore training being accessed by both organisations to identify any opportunities to source the same training and to develop a continuous improvement training model for investigators in addition to role-specific training. This would make benchmarking between the two organisations possible.

¹³⁸ https://pirc.scot/media/1211/pccs_statutory_guidance_web.pdf

14.136 There is also considerable merit in greater interaction, co-operation and training with the Scottish Public Services Ombudsman to share best practice on complaints handling. I very much welcome the willingness of both the Commissioner and the Ombudsman to explore opportunities for training and closer working arrangements between their two organisations.

PIRC culture

14.137 The PIRC is a relatively young organisation and is still developing. The Review has considered evidence around its staffing, training, structure and culture. The PIRC vision includes promoting continuous improvement. There is much more that is being done to realise that vision, and the essence of that is adopting a more positive approach, emphasising improvement and driving up Police Scotland's standards. I very much welcome the shift away from the previous predominantly punitive, fault-finding approach to constructive engagement with Police Scotland based on learning.

14.138 While the investigative role and the CHR function are both critical to thorough examination of what may have occurred to cause a complaint or public dissatisfaction, there was previously little evidence of the philosophy described in the PIRC's overarching statutory guidance, 'From sanctions to solutions'¹³⁹, in which the executive summary is introduced with the purpose of the guidance as, "to contribute to the modernising of police complaint handling in Scotland by moving from a culture of blame and sanction towards one of learning from complaints ...".

14.139 The PIRC is one of the vital checks and balances within policing in Scotland created to instil public confidence in independent investigations and the complaints system. The culture of the organisation should reflect and engage the ethos of 'From sanctions to solutions' with a view to assisting the police with continuous improvement in policing services. I am reassured that the change in

¹³⁹ https://pirc.scot/media/1211/pccs_statutory_guidance_web.pdf

approach described above, which was very apparent in my focus group discussions with PIRC staff and PIRC senior managers, together with the refreshed statutory guidance now in development, will help to embed that culture.

14.140 The roots of the organisation lie in the complaints handling review function described earlier in this report, however the PIRC is now much more heavily focused on its investigatory functions and this was very much reflected in evidence. This evidence included indications of a two-tier organisation where investigators heavily outnumber other functions and the Complaint Handling Review team is perceived as the second tier.

14.141 The PIRC employs a large number of very able and very experienced former police officers in its investigation teams who share with serving police officers a commitment to public service, a sense of fairness and a desire to help others. A senior prosecutor who gave evidence to the Review described them in this way:

“I found them to be exceptionally dedicated, very switched-on, very determined to do the job they’re paid to do without fear or favour ... They know the systems, they know the way things operate, they know where to go looking. If something doesn’t look right to them, in my experience, they follow it to the ends of the earth.”

14.142 They carry out a challenging role in investigating serious and sensitive matters. Dealing with allegations or situations that can range across the whole gamut of policing specialisms from within a relatively small organisation presents challenges. These were highlighted in the HMICS evidence to the Review:

“It is difficult for retired officers to maintain competence in contemporary investigation techniques, particularly if those officers reached senior rank and had not carried out operational roles for some time prior to retirement. This explains anecdotal evidence from serving officers that PIRC investigations can feel more like the 1990s than 2019.”

14.143 While keeping skills up to date is a challenge that should be addressed through training programmes, a related issue that also needs to be considered is the tenure of investigators and what the optimal duration for such a role is, taking into account experience, training and career development.

14.144 The key product from PIRC investigations is the investigator's report. The early evidence given to the Review suggested that the time and effort devoted at many layers of management to the quality assurance of these reports was excessive; in some instances reports were checked five times before being completed. There was evidence that this kind of excessive supervision caused delays, disempowered staff and had an effect on morale. Notwithstanding that level of intensive supervision, there was evidence that the product that goes to other agencies, including the Procurator Fiscal can on occasion be lacking in focus, over-lengthy, and does not always identify the relevant material.

14.145 In the preliminary report I suggested that there would be benefits to both the organisation as a whole, its staff and other organisations if its focus was more strategic, its engagement more constructive and its approach more outward-looking. Not only would a shift in emphasis and tone enhance external relationships but it would also boost the confidence and motivation of staff across all teams. In the light of the evidence provided about the organisation and its culture, I also recommended that there should be an immediate management review by an independent consultant to ensure that it has appropriate leadership, skills and culture to carry out its functions in the future, and to examine interactions with other stakeholders and how they can be improved.

14.146 In her submission of evidence responding to my preliminary report, the Commissioner explained that the Complaint Handling Review Team has refocused its approach, placing more emphasis on the central or critical issues of the complaint, on learning and improvement for the police, and less emphasis on the procedural and administrative issues associated with complaint handling. This has subsequently resulted in more complaint handling reviews concluding that the complaint was reasonably handled. The language being employed by review staff is also more constructive and less directive. I say more about language in the Accessibility and communication chapter at page 282.

14.147 Since the publication of my preliminary report I have held two focus groups at the PIRC offices at Hamilton, one with a group of members of the Complaint Handling Review Team and the Investigations Teams and one with the

PIRC senior management team. In the focus group that I had with PIRC complaint handling officers and investigators I was told that complaint handling reviews were identifying common issues and there was an opportunity to take a strategic overview in order to inform learning. The Complaint Handling Review team was fully resourced for the first time in many years. There was still a backlog of 70 cases but additional resources had helped to bring that down from the previous figure of 120 at the beginning of 2020.

14.148 It was also noted by this focus group that there had been a definite shift in the organisation, and people were more comfortable in bringing forward their questions and concerns. There had also been more training provided and taken up. The Review team was told that morale was changing for the better; there was greater recognition of what the officers did in the Complaint Handling Review Team, and in general a different approach to leadership had resulted in more engagement. There was an opportunity for a bit more cohesion within the organisation and a holistic approach.

14.149 The focus group with senior managers reported that things had changed during 2019 and 2020 with positive feedback from Police Scotland and processes being speeded up within the PIRC. There had been a streamlining of bureaucracy, more delegation was now happening and there was also better working with COPFS.

14.150 It is evident to me that the culture of the PIRC has changed significantly since my first visits there to gather evidence. The atmosphere and the feedback from the focus groups were both very positive and the organisation is moving in the right direction. I very much welcome that shift in culture. I also commend the Commissioner and her colleagues for taking on board and addressing many of the suggestions and recommendations made in the preliminary report.

[Preliminary report recommendation: There should be a management review by an independent expert to ensure that the PIRC has appropriate leadership, skills and culture to carry out its functions in the future, and to examine interactions with other stakeholders and how they can be improved.](#)

PIRC performance

14.151 In the first quarter of 2019-20 to the end of June 2019, 48% of complaints were found to have been reasonably handled by Police Scotland and the PIRC issued 23 reconsideration directions. For the six months from 1 July to 31 December 2019, on average per month, 65% have been found to be reasonably handled, taking the year to date figure to 60% reasonably handled. In December 2019, 72% were found to be reasonably handled. During the six-month period to December there were ten reconsideration directions.

14.152 The PIRC reported that in 2019-20 the number of reconsideration directions issued by them fell by 25% compared with the previous year, mirroring an overall improvement in how policing bodies are handling complaints.

14.153 A major issue for a number of complainers with whom the Review met was the time taken to conclude complaint handling reviews; and a recurring concern for those members of the public was that they were not properly updated on progress and had to chase the PIRC for an update on more than one occasion. Another concern for some of them was that the PIRC do everything in writing rather than in person or by the telephone. I address that issue in the Accessibility and communication chapter at page 282.

14.154 In 2019-20 PIRC issued 242 complaint handling reviews. They have reduced their backlog from 120 to 70. On average PIRC concluded cases in 8.8 months in 2019-20. The new strategic objective in future will be to complete 80% of complaint handling review cases within four months. In March 2020 they issued 20 complaint handling reviews with an average total timescale of six and a half months, so in their own words, they “are heading in the right direction”.

14.155 From 1 January 2020, PIRC introduced revised timescales for completing investigations. Investigations should normally be completed within these periods:

Category A – Death investigations – 3 months (previously 6 months)

Category A – 80% completed in 3 months (previously 90% in 6 months)

Category B – 80% completed in 3 months (previously 90% in 4 months)

Category C – 80% completed in 3 months (previously 90% in 3 months)

14.156 The timescales for death investigations were set following discussion with COPFS, aimed at significantly decreasing the time from a death occurring to the Fatal Accident Inquiry being held. These revised timescales mean that the focus very much falls on the more important, higher category investigations being completed quickly, with a corresponding adjustment to the timescales for the lower category investigations.

14.157 The PIRC's four strategic priorities are outlined in the Business Plan for 2020-21¹⁴⁰. They are:

- 80% of all investigation reports are submitted to the referring body within 3 months of the start of the investigation;
- 90% of all referrals are assessed and an investigation decision taken within 5 working days of receipt of relevant information;
- 80% of Complaint Handling Reviews from receipt to conclusion completed within four months; and
- to demonstrate effective and efficient governance.

14.158 I recommend that the PIRC should publish performance against set targets for complaint handling reviews and investigations in the Commissioner's annual report.

¹⁴⁰ https://pirc.scot/media/5160/pirc_-_business_plan_2020-21.pdf

Recommendations in relation to the Police Investigations and Review Commissioner

14.159 Recommendation: The 2006 Act should be amended to re-designate PIRC as a Commission comprising one Police Investigations and Review Commissioner and two Deputy Commissioners, to create a statutory Board and to provide for the necessary appointment arrangements. Given the sensitivity of the office of the Commissioner, the role should be strengthened by the appointment of two Deputies with relevant legal expertise or other relevant experience who are not former senior police officers.

14.160 Recommendation: The Police Investigations and Review Commissioner should be appointed by Her Majesty The Queen on the nomination of the Scottish Parliament and should be made accountable to the Scottish Parliament through the Scottish Parliamentary Corporate Body and the committees of the Parliament, but not for criminal matters, for which the Commissioner is accountable to the Lord Advocate, and not for operational matters or decisions in which she acts independently. This 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.

14.161 Recommendation: The ultimate ability of a member of the public to take a complaint against the PIRC or the Commissioner to the Scottish Public Services Ombudsman when they are dissatisfied with how that complaint has been handled by the PIRC in the first instance should be highlighted more prominently on the PIRC website.

14.162 Recommendation: The PIRC should be given a statutory power to call in an investigation of a complaint if there is sufficient evidence that Police Scotland has not dealt with a complaint properly, where the complainer provides compelling evidence of a failure on the part of Police Scotland and

where the Commissioner assesses that it would be in the public interest to carry out an independent re-investigation.

14.163 Recommendation: The PIRC should have an additional power, similar to the PONI's, to investigate a current practice or policy of Police Scotland if she believes that it would be in the public interest to do so; this power should be used to focus on broad themes or trends, or practices which might be of particular public concern.

14.164 Recommendation: The PIRC should take on responsibility for the key stages of the senior officer misconduct proceedings (both misconduct and gross misconduct) i.e. the functions of receipt of complaints/allegations, preliminary assessment, referral to COPFS of criminal allegations and, where appropriate, referral to an independent legally chaired panel.

14.165 Recommendation: The PIRC should be given a new statutory function and power to present a case at a senior officer gross misconduct hearing where the case would be determined by a three-person panel comprising an independent legally qualified chair, a lay person and an expert in senior policing.

14.166 Recommendation: The PIRC should have the power to recommend suspension of a senior officer if she or he believes that not suspending the officer may prejudice an effective misconduct investigation. The PIRC should provide supporting reasons when they make such a recommendation to the SPA that a senior officer should be suspended.

14.167 Recommendation: The PIRC should conduct an annual audit of triage within PSD of public complaints against the police to ensure that matters that can be resolved by FLR, or misconduct, or potential criminality are being properly identified and routed accordingly, and to provide assurance that Article 3 and Article 5 cases are being correctly identified and reported forthwith to COPFS.

14.168 Recommendation: The case for all complaints being received by an independent police complaints body such as the PIRC 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 model (Police Ombudsman for Northern Ireland) where all complaints go to that independent body in the first instance.

14.169 Recommendation: The PIRC should ensure that discrimination issues are considered as an integral part of their work. A systematic approach should be adopted across the organisation and in all cases investigators should consider if discriminatory attitudes have played a part.

14.170 Recommendation: PIRC should publish their performance against set targets for complaint handling reviews and investigations in the Commissioner's annual report.

Chapter Fifteen - Transparency, confidentiality and role of the media

15.1 In the preliminary report I said that I would give further consideration to the whole question of privacy, the public interest and the role of the media. In that report I supported the principle of transparency, which allows systems to be easily understood and which facilitates public, parliamentary and media scrutiny while respecting both the necessary confidentiality of any disciplinary process and the privacy of individuals and their families. I also noted the intense media and public scrutiny surrounding a number of high-profile issues and problems in the early years of Police Scotland and the SPA. I discussed the need for confidentiality at the early stage of a PIRC investigation to avoid deterring or intimidating potential witnesses or subjecting officers or their families to media attention when there is still very often no evidence available to support allegations and certainly no 'prima facie' case.

Legal background - Social media posts and contempt of court

15.2 Where the Crown Office and Procurator Fiscal Service (COPFS) is made aware of comments posted online which relate to an ongoing criminal case and which may create a risk of prejudicial pre-trial publicity, consideration is given as to whether its publication meets the test set out for contempt of court. The Contempt of Court Act 1981¹⁴¹ introduced 'the strict liability rule' whereby conduct may be treated as contempt of court as tending to interfere with the course of justice in particular legal proceedings regardless of intent to do so.

15.3 A number of options are available to the Crown. In the first instance, COPFS may decide to take no action, may warn the author about their conduct, or ask them to remove the publication and refrain from further similar comments until the trial has concluded.

¹⁴¹<https://www.legislation.gov.uk/ukpga/1981/49#:~:text=In%20this%20Act%20%E2%80%9Cthe%20strict,of%20intent%20to%20do%20so.>

15.4 Where the Crown is of the view that a publication undoubtedly amounts to a contempt of court and carries a significant risk of prejudice to a case, consideration will be given to petitioning the Court for contempt.

15.5 In an effort to prevent the publication of online commentary presenting a risk to ongoing proceedings, the Crown has recently taken the proactive approach of posting the following warnings on the COPFS Twitter account:

“When an individual is arrested or an indictment is served the Contempt of Court Act 1981 applies. The court may consider that any information published which creates a substantial risk that justice is seriously impeded or prejudiced is ‘contempt’.”

“Contempt is punishable by up to two years in prison and/or an unlimited fine. The law is used by the court to protect the integrity of proceedings, preserve access to justice of victims and to secure the rights of the accused.”

“Court is the only appropriate public forum for the discussion of matters of fact or law in live criminal cases. Any published information – including online – that creates a substantial risk of prejudicing justice may be contempt of court.”

The media and the police

15.6 The relationship between the police and the media was summed up in 2017 by McGovern and Philips in *Police, Media and Popular Culture*¹⁴²:

“The relationship between the police and the media is complex, multidimensional, and contingent. Since the development of modern-day policing, the police and the media have interacted with one another in some way, shape, or form. The relationship has often been described as symbiotic, and can be characterized as ebbing and flowing in terms of the power dynamics that exist. For the police, the media present a powerful opportunity to communicate with the public about crime threats and events, as well as police successes. For the media, crime events make up a significant portion of media content, and access to police sources assists journalists in constructing such content. But the police–media relationship is not always cosy, and at times, tensions and conflicts arise. The increasing professionalization of police media communications activities has further challenged the nature and scope of the police–media relationship. Not only has the relationship become more formalized, driven by police policies and

¹⁴² https://www.researchgate.net/publication/332368088_The_Police_Media_and_Popular_Culture

practices that are concerned with managing the media, but it has also been challenged by the very nature of the media.”

15.7 The police staff associations in their evidence to the Review referred to instances of ‘trial by press’, the propensity for an officer to be named instantly on social media at the very earliest stage of an allegation of misconduct or criminality, and the imbalance in media coverage when someone is subsequently exonerated. They also described their perception that social media and the press gave a disproportionate voice to individuals who had been through the complaints process but remained dissatisfied.

15.8 The media do of course carry the risk of being sued by a police officer for defamation but the costs of pursuing this action are often prohibitive. In Scotland an individual may also seek an interim interdict or prohibition from the court preventing publication of defamatory material. Such a court order has immediate effect until a full hearing takes place; this prevents publication until such time as a Judge can rule on the matter in question.

15.9 During the Review I met with senior members of the press who questioned the level of understanding within, and across, Police Scotland of the principle and importance of freedom of expression and the media’s role in delivering that.

15.10 High public office carries with it legitimate and well understood expectations of public scrutiny, accountability and transparency. In principle the higher the office, then the greater the expectation that the holder of that office will be subject to more external public, parliamentary and media scrutiny. There is a public interest in transparency around police misconduct proceedings, particularly in relation to senior police officers, and that is why I have recommended in the Evidence from other jurisdictions chapter at page 296 that all gross misconduct hearings should be held in public.

15.11 High expectations of police officers have to be balanced against individuals’ rights under Article 8 of the European Convention on Human Rights (ECHR) to respect for their private and family life. Those high expectations do not legitimise or

justify the improper, or even illegal, leaking of personal information to the media, and Police Scotland should deal with leaks of sensitive information by members of the police service relating to conduct matters as a breach of the statutory Standards of Professional Behaviour or Code of Ethics.

The media and the public

15.12 ECHR Article 8 rights also come into play when considering the relationship between the media and the public. The media have a responsibility to consider the rights of an individual and their family early on during an investigation, particularly in a serious incident involving a death. (In deaths and serious incidents where the PIRC are carrying out the independent investigation the police have a responsibility to refrain from making any public comment but should leave that to the PIRC.)

15.13 The issues around police, public and press relationships are not new. Lord Justice Leveson completed his inquiry into the culture, practices and ethics of the press in 2012. In his report¹⁴³ he said that:

“The public must be kept aware of policing concerns and must engage in the debate. Therefore the press also has a vital role: it must encourage the public to engage in the criminal justice system by coming forward with evidence; it must facilitate that assistance and it must applaud when criminals are brought to justice as a result. The press must also hold the police to account, acting as the eyes and ears of the public.”

15.14 While banning publication may not be in the public interest, restricting a publication which would be likely to impede an investigation, particularly at the early stages, could be in the public interest.

15.15 Publicity or the prospect of being named, particularly at the earliest stages of an investigation, can have an inhibiting effect on the willingness of witnesses to come forward to give evidence. Members of the press pointed out to the Review that

¹⁴³ <https://www.gov.uk/government/publications/leveson-inquiry-report-into-the-culture-practices-and-ethics-of-the-press>

an inhibiting effect can also work in the other direction where a member of the public who is concerned about police wrongdoing takes evidence to the newspapers but the newspapers are seen to do nothing about exposing that wrongdoing. That might make it less likely that a well-intentioned member of the public would report wrongdoing in the future.

Transparency and confidentiality

15.16 Until 2018 the PIRC had adopted the practice of putting into the public domain information relating to the investigations it was carrying out into the conduct of senior officers on receipt of the referral from SPA. At the point when a referral is received by the PIRC from the Scottish Police Authority there has been no more than a preliminary assessment of the complaints or allegations. I raised my concern with the then Commissioner in the early stages of the Review and this practice has since ceased. On 6 November 2018 the then Commissioner confirmed this change of practice to the Justice Committee of the Scottish Parliament, “In light of our experience last year, we agree that there should be confidentiality around the process and, like the SPA, have determined that in future we will not normally provide comment on senior officer misconduct investigations.”

15.17 While the principle of transparency is appropriate in relation to many of the functions of public bodies it is not always appropriate in relation to any public body charged with investigating allegations of misconduct or criminality at the earliest stages. Investigations into such matters should be confidential temporarily, not only to protect individual and family privacy when the investigation is only at a very early and crucial stage, but in order to create a safe space in which witnesses feel more comfortable to come forward with their evidence against senior and powerful people/officers as well as for those giving exculpatory evidence. There may be a time for transparency about the outcomes but not while the investigation is at its earliest stages, is ongoing or the decision on any action yet to be determined.

15.18 Premature publication of information and unauthorised disclosure of sensitive information, from whatever source, detracts from the efficacy of the investigation,

may create unhelpful and distorted speculation, place potential witnesses under immense pressure and cause profound reputational damage without good cause.

15.19 The current publication policy of the PIRC is that, other than confirming whether the PIRC has been requested by COPFS to investigate potential criminal conduct or matters of misconduct referred by the SPA, or to rectify inaccurate information, all information relating to any criminal investigation or allegations of misconduct of officers remains confidential to protect the integrity of the investigation and to avoid reputational damage without good cause.

Comparison of PIRC and IOPC publication policies

PIRC publication policy

15.20 Stage 1 (New investigations) - The PIRC normally publishes brief details of any new referrals of investigations on their website. They consider that it is appropriate to be open and transparent about their work, within applicable restrictions. It may be appropriate to give general details of what they have been asked to investigate, in response to a media query. In such a scenario, any family members (of someone injured or deceased) involved are notified in advance.

15.21 Stage 2 (During an investigation) - The Communications Team will not provide further details to the media while an investigation is ongoing, unless it is considered appropriate to make a witness appeal.

15.22 Stage 3 (Concluded investigations) - The Communications Team may publish a brief update on their website and Twitter site, once the investigation has been concluded, intimating that a report has been submitted to the relevant referring body.

15.23 Where the Communications Team become aware that the media intend to publish anything in relation to an investigation where proceedings are 'active' there is an onus on the Communications Team to ensure that the media are immediately made aware of the 'active' status of the proceedings.

15.24 The Communications Team may also require to advise the media that publishing information from either a civil case, or from any other sources, may prejudice a live PIRC investigation or any future criminal proceedings. Should the media ask for the name of the arrested officer, it should be given unless there is an operational reason for not doing so. This would be given verbally. This policy is based on the advice given in the amended guidelines issued by the Lord Advocate for Police and the Media¹⁴⁴.

15.25 PIRC publish summarised reports of some of their findings and recommendations on their website once an investigation is concluded. These are also e-mailed directly to the media. They consider that it is appropriate to be open and transparent about their work, within appropriate restrictions.

15.26 The decision to publish is based on whether there is significant organisational learning for the police and taking into account the historical nature of the case.

15.27 The reports do not normally include any details that may lead to identification of family members, witnesses, officers, or civilian policing staff. The name of a deceased may be included if it is already in the public domain. In this instance, written permission requires to be obtained from the family.

15.28 Reports from the PIRC to COPFS relating to criminality are confidential and would only be published with the permission of the COPFS.

15.29 Media responses in relation to complaint handling review (CHR) cases must not contain names, ages, location or any other details that may identify those involved. CHR reports are published weekly on the website, with a link posted on the PIRC Twitter site. These reports must be anonymised with names, addresses, place-names and other details removed that may lead to identification of those involved.

¹⁴⁴https://www.copfs.gov.uk/images/Documents/Prosecution_Policy_Guidance/Lord_Advocates_Guidelines/LAG%20-%20JANUARY%202018%2018%2001%2019%20Lord%20Advocates%20Guidance%20on%20Police%20and%20the%20Media%20v2.0.pdf

Independent Office for Police Conduct (IOPC)

15.30 The IOPC carries out a similar role to that carried out by the PIRC in Scotland.

15.31 The amount and nature of the information that the IOPC includes in public statements varies and depends on a number of factors including:

- the stage of the investigative process
- the public interest and seriousness of the issues that are being or have been investigated
- the outcome of any investigation
- the imperative not to prejudice legal proceedings
- the IOPC's responsibilities under the data protection legislation and Human Rights Act 1998

15.32 The naming of police officers and members of police staff in public statements must be seen in this context. Where the IOPC is considering naming an officer or staff member it will, as far as possible, give that officer or staff member a minimum of two weeks' notice, during which that officer or staff member may make written representations. Notification will be given to officers or staff members through the relevant appropriate authority.

Inhibition of witnesses

15.33 The Review asked both Police Scotland and the PIRC for any evidence they had of witnesses being reluctant to come forward for fear of publicity. The PIRC is unaware of any witness failing to co-operate with an investigation (criminal or misconduct) for fear of publicity. There have been occasions however, during PIRC investigations into misconduct allegations, where witnesses expressed concern about their identities becoming known.

15.34 Police Scotland are aware of instances where civilian complainers and/or witnesses have either failed to engage with a misconduct investigation or, at a later stage, failed to appear at proceedings simply because they had lost interest, had moved abroad, were anxious about the process, or were unwilling to engage as a witness. Police Scotland were not aware of any cases where a withdrawal was as a result of concerns around media interest.

Balancing freedom of expression and the right to respect for privacy

15.35 The Review sought the advice of Douglas Ross QC on the very finely balanced issue in respect of Article 8 rights to respect for private and family life on the one hand and Article 10 rights to freedom of expression on the other, in this particular context.

15.36 As I observed in my 2017 report for the then Home Secretary: “Disciplinary action against police officers, and decisions not to instigate such action, must be transparent in order to safeguard public confidence, and to give greater certainty to the police themselves.”¹⁴⁵

15.37 Article 10 gives journalists considerable latitude to express controversial views and opinions, on the basis that the freedom of the press and other news media affords the public one of the best means of discovering and forming an opinion on the ideas and attitudes of political leaders. However, in 1992 the European Court of Human Rights (ECtHR) stated that “the press must not overstep the bounds set, inter alia, for the protection of the reputation of others”¹⁴⁶.

15.38 Article 10 includes the right to receive information, not merely to impart it. The ECtHR has repeatedly held that the public has a right to be informed by the press of matters of important public interest.

¹⁴⁵ <https://www.gov.uk/government/publications/deaths-and-serious-incidents-in-police-custody>

¹⁴⁶ *Thorgeirson v Iceland* (1992) 14 EHRR 843 at §63.
<https://hudoc.echr.coe.int/eng#%7B%22dmdocnumber%22:%5B%22695672%22%2C%22itemid%22:%5B%22001-57795%22%5D%7D>

15.39 It is always the case that the context in which a newspaper or other publication presents controversial material is likely to make a considerable difference when the courts, or others, assess the extent to which it is protected from prosecution or civil action by Article 10.

15.40 The principle of freedom of expression applies to online media in the same way as it does to print media. Website owners are free to decide for themselves which material they wish to publish, and it is not a breach of freedom of expression for a website to moderate comments in order to remove material which might prove offensive.

15.41 The ECtHR has repeatedly emphasised the importance of freedom of expression. In one of the first major judgements on Article 10¹⁴⁷, it stated that its supervisory functions:

“... oblige it to pay the utmost attention to the principles characterising a ‘democratic society’. Freedom of expression constitutes one of the essential foundations of such a society, one of the basic conditions for its progress and for the development of every man.”

15.42 The freedoms protected by Article 10(1) are not unqualified. Article 10 states:

“(1) The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.”

15.43 ECHR Article 8 cannot be relied on in order to complain about a loss of reputation which is the foreseeable consequence of one’s own actions, and that is a fact which in this context will inevitably have a greater relevance the more senior the office that a police officer holds.

¹⁴⁷ *Handyside v United Kingdom* (1979-80) 1 EHRR 737 at §49.
<https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-57499%22%7D>

15.44 The Independent Press Standards Organisation (IPSO) is the independent regulator for the newspaper and magazine industry in the UK. Its stated aims are to hold newspapers and magazines to account for their actions, protect individual rights, uphold high standards of journalism and help to maintain freedom of expression for the press. IPSO publishes the Editors' Code of Practice¹⁴⁸ which "balances both the rights of the individual and the public's right to know".

15.45 The Code of Practice states that:

- There is a public interest in the freedom of expression itself.
- Everyone is entitled to respect for his or her private and family life, home, health and correspondence, including digital communications.
- Editors will be expected to justify intrusions into any individual's private life without consent.
- The public interest includes detecting or exposing crime, or the threat of crime, or serious impropriety.

15.46 In relation to policing there is a distinction to be drawn between criminal matters and misconduct matters. The treatment of individuals and the treatment of publication of material should not be governed by the same level of constraints. The protections in relation to criminal matters are stronger, for example, because they engage ECHR Article 6 rights (Right to a fair trial).

¹⁴⁸ <https://www.ipso.co.uk/editors-code-of-practice/>

The Cliff Richard case

15.47 The balancing of rights was considered by the courts in 2018 in relation to the case of Sir Cliff Richard v the BBC and South Yorkshire Police¹⁴⁹, the first issue which the Judge had to decide was whether Sir Cliff's Article 8 rights were engaged. That depended on whether he had a reasonable expectation of privacy. Whether an individual has a reasonable expectation is not always a question which is easy to answer. It has been described as:

“... a broad one, which takes account of all the circumstances of the case. They include the attributes of the claimant, the nature of the activity in which the claimant was engaged, the place at which it was happening, the nature and purpose of the intrusion, the absence of consent and whether it was known or could be inferred, the effect on the claimant and the circumstances in which and the purposes for which the information came into the hands of the publisher.”¹⁵⁰

15.48 The Judge's conclusion in the case was that Sir Cliff's privacy rights were not outweighed by the BBC's rights to freedom of expression. The question of whether the existence of a police investigation is something in relation to which the subject has a reasonable expectation of privacy had not been clearly judicially determined. The judgement ruled that: “as a matter of general principle, a suspect has a reasonable expectation of privacy in relation to a police investigation”.

Publication of information and investigations

15.49 Publication of information in relation to investigations carried out by the PIRC in relation to senior Police Scotland officers is problematic because of the small number of those senior officers and the likelihood that a name, even if not published, will find its way into the public domain in an uncontrolled way. That could constitute a breach of Article 8 rights so it is right that no names should be disclosed where the PIRC is carrying out an investigation into alleged criminal conduct. There may be

¹⁴⁹ <https://www.judiciary.uk/wp-content/uploads/2018/07/cliff-richard-v-bbc-judgment.pdf> Ch169 at §248.

¹⁵⁰ *Murray v Express Newspapers plc* and another [2009] Ch, per Sir Anthony Clarke MR (delivering the judgment of the Court of Appeal) at §36.

circumstances in which the restriction in relation to a PIRC investigation of a conduct matter may be less stringent. The current practice adopted by the PIRC in their publication policy (as set out above) strikes the right balance between providing an appropriate level of information to the press while being sensitive to the need to protect the identity of officers under investigation (and potentially witnesses and complainers) at the earliest stages of the investigation.

15.50 It is good practice for the PIRC not to issue a news release in normal circumstances. Information should not be put proactively into the public domain but be carefully considered when a request or press inquiry is received.

15.51 Any decision to withhold information needs to be supported by a compelling public interest justification for doing so. While it would be viewed as a breach of Article 10 rights for government to legislate to prohibit certain press activities in this area, it could be possible to put the press on notice that where they breach an individual's Article 8 rights they may face the prospect of providing a remedy for that individual. For example, the PIRC could publish a warning that referring to an investigation which at the time is confidential, is done by the press at their own risk and may constitute a breach of rights under Article 8 (Respect for private and family life) and may be prejudicial to the outcome of the investigation. If however the effect of certifying an investigation as confidential would include prohibiting or restricting reporting by the media, that would involve an interference with the right to freedom of expression enshrined in Article 10. The PIRC has no power to prohibit or restrict reporting by the media that would involve an interference with the right to freedom of expression enshrined in Article 10.

15.52 The ECtHR attaches the highest importance to freedom of expression on political issues and matters of general public concern. That certainly includes alleged police malpractice¹⁵¹. It is likely that the Court would consider there to be a higher level of legitimate public interest in reporting of allegations of wrongdoing on the part of senior officers.

¹⁵¹ *Thorgeirson v Iceland* (1992) 14 EHRR 843.
<https://hudoc.echr.coe.int/eng#%7B%22dmdocnumber%22:%5B%222695672%22%2C%22itemid%22:%5B%222001-57795%22%5D%7D>

15.53 It may also be impracticable and/or undesirable to keep the fact that an investigation is taking place out of the public domain. The public interest in knowing that serious allegations against the police are being investigated may apply to at least some investigations of misconduct falling short of criminality.

15.54 There may be circumstances in which greater transparency is required, but once a PIRC investigation is concluded, publishing reports setting out the conclusions without including names or identifying information about police officers involved seems, as a general rule, to strike a reasonable balance between the public interest in transparency and the Article 8 rights of the officers concerned.

Chapter Sixteen - Crown Office and Procurator Fiscal Service

16.1 As noted earlier in this report, the role of the Crown Office and Procurator Fiscal Service does have a bearing on the operations of Police Scotland, the Scottish Police Authority and the Police Investigations and Review Commissioner, and the efficacy of the system for handling complaints against the police. The following sections take cognisance of, and should be read in the context of, the Review's Terms of Reference which state that, "Whilst the Review will encompass the investigation of criminal allegations against the police, it will not address the separate role of the Lord Advocate in investigating criminal complaints against the police".

16.2 It is plain that for a system of complaints against the police to be perceived as truly effective it is also dependent on the performance of those other parts of the system charged with dealing with complaints. Accordingly, although I am not asked to consider the role of the Crown Office and Procurator Fiscal Service or the courts, it is clear that this independent constituent of the wider system can have a profound impact on how the state deals with complaints and how the overall system is viewed by the complainers.

Role of the Lord Advocate

16.3 The Lord Advocate is the head of the systems of prosecution and investigation of deaths in Scotland, functions which he exercises independently of any other person. Within that system, COPFS, as Scotland's independent public prosecution service, fulfils the responsibility for overseeing and investigating any allegation of criminality – and, by contrast with the position in the other parts of the UK, in Scotland the work of the police in investigating crime is subject to direction from the Crown. The Crown's responsibility extends to the investigation of allegations of criminality by police officers and is reflected in The Police Service of Scotland (Conduct) Regulations 2014¹⁵² and The Police Service of Scotland (Senior

¹⁵² <https://www.legislation.gov.uk/ssi/2014/68/contents/made>

Officers) (Conduct) Regulations 2013¹⁵³ both of which require that all allegations inferring criminality by police officers must be referred for independent investigation by COPFS. The regulations do not specify a time period but it is clear that alleged breaches of Articles 2, 3 and 5 of the Convention Rights and other allegations of serious criminality should be referred forthwith.

16.4 Reports alleging criminal conduct by police officers acting in the course of their duties are made to and investigated by a specialist division within COPFS: the Criminal Allegations Against Police Division (CAAP-D). This division is headed by a senior prosecutor who leads an experienced and senior team of investigators and prosecutors. It deals with a significant number of allegations of criminal conduct that are of wide-ranging sensitivity and complexity. In 2018-19 CAAP-D received 192 reports; in 2019-20 CAAP-D received 285 reports, and in the period April to July 2020 CAAP-D received 90 reports.

16.5 CAAP-D was created to provide a high level of consistency of practice and decision-making across Scotland. The practice of COPFS directing and overseeing investigations into criminal allegations against the police has existed for many years. The thorough and independent investigation of such allegations is essential in a democratic society.

16.6 The framework for a report to be submitted to COPFS differs from the position in criminal cases where the accused person is not an on-duty police officer. Where the accused person is not an on-duty police officer, a case will normally only be reported to COPFS where it is assessed by the police (or other reporting agency) that there is sufficient evidence to establish that a crime has been committed and that the accused person is the perpetrator. Where the criminal allegation is against an on-duty police officer, there is a statutory requirement that the matter be reported to COPFS where the Deputy Chief Constable, or the Scottish Police Authority in the case of a senior officer, considers that it can be reasonably inferred that a constable may have committed a criminal offence, irrespective of the question of sufficiency of evidence.

¹⁵³ <https://www.legislation.gov.uk/ssi/2013/62/contents/made>

16.7 COPFS may direct the Police Investigations and Review Commissioner (PIRC) or the Professional Standards Department of Police Scotland to undertake further investigations into the allegation. Whichever course is taken, the investigation remains under the direction and control of COPFS, consistent with the fundamental principle that the responsibility for overseeing and investigating any allegation of criminality rests with the Lord Advocate and COPFS as independent public prosecutor.

16.8 In every case where there appears to CAAP-D to be a sufficiency of evidence, a report will be submitted by CAAP-D to Crown Office for Crown Counsel's instructions. Crown Counsel¹⁵⁴ may instruct further enquiry before reaching a final decision as to whether criminal proceedings should be instituted in any case.

16.9 COPFS policy is that criminal proceedings will only be instructed against an on-duty police officer on the personal instructions of a Law Officer (i.e. the Lord Advocate or the Solicitor General), who will usually have available to them both CAAP-D's analysis and a recommendation from Crown Counsel. The decision is made in accordance with the criteria in the Scottish Prosecution Code, that is, before a prosecution is instituted, there must be sufficient credible, reliable and admissible evidence, and such proceedings are in the public interest.

16.10 One of the emerging themes from the evidence to the Review is that delays at various stages of the principal organisations' processes are inimical to the effectiveness and efficiency of the arrangements. This has included comment in relation to CAAP-D. Police Scotland said in their March 2019 submission in response to the call for evidence that:

“There are recent examples of criminal allegations having been reported to CAAP-D and officers placed on restricted duties for between two and three years before a decision was made regarding ‘No Proceedings’. Matters consistently take a disproportionate amount of time at CAAP-D before a determination is reached with ultimately the vast majority concluding with ‘No Proceedings’”.

¹⁵⁴ Together, the Lord Advocate, Solicitor General and the Advocate Deputes are known as ‘Crown Counsel’.

16.11 The evidence from the PIRC also in March 2019 commented on the absence of a timescale for COPFS decisions: “Where this organisation submits its reports expeditiously to the COPFS, there is no overarching target for the COPFS to aim for in reaching a determination on proceedings”. Oral evidence from PIRC investigators also indicated that receiving increased feedback and clarity around decisions by CAAP-D would be beneficial. In a focus group in February 2020 with PIRC staff the Review was told by one senior investigator that in general CAAP-D were now turning matters around more quickly.

16.12 There should be a collective effort on the part of all the principal organisations to reduce delays in the system. Some investigations are complex and require wide-ranging evidence-gathering from different sources and experts, but where this is not the case it is in the interests of justice, and all parties concerned, that cases are dealt with expeditiously. In addition to contributing to a joint examination of how processes can be made more efficient, COPFS may wish to consider whether there is a case for increasing the resources available to CAAP-D in order to address the issue of delay. I understand that additional resources have, since this Review commenced, been allocated to CAAP-D.

16.13 I also understand from my discussion with HM Chief Inspector of Prosecution in Scotland¹⁵⁵ that her planned inspection programme for 2020-21 includes a thematic review of how COPFS deals with criminal complaints against the police. I welcome this inspection which will be helpful to the Lord Advocate and should complement action being taken forward by CAAP-D in the light of my report. That thematic review might also consider the information technology available to CAAP-D. In common with many other criminal justice organisations, COPFS appears to have only operational ICT provision. My view, stated elsewhere in this report, is that CAAP-D would benefit greatly from having a modern database which allowed relevant trends and profiles of cases to be analysed and researched. I recognise

¹⁵⁵ Her Majesty’s Inspectorate of Prosecution in Scotland is an independent scrutiny body whose role is to inspect the operation of the Crown Office and Procurator Fiscal Service.

however that there are significant resource constraints across the whole of the public sector.

16.14 In the Accessibility and communication chapter at page 282 I suggest that the range of technology now readily available through telephony and video-conferencing could facilitate more personal interaction with the public. This also applies to CAAP-D and local Procurator Fiscal offices.

16.15 In my preliminary report I noted that there had been relatively little joint training involving CAAP-D and PIRC staff. Given the very close proximity of the CAAP-D office in Hamilton to the nearby PIRC office that appeared to be an opportunity for familiarisation and learning that had been missed. Participation in Police Scotland's Officer Safety Training has been offered and taken up by both organisations and this is an excellent example of giving those who investigate the police an insight into the dangers they face and the techniques the police are supposed to deploy when responding to situations of conflict, situations that can readily result in complaints against the police.

16.16 I also welcome the now regular engagement between the Head of CAAP-D, the Head of the Scottish Fatalities Investigation Unit (SFIU) and the current Commissioner, who meet monthly. The Head of the Scottish Fatalities Investigation Unit has also contributed to the training of PIRC investigators in 2020.

Reporting of off-duty criminality to COPFS by Police Scotland

16.17 In her submission to the Review the previous Police Investigations and Review Commissioner suggested that the Lord Advocate's guidelines be amended "to provide that the reporting of both on and off duty criminality by police officers is expedited to COPFS and/or the PIRC", and noted that "those guidelines provide that off-duty criminality should be reported to the District Procurator Fiscal in the same way as any criminality by a member of the public. Accordingly, they are frequently investigated by local police officers and later reported to COPFS once that

investigation is complete, without the opportunity for COPFS to instruct an independent investigation”.

16.18 I believe there is merit in adjusting the reporting arrangements so that cases involving allegations of criminality against off-duty police officers are reported early and simultaneously to both the local Procurator Fiscal and to CAAP-D. Such an arrangement would ensure that CAAP-D are sighted, can make any connections to any ongoing on-duty case involving the off-duty officer (or his or her immediate colleagues) and can have the opportunity to discuss with the local Procurator Fiscal how and by whom the allegation will be investigated.

16.19 In my preliminary report I suggested that COPFS might wish to consider whether the Lord Advocate’s Guidelines on the Investigation of Complaints Against the Police should be updated to take into account the current police structures and the creation of the PIRC.

16.20 COPFS may also wish to consider how best this could be done to take into account current legislation and recent experience, any other pertinent issues arising from this Review and the recommendations made in this report. COPFS might also wish to draw upon any work that might be done in future by the cross-agency Working Group to review guidance across the board which I recommended in the preliminary report and which is now established as the National Complaint Handling Development Group (NCHDG).

16.21 Following my preliminary report, the Strategic Oversight Group (SOG) is now taking forward a review of all the guidance for the individual agencies on their respective functions related to complaints against the police and taking into account the recommendations made in this report.

Direct reporting of criminality to COPFS

16.22 In hearing evidence from members of the public it was clear that many of them lacked confidence in reporting potential criminality by on-duty police officers to the police but that they were unaware of their right to do so direct to COPFS.

16.23 Where a member of the public alleges that any form of criminality by a police officer in the execution of their duties has taken place and they are dissatisfied with the way that Police Scotland has dealt with the allegation, or where they do not wish to report a crime direct to the police in the first instance, they have the right to report the alleged crime direct to the Crown Office and Procurator Fiscal Service. Where the complaint is of criminal activity by a police officer they may go direct to the specialist Procurator Fiscal division dealing with complaints against the police, known as Criminal Allegations Against Police Division (CAAP-D). This ability for members of the public and serving officers to go direct to the prosecutor is an important safeguard in Scotland that is little known by the general public. The need to ensure this is made very well-known and readily accessible is apparent.

16.24 In the PIRC chapter at page 205 I discuss the importance of the PIRC, rather than Police Scotland, carrying out independent investigations where the terms of the complaint made allege a breach of Article 3 (Prohibition of torture - inhuman or degrading treatment or punishment) by a police officer. Where the terms of a complaint made allege a breach of Article 5 (Right to liberty and security - unlawful detention) it may, depending on the circumstances and seriousness of the case, also require very early independent investigation.

Recommendations in relation to the Crown Office and Procurator Fiscal Service

16.25 Recommendation: The ability to report directly to the Criminal Allegations Against Police Division of COPFS a complaint of a crime by a police officer should be much better publicised and made more accessible to the public by COPFS, by Police Scotland and by the PIRC.

16.26 Recommendation: Where the terms of a complaint made allege a breach of Article 3 by a police officer, and therefore that a crime may have been committed, the Crown Office and Procurator Fiscal Service should instruct the PIRC to carry out an independent investigation rather than directing Police Scotland to investigate it; breaches of Article 5 may, depending on the circumstances and seriousness of the case, likewise require early independent investigation.

Chapter Seventeen - Interactions between the four principal organisations, relationships and culture

17.1 The preliminary Report described the role of the principal organisations that have a crucial role in dealing with complaints against the police. Generally, they are motivated to carry out their functions in a thoroughly professional way. What however became clear through the early evidence to the Review (and from previous media coverage) and was a matter of serious concern, was that certain aspects of those relationships were sub-optimal, were characterised by an absence of constructive engagement and coloured by a tone of cynicism.

17.2 I commented at the time that:

“Suspicious is not impartial, and impartiality is the foundation of every component part of the justice system. Suspicion can breed a lack of professional respect and a lack of confidence in other parties which can be corrosive. Suspicion must not be allowed to damage the trust on which relationships depend and the responsibility for ensuring that does not happen rests with the leadership teams”.

17.3 I suggested that a concerted effort was required to make these crucial professional relationships work more effectively. Better liaison at every level of interaction was needed to increase understanding and to reduce the unnecessary tension evident over the first few years of the new structures. I very much welcomed the establishment in August 2018 of the Quad meeting, which brings together senior representatives of Police Scotland, the Scottish Police Authority (SPA), the Police Investigations and Review Commissioner (PIRC) and Crown Office and Procurator Fiscal Service (COPFS), as a means to address some of the problems which had arisen and to consider practical issues collectively. There would have been benefit in having such a mechanism in place earlier.

17.4 In the preliminary report I recommended a senior cross-agency joint working group to review guidance in respect of each of the agencies. I also recommended that the group should take direction from and report to the Quad meeting. The working group was established in 2019 as the National Complaint Handling Development Group. I proposed that group might also be the forum at which the

prioritisation of the most serious cases is discussed, trends analysed prior to papers being submitted to the SPA Complaints and Conduct Committee and information-sharing protocols updated.

17.5 In setting the tone for future engagement and improvement, I also proposed that the Quad meeting should be guided by the ethos of 'From sanctions to solutions'¹⁵⁶ and turn into a reality its philosophy of non-punitive learning from complaints that do not involve misconduct, gross misconduct or criminality. I am pleased this statutory guidance is being updated by the PIRC in consultation with the other organisations.

17.6 The Quad meeting has been re-named the Strategic Oversight Group (SOG). It brings together organisations that have to be structurally and constitutionally independent but which cannot effectively function in isolation from each other. The efficacy of the system requires professional and positive relationships that can and must take into account distinct responsibilities and essential structural independence, but there has to be a recognition on the part of all those organisations that they are also interdependent.

17.7 The paramount purpose of the Strategic Oversight Group should be to develop a common understanding and expression of what the organisations are trying to achieve collectively and the kind of culture that they are trying to engender. It is important that the Scottish Parliament, the public, the staff associations and unions and all the other main stakeholders understand and buy in to that philosophy.

17.8 The approach being adopted south of the border in the light of the Chapman Report¹⁵⁷ is described in the Evidence from other jurisdictions chapter at page 296, but it is worth noting that the new Home Office approach is based on creating a learning culture which focuses on prevention, early intervention and support for the people involved, and a culture that applies equally to all parties, who should be willing to listen, reflect and learn lessons. The Home Office's stated intention was to

¹⁵⁶ https://pirc.scot/media/1211/pccs_statutory_guidance_web.pdf

¹⁵⁷ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/385911/An_Independent_Review_of_the_Police_Disciplinary_System_-_Report_-_Final....pdf

remove the explicit link between a complaint and the conduct of an officer, and to make the system less about blame and more about the customer.

17.9 The recent evidence suggests that the need to improve communication between organisations that I identified has been addressed and I very much welcome the shift that has taken place. The previous non-sharing of certain information between organisations that concerned me is no longer evident. In the preliminary report I commented on the Memorandums of Understanding (MOUs) that exist between a number of the organisations tending to be very short and in need of updating.

17.10 The Scottish Police Authority Complaints and Conduct Committee continue to have regular engagement with Police Scotland. The Assistant Chief Constable for Professionalism and Assurance and senior Professional Standards Department officers attend committee meetings to answer questions in the public sessions and to brief members on sensitive matters in private session. The Committee also supported the secondment of an inspector to the Authority's Complaints team until that officer was recalled to Police Scotland because of COVID-19 demands. The Committee renewed its invitation to the PIRC to attend and I welcome the participation of the PIRC Head of Reviews and Policy at their March 2020 meeting.

17.11 In her most recent submission to the Review the Police Investigations and Review Commissioner said, "The Strategic Oversight Group has been instrumental in resolving a number of issues that had been creating difficulties for one or more of the organisations. The protocol on sharing information for misconduct proceedings is such an example." At an early SOG meeting Police Scotland raised the issue of obtaining sufficient information to make informed decisions about misconduct proceedings relating to officers under investigation. PIRC subsequently drafted an Information Sharing Protocol in relation to misconduct proceedings which, following consultation, was agreed by Police Scotland, COPFS and PIRC.

17.12 Police Scotland told the Review that:

"Police Scotland recognises the development of a revised and substantially more detailed Memorandum of Understanding (MOU) and Information

Sharing Agreement (ISA) between the PIRC, SPA and Police Scotland as a key piece of work and has been working closely with these organisations in development of both document sets. The revised MOU and ISA will ensure that the necessity, relevance and proportionality tests for sharing the information are all met and will further ensure that information shared is managed appropriately. The MOU and ISA will formalise both the positive spirit of partnership working that exists between the organisations and existing processes developed to allow for organisational learning and to support the welfare of those involved.”

17.13 The PIRC has also instituted regular bilateral meetings with the Criminal Allegations Against Police Division (CAAP-D) and the Scottish Fatalities Investigation Unit (SFIU) of COPFS. Additionally, in order to increase awareness of the PIRC role in the investigation of deaths following police contact or in custody, PIRC is contributing to training for members of staff for these units and the COPFS Homicide on-call team.

17.14 The National Complaint Handling Development Group (NCHDG) reports to the SOG. It normally meets every six weeks and includes representatives from the PIRC, the Scottish Police Authority (SPA) and Professional Standards Department and is chaired by the PIRC Head of Reviews and Policy. The group has been instrumental in fostering a more collaborative and constructive approach between all parties involved in complaint handling and seeks to make improvements in all aspects of complaint handling. Those improvements include: the roll-out of a more streamlined frontline resolution process by Police Scotland; developing a joint annual audit strategy for Police Scotland, the SPA and the PIRC; and aligning the three organisations’ unacceptable actions policies for dealing with vexatious or malicious complaints to ensure that they are consistent, robust and efficient.

17.15 Another positive example of constructive engagement and joint working is the separate Group now established to consider cross-border jurisdictional issues. That group includes Police Scotland, the PIRC, COPFS, the Independent Office for Police Conduct (IOPC), the Police Ombudsman for Northern Ireland (PONI), Scottish Government and the Home Office. The conclusions of that group will come to the Strategic Oversight Group in due course for final agreement. I comment on the substantive cross-border matters in the Cross-border jurisdictional issues chapter at page 426.

17.16 Police Scotland told the Review in its most recent written submission of evidence that:

“Police Scotland is committed to having a positive impact on complaint handling services to the public and endeavour to promote a culture of organisational learning across the Service. To achieve this, the Professional Standards Department (PSD) cascades good practice, incorporating and communicating areas for development and learning points, and disseminates recommendations from partner agencies. While much has already been achieved, Police Scotland recognises that organisations must continually work together to identify ways to improve service provision and meet new and emerging demands. PSD continues to actively seek partnership opportunities to improve the quality of service provided to the public and to promote organisational learning.”

17.17 As well as this engagement with partners, Police Scotland has also established an internal Complaint Handling Review Working Group (CHRWG) to address my preliminary report recommendations that were specific to Police Scotland. Constructive engagement between Police Scotland and the PIRC has taken place over appropriate access to the Criminal History System and the Centurion complaints and conduct database and I comment on both those subjects in the Police Scotland chapter at page 81.

17.18 I previously suggested that in addition to updating, expanding and adhering to the bilateral Memorandums of Understanding, there would be a huge potential benefit in creating and adopting a new four-way Memorandum of Understanding based on a common purpose and shared objectives.

17.19 I also suggested that the creation of such a document was a matter for Police Scotland, the SPA, the PIRC and COPFS to take forward but I believed that it should encapsulate shared objectives shaped around these seven headings:

- Increasing public confidence and satisfaction with service
- Ensuring consistent practice
- Dealing effectively and expeditiously with complaints to reduce delays
- Increasing public awareness and understanding
- Improving communication with the public around progress
- Fostering proactive co-operation between organisations
- Sharing information

17.20 In its Terms of Reference the Strategic Oversight Group has adopted and adapted these objectives to form the core of its stated purpose. I very much welcome that. SOG is attended by the Deputy Crown Agent, the Police Investigations and Review Commissioner, the Assistant Chief Constable for Professionalism and Assurance and an SPA Director. Meetings, which take place every two months, are chaired by COPFS, the SPA, the PIRC and Police Scotland in rotation. The Terms of Reference also provide that SOG meetings may be attended in part by HMICS and Scottish Government.

17.21 This series of collaborative interactions, together with the recently revised Memorandum of Understanding between the PIRC, Police Scotland and the SPA, should form an effective platform for ensuring improvement and effective learning across the agencies in the future and can only be of benefit to the public.

[Preliminary report recommendation: There should be the immediate establishment of a senior cross-agency joint Working Group involving the SPA, Police Scotland and the PIRC to develop appropriate and up-to-date guidance.](#)

Chapter Eighteen - Accessibility and communication

18.1 Complaining against the police is a serious act and, if they wish to do so, members of the public should be supported in making a complaint. Helping them to exercise their right to complain requires creating a complaints system that is accessible, receptive, comprehensible, speedy, and fair; it also requires that every person who has a part in delivering that system communicates well with the members of the public to whom they are providing the service. In short, it should be easy to complain, easy to get a response and easy to learn the lessons.

18.2 The system should also take into account the broad spectrum of people who make complaints, or who are put off making a complaint, and the range of their different motivations, needs and inhibitions. These members of the public range from the regular to the reluctant, those who are very vulnerable, those who wish to make consumer-type complaints, those who allege serious wrong-doing or misbehaviour and those who are regular participants in the criminal justice system. These groups are not mutually exclusive.

18.3 During the course of this Review I have seen and heard evidence about the barriers that exist to making a complaint. This chapter deals with how those barriers can be reduced or eliminated.

18.4 In my preliminary report I recommended that Police Scotland should simplify and streamline systems to make it as straightforward as possible for members of the public to navigate the rather opaque landscape and as easy as possible for them to access and understand information on how to make a complaint; in particular, the online complaints form on the Police Scotland website should be made more prominent. Police Scotland has reviewed, improved and tested access to their website to ensure that the online complaint form is now simple to access and that sufficient guidance is provided regarding the complaints process. As a result, searching online for how to complain is now easier and quicker.

18.5 I said in the Custody chapter at page 372 that the Letter of Rights given to people in custody should make clear that they have a right to complain. The Police Scotland website also has a Know your Rights¹⁵⁸ section for young people. That section should also be amended to make clear the right to make a complaint.

18.6 A number of police forces and constabularies in the United Kingdom use their websites not only as a means of accessing the complaints system but as a means of passing on compliments on the service that they have provided, saying ‘thank you’ or giving other feedback. This complain/compliment/comment approach is one that is commonplace in other parts of the public sector and one that Police Scotland should consider adopting. Awareness of the right to praise as well as how to complain should also be increased by displaying posters in police stations and other public buildings such as courts on how to make a complaint about Police Scotland or give feedback, both positive and negative.

Preliminary report recommendation: Police Scotland should simplify and streamline systems to make it as straightforward as possible for members of the public to navigate this rather opaque landscape and as easy as possible for them to access and understand information on how to make a complaint. In particular the online complaints form on the Police Scotland website should be made more prominent.

Allegations of criminality

18.7 I welcome the recent improvements to the Police Scotland website. However, both that website and the Crown Office and Procurator Fiscal Service (COPFS) website and the online police complaints leaflet¹⁵⁹ (August 2014) should be updated to include reference to reporting criminal allegations against the police direct to the COPFS. This reference must be conspicuous and prominent. Members of the public have the right to report such allegations direct to COPFS and I deal with that little-known aspect of the system in the COPFS chapter at page 268.

¹⁵⁸ <https://www.scotland.police.uk/youth-hub/rights/know-your-rights/>

¹⁵⁹ <https://www.scotland.police.uk/spa-media/qomdikgi/complaints-about-the-police-guide.pdf?view=Standard>

Communication and language

18.8 Improving the accessibility of the police complaints system can take many forms. In the preliminary report I said that using candid and frank written responses outlining the outcome of a complaint was critical to maintaining public confidence; and that responses which are not clear or open have the potential to undermine the process. This was based on evidence provided of the use of ambiguous language in correspondence. Guidance on communication is available in the Principles of Inclusive Communication published by the Scottish Government¹⁶⁰ in 2011.

18.9 The style and language used in letters and e-mails that I have seen are mixed. Some are excellent, others are legalistic and lacking in empathy, sorrow or apology. The use of template letters can also be dangerous if they are not amended carefully to reflect the individual circumstances of the complaint. In one very serious case that was brought to my attention, where this was not done carefully, it resulted in a serious loss of confidence in the process on the part of the complainer. People who have poor experiences of the complaints system can become jaundiced, and in extreme cases that can lead to them thinking that the whole system is rotten.

18.10 I was struck during the Review that the practice of both Police Scotland and the PIRC was to conduct nearly all communication by letter or by e-mail. I met with a number of families and individuals whose accounts of their experiences were particularly harrowing but where the organisational response did not seem to recognise that the nature of their cases was such that what they needed was to see the human face of the organisation, or to be able to speak to someone face to face, or to hear a human voice. In such circumstances those operating the system should be able to demonstrate greater empathy and humanity towards members of the public but the system was not designed to allow that to happen. Human interactions can build relationships and prevent misconceptions, misunderstandings and pre-empt lengthy correspondence.

¹⁶⁰ <https://www.gov.scot/publications/principles-inclusive-communication-information-self-assessment-tool-public-authorities/pages/0/>

18.11 One family told me about a letter of apology they received from Police Scotland about the circumstances around a complaint related their grown-up child:

“It almost re-traumatised [X], and probably us as well to be honest, and that’s really difficult because emotionally as a human being you want some sort of outcome. You get a letter like that, it just compounds it.”

“The biggest thing for me ... just to be listened to, just to be actively listened to at initial point of contact for the investigation and take it seriously no matter what your views are, ... just listen to that person.”

18.12 The same family also told me:

“It’s all designed to put you off. In my opinion it’s all designed to exhaust you and to bring you to the point that you’re just going to say: You know what, we’re going to walk away.”

“And I suppose maybe the other thing is their use of jargon and “giving reconsideration directions”, that means nothing to us. And PIRC and Police Scotland, we are not interested in their jargon, their departments, we are interested in our complaint being answered timeously and seriously, and being investigated thoroughly in the first instance and not then having to go back to them again saying: We are really not happy with your responses.”

18.13 Professor John McNeill, the previous Police Complaints Commissioner for Scotland and first holder of the office of the PIRC told the Review that:

“On reflection, one of my regrets was that I didn’t meet with the complainers. In my current role with the armed services I do that and I recognise the benefits in doing so. I also take the view that many police cases are quality of service cases which could be resolved by an intervention from a senior or experienced person who would ‘cut to the chase’ and mediate or have a conversation with the complainer.”

18.14 Many troubled or vulnerable individuals need human interaction rather than communication in writing. I recognise that if that facility is to be built into the complaints system to deal with certain cases then it does require that someone more senior should make a judgement on how to engage and that the officers then involved in that personal engagement should have appropriate training. I welcome Police Scotland’s intention, stated in its annual police plan for 2020-21¹⁶¹, to develop

¹⁶¹ <https://www.scotland.police.uk/spa-media/obva4ntn/annual-policing-plan-2020-21.pdf>

trauma-informed approaches to engagement. That is primarily in relation to children and young people but is exactly the approach that is needed for many of the adults who come into contact with the complaints system. That was reinforced in the evidence from the Scottish Women's Rights Centre¹⁶² (SWRC) who suggested in their submission that training for those handling complaints should also include trauma-informed practice to ensure they are alert to the barriers that those making complaints may experience.

18.15 SWRC went on to suggest that access to adequate support throughout the process is vital for survivors of gender-based violence (GBV) (even where they are already engaged with services) and should be made available on receipt of a complaint to ensure their needs are considered during the process; and that as a matter of course, survivors should be offered the opportunity to have a support person or advocacy worker with them during any interview that relates to the complaint.

18.16 Clearly there are resource implications if less communication is to take place solely by letter or e-mail. Some written communication will always be appropriate and some bereaved or vulnerable people will always warrant a meeting in person, but the range of technology now readily available through telephony and video-conferencing, such as MS Teams which is now commonly used by Police Scotland, could all facilitate more personal interactions with the public.

Resolution letters

18.17 Where complaints cannot be resolved by frontline resolution or complainers remain dissatisfied, candid, empathetic and frank written responses outlining the outcome are critical to maintaining public confidence; responses which are not clear or open have the potential to undermine the process. Evidence of the use of ambiguous language in correspondence was provided to this Review. For example, it was common practice for a final resolution letter to the complainer to feature the

¹⁶² <https://www.scottishwomensrightscentre.org.uk/>

phrase, “the matter has been resolved”, in circumstances where the final determination of that complaint by Police Scotland was that the complaint was not justified. Describing that outcome as “resolved” might readily be interpreted by the complainer as a positive outcome when in fact what is recorded on the Centurion complaints and conduct database in such cases is “Not upheld”. This practice could be viewed as disingenuous and I understand has now ceased. Another poor example was saying in a letter that “it will be dealt with internally”. That is mysterious and not at all transparent.

18.18 The working group that I proposed in the preliminary report has been established as the National Complaint Handling Development Group, involving Police Scotland, PIRC and the Scottish Police Authority (SPA). That Group should have a role in keeping under review the language used by Police Scotland in its correspondence with complainers, simplifying and clarifying the language used, with a view to increasing openness both with complainers around outcomes and with those who scrutinise Police Scotland. Furthermore, the group should oversee a review of the ACPOS¹⁶³ Guidance on the Recording of Complaints About the Police published in 2011. That task should consider in particular the definitions/use of ‘incivility’, ‘excessive force’ and ‘detention’.

Language and translation

18.19 In the Inclusion, diversity and discrimination chapter at page 130 I comment on the reluctance of some minority groups to make a complaint to Police Scotland and the reasons for that. Those qualms can be compounded because individuals do not speak English as their first language. In their submissions to the Review both the Scottish Women’s Rights Centre (SWRC) and Sikh Sanjog¹⁶⁴ highlighted that the Police Scotland website offers this advice: “if you would like this information in an alternative format or language - please phone us on 101 to discuss your needs.” There are a variety of reasons why people may not wish to make such a call,

¹⁶³ ACPOS, the Association of Chief Police Officers (Scotland) ceased to exist after police reform in 2013.

¹⁶⁴ <http://www.sikhsanjog.com/>

including apprehension, language or anonymity. The existing guide to the police complaints system should be made available in the most frequently used languages in Scotland on all the relevant organisations' websites as well as in print format. The current version of the guide¹⁶⁵ dates from August 2014 and requires to be updated both now and on a regular basis thereafter.

18.20 The PIRC guide for the public¹⁶⁶ should similarly be made more easily available.

18.21 The PIRC confirmed in their submission to the Review that they can provide documentation in large print, have a British Sign Language (BSL) plan on their website and can provide audio replies. They are also giving consideration to having some of their core leaflets translated into the most frequently used languages in Scotland. Like Police Scotland, they currently offer to arrange for translation if requested.

18.22 I have also had evidence that the language being employed by PIRC review staff is also more constructive and less directive than it was when I began this Review and that is very much to be welcomed.

Official support and liaison for members of the public

18.23 Victim involvement, that is, allowing the complainer to be involved in the complaints process in order to safeguard his or her legitimate interests, is one of the five principles that the European Court of Human Rights has developed for the effective investigation of complaints against the police that engage Article 2 or 3 of the European Convention on Human Rights.

18.24 In all complaints it is important that individuals submitting a complaint to the police are supported throughout the process. The level of support should be

¹⁶⁵ <https://www.scotland.police.uk/spa-media/qomdikgi/complaints-about-the-police-guide.pdf?view=Standard>

¹⁶⁶ https://pirc.scot/media/4905/pirc_a_guide_for_the_public_web.pdf

proportionate to the seriousness of the complaint and the vulnerability of the complainer. The principal organisations provide varying degrees of support to members of the public whether they be complainers, victims of crime, witnesses or relatives. For example, Police Scotland and the PIRC employ specially trained Family Liaison Officers, and COPFS have a Victim Information and Advice service (VIA) with offices around Scotland. All three organisations also give information on a variety of appropriate support and advocacy groups on their websites.

18.25 Individuals who make complaints about the police may have vulnerabilities that should be taken into account by policing bodies. The Scottish Public Services Ombudsman (SPSO) produced a report¹⁶⁷ on complainers with vulnerabilities, which suggests that organisations should be mindful of a complainer's vulnerabilities and that types and levels of vulnerability can vary from person to person. The vulnerability may be influenced by circumstances linked to the complaint and other extraneous factors.

18.26 The Ombudsman, Rosemary Agnew, suggested to the Review that there were benefits in face-to-face engagement, for example by using people who had been trained to understand Attention Deficit Hyperactivity Disorder (ADHD), that knowledge of mediation approaches and skills aimed at finding a resolution could be very valuable and that there might be a case for creating a Police Complaint Support Officer role.

18.27 In order to communicate effectively, SPSO use the principle of 'universal design' to ensure their services are accessible in a number of ways to suit different people and situations; are responsive and flexible in how they engage with people; and collect and use data to continuously improve services for vulnerable people. SPSO believe that 'universal design' is particularly important in the digital age, where the increased focus on online service delivery can inadvertently exclude some users (digital exclusion), for example by failing to take into account those without internet access or capability, or through poor content design. Digital exclusion often overlaps with other factors of vulnerability, such as disability or older people's vulnerabilities.

¹⁶⁷ <https://www.spsso.org.uk/how-we-offer-support-and-guidance>

18.28 SPSO are committed to offering as many routes of access to their service as possible, including digital, phone, post and in person. The actions they can take if they are aware that the complainer may be vulnerable are:

- Fast track individual cases.
- Prioritise the progress of individual cases within their caseloads.
- Manage expectations clearly from the outset.
- Identify and signpost to sources of support.
- Change how they communicate with someone.

Third-party support

18.29 The Police Scotland website states that, “If you prefer to be represented by another person, e.g. a solicitor, an elected representative, community group or some other organisation, that is acceptable and will not prevent you from making a complaint providing it is clear that you have given your authority for that person, group or organisation to act on your behalf.” The website offers Citizens Advice Scotland and the Scottish Refugee Council as examples. I applaud that openness but the support available from third parties would be more concrete and more likely to be taken up if there was better sign-posting.

18.30 The complaints system examined by the Review and described earlier in the report currently gives the appearance of being designed in a way that does not take sufficient account of the needs of people with disabilities. Helping different people and diverse groups to make their complaints will always require different responses and some adjustment of process and practice. It is the responsibility of Police Scotland and the PIRC respectively to assess the vulnerability or neurodiversity of complainers and to make those reasonable adjustments for people who have disabilities, have autism or are vulnerable in some way.

18.31 In their submission to the Review the Scottish Women’s Rights Centre (SWRC) highlighted the absence from the literature of guidance about what would be

considered a serious complaint or criminal matter and that in their view this resulted in the process not always being straightforward, especially when those making the complaint are also dealing with trauma. They also listed reasons why survivors whom they support do not feel able to complain to Police Scotland, including:

- The ongoing nature of their involvement with Police Scotland.
- Receiving poor responses to previous complaints.
- Concerns that submitting complaints before a case has been heard in court could unduly influence the outcome.
- Complexity around cases involving dual and malicious reporting.
- Distress at complaining to a state body that they may rely on in further matters.
- Lack of trust that the complaints process will address the systemic issues they have faced.

18.32 SWRC also recommended to the Review that, in order to make the complaints process accessible, concrete reassurance would be required that making a complaint would not have an adverse impact on the handling of a criminal case that a victim had reported. This was echoed by the Law Society of Scotland in its early submission to the Review:

“There is a general perception from our members that it can be difficult to advise a client whether or not to make a complaint. The question of timing of a complaint is an issue. If there is an ongoing criminal case, that may not be the best time to make a complaint. There is a lack of confidence even if the complaint has been raised and is being dealt with by other officers, independent of the criminal case, that such processes are truly transparent and unbiased. Raising a complaint after the criminal case has been resolved may be much too late.”

18.33 The Police Scotland website asks readers: “How would you like to be contacted? Please provide your preferred method of contact.” I commend that flexible offer but the range of methods for making complaints should be expanded to meet differing needs and reflect modern means of communication. For some people the thought of attending the police station would be enough to put them off making a

complaint while for others who are digitally excluded using the internet to send an e-mail is not an option.

18.34 In its submission to the Review the Law Society of Scotland said:

“There are also implications from an equality and diversity perspective where increasingly, the vulnerable are coming into contact with the criminal justice system in all capacities, be it as a witness or accused, who may well wish to make a complaint. The procedures for making a complaint must allow that to be done which will need to take account of any reasonable adjustments in respect of these issues and for instance, where a complainer’s language is not necessarily English. These problems may well be compounded with police station closures or those that have limited operating hours. Those seeking to complain may be required to travel a significant distance or to find a time when the police station is open. Just what processes exist for online reporting may not work for all where they may not have access or be able to access computers. In some small local jurisdictions making a complaint may be difficult because of the need as highlighted above for public confidence as well as practicality that such matters will be treated as confidential.”

18.35 For the majority of people, interacting with the police is a rare thing and something that they would prefer not to have to do. The police service should be sensitive to that apprehension and should make the effort to accommodate personal preferences. Those seeking to make a complaint should not be asked to come to a police station if they are not comfortable in doing so, while officers should not attend people’s homes without prior agreement. The Review heard evidence of the negative effect that uniformed officers coming to their door had on the perception of their neighbours. That is the kind of issue that Police Scotland need to consider and, where they can, they should ensure that they engage on the individual’s terms and in a way with which they are comfortable.

18.36 On the basis of the evidence that I received, and in particular what I heard in the community focus groups, I have concluded that increasing the level of third-party support for complainers would enhance the accessibility of the complaint system in a very positive way.

18.37 In the Inclusion, diversity and discrimination chapter at page 130 I discuss the support available to victims and witnesses of hate crime who do not feel comfortable

reporting the matter directly to the police. Police Scotland work in partnership with a wide variety of partners who perform the role of third-party reporting centre for hate crime and Police Scotland list on their website around 500 organisations as third-party reporting centres in Scotland to whom hate crime can be reported.

18.38 I recommend that Police Scotland should have discussions with a number of the third-party reporting centres for hate crime and secure their agreement to offer third-party support for those who wish to make a complaint against the police. In addition to the two organisations currently listed on the website, I suggest that a number of the most relevant organisations, including those representing minority groups, might be added.

Customer service principles

18.39 In terms of standards of customer service, complainers should reasonably expect to receive a sincere apology and any appropriate action when that is justified, know that they will be listened to respectfully and be given a clear and candid explanation of the causes of any failing or perceived failing. They are also entitled to have their telephone calls returned promptly, have any communication acknowledged and responded to timeously and be kept advised both of progress and of what steps will be taken to address the issue. The public have a legitimate expectation that they will receive fair treatment at all times; police officers and support staff also have a right to be treated fairly when being held accountable for their actions.

18.40 Every complaint is important to the complainer. The recipient of the complaint should be receptive and from the start the premise should be that the complaint is taken at face value, will be dealt with politely, with an open mind and from an impartial standpoint.

18.41 A recurring theme in the evidence to the Review from members of the public was that the complaints process took too long to conclude and that they often had to chase Police Scotland or the PIRC to find out what progress had been made. As a

matter of course both organisations should give their customers clear expectations around how long it will take to resolve a complaint or complete a complaint handling review and thereafter provide regular updates.

18.42 Police Scotland should develop, in consultation with relevant organisations, and publish realistic but stretching targets for completing the key stages of the complaints handling process. These should be consistent with any relevant statutory provisions and the statutory guidance contained in 'From sanctions to solutions'¹⁶⁸ or its successor document. It would not be appropriate to put such detailed targets into statute but they should be published; performance should be measured and be the subject of regular report. The SPA Complaints and Conduct Committee should scrutinise that performance and hold Police Scotland to account where they are not being achieved.

18.43 PIRC should also publish their performance against set targets for complaint handling reviews and investigations in the Commissioner's annual report.

18.44 Not only is it in the public interest that this area of Police Scotland and PIRC activity is transparent, but clear expectations, better communication and improved performance will enhance public confidence generally and reduce the anxieties for all individuals involved in the process.

¹⁶⁸ https://pirc.scot/media/1211/pccs_statutory_guidance_web.pdf

Recommendations in relation to accessibility and communication

18.45 Recommendation: Police Scotland should publicise the right to complain as well as how to complain by displaying posters in police stations and other public buildings on how to make a complaint about, pay a compliment to, or submit a comment on Police Scotland.

18.46 Recommendation: The Know your Rights¹⁶⁹ section of the Police Scotland website for young people should be amended to make clear their right to make a complaint.

18.47 Recommendation: Police Scotland should have discussions with a number of the third-party reporting centres for hate crime, including those representing minority groups, and secure their agreement to offer third-party support for those who wish to make a complaint against the police.

¹⁶⁹ <https://www.scotland.police.uk/youth-hub/rights/know-your-rights/>

Chapter Nineteen - Evidence from other jurisdictions

19.1 As I said in my preliminary report, there is much that can be learned from other jurisdictions. Rather than looking at the Scottish arrangements in isolation the Review gathered evidence to allow us to make comparisons with other parts of the British Isles. In order to ensure that we were bringing as broad a perspective as possible to this Review I undertook engagement with policing organisations in England and Wales, Northern Ireland and the Republic of Ireland.

19.2 In the second phase of evidence-gathering the Review Team visited Dublin, Belfast and London to speak with some of the key organisations in those three jurisdictions.

The Republic of Ireland

19.3 I was very grateful to the Policing Authority, the Garda Síochána Ombudsman Commission (GSOC), the Department of Justice, An Garda Síochána (AGS) and the Garda Inspectorate for being so willing to share their experience and knowledge when I met with them in Dublin in October 2019.

19.4 An Garda Síochána¹⁷⁰ is the national police and security service and is directed and controlled by the Garda Commissioner. The Commissioner and Deputy Commissioner are appointed by the Government. The Policing Authority appoints the Assistant Commissioners. The mission of the service is: “To deliver professional policing and security service with the trust, confidence and support of the people we serve”. It is responsible for the security of the state and the provision of policing services, two functions united by an underpinning philosophy: the protection of the individual and the safety of communities.

19.5 As at March 2020 the service consisted of 14,750 Garda members (police officers) and 3,281 staff so it is broadly comparable in size to Police Scotland.

¹⁷⁰ *An Garda Síochána* is the Irish Gaelic name for the Republic of Ireland’s police service.

19.6 The Policing Authority was established in 2016 with a primary remit to oversee the performance of An Garda Síochána in delivering policing services. Its leadership comprises a Chairperson and eight Members. Its functions include a range of activities relating to the selection and appointment of senior personnel in An Garda Síochána, setting annual policing priorities and performance targets for the service, building independent sources of evidence to assess performance, reporting and providing advice to the Minister for Justice arising from the Authority's functions and overseeing the embedding of the Code of Ethics for An Garda Síochána, developed by the Authority in 2016. This Code sets standards of conduct and practice.

19.7 The Authority does not have any role in dealing with individual complaints but it does keep itself generally informed about complaints made and the application of the disciplinary regulations. The Authority has no investigators and would send any complaint that it received in respect of a senior officer straight to GSOC.

19.8 The Garda Síochána Ombudsman Commission (GSOC) was set up in 2007. It is led by a Chairperson and two other Commissioners. Its remit is to provide efficient, fair and independent oversight of policing in the Republic of Ireland. Its vision is to be a driver of continuous improvement in police accountability and its principal role is to deal with complaints about the conduct of members of An Garda Síochána.

19.9 GSOC's main area of responsibility is to deal with complaints concerning garda (police) conduct. Each year over 2,000 formal complaints are opened, containing allegations of garda misconduct. Complaints can be made direct to GSOC or to An Garda Síochána at a local police station depending on the nature of the complaint. Minor complaints that are reported at police stations and can be resolved locally do not come to GSOC.

19.10 GSOC also conducts independent investigations, following referral from An Garda Síochána, into circumstances where it appears that the conduct of a garda may have resulted in death or serious harm to a person. Such incidents are referred

to GSOC by An Garda Síochána so that the public can be confident that there is independence in these investigations.

19.11 GSOC also investigates matters in relation to the conduct of gardaí, when it is in the public interest, even if a complaint has not been received. The Commission may decide to open such an investigation itself or may be requested to do so by the Policing Authority or by the Minister for Justice. In 2018 17 public interest investigations were opened¹⁷¹.

19.12 GSOC also examines practice, policy and procedures in An Garda Síochána. These examinations are often prompted by issues that come to notice during the course of investigations following complaints or referrals. Their purpose is to prevent complaints or other issues from arising.

19.13 GSOC has a whistleblowing responsibility. Under the Protected Disclosures Act 2014¹⁷², workers of An Garda Síochána, including garda members (police officers), may confidentially disclose allegations of wrongdoings within An Garda Síochána to a member of GSOC, as a prescribed person under section 7 of that Act.

19.14 The Garda Síochána Inspectorate is an independent statutory body. Its objective is "to ensure the resources available to the Garda Síochána are used to achieve and maintain the highest levels of efficiency and effectiveness in its operation and administration, as measured by reference to the best standards of comparable police services"¹⁷³. It carries out its functions by undertaking inspections or inquiries in relation to any particular aspects of the operation and administration of An Garda Síochána, either on its own initiative or as requested to do so by the Policing Authority or the Minister for Justice; by submitting a report on those inspections or inquiries; and by providing advice to the Policing Authority or the Minister for Justice with regard to best international policing practices.

¹⁷¹ <https://www.gardaombudsman.ie/news-room/archive/gsocs-2018-annual-report-has-been-published/>

¹⁷² <http://www.irishstatutebook.ie/eli/2014/act/14/enacted/en/html>

¹⁷³ <http://www.irishstatutebook.ie/eli/2005/act/20/enacted/en/print> (s. 117, Garda Síochána Act, 2005)

19.15 The Irish Government's Department of Justice has a strategic goal to provide "a safe and secure Ireland", and has specific responsibility for advising the Minister in relation to policing policy matters (both domestic and international), discharging the Minister's governance responsibilities and the exercise of his or her powers in relation to An Garda Síochána, the Garda Síochána Ombudsman Commission, the Policing Authority and the Garda Síochána Inspectorate.

19.16 In 2018 the Commission on the Future of Policing in Ireland¹⁷⁴ recommended a new framework for the governance and oversight of policing to address concerns around the effectiveness of the existing framework. It proposed that the new framework be based on a clear delineation between the governance of An Garda Síochána, independent external oversight and the Minister's accountability to Parliament. It recommended that the Garda Commissioner as a "true CEO" should have responsibility for managing the organisation and be empowered to do so and that he or she should be held to account by a non-executive statutory board. Truly independent oversight should be provided by a new body to scrutinise policing performance merging many functions of the Policing Authority and the Garda Síochána Inspectorate but without executive functions in relation to An Garda Síochána. The Government endorsed and accepted all its recommendations and work on a Policing and Community Safety Bill is ongoing.

Evidence from comparison with the Republic of Ireland jurisdiction

19.17 In my preliminary report I suggested that, "Given the sensitivity of the office of Commissioner [the PIRC], the role could be strengthened and supported by the creation of two additional part-time Deputy Commissioners with relevant legal expertise and experience who are not former senior police officers".

19.18 The advantages of having more than one Commissioner were evident from the discussion with GSOC's three Commissioners, one of whom is the Chairperson of the Commission. Decisions made by the Commission are very much

¹⁷⁴ <http://www.policereform.ie/>

‘Commission’ decisions. That collective approach mitigates the risk of particular focus on one individual and strengthens the assurance of a balanced approach. One of the three Commissioners was appointed after an international competition and brought extensive experience of working in law enforcement in another jurisdiction.

19.19 At its inception GSOC also advertised staff posts internationally. This succeeded in attracting staff from the United Kingdom, South Africa, New Zealand and Australia, and from the Police Service of Northern Ireland. This had included people with policing skills for senior investigating officer roles.

19.20 GSOC’s annual report¹⁷⁵ includes charts that illustrate the profile of people who complained to them in 2018. The data covers 11 different characteristics. This is a valuable exercise that could be considered by Police Scotland as means of enhancing its understanding of public attitudes and concerns.

Northern Ireland

19.21 In February 2020 in Belfast the Review Team was able to meet with the Police Ombudsman for Northern Ireland (PONI), the Department of Justice, the Police Service of Northern Ireland and Criminal Justice Inspection Northern Ireland. I am very grateful to all those organisations for making time to talk with me. That valuable series of meetings was followed up with a tele-conference with the Ombudsman and a separate tele-conference with her predecessor.

19.22 The Northern Ireland Policing Board has a range of important statutory functions in order to deliver accountability and effective oversight. Those functions do not include complaints handling or investigations. The Board appoints (and may remove) senior officers to the ranks of Assistant Chief Constable, Deputy Chief Constable and Chief Constable as well as civilian chief officer equivalents. The

¹⁷⁵ <https://www.gardaombudsman.ie/publications/statutory-reports/?download=file&file=3161>

Police (Conduct) Regulations (Northern Ireland) 2016¹⁷⁶ provide that the Chair of the Board (or other member) would chair a senior officer misconduct meeting and be a member of a senior officer misconduct hearing. Such proceedings are heard in private. Arrangements for the attendance of “interested” persons are set out in the regulations. The Board administers the Police Appeals Tribunal process and facilitates Police Appeals Tribunal hearings.

19.23 The Board consists of ten politicians across the various political parties and nine non-political members. Policing remains a politically sensitive matter in Northern Ireland.

19.24 The Police Service of Northern Ireland is the single police service for Northern Ireland. It is headed by a Chief Constable appointed by the Policing Board. PSNI’s role is to support and work with the Northern Ireland Executive, community, business and voluntary groups to continue to help in building a safe, confident and peaceful society.

19.25 As at July 2020 the service consisted of 6,917 police officers and 2,391 staff.

19.26 It is the policy of the Police Service to work professionally and productively with PONI in effectively dealing with, and reducing, complaints against the PSNI. By dealing with complaints in a timely and responsive manner PSNI endeavour to demonstrate accountability and inspire public confidence.

19.27 The PSNI directs members of the public who wish to make a complaint against the service or against a police officer towards the Office of the PONI as the independent, impartial system for the handling of complaints about the conduct of police officers while on duty.

19.28 The Police Ombudsman for Northern Ireland was established under the Police (Northern Ireland) Act 1998¹⁷⁷. The Office was established on 6 November 2000 and

¹⁷⁶ https://www.legislation.gov.uk/nisr/2016/41/pdfs/nisr_20160041_en.pdf

¹⁷⁷ <https://www.legislation.gov.uk/ukpga/1998/32/contents>

is an executive Non-Departmental Public Body (NDPB) of the Department of Justice. The Office is not governed by a Board but is headed by a Police Ombudsman as a Corporation Sole who is appointed by Royal Warrant and normally serves for a period of seven years. The Police Ombudsman is accountable for funding and resources to the Department of Justice and ultimately the Northern Ireland Assembly. Her decisions in respect of investigations can only be challenged in the courts. The First Minister and deputy First Minister, acting jointly, recommend appointment of the Ombudsman.

19.29 The Office of the Police Ombudsman is constituted and operates independently of the Department of Justice, the Northern Ireland Policing Board and the Police Service of Northern Ireland. The Office is accountable to the Northern Ireland Assembly.

19.30 The creation of the PONI in the Police (Northern Ireland) Act 1998¹⁷⁸ was driven by the unique history of Northern Ireland, the police reform process and the need for investigation to be independent and to be seen to be independent. PONI provides a system of independent, impartial, civilian oversight of policing. Prior to its creation nearly all complaints against the police had been investigated by other police officers; since then all complaints are considered in the first instance by the PONI. PONI are able to deal with minor complaints by way of Informal Resolution where this is agreed by both the complainant and the police officer. PONI maintain oversight of the Informal Resolution process. Currently, if the complainer is not happy with how police have tried to resolve it, the Ombudsman is obliged to investigate.

19.31 Complaints have to be made to PONI within twelve months of the event, but in special circumstances, the Ombudsman can decide to investigate a complaint about something that happened more than a year before it was reported to them. This happens when the Police Ombudsman believes the complaint to be grave or exceptional.

¹⁷⁸ <https://www.legislation.gov.uk/ukpga/1998/32/contents>

19.32 The functions of the PONI include receiving and investigating complaints and other referred matters and deciding how to deal with them; investigating matters called in by the Police Ombudsman where it would be in the public interest to do so; making recommendations to the Director of Public Prosecutions for criminal prosecution; making recommendations and directions in respect of disciplinary action against police officers; carrying out inquiries if so directed by the Department of Justice; and investigating current practice or policy of the police, if it would be in the public interest to do so. Referrals to the PONI can be made by the Chief Constable, the Northern Ireland Policing Board, the Department of Justice or the Director of Public Prosecutions.

19.33 All complaints about the police (2,627 complaints in 2018-19) come to the PONI.

19.34 To ensure it is serving all sections of the community, the Police Ombudsman's Office is required to monitor the types of people who access its services. In order to do this, the Office conducts a regular equality monitoring survey which provides information about the range of people who make complaints.

19.35 One of the Ombudsman's statutory duties is to use her powers to secure the confidence of the public in policing. The Police Ombudsman has an overarching duty to exercise her power in such manner and to such extent as appear to her to be best calculated to secure the confidence of the public and the police in the complaints system. Their activity includes awareness-raising and outreach.

19.36 Criminal Justice Inspection Northern Ireland (CJI), is an independent statutory inspectorate with responsibility for inspecting all aspects of the criminal justice system in Northern Ireland, apart from the judiciary. That responsibility encompasses both PSNI and the Office of the PONI. It also inspects a number of other agencies and organisations that link into the criminal justice system.

19.37 CJI is funded by the Department of Justice for Northern Ireland. The Chief Inspector is appointed by the Minister of Justice.

19.38 CJI endeavours through its work to secure improvement and promote greater co-operation between the various statutory and voluntary organisations to provide a better justice system for the whole community in Northern Ireland.

19.39 CJI is also one of four designated organisations in Northern Ireland involved with the National Preventive Mechanism (NPM) which ensures the rights of those in places of detention such as prisons and police custody.

19.40 By law, CJI is not allowed to investigate individual cases but it can, when asked by the Minister of Justice, undertake specific pieces of work including thematic inspections. Periodically CJI reports on complaints handling across the whole criminal justice system.

19.41 The Justice Minister in the Northern Ireland Executive is supported by the Department of Justice for Northern Ireland which was established in April 2010 following the devolution of justice powers to the Northern Ireland Assembly. The Department of Justice has four Directorates including the Safer Communities Directorate which is responsible for policing policy and strategy. Part of its role is to promote a high level of public confidence in policing and in the tripartite accountability arrangements.

Evidence from comparison with the Northern Ireland jurisdiction

19.42 Legacy issues remain enormously important to many people in Northern Ireland. This is a significant factor for policing and the organisations which have to deal with extremely serious historical matters.

19.43 The Police Service of Northern Ireland has a statutory Code of Ethics. The preamble¹⁷⁹ to the Code begins:

“Policing is an honourable profession that plays an important part in the maintenance of a just and fair society. The people of Northern Ireland have

¹⁷⁹ <http://www.legislation.gov.uk/nisr/2016/41/schedule/made/data.xht?view=snippet&wrap=true>

the right to expect the Police Service to protect their human rights by safeguarding the rule of law and providing a professional Police Service.”

19.44 The work of criminal justice agencies is underpinned by legislation, not least the Northern Ireland Act 1998¹⁸⁰. One notable provision of that Act is section 75¹⁸¹, which aims to change the practices of government and public authorities so that equality of opportunity and good relations are central to policy-making and service delivery (including complaints handling). The Section 75 statutory duties aim to encourage designated public authorities to address inequalities and demonstrate measurable positive impact on the lives of people experiencing inequalities.

19.45 Creating the Police Ombudsman for Northern Ireland was hugely important in demonstrating equality and credibility and giving the public confidence in the ability to scrutinise the police.

19.46 With its own teams of professional investigators from a range of different backgrounds, the PONI was regarded by many as the first fully funded and completely independent police complaints organisation in the world. Professor Tim Prenzler, Professor of Criminology at the University of the Sunshine Coast (Queensland, Australia), whose area of expertise includes civilian oversight and control of policing, described PONI in this way:

“There’s only one agency that I’m aware of in the world that actually deals with, on paper at least, all, certainly the very large majority of, complaints against the police itself, by investigators, the large majority of whom are not police, they have some ex-police, and that’s the Police Ombudsman for Northern Ireland. So at least we have one agency which we can say is, I think, genuinely external in its processes, and actually has a significant adjudicative role as well.”¹⁸²

19.47 The previous Police Investigations and Review Commissioner quoted Professor Prenzler in evidence to this Review in 2019 and suggested that all

¹⁸⁰ <https://www.legislation.gov.uk/ukpga/1998/47/contents>

¹⁸¹ <https://www.legislation.gov.uk/ukpga/1998/47/section/75>

¹⁸² CEPS Conference, 2012 <https://www.youtube.com/watch?v=uBr35EjVLCE>

complaints against the police should go to her organisation in the first instance, as is the case in Northern Ireland, rather than to Police Scotland.

19.48 The Commissioner at the time, Kate Frame, said:

“There would appear to be merit in all complaints about the police, by members of the public, being directed to an independent body, right from the outset. It is appreciated that such a model would represent a transformation of the investigation of police complaints in Scotland but perhaps such a change is necessary in the new environment in order to maintain public confidence and ensure that the police complaints system is seen to be independent and fair. This would require new legislation and adequate resources to be put in place.”

19.49 In the preliminary report I stated that:

“I am unconvinced at this stage about such a fundamental change in functions and structures. The majority of complaints about Police Scotland go in the first instance to Police Scotland and are dealt with by them. I comment elsewhere in the report on ensuring effective triage, the possibility of direct and supervisory monitoring of the Centurion system by the PIRC, the identification of potential criminality or breaches of Convention Rights, the crucial importance of independent oversight and how all those elements can be strengthened. These can be achieved under the current structures. Directing all complaints from the most minor to the more serious to an enlarged independent body may be a disproportionate and bureaucratic arrangement which will create further delay for those individuals complaining about quality of service matters.”

19.50 In terms of police oversight, whether all complaints should go to a single independent organisation or whether different organisations could receive and deal with complaints depending on the nature of the complaint or behaviour is a matter of political judgement based, amongst other factors, on the history, culture and standing of policing in any particular jurisdiction.

19.51 The “all complaints” approach contributes to a high degree of awareness of the PONI’s role. For organisations, and for the public, such clarity is valuable, but it comes at a cost.

19.52 The system should be constructed in such a way that complainers know who they can complain to, that each complaint will be considered on its merits and that systematic triage arrangements will ensure that it is dealt effectively, promptly and proportionately by the appropriate organisation. A fuller description was given in 1999 in the Patten Report¹⁸³ ('A New Beginning: Policing in Northern Ireland - The Report of the Independent Commission on Policing for Northern Ireland');

“An effective process for handling public complaints against the police requires many things: a sound legislative foundation; dedicated, competent, experienced and/or trained personnel to administer it; a reasonable level of commitment and co-operation on the part of the police organisations and personnel to whom the process applies; an adequate degree of knowledge of, confidence in, and willingness to use the process, and good faith, on the part of potential complainants in particular and the public more generally; and the commitment of adequate resources for full and effective implementation of the process.”

19.53 Having considered all the evidence available to me and examined the arrangements in other jurisdictions my view remains that, in principle, quality of service or non-serious complaints should be made and dealt with close to the source of that complaint and where appropriate they should be resolved speedily. Complaints which suggest misconduct or criminality should immediately be routed to an appropriate place or body so that they can be professionally assessed and if need be investigated.

19.54 If you take all ownership of complaints away from any organisation it loses something that is very valuable to it in terms of feedback, insight and learning. One effect of all complaints being sent to a third party was that it could result in the police feeling that complaints processes and procedures were things that were “done to them”.

19.55 In their written evidence to the Review the Association of Scottish Police Superintendents (ASPS) said:

¹⁸³ <https://cain.ulster.ac.uk/issues/police/patten/patten99.pdf>

“Continued ownership of complaints made about quality of service and relatively minor misconduct of individual officers is crucial if the Service is to truly transform its approach into a learning organisation that seeks to say sorry and learn from mistakes made.”

19.56 The 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. That simplicity would help public awareness and make it easier for them to enter what can be a very complex police complaints system. A single point of entry to the system is very valuable to the public and the associated clarity of purpose is very valuable to the receiving organisation. That said, there are certain complaints that should be dealt with completely independently from the outset. 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. I have recommended changes to the powers of the PIRC to reflect this in the PIRC chapter at page 205 and I comment on public awareness of the role of COPFS in the COPFS chapter at page 268.

19.57 I have carefully considered the Northern Irish model for oversight of complaints where all complaints go in the first instance to the independent Police Ombudsman. I believe that it stands alone as an example of exceptionally strong oversight of complaints and independence designed for the particular and exceptional circumstances that exist in Northern Ireland. This Review recommends a set of improvements to the system and a suite of new powers for the PIRC that would strengthen independent investigation and oversight in Scotland. If those are implemented, and if, after a reasonable passage of time, those changes have not secured appropriate improvement, then Scottish Ministers should consider afresh whether they want to move to a PONI model where all complaints go to an independent body in the first instance. My current view is that such a radical change is not necessary or proportionate at present.

England and Wales

19.58 In September 2019 I had very helpful and informative meetings in London with the Home Office, the Independent Office for Police Conduct (IOPC), the Metropolitan Police Service (MPS), the Mayor's Office for Policing and Crime (MOPAC) and the College of Policing (CoP). I was grateful for the opportunity to be updated on how they operate and interact.

The Home Office

19.59 In England and Wales policing is the responsibility of the Home Secretary. I am very grateful to Home Office officials for their assistance and to Michael Cordy, the Head of the Police Integrity Unit and Ian Balbi, the Head of Police Discipline Policy for their insight and assistance over the course of my Review.

19.60 In England and Wales there are 43 police forces. In most cases Chief Constables are accountable to elected Police and Crime Commissioners (PCCs). Different accountability arrangements exist for both the City of London Police and the Metropolitan Police Service.

19.61 Unlike Scotland, the police in England and Wales can decide if certain crimes can be prosecuted. In Scotland that role lies solely with Crown Office and Procurator Fiscal Service which also has the power to direct the police. The Crown Prosecution Service has no such power of direction.

19.62 The legislative framework makes it explicit that PCCs are to hold chief officers to account for the exercise of their functions in relation to the handling of police

complaints. They are also the oversight body for certain reviews related to complaints.

19.63 There are 30,000 complaints about the police per year in England and Wales (excluding minor complaints which, as in Scotland, are resolved locally). The vast majority of complaints are dealt with by local police forces; the most serious complaints are dealt with by the IOPC.

The Metropolitan Police Service

19.64 The Metropolitan Police Service is the largest police service in the United Kingdom with around 31,000 officers and 8,472 staff¹⁸⁴.

19.65 The Commissioner of the Metropolis is accountable in law for exercising police powers and to the Mayor's Office for Policing and Crime (MOPAC). She is held to account for the delivery of policing by the Home Secretary and the Mayor of London, both of whom have a role in appointing the Commissioner. The decision is taken by the Home Secretary following consultation with the Mayor.

19.66 There was a recognition from a number of interviewees that in the MPS there is a history - as in other parts of the UK - of rapid or premature escalation to misconduct of matters that would be more appropriately dealt with by other, more proportionate, routes. The service is addressing that issue by pushing back on the cultural over-use of misconduct procedures.

The Mayor's Office for Policing and Crime

19.67 A number of powers are devolved to MOPAC, which is led by the Deputy Mayor for Policing and Crime, including the delivery of efficient and effective policing, and management of resources and expenditure. MOPAC is the functional body of

¹⁸⁴ <https://www.gov.uk/government/statistics/police-workforce-england-and-wales-30-september-2019>

the Greater London Assembly that sets the policing budget, holds the Commissioner to account and in partnership discusses progress against the Police and Crime Plan.

19.68 MOPAC has overall responsibility for complaints oversight in the Metropolitan area and has a statutory duty to hold the Commissioner to account “for the exercise of the Commissioner’s functions in relation to the handling of complaints”. The Deputy Mayor meets regularly with the IOPC Regional Director for London and discusses MPS performance on police complaints and discipline.

19.69 Complaints about most ranks of MPS police officer are made direct to the MPS itself; complaints about senior officers go to the IOPC; and MOPAC deals with all complaints against the Metropolitan Police Commissioner. Under the new legislative framework MOPAC now deals with reviews of how the MPS handled complaints. (Reviews (appeals) were previously considered internally within the MPS.)

Independent Office for Police Conduct

19.70 The Independent Office for Police Conduct (IOPC) oversees the police complaints system in England and Wales.

19.71 The Policing and Crime Act 2017 provided for the Independent Police Complaints Commission to continue to exist but to be re-named as the Independent Office for Police Conduct (IOPC). This happened in January 2018.

19.72 The IOPC investigates the most serious matters, including deaths following police contact, and sets the standards by which the police should handle complaints. IOPC uses learning from its work to influence changes in policing. Its decisions are made entirely independently of the police and government.

19.73 IOPC has a statutory duty to secure and maintain public confidence in the police complaints system in England and Wales and to ensure that it is efficient and effective. It also has a power to direct the police which is used only as a last resort.

19.74 The IOPC is headed by the Director General who is appointed by Her Majesty The Queen. The Director General leads the Executive team and chairs the Board of the IOPC, which includes six non-executive directors. The role of the Board is to advise, suggest, and inform but it cannot tell the Director General what to do.

19.75 There are two Deputy Directors General and an operational team of regional directors located across England and Wales. Former police officers are excluded from holding the most senior posts. The IOPC employs approximately 25% former police officers in more junior posts.

19.76 IOPC audit complaints data and produce an annual report, broken down by the 43 forces. They have a small research unit which amongst other things has carried out stakeholder/public perception surveys. IOPC have also worked with the Mayor's office research team and made use of independent academics.

The College of Policing

19.77 The College of Policing was established in 2012 as the professional body for everyone who works for the police service in England and Wales. The purpose of the College is to provide those working in policing with the skills and knowledge necessary to prevent crime, protect the public, and secure public trust.

19.78 The Review's meeting with the College of Policing was specifically to receive a briefing on the Police Barred and Advisory Lists as they operate in England and Wales. That subject is discussed in detail in the Former police officers chapter at page 168.

Evidence from comparison with the English and Welsh jurisdiction

19.79 One senior police officer suggested to the Review that the conduct regulations in England and Wales prior to 2020 were labyrinthine, prescriptive, incredibly

complex and understood properly only by a handful of people. Against that background what the Home Office has been trying to achieve are simplifying the complaints system, and improvement to line management practice and performance management. Complexity and line management were also themes that emerged early in the evidence gathered by the Review in Scotland and that featured in the preliminary report.

The legislative framework in England and Wales

19.80 The Policing and Crime Act 2017 updated and changed the legal framework for police discipline, conduct and complaints in England and Wales. The explanatory notes to the Act state that:

“The operation of the complaints system and the outcomes it achieves play an important role in ensuring that the police continue to exercise their powers fairly and legitimately in the eyes of the public.”

19.81 The Home Office has three over-arching purposes for police disciplinary proceedings: 1) to maintain public confidence in, and the reputation of, the police service; 2) to uphold high standards in policing and deter misconduct; and 3) to protect the public.

19.82 Various reforms to the complaints and discipline systems in England and Wales have been implemented over the past five years or so, culminating in the implementation of the main bulk of the reforms in regulations that came into effect in February 2020. Of most relevance to this Review are the Police (Conduct) Regulations 2020¹⁸⁵ and the Police (Complaints and Misconduct) Regulations 2020¹⁸⁶.

¹⁸⁵ <https://www.legislation.gov.uk/uksi/2020/4/made>

¹⁸⁶ <https://www.legislation.gov.uk/uksi/2020/2/made>

19.83 In summary, the 2020 changes to the ‘disciplinary system’ in England and Wales included:

- changing the definition of misconduct;
- introducing a Reflective Practice Review Process;
- ensuring that the IOPC investigates all cases involving chief officers; and
- allowing the IOPC to present its own case to disciplinary hearing panels.

19.84 Provision extending the disciplinary regime to former police officers for up to 12 months after they leave the police, and for longer in the case of the most serious misconduct, was implemented in 2017.

19.85 Changes to the police ‘complaints system’ in England and Wales included:

- simplifying the complaints system;
- providing for a stronger role for Police and Crime Commissioners; and
- changing the definition of a complaint to “any expression of dissatisfaction with a police force” rather than “about the conduct of a person serving with the police”.

19.86 Broadly speaking the legal framework distinguishes between 1) the handling of complaints by members of the public against the police (whether against individual officers or forces); 2) conduct matters, where assessment or investigation is instigated internally because of an indication that a person serving with the police may have committed a criminal offence or behaved in a manner which would justify disciplinary proceedings; and 3) death and serious injury (DSI) matters. In simple terms, complaints come from an external source whereas conduct matters come from an internal source, but clearly an external complaint may be an indication of a conduct matter on the part of a police officer.

19.87 The framework enables lower-level customer-service type complaints to be resolved quickly. This allows a police force, with the approval of the complainant, to deal with low-level customer service matters that can be resolved to the

complainant's satisfaction without having to follow the processes set out in legislation. In practice, in England and Wales the police can seek to resolve matters to the complainant's satisfaction in this way and did so prior to the new Regulations coming into force.

19.88 The most serious and sensitive cases arising from complaints are considered by the IOPC which determines the form of the investigation required. It does so having regard to the seriousness of the case and the public interest.

19.89 The regulations require the relevant investigating body to provide a written explanation to the local policing body if an investigation is not completed within twelve months.

19.90 All complaints and matters concerning the conduct of chief officers are required to be referred to the IOPC. The IOPC must independently investigate all complaints, recordable conduct matters and DSI matters which relate to the conduct of a chief officer (i.e. a chief constable) or the Deputy Commissioner of the Metropolitan Police Service.

19.91 As in Scotland, conduct of police officers is measured against statutory Standards of Professional Behaviour. Misconduct is a breach of the Standards that is so serious as to justify disciplinary action. Some breaches of the Standards will not be serious enough to justify disciplinary action. An allegation that is not that serious but which nevertheless falls short of the expectations of the public and the police service will not always involve misconduct or require formal action under the Conduct Regulations. Gross misconduct is a breach of the Standards so serious as to justify dismissal.

19.92 Home Office guidance¹⁸⁷, intended to assist with the correct assessment of any matter, makes clear that the handling of lower-level matters related to an

¹⁸⁷https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/863820/Home_Office_Statutory_Guidance_0502.pdf

individual's behaviour, performance or conduct, may be dealt with through a new Reflective Practice Review Process (RPRP).

19.93 The intention is that disciplinary proceedings apply to serious breaches of the Standards of Professional Behaviour where it is clear that a formal disciplinary sanction (i.e. at least a written warning) is justified. Where a matter does not reach that threshold, it should be handled by local line managers and supervisors with a clear focus on reflection, learning from mistakes and focusing on actions/development to improve; and where necessary putting the issue right and preventing it from happening again. Where an officer's behaviour or actions constitute practice requiring improvement (PRI) they should go down the Reflective Practice Review Process route, whether they have been raised externally through a complaint or raised internally within the force.

19.94 The definition of practice requiring improvement is: under-performance or conduct not amounting to misconduct or gross misconduct, which falls short of the expectations of the public and the police service as set out in the Code of Ethics.

19.95 Practice requiring improvement is not categorised as misconduct and the Regulations are specific that the Reflective Practice Review Process does not constitute disciplinary proceedings.

19.96 The purpose of the Reflective Practice Review Process is to allow low-level conduct, mistakes or performance issues that can be handled in a more proportionate and constructive way to be dealt with without recourse to formal disciplinary proceedings or performance procedures. It is regarded as a normal line-management/performance-related conversation between the reviewer and the participating officer, so there is no formal representation of parties. Reviewers are required to consider the fullest circumstances of what has occurred, including any operational, welfare or wider factors or personal circumstances that affected behaviour.

19.97 Actions arising out of the discussion may include proportionate remedial or restorative action, which might include meeting, apologising to, or engaging with a

member of the public or another officer. Where a member of the public is involved their view should be sought about what has happened from their perspective and what an appropriate response might be, this gives the complainant the opportunity to be engaged in the reflective process.

19.98 The Home Office encourages force grievance processes to focus on resolution at every stage and with proportionate handling, as locally as possible, so that matters can be resolved informally and by mutual agreement by all parties. It also encourages those who wish to raise a concern or grievance to consider what course of action, resolution or outcome they wish to achieve; they should consider, wherever possible, whether to raise matters informally and locally before a formal grievance is submitted.

Probationers

19.99 In England and Wales the chief officer of a force has discretion to use the disciplinary procedures or the procedures related to discharge of probationers as the most appropriate means of dealing with a misconduct matter involving a probationary constable.

19.100 In Scotland where an allegation of misconduct is made against a probationary constable, this must be dealt with through The Police Service of Scotland (Conduct) Regulations 2014¹⁸⁸ in the first instance, rather than through The Police Service of Scotland Regulations 2013 (i.e. Regulation 9¹⁸⁹ which applies where it is believed that the officer is unlikely to become an efficient/well conducted constable). Police Scotland consider that for reasons of public trust and operational efficiency it would be more appropriate and proportionate to deal with such matters through Regulation 9 of the 2013 Regulations in the first instance, a process which can be progressed and concluded in a matter of weeks.

¹⁸⁸ <https://www.legislation.gov.uk/ssi/2014/68/contents/made>

¹⁸⁹ <https://www.legislation.gov.uk/ssi/2013/35/regulation/9/made>

19.101 I take the view that purpose of a probationary period is to inform the assessment of whether an individual is suited to their position and that that assessment should take into account their conduct. I therefore recommend that the regulations governing probation should be amended so that a fair and speedy consideration of any allegation of misconduct can be dealt with during the probation period.

Accelerated misconduct hearings

19.102 The Home Office legislative framework makes provision for accelerated misconduct hearings where special conditions are met. There is no such provision in Scottish Regulations.

19.103 Accelerated misconduct hearing procedures can be used where the appropriate authority certifies the case as a special case, meeting special conditions. Those conditions are that there is sufficient evidence, in the form of written statements or other documents, to establish on the balance of probabilities, that the conduct of the officer concerned constitutes gross misconduct; and it is in the public interest, if the case is found or admitted, for the officer concerned to cease to be a police officer without delay.

19.104 These procedures are designed to deal with cases where the evidence is incontrovertible in the form of statements, documents or other material, (e.g. CCTV footage) and that it is therefore sufficient without further evidence to prove gross misconduct.

Other issues

19.105 Where there is a case to answer in respect of gross misconduct, there must be a misconduct hearing; in a case of misconduct (as opposed to gross misconduct), the proceedings will normally be a misconduct meeting. Misconduct meetings are held in private, however, where the investigation was conducted having been instigated by an external complaint, the complainant and an interested person can attend as observers. For misconduct hearings, on the other hand, the presumption is that they are open to the public and the media.

19.106 At a misconduct hearing either the appropriate authority or the IOPC will present the case and can appoint a relevant lawyer to represent them.

19.107 The question of whether, like the IOPC, the PIRC should be able to present its own case to gross misconduct hearings in Scotland is considered in the PIRC chapter at page 205.

19.108 A panel of three people is required to conduct misconduct hearings for all officers and misconduct meetings for senior officers. The panel includes a legally qualified person as the Chair, an officer of the rank of superintendent or above and an independent lay person. The inclusion of the lay person allows a further independent and impartial view at the meeting from outside of policing. In a senior officer hearing HM Chief Inspector of Constabulary, or an inspector nominated by HMCIC, takes the place of the superintendent or above on the panel.

19.109 A police officer has the right to appeal against the finding or outcome of a gross misconduct hearing to a Police Appeals Tribunal.

19.110 Since 2017 the legal framework has allowed for the procedures concerning disciplinary proceedings, which apply to serving officers of police forces in England and Wales, to be extended to former members of police forces in certain circumstances. The changes meant that disciplinary proceedings could take place after the person concerned had left the force, where due to the nature of the conduct there is a need for accountability irrespective of when the matter came to light.

Misconduct procedures are only applicable to former police officers where the severity assessment of the conduct is one of gross misconduct.

19.111 Where an allegation of gross misconduct came to light more than twelve months after the person ceased to be an officer, proceedings can continue but that category of case is intended to cover only the most serious and exceptional cases of gross misconduct likely to do damage to public confidence in policing. In such cases it is the IOPC which 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, inefficiency or effectiveness, the impact of the allegation on public confidence in the police, and the public interest.

19.112 For the former officer the process provides an opportunity to hear the existing evidence, answer the investigator's questions and put forward their position. There can be no disciplinary action 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, but their name is added to the statutory list of persons barred from policing, i.e. the Police Barred List held by the College of Policing. There is also a Police Advisory List which includes details of individuals who are under investigation for matters which could lead to their dismissal at the time that they resign or retire from the force, pending the outcome of the investigation or disciplinary proceedings.

19.113 There are a numbers of features of the current legislative framework in England and Wales that would enhance the equivalent devolved framework in Scotland. These are:

- a formal Reflective Practice Review Process
- accelerated misconduct hearings
- independent legally qualified chairs for gross misconduct hearings
- gross misconduct hearings being held in public
- the use of Barred and Advisory Lists

Reflective Practice Review Process

19.114 In my preliminary report I referred to the focus group in which the Review was told that not all line managers understood the management of performance and how to use the Performance Regulations. There was a tendency to shy away from tackling difficult issues, giving negative feedback or telling constables that they were not ready for promotion, and a reluctance to consult HR professionals in Police Scotland to get advice on staffing issues. There was also consistent evidence that complaints could escalate very quickly and disproportionately in an unhelpful way that was described as “from flash to bang”. I recommended that Police Scotland should review the service-wide capability of its line managers to line manage effectively, including the adequacy of training and mechanisms of support for line managers.

19.115 Having looked at the Reflective Practice Review Process now being implemented in England and Wales I can see considerable benefit in giving managers a process that formalises what is in effect good practice by line managers as it should be practised in any organisation i.e. line managers identifying where behaviour has to improve, a conversation taking place between manager and officer that takes into account all the circumstances (including welfare and personal factors), actions being agreed and properly recorded and monitored.

19.116 I support in principle the practice that has been created for England and Wales. However, I do differ in my view of the extent to which that practice requires to be set out in statute. I believe that, rather than have the detail set out in a whole part of the Conduct Regulations as is the case in England and Wales, Scottish Ministers issuing statutory guidance in respect of a new Reflective Practice Review Process would be preferable, not least because it would not substantively add to the complexity of the legislative framework or the difficulty of amending it.

19.117 The current guidance for Police Scotland on improvement action is contained within general guidance¹⁹⁰ (dated April 2014) on the Police Service of Scotland (Conduct) Regulations 2014 prepared by the Scottish Government, Police Scotland, the Scottish Police Federation and the Association of Scottish Police Superintendents. The procedures described there have much in common with the Reflective Practice Review Process being adopted in England and Wales. The stated purpose of improvement action is to deal with misconduct in a timely, proportionate and effective way that will command the confidence of staff, police officers, the police service and the public; identify any underlying causes or welfare considerations; and improve conduct and to prevent a similar situation arising in the future. Managers in Police Scotland are expected and encouraged to intervene at the earliest opportunity to prevent misconduct occurring and to deal with cases of misconduct in a proportionate and timely way through improvement action.

19.118 I recommend that, as part of the revisal and consolidation of all the relevant legislation, Scottish Ministers should, at the earliest opportunity issue statutory guidance in respect of a new Reflective Practice Review Process. That guidance should build on the spirit of existing Scottish guidance and take into account any valuable elements of English and Welsh best practice.

Accelerated misconduct hearings

19.119 The new provision in England and Wales for accelerated misconduct hearings where special conditions are met update the previous provisions for fast-track procedures which have been in existence there for many years. Such provisions did not and do not exist in Scotland. A fast-track procedure for special cases also exists in Northern Ireland. Such cases are rare and can only apply to “special cases, meeting special conditions”.

¹⁹⁰ <https://www.gov.scot/binaries/content/documents/govscot/publications/factsheet/2018/04/conduct-and-performance-procedures-police-guidance/documents/police-guidance-conduct-procedures/police-guidance-conduct-procedures/govscot%3Adocument/Police%2BService%2Bof%2BScotland%2B%2528conduct%2529%2Bregulations%2B2014.pdf>

19.120 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, I believe that the ability to conclude formal misconduct proceedings without delay is in the public interest and is fair to the officer concerned. I therefore believe that equivalent provision should be included in Scottish conduct regulations for all ranks of constable.

Independent legally qualified chairs for gross misconduct hearings

19.121 In the preliminary report I proposed that all senior officer gross misconduct hearings in future be removed from the responsibility of the SPA and made subject to consideration by an independent legally chaired panel. I also said that the same independence principle should apply to gross misconduct hearings for all ranks of constable. Further consideration of that proposal in the light of my consultation with the key organisations affected is in the Scottish Police Authority chapter at page 176. Such panels should also include independent lay members.

Gross misconduct hearings being held in public

19.122 For gross misconduct hearings in England and Wales the presumption is that they are open to the public and the media. This contrasts with the position in Scotland and Northern Ireland where gross misconduct hearings are held in private. The hearing Chair in Scotland does however have discretion to consider and agree to requests to attend.

19.123 In England and Wales the Chair's decision on restricting attendance is based on the principle that misconduct hearings should be in public and should consider the need for transparency, the public interest, the vulnerability of witnesses, the involvement of any children, the vulnerability of the complainant (if there is one), and the physical and mental health or welfare of the subject officer, the welfare of any other third party, factors relating to sensitive police operations, potential

interference with any criminal proceedings or the detection of crime, and any relevant national security issues.

19.124 As I said in the preliminary report, “those in the office of constable and holding the powers of that office have a higher duty than others to account for their actions”. That responsibility increases with the seniority of the post. In all jurisdictions the office held by a senior police officer is one the most important public offices that exists in society.

19.125 Having weighed the benefits of conducting gross misconduct hearings in public with the benefits of conducting them in private I have concluded that the balance lies in favour of opening them up to the public and media. I recognise that facing serious disciplinary allegations is a potentially traumatic experience for officers and their families and that they have a right to respect for their privacy but I believe that those benefits are outweighed by the public interest. I have also considered the potential impact that the attendance of the media and the way they report on the proceedings could have, and that is a subject on which I commented in my preliminary report, noting that in the first years of Police Scotland and the SPA a number of high-profile issues and problems had been the subject of intense media and public scrutiny and the atmosphere around the fledgling force appeared at times to be febrile.

19.126 The presumption that misconduct hearings be held in public would require appropriate protections to be available for any witnesses who may be vulnerable, disabled, or have some other special need. The 2014 guidance¹⁹¹ on the Police Service of Scotland (Conduct) Regulations 2014¹⁹² acknowledges that some individuals who come into contact with the police, such as victims, witnesses or suspects, may be vulnerable and therefore may require additional support and assistance. Both sets of Scottish Regulations on police officer conduct provide that if

¹⁹¹ <https://www.gov.scot/binaries/content/documents/govscot/publications/factsheet/2018/04/conduct-and-performance-procedures-police-guidance/documents/police-guidance-conduct-procedures-police-guidance-conduct-procedures/govscot%3Adocument/Police%2BService%2Bof%2BScotland%2B%2528conduct%2529%2Bregulations%2B2014.pdf>

¹⁹² <https://www.legislation.gov.uk/ssi/2014/68/contents/made>

a witness is giving evidence, they may be allowed such other persons to attend those proceedings as seem reasonable by virtue of any special circumstances (and, in particular, a parent or guardian may be allowed to attend where a child is giving evidence). They also permit preventing disclosure where that is necessary and proportionate for the protection of the welfare and safety of any informant or witness.

19.127 In reaching the conclusion that police officer gross misconduct hearings should be held in public I have also taken into account that such an arrangement is common in other professions where the public have the right to expect the highest standards of behaviour. Solicitors, teachers and doctors are all subject to disciplinary proceedings which are held in public.

Barred and Advisory lists

19.128 There is a strong public interest in dealing with former police officers' gross misconduct and in my preliminary report I invited views on the question of jurisdiction over retired police officers. In England and Wales that jurisdiction has existed since 2017. It is through the operation of the statutory Police Barred and Advisory Lists that that jurisdiction can have any practical effect on individuals. I deal with this matter further in the Former police officers chapter at page 168.

Other matters

Public confidence duty

19.129 I have considered whether Scottish legislation should incorporate a statutory duty related to maintaining public confidence in policing. Such a duty exists in both England and Wales and in Northern Ireland. IOPC has a statutory duty to secure and maintain public confidence in the police complaints system in England and Wales. The Police Ombudsman for Northern Ireland has an overarching duty to exercise her power in such manner and to such extent as appears to her to be best

calculated to secure the confidence of the public and the police in the complaints system.

19.130 There is no equivalent statutory duty in Scotland. Notwithstanding the question of who should have such a duty, I have concluded that it is not required. Dealing with complaints in a way that is fair, transparent, accountable, proportionate, responsive and impartial is critical to upholding public confidence and in practice a responsibility that is shared across the police service, the Scottish Police Authority and the PIRC. That responsibility is implicit for all 3 organisations and does not require to be spelt out in legislation.

Suspension conditions

19.131 It would be of practical assistance to the SPA if the range of options available to the Authority when a senior police officer is under investigation by the PIRC was clarified and expanded. The options should be determined having regard to the particular circumstances and an assessment of the risk of interference in any investigation. They should include: the possibility of a senior officer remaining in post with their duties otherwise unaffected by the process; placing the senior officer on restricted duties (although at a senior level that option is seldom practicable); seconding them to another police force or third-party organisation; and suspension. Suspension is however a significant step to take and may not be seen as a neutral act.

19.132 In England and Wales the first statutory suspension condition that must be met before an appropriate authority can suspend an officer is:

“(a) having considered temporary redeployment to alternative duties or an alternative location as an alternative to suspension, the appropriate authority has determined that such redeployment is not appropriate in all the circumstances of the case, and”¹⁹³

¹⁹³ <http://www.legislation.gov.uk/uksi/2020/4/regulation/11>

19.133 That statutory suspension condition does not exist in Scottish legislation. I believe that it should be replicated in Regulations in relation to all ranks of constable. In any consideration of whether to suspend a senior officer the SPA should seek a recommendation from the Police Investigations and Review Commissioner and act upon that recommendation unless there are compelling reasons not to do so. Such a power on the part of the Commissioner to recommend suspension, rather than just be consulted, should be put into the relevant secondary legislation. Provision should also be made for regular review of the suspension of an officer.

Joint misconduct proceedings

19.134 The Conduct Regulations in England and Wales allow for two or more officers to appear before a misconduct meeting or a hearing in relation to the same matter where all or none of the officers are senior officers. Alleged misconduct may relate to different actions by each officer involved but relate to the same event but it will normally be considered appropriate to deal with all the matters together.

19.135 That is a sensible provision that should be mirrored in Scottish Regulations. I would go further and suggest that, subject to safeguards needed to protect the rights of each individual officer, the Regulations should provide for joint proceedings to deal with any officers, including senior officers. There may be particular circumstances where it is more appropriate to have separate hearings but the ability to hold a joint hearing would be a valuable addition to the procedures. Such a provision would be facilitated if the existing two sets of conduct regulations were combined.

19.136 The principles of natural justice demand that any disciplinary penalty that might be imposed on any officer of any rank following a determination of misconduct or gross misconduct can only be drawn from those prescribed in the relevant conduct regulations to which he or she was subject at the time of the event, act or omission.

Misconduct pre-hearings

19.137 In England and Wales a new regulation on gross misconduct pre-hearings designed to make proceedings more efficient sets out how pre-hearings should be conducted, with Chairs considering witness lists, the timing of the hearing, preliminary legal arguments or points of law and issues related to disclosure. In my preliminary report I also proposed, “a preliminary independent hearing by an independent, legally chaired panel to identify any evidence that is not in dispute and can be agreed, and any other matter which can be resolved prior to the formal hearing of the misconduct” and I therefore commend the approach taken to this in the English and Welsh Regulations. It would bring benefits if replicated in the Scottish Regulations, which currently cover some but not all of these procedural points.

Publication of outcomes

19.138 In the interests of transparency, I am also supportive of the publication of the outcome of gross misconduct proceedings. In England and Wales the Regulations provide for the appropriate authority to publish, subject to any necessary redactions, the Chair’s report on its website for a period of no less than 28 days. Similar provision should be made in Scottish Regulations.

19.139 In the preliminary report I said that a number of issues had been identified where clarification of the governing legislation is required in the light of application and practice and would be recommending consolidation of the legislation and substantive changes. The case for combining the Scottish conduct regulations is strong and is set out in the Legislative changes chapter at page 432.

Recommendations based on evidence from other jurisdictions

19.141 Recommendation: Provision equivalent to that in England and Wales for 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.

19.142 Recommendation: Police officer gross misconduct hearings should be held in public. The Chair should have discretion to restrict attendance as appropriate but the aim should be to ensure that as much of a hearing is held in public as possible.

19.143 Recommendation: In addition to the existing protections for witnesses, the Chair of the gross misconduct hearing should consider whether the evidence of any vulnerable witnesses should be heard in private and they should also be under an obligation to consider any other reasonable adjustments that they believe to be necessary to ensure the protection of such vulnerable witnesses. This may include the officer who is the subject of the proceedings.

19.144 Recommendation: The 2012 Act should be amended to confer on Scottish Ministers a power to issue statutory guidance in respect of conduct and a duty to consult on any such guidance, and confer a duty on policing bodies to have regard to any such guidance. Scottish Ministers should use that power at the earliest opportunity to issue guidance in respect of a new Reflective Practice Review Process. That guidance should build on the spirit of existing Scottish guidance and take into account any valuable elements of English and Welsh best practice.

19.145 Recommendation: Subject to safeguards needed to protect the rights of each individual officer, the regulations should make provision for the possibility of joint misconduct proceedings to deal with any number of officers, including senior officers.

19.146 Recommendation: The regulations governing probation (the Police Service of Scotland Regulations 2013¹⁹⁴) should be amended so that a fair and speedy consideration of any allegation of misconduct can be dealt with during the probation period.

19.147 Recommendation: A statutory suspension condition in England and Wales that temporary redeployment to alternative duties or an alternative location should have been considered as an alternative to suspension should be replicated in Scottish regulations in relation to all ranks of constable. Provision should also be made for regular review of the suspension of an officer.

19.148 Recommendation: The outcome of gross misconduct proceedings should be made public. The Chair's report, subject to any necessary redactions, should be published by the Scottish Police Authority on its website for a period of no less than 28 days.

¹⁹⁴ <https://www.legislation.gov.uk/ssi/2013/35/contents/made>

Chapter Twenty - Guidance on complaints and conduct

20.1 In addition to the statutory framework on conduct, the police and other bodies rely on guidance documents produced to assist implementation of their statutory obligations. In my preliminary report I noted that the current set of guidance in operation within and across those main organisations involved in complaints against the police was piecemeal, elderly and incomplete and, in some significant respects, inconsistent in approach. That is a matter of serious concern because misunderstandings and conflicts between organisations might arise from members of different organisations working from different texts which have not been fully updated or reconciled to take into account the new legislative framework and the new landscape in which they are operating and exercising their responsibilities.

Governance

20.2 I recommended in my preliminary report that there should be the immediate establishment of a senior cross-agency joint Working Group bringing together the Scottish Police Authority (SPA), Police Scotland and the Police Investigations and Review Commissioner (PIRC). I recommended that these organisations develop appropriate and up-to-date guidance drawing on the considerable knowledge and expertise that exists within and outwith those organisations, while consulting other experts and external organisations as and when required.

20.3 I also suggested that representation from the Crown Office and Procurator Fiscal Service (COPFS) to assist with that cross-agency approach would also be extremely helpful. I also proposed that the Crown Office and Procurator Fiscal Service might wish to consider updating the guidance to the police in this area of their functions and any guidance regarding the PIRC's responsibilities for investigating allegations of criminality.

20.4 I suggested that this approach, the remit, the scope of relevant guidance, the membership and chair of the Working Group should be agreed by all from the outset.

I also recommended that the Group should report to and take its instructions from the Director-level cross-agency Quad meeting. (The Quad meeting has since been re-designated as the Strategic Oversight Group.)

Existing guidance

20.5 The Working Group that I proposed should have a role in reviewing the language used by Police Scotland in its correspondence with complainers, simplifying and clarifying the language used. This should be done with a view to increasing openness both with complainers around outcomes and with those who scrutinise Police Scotland. Any new guidance should also take into account the Principles of Inclusive Communication published by the Scottish Government¹⁹⁵ in 2011. I deal with effective communication in the Accessibility and communication chapter at page 282.

20.6 Furthermore, I proposed that the group should oversee a review of the guidance on the categorisation of complaints published in 2011 by the Association of Chief Police Officers (Scotland)¹⁹⁶ (ACPOS). That task should consider in particular the definitions/use of 'incivility', 'excessive force' and 'unlawful detention'.

20.7 Section 45 of the Police, Public Order and Criminal Justice (Scotland) Act 2006¹⁹⁷ gives the PIRC the power to issue statutory guidance on the handling of complaints about the police. The Commissioner may also issue non-statutory guidance to Police Scotland or the SPA, and regularly does so in the form of Learning Points which are made public on the PIRC's website.

20.8 The current guidance, 'From sanctions to solutions'¹⁹⁸ was published by the then Police Complaints Commissioner for Scotland (PCCS), Professor John McNeill

¹⁹⁵ <https://www.gov.scot/publications/principles-inclusive-communication-information-self-assessment-tool-public-authorities/pages/0/>

¹⁹⁶ ACPOS, which represented the views of the chief constables and developed national policing policy, ceased to exist after 2013.

¹⁹⁷ <http://www.legislation.gov.uk/asp/2006/10/section/45>

¹⁹⁸ https://pirc.scot/media/1211/pccs_statutory_guidance_web.pdf

in 2011. It remains the statutory guidance for police complaints handling in Scotland. It was subject to minor revision in 2013 at the time of police reform. The purpose of the guidance is “to contribute to the modernising of police complaint handling in Scotland by moving from a culture of blame and sanction towards one of learning from complaints, which in turn strengthens the accountability and integrity of the police complaint handling system”. That guidance is now being reviewed by the PIRC in consultation with Police Scotland and the SPA.

20.9 Police Scotland have told the Review that updated guidance will drive consistency and effectiveness for both the complainer and the subject officer(s), will help to streamline complaint handling and will clarify key themes to improve future complaint handling.

20.10 I also suggested in my preliminary report that COPFS may wish to consider whether the Lord Advocate’s Guidelines on the Investigation of Complaints Against the Police should be updated to take into account the new police structures and the PIRC. COPFS may also wish to consider how best this could be done to take into account current legislation and recent experience, and any other pertinent issues arising from this Review. COPFS might also wish to draw upon any work that might be done in future by the cross-agency Working Group.

20.11 I understand that COPFS will review and update the guidelines as appropriate in the light of the recommendations in this report.

20.12 The PIRC will also require to update in due course their Guide for the public on the role of the Police Investigations and Review Commissioner¹⁹⁹.

20.13 Scottish Government, Police Scotland, the PIRC and COPFS all contributed to “A guide for complaints about the police”²⁰⁰ which was prepared in 2014 after police reform. It is produced as a hard-copy leaflet and is also published on the Police Scotland website. That leaflet will also require to be updated to reflect revised

¹⁹⁹ https://pirc.scot/media/4905/pirc_a_guide_for_the_public_web.pdf

²⁰⁰ <https://www.scotland.police.uk/spa-media/qomdikgi/complaints-about-the-police-guide.pdf?view=Standard>

guidance and to provide the public with a clear route map of how their complaint will be handled.

20.14 The current guidance for Police Scotland on improvement action is contained within general guidance²⁰¹ on the Police Service of Scotland (Conduct) Regulations 2014 prepared by the Scottish Government, Police Scotland, the Scottish Police Federation and the Association of Scottish Police Superintendents. That guidance will require to be updated in the light of any legislative changes made to the conduct regulations as a result of the recommendations in this report.

20.15 In the Evidence from other jurisdictions chapter at page 296 I recommend that the 2012 Act should be amended to confer on Scottish Ministers a power to issue statutory guidance in respect of conduct and a duty to consult on any such guidance. Scottish Ministers should use that power at the earliest opportunity to issue guidance on the new Reflective Practice Review Process that I recommend in that chapter. I also recommend the establishment of a duty on policing bodies to have regard to any such guidance.

²⁰¹ <https://www.gov.scot/binaries/content/documents/govscot/publications/factsheet/2018/04/conduct-and-performance-procedures-police-guidance/documents/police-guidance-conduct-procedures/police-guidance-conduct-procedures/govscot%3Adocument/Police%2BService%2Bof%2BScotland%2B%2528conduct%2529%2Bregulations%2B2014.pdf>

Chapter Twenty-one - Audit

21.1 In the preliminary report I identified the need for significant improvement in the range and quality of audits of the work carried out on complaints by Professional Standards Department and Police Scotland's frontline managers. In particular, I emphasised the need for stringent internal scrutiny, external review and audit of the initial decision about how a complaint is identified and thereafter dealt with, and by whom it is dealt with. Additionally, I commented on the need for co-ordinated audit among those authorities charged with scrutinising and holding to account Police Scotland and the Scottish Police Authority for their activities in dealing with complaints against the police. I also emphasised the need for thematic and strategic scrutiny in order to ensure that the complaints processes and procedures are as effective as they can be.

21.2 In relation to thematic scrutiny of the Scottish Police Authority and Police Scotland, there are areas of similarity and interaction between the roles of the Auditor General for Scotland (AGS), HM Inspectorate of Constabulary in Scotland (HMICS), and the Police Investigations and Review Commissioner (PIRC). In recognition of this, therefore, Section 85 of the Police and Fire Reform (Scotland) Act 2012 obliges this triumvirate of scrutiny bodies to "co-operate and co-ordinate activity with each other with a view to improving the carrying out of their respective functions" in this regard.

21.3 Following on from this provision, three broadly analogous bilateral Memorandums of Understanding have been put in place:

- AGS and PIRC in July 2013²⁰², "to optimise the skills and experience involved in audits, reviews or investigations, avoid duplication of effort and minimise the burden of scrutiny".
- HMICS and AGS in September 2014²⁰³, "to optimise the skills and experience involved in audit and inspection, avoid duplication of effort and minimise the burden of scrutiny".

²⁰² https://pirc.scot/media/1277/mou_audit_scotland.pdf

²⁰³ https://www.audit-scotland.gov.uk/work/scrutiny/docs/as_140925_hmics_memorandum.pdf

- PIRC and HMICS in October 2017²⁰⁴, “to optimise the skills and experience involved in inspections, reviews or investigations, avoid duplication of effort and minimise the burden of scrutiny”.

21.4 Within this general framework for the police landscape, the AGS’s particular focus – consistent with his general remit for dozens of organisations across Scotland’s public sector – is financial, ensuring propriety and value for money in the spending of public funds. Central to this is a programme of annual audit. The 2018-19 audit of the Scottish Police Authority²⁰⁵, which was published in December 2019, was the eighth such report on the Scottish Police Authority/Police Scotland.

21.5 While HM Inspectorate of Constabulary in Scotland also has a statutory role in ensuring that obligations are met in terms of best value and continuous improvement, this is in the context of a wider operational remit which is to look into the “state, effectiveness and efficiency” of the Scottish Police Authority and Police Scotland. An Annual Scrutiny Plan sets out how HMICS intends to meet its statutory purpose, specifying its key priorities for inquiries over the year.

21.6 Insofar as it relates to their general remits, there is nothing to prevent the AGS or HMICS auditing, inspecting or evaluating how the Scottish Police Authority and Police Scotland handle complaints (as evidenced, for example, within the June 2019 report from HMICS on “Inspection of the strategic arrangements for the delivery of police custody”²⁰⁶). However, of the three scrutiny bodies, it is PIRC alone²⁰⁷ which, amongst its other duties, has explicit responsibilities for this matter conferred by statute (Chapter 2 of the Police, Public Order and Criminal Justice (Scotland) Act 2006), notably Section 33A(a)²⁰⁸ of the 2006 Act:

²⁰⁴ <https://www.hmics.scot/sites/default/files/publications/PIRC%20and%20HMICS%20MoU%20-%202019.pdf>

²⁰⁵ <https://www.audit-scotland.gov.uk/report/the-201819-audit-of-the-scottish-police-authority>

²⁰⁶ <https://www.hmics.scot/sites/default/files/publications/HMICS20190606PUB.pdf>

²⁰⁷ A caveat to this statement is that the Auditor General has a statutory role as regards complaints about fraud, corruption or wrongdoing from employees who have the status of whistleblowers.

²⁰⁸ <https://www.legislation.gov.uk/asp/2006/10/section/33A>

“to maintain, and to secure the maintenance by the Authority and the chief constable of, suitable arrangements for —

- (i) the handling of relevant complaints; and
- (ii) the examination of the handling of relevant complaints and the reconsideration of such complaints”.

21.7 In large part PIRC discharges these responsibilities by reactively conducting individual Complaint Handling Reviews (CHRs) in cases where a complainer remains dissatisfied after having initially gone through the relevant internal Scottish Police Authority or Police Scotland procedures. There is also a proactive element to PIRC’s responsibilities, in that it is also charged with initiating audits, research and assessments of the organisations’ practices.

21.8 Since April 2013 reports of the following audits have been published by the PIRC:

2013	None, since April. (Two prior to April.)
2014	<ul style="list-style-type: none"> • Audit of police adherence to timescales in the handling of complaints (February 2014) • Police Scotland Frontline Resolution Audit (July 2014) • SPA Complaints Audit (July 2014)
2015	<ul style="list-style-type: none"> • SPA Complaints Audit (April 2015)
2016	<ul style="list-style-type: none"> • Police Scotland Complaint Timescales Audit (November 2016)
2017	<ul style="list-style-type: none"> • SPA Complaints Audit (December 2017)
2018	None.
2019	None.
2020	None to date.

21.9 The absence of any proactive audit over the last three years is a concern. While it is absolutely right for PIRC to focus attention on dealing with individual CHRs (especially given the backlog which has been reported to the Review), the value of the proactive element is also critical and should not be overlooked. While it is certainly not a panacea, audit does offer an important means of gaining a broader perspective, one which should enable the identification of significant points which might otherwise remain hidden, for instance regarding:

- cases in which there have been particular examples of very good practice, which should be identified, highlighted and disseminated;
- cases in which, although the complainer chose for some reason not to progress the matter to PIRC, or (perhaps unwittingly) received an inappropriate service;
- cases in which, although the complainer was happy with the handling of the complaint and the outcome, the police officer who was the subject of the complaint was inappropriately treated; or
- cases which collectively show a pattern of systemic concern, for example regarding timescales or categorisation.

21.10 I understand that PIRC has sought and received additional funding to enable it to establish a Compliance Team which would have the audit of various aspects of Police Scotland's complaints process as one of its primary objectives. This is a welcome indication that the value of proactive audit work is recognised in principle within PIRC. However, such work must be viewed as an integral and essential part of the PIRC's activities. Resources within the PIRC should be allocated in such a way that the audit of complaints, the identification of trends and the promotion and support of continuous improvement in policing is prioritised.

21.11 The Commissioner has recently engaged with HM Inspectorate of Constabulary in Scotland (HMICS) and COPFS (Crown Office and Procurator Fiscal Service) and agreed that if PIRC identify important learning, PIRC can notify HMICS

at an early stage. HMICS may consider whether the issue could merit a thematic review or audit.

21.12 The Review heard evidence from PIRC managers that they would like to have carried out more audit work but did not have the resources to do so. Such a team could be a standalone unit resourced with trained auditors and supplemented by existing staff with appropriate skills and expertise from both the Investigation and Review Teams.

21.13 Since my preliminary report was published additional resources have been allocated to recruit compliance officers. Progress was delayed due to COVID-19 but the recruitment process is now in train.

21.14 Alongside these arrangements, the Crown Office and Procurator Fiscal Service (COPFS) has longstanding responsibility for overseeing and investigating any allegation of criminality, including the investigation of allegations of criminality by police officers. In addition to dealing with individual allegations, COPFS also has oversight of the effectiveness of the overall system. Thus, in 2019, the Crown Agent advised the Justice Committee that, to provide additional reassurance that Police Scotland categorises and routes such allegations correctly:

- The Criminal Allegations Against Police Division (CAAP-D) within COPFS would carry out a retrospective review of a representative sample of complaint cases that have been characterised by Police Scotland as complaints of 'excessive force' and/or 'unlawful detention'.
- Police Scotland would meantime be expected to report all cases to CAAP-D where they propose to categorise the complaint as one of 'excessive force'.

21.15 I comment on the outcome of that review and sampling in the Scottish Parliament Justice Committee chapter at page 64.

21.16 Aside from the external audit, review and inspection activities undertaken by COPFS and the three scrutiny bodies specified in Section 85 of the 2012 Act, as summarised above, there is clearly a vital internal quality control function for the

Scottish Police Authority and for Police Scotland. A pivotal role in this is played by the Scottish Police Authority's Complaints and Conduct Committee, since it was re-established in 2018, and by Police Scotland's Professional Standards Department (PSD).

21.17 The Complaints and Conduct Committee considers information from a range of sources, including statistical reports from PSD, dip-sampling reports produced by the Scottish Police Authority's own staff and trend analysis. There is clear evidence from the Complaints and Conduct Committee's published material of an ongoing effort to focus on thematic and systemic issues, with a view to drawing generally applicable lessons and facilitating organisational learning for the Scottish Police Authority and Police Scotland. It appears, however, that – notwithstanding the view in PIRC's 2017 Audit that “the current level of resources dedicated by the SPA to complaint handling is sufficient” – resource and skills constraints in the Authority may at times inhibit its ability to pursue a rigorous, in-depth approach, not least when the small support team is under exceptional pressure, for example on occasions when it is operating below complement and/or is diverted by having to deal with individual complaints about senior police officers or the Authority itself. Against that background, the Review welcomes indications from HMICS that the Complaints and Conduct Committee is making positive efforts to increase its capability. The then Chair of the SPA recognised the challenges in this area and sought to develop a more robust position.

21.18 Even now, however, it appears that the Complaints and Conduct Committee provides a useful, open forum for addressing statistically-based emerging themes and systemic issues. The reports that are presented to the Complaints and Conduct Committee and minutes of its discussions are available online to all the aforementioned scrutiny organisations and, indeed, to the general public. However, it is generally the case that the Complaints and Conduct Committee is attended only by the Scottish Police Authority and Police Scotland. Other relevant bodies, such as the PIRC, should consider whether more direct engagement with the Complaints and Conduct Committee could facilitate a clearly focused, whole-system approach to complaints handling. This may offer one additional means of achieving more co-ordination, with regular, thematic, analytically robust outcomes.

21.19 As part of the SPA's responsibilities for holding Police Scotland to account and for promoting and supporting continuous improvement in the policing of Scotland its Complaints and Conduct Committee should be considering which areas should be the subject of audit. It should do so in consultation with the PIRC. I comment in more detail on the role of the Committee in the Scottish Police Authority chapter at page 176.

Co-ordination of audit arrangements

21.20 In my preliminary report I recommended that all the audit arrangements, including regular dip-sampling designed to identify poor practice, good practice and emerging trends, should be prioritised and co-ordinated to support the common objective of improving standards and service to the public.

21.21 I also recommended that PIRC should be given appropriate access to the Police Scotland Centurion system for the purposes of contemporaneous audit of complaints and to help facilitate early PIRC awareness of criminal allegations. A progress update on that recommendation is in the Police Scotland chapter at page 81.

21.22 Sharing of audits between organisations and discussion of them at the cross-agency Strategic Oversight Group (SOG) is essential. The Strategic Oversight Group evolved from the previous Quad meeting, which brought together senior representatives of Police Scotland, the SPA, the PIRC and COPFS, and was part of the response to recommendations in my preliminary report.

21.23 The SPA has reported that work is under way within the National Complaint Handling Development Group (NCHDG is a new group that reports to the SOG) to agree arrangements for an annual multi-agency audit of Police Scotland's complaint handling involving the SPA, Police Scotland and the PIRC. I welcome that co-ordinated response.

Police Scotland

21.24 In their evidence to the Review Police Scotland confirmed that they would welcome the introduction of such a yearly multi-agency audit, “to further strengthen quality assurance focused on the complainer’s journey across all relevant organisations”.

21.25 Police Scotland have an internal corporate audit function that is delivered by its Risk, Assurance and Inspection (RAI) team. The RAI team were asked to assist the Professional Standards Department (PSD) in following up my recommendation that, “Frontline resolution of complaints should be subject to close and regular monitoring through regular, meaningful internal and external audits, and monitoring of decision-making”. The RAI team completed an internal audit of Police Scotland’s Six-Stage Complaints Handling process in November 2019 and I am grateful to Police Scotland for sharing that report with the Review. It is a good example of the benefit of utilising a specialist internal audit resource and I comment on the substance of their report in the Professional Standards Department section at page 81.

21.26 I also welcome the proposal from the PIRC and Police Scotland that the PIRC should audit Police Scotland’s National Gateway Assessment Unit (NGAU). The NGAU assesses and triages referrals on a variety of matters from other parts of Police Scotland, providing a single point of entry for internal referrals, ensuring a proportionate and consistent approach is taken in respect of subsequent dissemination, guidance and investigation allocation.

Police Investigations and Review Commissioner

21.27 PIRC describes its responsibility in respect of audit as, “We ensure that all policing bodies in Scotland have efficient and effective procedures for complaint handling that are suitably independent and adhere to the principle of continuous improvement. We achieve this by auditing their complaint handling procedures.”

21.28 I believe that the PIRC should be carrying out regular audits as part of an armoury of system safeguards. In particular, priority in respect of complaints to Police Scotland should be given to the most serious complaints i.e. those that relate to potential or actual breaches of ECHR rights under Article 2 (Right to life – death in custody or following contact with state agents), Article 3 (Prohibition of torture - inhuman or degrading treatment or punishment) or Article 5 (Right to liberty and security - unlawful detention). These are the cases that should be being reported forthwith to COPFS (in the case of Article 2 it must be reported immediately from the point of death) so that CAAP-D can consider whether, how and by whom the case should be investigated. I comment on the importance of independent investigation of such allegations in the PIRC chapter at page 205 and in the Complaints arising from deaths in custody chapter at page 394.

The benefits of audit

21.29 Two of the guiding principles described in the statutory PIRC guidance on complaints handling ‘From sanctions to solutions’²⁰⁹ are continuous improvement (“There must be effective means of communicating and sharing lessons learned”) and independence (“Robust internal and external monitoring and auditing processes help ensure independence”). That guidance goes on to say that, “Each complaint should have an audit trail” and that “a clear audit trail is as much in the interests of the complaint handler as the complainer”.

²⁰⁹ https://pirc.scot/media/1211/pccs_statutory_guidance_web.pdf

21.30 'From sanctions to solutions' requires auditable records to be kept in respect of all complaints consisting of records of all enquiries undertaken and all significant steps taken during the complaints process. All evidence obtained or created as part of the enquiry must be retained on file. Auditable systems must also be in place to demonstrate how learning identified has been acted upon.

21.31 The real power and value of audit lies in developing themes and training issues for discussion with senior managers and officers, supporting continuous improvement and ultimately delivering quicker and better resolution for the public. Acting on the findings of regular and effective audit will deliver benefits in terms of efficiency, scrutiny, openness and assurance and, in the context the police complaints system, should:-

- provide assurance to senior managers, SPA and the public.
- support best value in the allocation of resources.
- identify trends and the need for remedial action.
- identify risk, errors and delays within the system, and potential criminality.
- identify positive practice which can then be promoted.
- improve complainers' experience and understanding of outcomes.
- identify inappropriate escalation of complaints e.g. failures to use mediation or grievance procedures.
- identify any geographical or service inconsistencies across Scotland.

21.32 In commenting earlier this year on Audit Scotland's Code of Audit Practice the then Auditor General for Scotland, Caroline Gardner said: "Independent, reliable and high-quality audit improves the use of public money and helps ensure the services we all rely on are as effective and efficient as they can be." That principle applies equally to the audit work carried out in relation to police complaints. As I made clear in my preliminary report recommendation, that work requires to be co-ordinated. There should be a clearly delineated hierarchy of audit functions that eliminates duplication of effort. Each level of analysis, measurement or research should inform the relevant level above. The current arrangements include:

- Police Scotland's own internal audit and dip-sampling/quality assurance checks
- SPA's quarterly dip-sampling of a random sample of complaint cases
- PIRC's identification of trends based on learning from complaint handling reviews
- Police Scotland's corporate monitoring of PIRC recommendations
- PIRC's annual audit of complaints made to SPA
- PIRC's thematic audits e.g. frontline resolution, police adherence to timescales
- The SPA's statutory duty to satisfy itself that the Chief Constable has suitable complaint handling arrangements in place
- The PIRC Audit and Accountability Committee's scrutiny of that organisation's audit activities in relation to complaints

21.33 In addition to the list of functions above it can be argued that the complaint handling review function carried out by the PIRC is itself an audit function, albeit that the group of cases is self-selecting from those who are not satisfied with the way that Police Scotland or the SPA have dealt with their complaint.

21.34 Audit should be more than just a paper exercise; it should incorporate dialogue with officers and staff and observation of how PSD handle calls from members of the public making complaints. Those conversations could also be recorded for training purposes.

21.35 Along with the audit functions listed above there is scope for Police Scotland and the PIRC to undertake more detailed research and analysis. In my preliminary report I commented on the significant scope to enhance and widen the current functions of the PIRC complaint handling review (CHR) team and how it pursues its role by engaging in its statutory responsibilities of audit and research. Both Police Scotland and the PIRC should consider drawing on the expertise of Audit Scotland and the Scottish Public Services Ombudsman in re-designing the audit arrangements in respect of police complaints.

21.36 In comparing the arrangements in Scotland with those in England and Wales, Northern Ireland and the Republic of Ireland it was striking how much more data is collected and analysed in those three jurisdictions on the profile of people who make complaints about the police than is the case in Scotland. The profiling there of complainers and the analysis of the source of complaints allow a far greater understanding of particular communities' or groups' experience of policing. For example, the Garda Síochána Ombudsman (GSOC) collect, and publish in their annual report, data on the profile of complainers including gender, age, nationality, country of birth, ethnicity, disability, language, religion, housing and higher level of education.

21.37 Learning from research and analysis that identifies recurring themes, geographical or other patterns can enhance Police Scotland's ability to put in place preventative policy or practice measures. It can also highlight potential or actual discriminatory behaviours and the types of complaints made by particular communities within Scotland. The opportunity it offers is to help to shift the current system from being a fundamentally reactive one to a more responsive and preventative one, reduce the volume of future complaints and contribute to an increase in public confidence.

21.38 How the state responds to complaints in relation to policing in Scotland is the subject of this review. However, reducing complaints by better policing methods is clearly also highly desirable. Rather than mainly reacting to complaints when they occur, the policing bodies should be taking preventative actions and adopting policies that will contribute to a reduction in their number.

21.39 The categorisation carried out by Police Scotland needs to be the subject of regular and robust auditing in order to mitigate the risks of breaches of Articles 3 and Article 5. This matter was raised by the previous PIRC in evidence to the Justice Committee. There have been some egregious cases which are in the public domain and many of the individuals involved were keen to assist the Review.

Preliminary report recommendation: All the audit arrangements, including regular dip-sampling, designed to identify poor practice, good practice and emerging trends should be prioritised and co-ordinated to support the common objective of improving standards and service to the public.

Recommendations in relation to audit

21.40 Recommendation: In order to ensure public confidence in the police, the SPA should confirm each year in its annual report whether or not in its view, based on an informed assessment by the Complaints and Conduct Committee and evidence from the relevant audits, the Chief Constable has suitable complaint handling arrangements in place.

21.41 Recommendation: At the point at which people make complaints Police Scotland should collect and analyse data to enable them to undertake demographic modelling and gain a better understanding of different groups and communities' experience of the police service.

21.42 Recommendation: Both Police Scotland and the PIRC should consider drawing on the expertise of Audit Scotland and the Scottish Public Services Ombudsman in re-designing the audit arrangements in respect of police complaints.

Chapter Twenty-two - Training, continuing professional development and learning culture

22.1 In the preliminary report, I welcomed the additional training and programmes that had been recently implemented, especially the training that had been undertaken across and between organisations. It is vital that people have better knowledge and empathy towards the challenges of others' roles. Improved communication along with joint training will assist in this.

22.2 Much of this report is concerned with the response to complaints but many complaints can be prevented by good psychology, empathetic engagement, a trauma-informed approach and using techniques that de-escalate aggression and create a safer environment for everyone.

Scottish Police Authority training

22.3 The Scottish Police Authority (SPA) is charged with holding Police Scotland to account for the efficacy and effectiveness of its complaints handling practices. It is clearly vital therefore that those carrying out that responsibility for SPA are knowledgeable in appropriate complaint handling standards and responses. Both staff and members of the Complaints and Conduct Committee should receive appropriate training to allow them to carry out their functions. Best practice in public-sector complaint handling is promoted by the Scottish Public Services Ombudsman (SPSO) and her organisation. The SPA complaints staff should be familiar with model complaint handling procedures published by SPSO and keep up to speed with developments so that they can brief SPA members on best practice and developments in this field.

22.4 There are instances where audits of organisations have previously identified gaps in their training needs. For example, Police Investigations and Review Commissioner's (PIRC's) 2017 complaints audit²¹⁰ of the Scottish Police Authority

²¹⁰ <https://pirc.scot/media/4447/spa-audit-report-2017.pdf>

(SPA) concluded that no staff had undertaken formal complaint handling training since taking up post, and that there was no formal or structured annual training, or continuing professional development programme made available to staff. PIRC therefore recommended more training for staff in the SPA's Complaints and Conduct Team and this has been progressed.

22.5 SPA initially relied on on-the-job training for their complaints handling staff. However, after a PIRC audit highlighted that the staff did not have any official accredited training, the SPA now offer their staff the opportunity to attend Queen Margaret University's course in 'Complaints and Ombuds Techniques'. This course looks at how organisations can respond effectively to complaints and how they can learn from complaints while reflecting on consumer behaviour and its consequences for dispute resolution. It also covers the approaches to dispute resolution used by ombudsman schemes, independent complaints handlers and adjudicators when the complaints at organisation level have failed to resolve the issue in dispute.

[Preliminary report recommendation: Further training for complaints and conduct officers in SPA should be consolidated and broadened in order to ensure the right skillset and up-to-date knowledge of complaint handling best practice in other sectors.](#)

Police Scotland training

22.6 This section of the report deals with three elements of Police Scotland's training programme and training needs: training for PSD officers, training for 101 call-handlers and training for all officer ranks but with a focus on frontline constables. The first point of contact for members of the public wishing to make a complaint will often be through Police Scotland's service centres who deal with people who telephone Police Scotland and will usually pass the call to the PSD Complaints Assessment and Resolution Unit (CARU). In each of these areas the skills, empathy and knowledge of officers and staff can and do help to resolve issues

for members of the public and prevent disproportionate escalation through the complaints process.

22.7 Within Police Scotland, complaints handling is dealt with by adding training on professional standards into different developmental areas across the organisation. These inputs cover the ranks from constable to chief superintendent.

22.8 As part of the national training programme, Police Scotland probationers have a 45-minute overview into the role of the Professional Standards Department (PSD), with a focus on the statutory Standards of Professional Behaviour. This training reinforces the expectations placed upon officers in terms of their conduct and also what constitutes misconduct, both on and off duty and is focused on ensuring that new recruits have an understanding of the role and remit of PSD from the outset of their foundation training.

22.9 As a follow-up, the second probationer input from PSD builds upon the input provided in the first week of foundation training and includes reflection on the themes touched upon in the previous input, again focusing on the Standards of Professional Behaviour. Additionally, there is more information on the role of PSD in respect of criminal and non-criminal complaints and conduct matters, both on and off duty.

22.10 Police Scotland also provide sergeant and first-line manager training. This training is aimed at both police officers and members of police staff and seeks to identify best practice when dealing with complaints about the police. Emphasis is placed upon the importance of adhering to Police Scotland's Standards of Professional Behaviour. The training describes the 'Early Intervention Programme' in relation to complaints about the police. It also sets out to ensure attendees recognise the role and remit of PIRC within the framework of complaints handling and investigations.

22.11 Since the publication of the preliminary report a PSD training portfolio review was undertaken in September 2019. It concluded that a revision of the content of both the probationers course and first-line managers course was a priority. As a result, the training for probationers in week one/year one of their course has been

rewritten; instead of three separate inputs on different days, students will be presented with training over five classroom periods on the same day.

22.12 The training portfolio review also examined a variety of frontline manager course training packages in use. The training review team are reviewing and rewriting this material into a single course training package which, when complete, will be used across different Police Scotland training venues.

22.13 Training is also provided to special constables, with the input similar to the training provided to probationers in weeks one and eleven. It also covers the availability of confidential reporting of concerns through the Integrity Matters process. Integrity Matters is Police Scotland's internal confidential reporting mechanism through which matters may be raised anonymously.

22.14 Custody officer training is aimed at sergeants and constables who may be required to take up duties within the custody suites as part of their daily role and seeks to raise an awareness of the type of complaints received in the custody environment, along with the most appropriate procedure to follow in handling such complaints. The course not only sets out the complaint handling procedures and the role the PIRC plays, but also outlines preventative measures to mitigate or clarify complaints, such as the efficient use of CCTV and ensuring that written procedures are followed and processes are carried out correctly. As I say elsewhere in this report, the introduction of body-worn video cameras would allow complaints to be dealt with in an accelerated manner.

22.15 PSD provide a short input to the Advanced Investigator Programme to ensure those dealing with more complex investigations have a sound knowledge of the complaints process. The input seeks to provide an overview of the complaints process, provide an overview of complaint investigations (criminal and non-criminal), raise awareness of the role of the PIRC in the complaints process and discuss the roles of PSD, the PIRC and police investigators.

22.16 Transferee training for officers joining Police Scotland from other constabularies covers the difference between the roles of PSD and the

Anti-Corruption Unit in relation to conduct on and off duty in Scotland. It also highlights a number of areas of vulnerability of which officers need to be aware, defines the main areas of regulation and explains Integrity Matters, the confidential reporting mechanism.

22.17 In the context of misconduct, the Association of Scottish Police Superintendents (ASPS) expressed the view in their evidence that those in charge of conduct procedures, especially hearings, lacked specific training, and stressed that it is important that those fulfilling independent roles are properly trained and resourced. Following the introduction of the Police Service of Scotland (Conduct) Regulations 2014²¹¹, the process for misconduct hearings changed so that such hearings, which by definition deal with allegations of gross misconduct, require to have a chairperson and an assessor, roles carried out by a chief superintendent and a superintendent respectively.

22.18 In my preliminary report I recommended that in future the chairs of all gross misconduct hearings should be independent legally qualified persons supported by a policing member and a lay person. The policing member role could still be carried out by a superintendent, depending on the rank of the subject officer.

22.19 PSD delivered chair and assessor training to approximately 40 chief inspectors and superintendents in June 2019. The training provided an overview of the requirements of chairperson and assessor and further provided detail on the legislation relevant to the process. Police Scotland also recognise that training is only one aspect of being a chairperson, and that experience is also necessary.

22.20 During 2020 PSD has delivered training to chief superintendents locally on a one-to-one basis. Police Scotland report that this individual approach has worked well and has resulted in more participation than there would have been for a defined course run by PSD.

²¹¹ <https://www.legislation.gov.uk/ssi/2014/68/contents/made>

22.21 Police Scotland are planning chair and assessor training and PSD intend to visit divisions on a rotational basis to deliver a package to the senior management team which will support them in dealing effectively with minor conduct-related matters through to chairing misconduct proceedings. This will cover the Regulations and guidance and incorporate a continuing professional development (CPD) element based on:

- legal challenge
- the Scottish Police Federation role
- learning from internal appeals
- learning from Police Appeals Tribunals
- senior counsel and other legal advice

22.22 Service advisers (C3 call-handlers in service centres²¹²) receive training on complaints about the police which provides direction on the definition of a complaint, on what type of complaint is being made and how to identify the appropriate method of capturing a complaint.

Preliminary report recommendation: Police Scotland should review the service-wide capability of its line managers to line manage effectively, including the adequacy of training and mechanisms of support for line managers.

²¹² C3 stands for Contact, Command and Control, the division within PoliceScotland which deals with calls from the public.

Training on diversity and unconscious bias

22.23 Police Scotland advised the Review that all probationary officers receive diversity training at the Scottish Police College on their initial training course. Following completion of this course, probationary officers return to their allocated local policing divisions where, prior to local deployment, they receive an input from representatives from a number of police diversity staff associations and other organisations.

22.24 The Review was told in a focus group that unless officers specialise in areas such as hate crime, diversity training is a “once in a career” session delivered for probationers. The diversity training that is provided by Police Scotland was described to the Review as superficial, because it does not factor in unconscious bias, and because training which used to be delivered over the course of a week has been condensed.

22.25 I recommend that all police officers and staff should receive training on unconscious bias, equality legislation and diversity and that this should be updated throughout their career, with the opportunity for refresher courses at regular intervals. The Equality Act 2010²¹³ provides that it is against the law to discriminate against someone because of a protected characteristic. The nine protected characteristics prescribed in the Act are: age; disability; gender reassignment; marriage and civil partnership; pregnancy and maternity; race; religion or belief; sex; and sexual orientation.

22.26 The values of equality and diversity and a zero-tolerance approach to discrimination, bullying and cynicism should be reinforced at all levels and exemplified by the service’s leaders.

²¹³ <https://www.legislation.gov.uk/ukpga/2010/15/contents/enacted>

Mental health training

22.27 In evidence to my 2017 report on Deaths and Serious Injuries in Police Custody in England and Wales²¹⁴, Michael Brown, the national mental health co-ordinator for the College of Policing, agreed that there was an emerging sense that the police need to see themselves as mental health professionals, but that training in England and Wales remained 'patchy'. In the same report, I noted the Police Federation evidence that: "Dealing with those in our communities who are suffering with mental ill-health problems is considered as core police business. Police officers and staff working in public-facing roles, in particular those working with detained persons, require improved, accredited and consistent training and development in the identification and management of mental health risks; that this should be a mandatory requirement for all officers."

22.28 In discussion with a focus group of Police Scotland sergeants for this Review, it became apparent that a significant amount of officers' time was taken up dealing with mental health crises faced by members of the public. The police are increasingly being called out to deal with mental health problems, missing persons and high-risk vulnerable individuals. A significant amount of time is spent on mental health issues because the police service is "the service that can't say 'No'". In recognition of these ubiquitous mental health issues, all officers need to have the appropriate training to deal with the complex and challenging demands they create. I comment elsewhere in this report on the tendency for people to be forced into the criminal justice system because of the lack of capacity in the health service to handle the demand.

22.29 The prevalence and prominence of mental health issues in society should be reflected in the police service's ability to deal with them and therefore I recommend that police officers should receive regular training inputs on how to deal effectively with individuals who display mental ill-health symptoms or related behaviours.

²¹⁴ <https://www.gov.uk/government/publications/deaths-and-serious-incidents-in-police-custody>

De-escalation training

22.30 Police officers in the course of their duties will encounter individuals who display florid, disturbed or aggressive behaviours. This training is not only confined to people in mental health crisis but also others without mental issues health may present in a very unpredictable way due to intoxication, drugs, alcohol or be armed or suicidal. Mental health is discussed in the Custody chapter at page 372.

22.31 Given the inherent risks to both officers and those detained in the event of the use of physical force, the ability to de-escalate circumstances which may lead to a violent encounter are paramount in the skillset of the individual officer. Compliance with an officer's instruction can be achieved through a hierarchy of approaches. Persuasion, calming techniques and negotiation, known collectively as de-escalation, may have a more effective impact in securing such compliance than directive commands that escalate tension and the probability of resistance.

22.32 In the Accessibility and communication chapter at page 282 I say more about the benefits of being trauma-informed when interacting with troubled or vulnerable individuals and I welcome Police Scotland's intention to develop trauma-informed approaches to engagement.

22.33 A senior Police Scotland officer provided evidence to the Review that, as part of officer safety training, officers were being encouraged to be aware that there are different levels of response that can be deployed to avoid escalation of an incident into one requiring the use of force. Training in this area is critical not least because there have been a number of instances where members of PIRC have asserted in their reports that an incident went beyond 'excessive force' and should correctly have been classed as an assault. I comment on this issue in the Scottish Parliament Justice Committee chapter at page 64 but in the context of officer safety and public safety, Police Scotland are training officers to understand what constitutes necessary and proportionate force in any given circumstance and to feel confident about using appropriate force in an incident when these criteria are met.

22.34 Part of Police Scotland’s officer safety training prepares officers for hostile situations in which their communications skills are tested in order to prevent situations from escalating further. The training course covers de-escalation strategies, components of communication, tactical communication, factors affecting communication, how to recognise occasions when tactical communications may fail, compliance and signals of submission, and the effects on the body of adrenaline, endorphins, dopamine, noradrenaline and cortisol. This training is critical to frontline policing and is to be commended for its coverage of theory, practice and insight into human behaviour.

22.35 In my 2017 report²¹⁵ on Deaths and Serious Incidents in Custody in England and Wales I said, “In addition to law, training and guidance on how officers should approach encounters that may lead to detention, the community relies on the professionalism, wisdom and courage of police officers to approach incidents which may result in harm to the officers or others”. Knowing how to talk to someone who is under extreme stress, agitated, intoxicated or potentially violent, knowing how to de-escalate a situation and knowing how to restrain people safely is essential for the officer and their safety, but the application of that knowledge is also vitally important to the safety any such individual whom they do encounter.

22.36 We ask a lot of our police officers in the 21st century and expect that they will be equipped with the skills to reduce, so far as possible, the threat of harm and danger to themselves. These various circumstances may require high levels of physical competence but, most importantly, emotional intelligence and empathy to diminish the need for physical restraint with all of its attendant risks.

Complaints and conduct training

22.37 PSD in partnership with the PIRC designed and delivered a new one-day module for inspectors and chief inspectors on the Established Leaders course at the Scottish Police College at Tulliallan. The aim of the one-day module is to improve

²¹⁵ <https://www.gov.uk/government/publications/deaths-and-serious-incidents-in-police-custody>

the awareness of the complaints process and to generate consistency across Police Scotland. The learning outcomes for this course are:

- to understand the role and remit of the PIRC in relation to complaints about the police
- to identify the six stages of the complaints handling process²¹⁶
- to demonstrate the complaints handling process
- to examine the areas commonly missed from the six-stage form

22.38 On request, PSD has also provided an overview in the form of a presentation on complaints handling best practice to a range of police specialist departments.

22.39 The Scottish Police College hosted a continuing professional development day at Tulliallan in February 2020. Representatives from both Police Scotland and PIRC spoke to approximately 150 attendees, most of whom were inspectors and above. Also in attendance were a number of staff from PIRC and members of the SPA. The event was positively received with PSD receiving a number of requests to host future, similar events. PSD plan to hold such events on a six-monthly basis when the COVID-19 pandemic allows.

22.40 In November 2019, Police Scotland's Risk, Assurance and Inspection team undertook an internal audit of Professional Standards Department's six-stage complaints process. This is dealt with in more depth in the Professional Standards Department section at page 81. The audit found that there was a lack of training available to officers and staff within PSD and those at division or department dealing with complaints. At the time of the audit it was reported that there was no defined official training provided to officers or staff when joining PSD on how to deal with complaints. Most of their training comprised completing desk training with an established team member. This supported earlier evidence from members of PSD to this Review. The audit also found that members of PSD and officers/staff at

²¹⁶ https://pirc.scot/media/1211/pccs_statutory_guidance_web.pdf The 6 stages of the complaints handling process set out in the PIRC's statutory guidance, 'From sanctions to solutions' are 1) notification, 2) allocation, 3) determination, 4) identifying learning, 5) notification to complainers and 6) review by the PIRC.

division/department do not currently receive any training on systems, letter-writing or complaints handling.

22.41 The Police Scotland action as a result of this audit has been positive. They have used the audit to instigate a continuous improvement exercise with actions being taken to ensure all the recommendations and improvement actions are progressed. PSD advised that since the audit they had introduced induction training for new members of PSD and created a training module on the six-stage complaints process aimed at all managers in divisions.

22.42 Training in the field of complaints and conduct within Police Scotland is an important introduction to the subject, a significant element in continuing professional development and a tool to drive continuous improvement across the organisation and the service it delivers to the public.

22.43 The role of the Professional Standards Department should develop and is developing beyond involvement in situations that go wrong or involve poor behaviours, but they should continue to enhance their role in identifying training needs and in preventative work.

22.44 From the evidence provided by Police Scotland it is clear that they have taken steps to increase the breadth and depth of the training that they provide in this area to probationers, line managers and practitioners. That response to my preliminary report and their own internal audit are to be commended. It is critical that those involved in complaints handling should be immersed in best practice, fully understand and apply both the letter and the spirit of the statutory guidance, be empathetic with members of the public, manage their expectations and appreciate the power of apology.

22.45 The wide-ranging nature of the police officer's role requires a vast array of skills. In this context officers should ideally receive training in officer safety, dealing with complaints, managing people, mediation, de-escalation techniques and plain English but achieving all of that is inevitably a challenge for the organisation.

22.46 PIRC have recognised that there should be more thematic analysis of complaints to help to develop officer training. They should therefore liaise with PSD and with the Scottish Police College over how that learning can be converted into practical training for police officers.

22.47 HMICS are currently undertaking a thematic inspection of training and development within Police Scotland²¹⁷, and will consider a comparative overview of training and development approaches in other sectors and jurisdictions to identify any good practice. Enhancing the training and development function will be a key element in improving the service to the public and changing the culture of the organisation.

22.48 I recommend that Police Scotland should have a PSD training officer to maintain the momentum in training and development arising from the audit, and to liaise with the SPSO, the PIRC and the SPA on joint training, best practice and other relevant development opportunities.

Preliminary report recommendation: Police Scotland should consider the importance of providing all officers involved in frontline resolution with training in mediation and customer handling.

PIRC training

22.49 In year one of traineeship, trainee investigators at the PIRC attend the University of the West of Scotland (UWS) in Paisley on day release from September to December to study Scots Criminal Law. Thereafter they receive three bespoke tutorials to supplement the relevant facts of law specific to their PIRC role. The learning points covered in this course are:

- The fundamentals of establishing criminal liability ('actus reus', 'mens rea' and strict liability)

²¹⁷ <https://www.hmics.scot/sites/default/files/publications/HMICS20191210TOR.pdf>

- Important doctrines concerning liability (e.g. causation, art and part and attempts) and defences
- The range of specific crimes, but focusing on the common law crimes against the person, against property, against public order and against justice.

22.50 To supplement this learning, I recommend that the PIRC should deploy the in-house expertise that the organisation has to deliver internal training for investigators in the law of evidence.

22.51 In their second year of traineeship, trainee investigators attend the UWS Paisley campus on day release from September to December to study a science and crime module. The learning points covered are:

- Knowledge of the work of forensic scientists from the crime scene to the laboratory and their role as expert witnesses
- How forensic science has developed in parallel with other scientific advances
- Forensic science and the media
- Understanding of the application of science to a selection of forensic topics: explosives; fingerprints; drugs; alcohol; and crime scene investigation
- Basic practical exercises relating to forensic science including laboratory examinations of unknown materials, developing fingerprints and crime scene examination

22.52 In each case these modules are attended one day a week for twelve weeks. Investigators also participate in delivering training at UWS; they talk through the role of the PIRC and how investigations are conducted.

22.53 PIRC has recruited a training co-ordinator to help people focus on learning and identify their training needs, and has reported a growing appetite for professional development. The co-ordinator is also developing a number of online resources for the organisation. In terms of recruitment strategy, PIRC are now increasingly focusing on the detail of the different skillsets that they are looking for when filling vacancies.

22.54 PIRC reported to the Review that they have completely revamped their trainee development programme in the period since May 2019. They have partnered with the Scottish Police College and staff now receive training there that is accredited by the Scottish Qualifications Authority (SQA). For example, PIRC use the Scottish Police College's investigative learning development programme that is accredited by SQA. That programme is available to people in the PIRC up to the level of senior investigating officer.

22.55 Training was undertaken at the Scottish Police College on giving evidence by any PIRC staff who have never appeared in court or not had experience of Fatal Accident Inquiries.

22.56 PIRC also provide continuing professional development in the form of internet and social behaviour training.

22.57 At the focus group I held with PIRC reviewers and investigators I was given evidence that, since being reviewed, training within the PIRC was much improved. This evidence was supported by positive trainee feedback to PIRC's Human Resources Team over the relevant period.

22.58 A member of the PIRC senior management team explained to the Review that one of the challenges that they have in bringing people in to develop them up through the ranks is that the two-year training programme allows trainees, potentially, to be sent out to handle some very serious investigations that someone from a police background might not have dealt with until they had 20 years' service.

22.59 I believe that although the comprehensive training for PIRC staff is commendable, the context of an incident cannot always be taught in the classroom; police officers are aware of how dangerous situations can become, and how sometimes decisions have to be made quickly. In order for PIRC complaint handling reviewers to understand this better, it is recommended that they work-shadow police officers at peak times to see at first hand the atmosphere and environment in which officers are obliged to make decisions that can have serious implications.

22.60 The Review heard evidence that more training was being provided and taken up in the PIRC, including a bespoke training course on how to deal with abusive callers for complaint handlers and a plain English course on report-writing. Family Liaison Officers had also been sent on the appropriate training and crime scene managers had been on the full scene management course. Training input from PIRC was also being delivered to Police Scotland's post-incident managers and in practice investigators were now getting full accounts from officers more speedily. Other courses provided include driver awareness and mental health management. PIRC have been using Civil Service online training to cover diversity and have accessed courses on unconscious bias, managing diversity and recruiting.

22.61 All the PIRC staff undertook diversity training in 2017 and in November 2019 undertook training on unconscious bias. In addition, all staff were provided with inputs on mental health awareness in January 2020. Mental health awareness is particularly relevant given the background of many people who take their complaints to PIRC.

Guidance

22.62 PIRC staff confirmed that they do refer to their statutory guidance document 'From sanctions to solutions'²¹⁸. However, as noted in the preliminary report, this document was first published in 2011 prior to the inception of Police Scotland, with only a minor update in 2013, so it is significantly out of date. The tenor of the document itself should be commended as it was intended to drive a move away from a blame culture relating to complaints to a culture of learning and development. The PIRC has confirmed that their statutory guidance is being updated and Police Scotland and the SPA are being consulted on the revised document.

22.63 Evidence from PIRC and PSD officers confirmed that there is no comprehensive cross-organisational guidance on complaints. There is a heavy reliance on on-the-job training, as well as using 'From sanctions to solutions' and

²¹⁸ https://pirc.scot/media/1211/pccs_statutory_guidance_web.pdf

outdated ACPOS guidance from 2011 on the recording of complaints. It was put to the Review that in general terms the guidance available had value, but that it should be routinely updated and refreshed so that all organisations are working from relevant and comprehensive guidance.

22.64 Guidance should be developed across all the relevant organisations, so that all learning and development has a consistent basis, and so that there is no ambiguity regarding the interpretation of regulations. It was also suggested by an officer from Professional Standards that consideration should be given to publishing a version of any new guidance in order for the public to make better informed decisions when considering making a complaint. In the interests of transparency all the guidance related to public complaints arrangements should be published in an easily accessible place.

Strengthening the learning culture across the organisations charged with dealing with complaints

22.65 The 2015 Review of PIRC Procedures in relation to Complaint Handling Reviews of PIRC led by Robert Gordon recommended that the SPSO should share their training materials and courses where appropriate, and that a quality assurance check of decisions issued by review officers could offer feedback to identify any training needs. The PIRC should also consider the operational and career development merits of interchange between PIRC staff and SPSO staff. The benefits of engaging with SPSO apply equally to Police Scotland and PSD officers should be encouraged to learn from their best practice and apply it.

22.66 The Scottish Public Services Ombudsman (SPSO), Rosemary Agnew told the Review that learning lessons, identifying systemic issues and rectifying them were the best way for an organisation to improve, and that training, support and advice were important elements in achieving that. This view was echoed by the Police Ombudsman for Northern Ireland who believes that efficient complaints handling depends on proper training if it is to be done properly.

22.67 SPSO provides training for public service complaint handlers. Courses have been developed for frontline staff to support the implementation of model complaint handling procedures in different sectors. The training provided by SPSO is both direct delivery and e-learning; it is available to all public sector bodies and the e-learning is currently free.

22.68 Cross-training between organisations, where it has taken place, has been of great value in understanding others' roles and gaining a different perspective.

22.69 Although Police Scotland is not a scheduled organisation under the SPSO legislation that should not be seen as a blockage to secondment, consultation and learning between the two organisations.

22.70 A forum is being set up with the involvement of PIRC, IOPC, PONI and GSOC to look at what training is available across their independent investigation sector. Due to work pressures and the COVID-19 pandemic this forum has yet to meet. However, I am encouraged that in future the forum will be discussing how mutually beneficial training can be developed. GSOC has also engaged with PONI, IOPC and the PIRC on trying to arrange peer review accreditation.

Training in the Police Service of Northern Ireland

22.71 In the PSNI training of officers was seen as critical to their behaviours because they would act and behave according to whatever they had been trained to do and how they had been trained to do it. Complaint handling and prevention had to be considered as part of a whole system which included training, vetting, welfare and occupational health support. Misconduct proceedings are all chaired by a chief inspector or superintendent who received barrister-level training in order for them to carry out that function.

Mediation

22.72 Scottish Mediation²¹⁹ can advise where mediation makes a positive impact, the range of areas where mediation and the skills of mediation can help people sort out their disagreements and by doing so encourage an uptake in the use of mediation and an increase in those who understand and can use the skills of mediation on a day-to-day basis. In their evidence to the Review the Scottish Legal Complaints Commission extolled the benefits of using mediation. Their online guidance²²⁰ is designed around legal complaints but sets out excellent principles and practice.

²¹⁹ <https://www.scottishmediation.org.uk/>

²²⁰ <https://www.scottishlegalcomplaints.org.uk/media/1222/new-mediation-brochure-compressed.pdf>

Recommendations in relation to training

22.73 Recommendation: Police Scotland should appoint a PSD training officer to maintain the momentum in training and development arising from its internal Risk, Assurance and Inspection (RAI) team audit, and to liaise with the SPSO, the PIRC and the SPA on joint training, best practice and other relevant development opportunities.

22.74 Recommendation: PIRC complaint handling review officers and trainee investigators should work-shadow police officers at peak times to see at first hand the atmosphere and environment in which police officers are obliged to make decisions that can have serious implications.

22.75 Recommendation: PIRC should deploy the in-house expertise that the organisation has to deliver internal training for investigators in the law of evidence.

22.76 Recommendation: PIRC and Police Scotland should work together to develop training and development opportunities that take the theoretical learning from thematic analysis of complaints and embed it in practical learning for individual officers.

22.77 Recommendation: All Police Scotland officers and staff should receive training on unconscious bias, equality legislation and diversity; this should be updated throughout their career, with the opportunity for refresher courses at regular intervals.

22.78 Recommendation: Police Scotland officers should receive regular training inputs on how to deal effectively with individuals who display mental ill-health symptoms or related behaviours.

Chapter Twenty-three - Public sector best practice

23.1 The public's interaction with the police and the dynamics around trust and confidence are very different to those in other public services. Frequently the interaction with the criminal justice system and criminal investigations, as well as the complexity of the complaints arrangements, make complaining about the police more challenging.

23.2 There are significant differences in how the police and other sectors work but when it comes to complaint handling, the broad principles of customer service are common across the private, public and third sectors. There is scope for policing to adopt some of those principles and learn from best practice.

23.3 Some principles apply across the whole of the public sector but the nature of complaints against the police and nature of the circumstances in which they may deal with members of the public make policing unique. Many of the broad principles do apply to some extent and are captured in 'From sanctions to solutions'²²¹, the statutory guidance on complaints handling for policing organisations issued by the Police Investigations and Review Commissioner (PIRC). It is the PIRC that has the statutory duty of ensuring that the Scottish Police Authority (SPA) and Police Scotland both have suitable arrangements for the handling of relevant complaints.

23.4 The other principal source of expertise available to policing with regard to complaint handling best practice, as it is to all public sector bodies in Scotland, is the Scottish Public Services Ombudsman (SPSO).

23.5 In Scotland the SPSO is the final stage for complaints about councils, the National Health Service, housing associations, colleges and universities, prisons, most water providers, the Scottish Government and most other Scottish public authorities. If complaints come directly to the SPSO in the first instance they are referred to the appropriate body.

²²¹ https://pirc.scot/media/1211/pccs_statutory_guidance_web.pdf

23.6 The SPSO has no locus in respect of complaints against Police Scotland or the Scottish Police Authority but can take complaints about the Police Investigations and Review Commissioner (PIRC) and the Crown Office and Procurator Fiscal Service (COPFS). The PIRC and COPFS are required to comply with the SPSO's model complaints handling procedures (MCHP) but Police Scotland and the SPA are not.

23.7 The SPSO supports public service organisations in improving their complaints handling practices by providing guidance, resources and training that help public sector organisations in Scotland comply with the relevant model complaint handling procedures²²². It provides additional advice and support for handling complaints well and learning from them. Model complaints handling procedures offer a consistency of approach to complaints handling across most public services in Scotland. They are laid in the Scottish Parliament and include audit arrangements. The SPSO have the power to make a finding, and also the power to make a direction where complaint handling did not match up to the procedures.

23.8 The SPSO offers support through its support and intervention policy, advice on meaningful apologies, training, e-learning courses, thematic reports, case studies and a complaints improvement framework. There is additional information about SPSO training that could assist Police Scotland in the Training chapter at page 348.

23.9 The SPSO is also set to become the Independent National Whistleblowing Officer (INWO) for the NHS in Scotland. The implementation date for that has yet to be determined but the SPSO has published National Whistleblowing Standards²²³ which set out how the INWO expects all NHS service providers to handle concerns that are raised with them and which meet the definition of a 'whistleblowing concern'.

23.10 In their response to the Review's call for evidence the SPSO stated that in their experience three elements are critical to the success of any complaints process, namely:

²²² <https://www.spsso.org.uk/the-model-complaints-handling-procedures>

²²³ <https://inwo.spsso.org.uk/nhs-organisations>

- a culture of valuing complaints and willingness to learn from complaints, established by consistent and supportive leadership, with appropriate governance structures in place;
- an emphasis on frontline resolution which is backed up by training and support to empower frontline staff to resolve complaints early; and
- evidence-based conclusions with fully explained reasoning for findings.

23.11 SPSO also believes that organisations need to actively support their staff through complaints processes and engage staff in positive and purposeful activities to manage and learn from complaints. Getting that right can encourage staff, help drive improvement in services and promote learning.

23.12 The SPSO in their written submission to the Review described Police Scotland's publicly available information as easy to find and setting out what may happen, and noted that there is regular reporting of the subject of complaints made. However, SPSO also told the Review that they could not identify on the Police Scotland website performance data on timescales, time taken to deal with complaints or outcomes, reports on lessons learned, changes made as a result of complaints or any reporting on how those who complained felt about their experience of the process. SPSO found the descriptions of the level of formality and documentation around complaints in 'A guide for complaints about the police'²²⁴ to be potentially intimidating and off-putting as well as unnecessary for complaints which could be resolved quickly at the frontline.

23.13 The Review met with the Ombudsman in order to gain more insight into public sector complaints processes. She told the Review that quality assurance should be designed into the complaint handling procedures and that learning lessons, identifying systemic issues and rectifying them were the best way for an organisation

²²⁴ <https://www.scotland.police.uk/spa-media/qomdikgi/complaints-about-the-police-guide.pdf?view=Standard>

to improve. That improvement cycle should be supported by training, support and advice.

23.14 Police Scotland and the Scottish Police Authority are not governed by the SPSO's model complaint handling procedures but there is scope for the two organisations to learn from them and from other guidance produced by the SPSO. For example, the SPSO has produced very useful internal guidance²²⁵ for SPSO staff on interaction with complainers with vulnerabilities and has shared this on their website as a practice example for all public service organisations. The guidance emphasises that organisations should be mindful of a complainer's vulnerabilities, that types and levels of vulnerability can vary from person to person and that they may be influenced by situational circumstances linked to the complaint. I comment further on this subject in the Accessibility and communication chapter at page 282.

23.15 The SPSO should be regarded by Police Scotland, the SPA and by PIRC as a centre of expertise and used as a valuable source of advice and guidance. I recommend that acting jointly, the three organisations seek an early opportunity to engage with the SPSO to agree where their contribution and advice would be most useful.

23.16 Recommendation: The Strategic Oversight Group or the National Complaint Handling Development Group should take an early opportunity to engage with the SPSO to agree where their contribution and advice would be most useful.

²²⁵ <https://www.spsso.org.uk/how-we-offer-support-and-guidance>

Chapter Twenty-four - Custody

Experience in custody

24.1 This chapter of the report is about issues and complaints related to people in police custody. In 2018-19 the number of people detained in police custody in Scotland over that twelve-month period was 118,418. (The figures for each year since the creation of Police Scotland are given in the 2019 HMICS Inspection of the strategic arrangements for the delivery of police custody²²⁶.) This number represents a significant percentage of the population who come into direct contact with the police service and are a potential source of feedback and evidence about how they are treated by Police Scotland officers and staff. Awareness of the risks to potentially vulnerable people at the point of arrest is critical; it has to continue throughout their period of detention and up to the point of release.

Independent custody visiting

24.2 Since 1 April 2013, the Scottish Police Authority has had a statutory duty to maintain and manage an independent custody visiting scheme to monitor the welfare of people detained in police custody facilities throughout Scotland. Independent Custody Visitors (ICVs) are volunteer members of the local community who visit police stations unannounced to check on the treatment of detainees, the conditions in which they are being held and that their rights and entitlements are being observed.

24.3 As I stated in my 2017 report on Deaths and Serious Incidents in Police Custody²²⁷ in England and Wales for the then Home Secretary, independent custody visitor schemes need to be recognised and valued for the vital role they play in helping to safeguard conditions within police custody. This means that they should

²²⁶ <https://www.hmics.scot/sites/default/files/publications/HMICS20190606PUB.pdf>

²²⁷

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/655401/Report_of_Angiolini_Review_ISBN_Accessible.pdf

have all necessary support required to collate and disseminate learning, and see it acted upon.

24.4 The statutory ICV arrangements for Scotland are set out in the Police and Fire Reform (Scotland) Act 2012 with guidance being subsequently agreed between Police Scotland and the Scottish Police Authority.

24.5 There are 77 custody centres of various sizes across the Police Scotland estate. Custody centres across Police Scotland are organised into twelve geographical clusters. There are also a number of remote legalised police cells²²⁸ which are visited by the ICVs. The larger, high-capacity custody centres are visited once a week with the auxiliary centres being visited somewhere between fortnightly and monthly. Every centre is visited at least once a year.

24.6 The SPA arranges quarterly meetings between the ICVs and Police Scotland to share learning and best practice and to exchange views. There are also twelve cluster meetings across Scotland on a regular basis. The SPA maintains a database of visits, analyses visitors' reports and produces an annual review²²⁹ that is published on the SPA website.

24.7 The Review held a focus group with volunteer ICVs. Visitors are allocated a particular week by the regional co-ordinator and then it is entirely up to them when they visit. The regional co-ordinators determine the frequency of visits by considering the throughput in each cluster and splitting them into weekly, fortnightly, monthly, quarterly, bi-annual and annual visits. ICVs may visit at any time but generally they visit in the morning, the afternoon or the early evening. Saturday mornings are valuable because visitors get to hear about individuals' Friday night experience of custody. While this is valuable, the SPA may want to target volunteers, perhaps individuals who work shifts who could do night visits. SPA could provide safe transport to and from the police station if required. ICVs should also be making

²²⁸ There are 4 designated police stations in Scotland where cells have been 'legalised'. Prisoners (rather than individuals taken into custody by the police) can be held in these cells for up to 30 days. The cells are in stations which are not near to prisons. HM Chief Inspector of Prisons has a duty to inspect these cells and report on the conditions and treatment of prisoners in them.

²²⁹ <https://www.spa.police.uk/spa-media/sg5ijvgo/icvs-annaul-review-2018-19.pdf>

visits at times when detainees are at their most vulnerable and should be encouraged to get the full picture of how custody suites operate throughout the night and day.

24.8 During the focus group the ICVs told the Review about common issues raised by those held in police custody. Often they raised with the ICVs their inability to speak to family members to tell them that they were in custody as mobile phones are removed from persons in custody. (Everyone has the right to have someone else told that they are at the police station.)

24.9 Those in custody also had concerns about the food provided, lack of updates, cell conditions and the difficulty in arranging childcare. The ICV co-ordinator confirmed that where possible everyone should be offered a wash/shower regardless of how long they have been held in custody. Washing facilities were not uniform and this could lead to complaints because of a lack of shower facilities and hand-washing facilities. Allegations of being assaulted or verbally abused were rarely raised with the ICVs. People in custody who wish to make a complaint will normally complain to the custody sergeant. The ICVs confirmed that when a complaint was raised directly with them, they would seek reassurance that the proper Police Scotland procedures had been followed.

24.10 The SPA's annual review of Independent Custody Visiting for 2018-19²³⁰ describes how issues are dealt with:

"A large number of issues raised throughout the year were resolved immediately at the time of the visit and, given the preventive nature of the scheme, this provided the most satisfactory resolution for the majority of the visits. Those that were unable to be resolved immediately were escalated by the regional co-ordinators and outcomes were discussed at the cluster meetings with Police Scotland."

24.11 Some ICVs had been apprehensive about the change that allowed constables rather than sergeants to be custody supervisors but positive feedback had been received about the motivation of those officers. Officers make frequent rounds,

²³⁰ <https://www.spa.police.uk/spa-media/sg5ijvgo/icvs-annual-review-2018-19.pdf>

usually hourly. The options available for observation depend on the risk assessment carried out. ICVs had been in custody suites at the time of emergency situations and felt that technology could provide improved monitoring systems but the question came down to prioritisation and resources.

24.12 In the context of the current Review and the scope for complaints to arise from detention, the interaction between members of the public and the police at custody suites should be seen as an area of high risk and the scrutiny of ICVs as an additional means of using the learning gained to mitigate that risk.

24.13 The ICVs felt that their role definitely added value, particularly on the legal side where they could help to explain individuals' rights and in being able to listen to the concerns of those who were in police custody. Overall, the ICVs thought the custody system worked well.

24.14 Separately, the Review also received evidence about women who have experience of mental health issues, of the criminal justice system and of recently being in police custody. This evidence corroborated the point raised by the ICVs regarding the very real concerns about whether or not family members had been contacted during their stay in custody and were aware of their whereabouts. Some women were uncertain if this had been done. One woman described being held over a weekend and repeatedly asking staff to contact her mother to ensure her children were being looked after. When she was finally released after her court appearance, she discovered this had not been done and her children had been taken into care. She described this as being very distressing, and it took several months to regain custody of her children.

24.15 The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) visited custody suites in Scotland in October 2018 as part of preparing their report to the UK Government²³¹. The purpose of the visit to Scotland was to examine the situation in police and prison establishments and to assess the progress made since the CPT's previous visit in

²³¹ <https://rm.coe.int/0900001680982a3e>

2012. In their report, the CPT made a recommendation that police custody sergeants should systematically inform detained persons that a third party had been notified of their detention. I believe that as a matter of course ICVs should be checking with detainees and custody officers that this has happened.

24.16 Police Scotland contributed to the UK Government's formal response²³² to CPT and confirmed that:

“23. Except in exceptional circumstances, a person who is in police custody has the right to have intimation sent to a solicitor and another person informing them that they are in custody and where they are being held. Details in this regard are fully recorded on Police Scotland's NCS. There is an expectation that staff will, during their routine engagements with a person in custody, advise them that any requested intimations have been completed. The expectations and obligations placed on custody officers are covered in training and are contained in the Criminal Justice (Scotland) Act 2016 Arrest Process SOP. Prior to an individual being released, Custody Sergeants monitor whether all intimations have been complied with. Compliance is also assessed through weekly and monthly cross-cluster audits.

24. Following the Committee's visit, Police Scotland circulated a briefing note to custody staff reminding them of their obligations around custody intimations, and this is now monitored by the CJSD management team.”

24.17 HM Inspectorate of Constabulary in Scotland (HMICS) carries out custody inspections not only in respect of duties under the 2012 Act but also in fulfilment of the UK's obligations under the UN Optional Protocol on the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment²³³ (OPCAT). HMICS is one of 21 bodies designated as a member of the UK's National Preventive Mechanism, a group of bodies tasked with independently monitoring places of detention in accordance with OPCAT.

24.18 HMICS and ICVs have separate but complementary roles in respect of police custody centres. Inspections by HMICS and visits by Independent Custody Visitors are carried out independently but share a common purpose under OPCAT. How they work together is set out in a Memorandum of Understanding²³⁴.

²³² <https://rm.coe.int/1680982a02>

²³³ <https://www.ohchr.org/EN/ProfessionalInterest/Pages/OPCAT.aspx>

²³⁴ https://www.hmics.scot/sites/default/files/basic_page_attachments/HMICS20190904MoU.pdf

24.19 HMICS use a Custody Inspection Framework²³⁵ which sets out what they expect to find in a custody centre. Their custody-specific outcomes include:

“Detainees know how to make a complaint and are enabled to do so (Detainees are told how to complain and there are systems in place to facilitate complaints. Complaints are monitored for patterns and trends and these are acted upon)”. This is in addition to their standard indicator in their regular framework that, “There is an effective complaints procedure, which includes a commitment to investigate and resolve them within a defined time limit. This information is used to improve services.”

24.20 In its 2019 Inspection of the strategic arrangements for the delivery of police custody²³⁶ HMICS reported that:

“There has been a reduction in the volume of complaints received about custody, both in relation to complaints about officer and staff conduct, and the quality of the police service. Between 1 April and 30 November 2018, 89 complaints were made about the conduct of officers and staff in CJSD [Criminal Justice Services Division], resulting in 148 separate allegations being identified. This compared to 272 allegations during the same period the previous year. This is a reduction in allegations relating to the Division of 45.6%, compared to a 15% decrease nationally.”

“While we welcome the reduction in the volume of complaints, during our inspection we heard concerns about how complaints were managed by the Division. Generally, complaints are allocated to divisional inspectors, including cluster inspectors but excluding those who perform the FCI [Force Custody Inspector] or CRI [Custody Review Inspector] roles. Many officers told us that inspectors struggled to find time to investigate and resolve complaints in addition to their other duties. Indeed, the Division can struggle to resolve complaints within a nationally set 56-day timescale, with a significant proportion of complaints being overdue. Some officers also told us that they lacked training in dealing with complaints, although a pamphlet providing guidance was available and the Professional Standards Department and PIRC had delivered some inputs to divisional personnel on complaints handling and had plans to do more.”

24.21 The most recent figures provided by Police Scotland show that the number of people taken into custody in the twelve-month period 2019-20 was 115,130. Of

²³⁵ <https://www.hmics.scot/sites/default/files/publications/HMICS20191107PUB.pdf>

²³⁶ <https://www.hmics.scot/sites/default/files/publications/HMICS20190606PUB.pdf>

those individuals 116 persons made 154 complaints (consisting of 347 allegations) against Custody Division. Allegations made in complaints include irregularity in procedure, care of prisoners, cell conditions, incivility, assault or the use of excessive force and the quality, quantity or suitability of food. In 2019-20 the PIRC requested papers for seven cases containing allegations against the Custody Division received during 2019-20. On average in the previous four years the PIRC requested the papers relating to 12.5 cases.

24.22 While the number of custody-related complaints is a very small percentage of the total number of people in custody in any given year, the custody setting will always be one which carries high risk and inevitably brings some very vulnerable people into contact with the police, often at a time of crisis. Assessment and mitigation of those risks is a high priority for Police Scotland. Deaths in police custody represent the most extreme end of a broad spectrum of experiences in custody. I deal with matters related to the Article 2 rights flowing from the European Convention on Human Rights of individuals in custody and their families in the Complaints arising from deaths in custody chapter at page 394.

24.23 Deprivation of liberty is one of the most serious and significant powers that the state has over any individual. I heard compelling evidence from one individual who had been unlawfully detained by Police Scotland about their interaction with Police Scotland, the PIRC and COPFS. The impact of the sequence of events described to me has been enormous and traumatic on the individual. I am very grateful to the individual concerned and their spouse for sharing with me what has been, over a number of years, a life-changing experience.

24.24 The letter received from Police Scotland after the individual's release was long, bureaucratic and defensive and used what could objectively be regarded as provocative language. It did not contain any apology. No apology was received from Police Scotland until after a legal action was settled nearly five years later. Police Scotland reached a financial settlement out of court.

24.25 The individual contacted the PIRC in 2016. It took the PIRC just over two years to complete their report. The PIRC reported the matter to the Criminal

Allegations Against Police Division (CAAP-D) of COPFS because of the serious nature of what had occurred. The individual was never made aware by any organisation of the right to go direct to CAAP-D to make a criminal allegation against a police officer.

24.26 The individual wanted to do something so that no one else should have to go through what they had gone through. In speaking to me the individual identified important lessons to be learned from their experience: where there have been serious allegations of unlawful detention of this kind Police Scotland should be addressing the failing and not leaving it to the victim to press for corrective action; steps should be taken to ensure some form of accountability for officers and repercussions for their behaviour; the lack of suspension, disciplinary action or prosecution sends the wrong signal to other police officers; they were not informed if there would be disciplinary proceedings against officers and told that they (the complainer) would never know what would happen to the officers; that such an egregious failing should be brought to the attention of COPFS by Police Scotland at a very early stage; and closer and quicker co-operation between all organisations is required to deal with such cases.

24.27 The complainer should have been made aware that their complaint of unlawful detention could have been made directly to the Procurator Fiscal at CAAP-D. I make recommendations to better facilitate this option in the COPFS chapter at page 268.

Healthcare provision in custody

24.28 The responsibility for custody healthcare transferred from the police to the National Health Service in 2013. Police Scotland reported to the Review that due to differences in geography, NHS resources, service provision, funding and health board structures, as well as varying levels of custody throughput in each area, each of the 14 health board areas provides a slightly different model of care.

24.29 By way of illustration of the range, in Greater Glasgow and Clyde the model is nurse-led and supported by contracted Custody and Offender Medicine Services (COMS) forensic practitioners (formerly known as police surgeons), with calls being triaged and nurses attending from the hub at Govan in Glasgow; in Lothian and the Borders NHS Lothian host a nurse-led service based in Edinburgh and also providing services to Dalkeith, Livingston and Hawick; in Wick and Stornoway the service is provided by forensic practitioners; while in Kirkwall and Lerwick the service is GP-led.

24.30 Liaison at different levels is ongoing between Police Scotland and health boards to achieve consistency across all the custody suites and provision is under regular review. In their evidence Police Scotland also said that regular contact at operational level takes place to identify and resolve any short-term gaps in service. Such gaps are normally filled by backfill NHS staff or by the on-call forensic practitioners.

24.31 The evidence from the ICV focus group was that in terms of health provision, individuals were in the main looked after well; NHS provision was consistent but basic. In urgent cases they were reassured about how they were dealt with, but minor issues could be neglected and that was a concern, for example cuts that were not treated swiftly. The Committee for the Prevention of Torture (CPT) recommended in their report that all injuries should be immediately and properly documented by NHS healthcare staff. It was also important that individuals were able to receive their regular medication for conditions such as diabetes, and this could be challenging when there was only one nurse available to assist. Delays in administering minor medication could antagonise individuals.

24.32 The ICVs reported that it was not unknown for one of the smaller custody centres to transfer a person to a larger centre which had better healthcare available. While the largest custody centres had an NHS presence, there were many mid-sized custody centres which had no on-site NHS service provision. Sometimes the NHS nurses available had mental health skills and sometimes they did not.

24.33 The Review also received evidence of people in custody having problems in getting access to their medication when either it was delayed or not received at all. They might be told the medication they needed was not in stock. One individual described not having access to an inhaler overnight in custody because it had been put in their property bag and could not be retrieved. While there were variations in provision, the availability of nurse prescribers was very helpful.

24.34 It was reported to the Review that there was an issue about access to health service records within police stations where people were held in custody. I raised this matter in a letter to the then Chief Executive of NHS Scotland. He confirmed in his reply that a single national system for all police custody sites is in place known as Adastra, that the Emergency Care Summary (ECS) is available in all sites providing key patient information on medication, allergies and other patient details for all those registered at a GP practice, and that access to ECS is available across Scotland and is not restricted by health board.

24.35 The main focus of the police and other agencies should always be to divert the most vulnerable people from police custody at the earliest stage possible. It is also vital that the police and healthcare providers are properly resourced to do so and that the most effective disposals become more readily available.

24.36 The arrangements in Scotland are vastly superior to the position I found in England and Wales in 2017 where there was and is no NHS provision in custody centres. I recommended in my report in relation to police custody in England and Wales that Forensic Medical Examiners and other medical services within police stations should be brought within NHS commissioning, in order to introduce

minimum standards of medical care in police custody and so that medical records are quickly available to the doctor.

Letter of Rights for people in police custody in Scotland

24.37 The Scottish Government has produced a Letter of Rights that is given to every person who is taken into custody. It provides important information on an individual's rights while being held in police custody. The Scottish Government undertook to consult on the Letter of Rights in 2019 after a number of issues were highlighted in the version released in January 2018.

24.38 The Independent Custody Visitors told the Review that the extent to which individuals were aware of their rights depended on whether they were settled or whether they were under the influence of alcohol or drugs. Overall, when they are settled they did seem to understand their rights. In general they were aware of their rights. All ICVs agreed that some persons in custody would not necessarily know if they were being unlawfully detained, and in terms of complaints against the police, they might not have enough confidence to make a complaint. Many individuals are vulnerable and may have learning difficulties. They agreed with the Review that the subject of complaints was a gap in the Letter of Rights that should be rectified.

24.39 It is also important to address the reality that many people in custody may be vulnerable for a variety of reasons. Individuals with learning difficulties and those whose first language is not English could find the document difficult to understand and follow.

24.40 The Scottish Public Services Ombudsman (SPSO) has published very useful internal guidance²³⁷ for SPSO staff on interaction with complainers with vulnerabilities. The guidance emphasises that organisations should be mindful of a complainer's vulnerabilities, that types and levels of vulnerability can vary from person to person and that they may be influenced by situational circumstances

²³⁷ <https://www.spsos.org.uk/how-we-offer-support-and-guidance>

linked to the complaint. I comment further on this subject in the Accessibility and communication chapter at page 282.

24.41 I responded to the Scottish Government's consultation, commenting that the merits of providing the Letter of Rights in a range of alternative formats to facilitate accessibility should be considered. I also suggested that they should consider adding to the letter a contextual reference to the individual's general rights. There are also merits of adding to the letter a reference to the individual's right to complain (either while in custody or thereafter) about their treatment. The results of the Scottish Government consultation will be published in due course.

24.42 A former HMICS inspector told the Review that some people in custody were not aware of all of their rights and in some cases individuals were not aware that the way they had been treated was wrong. In other cases individuals did not make complaints because they were reluctant to rock the boat. People in custody could be inhibited for a number of reasons, because they were in custody for the first time, because they were in shock, because they wanted out as quickly as possible or because they could not necessarily take in information that they were given. Many of the individuals in custody were vulnerable people who might find it difficult to make a complaint.

24.43 Feedback to HMICS from vulnerable women who had been in custody was that because they are often initially in crisis or upset when being taken into custody, they do not always fully take in information at the point they are booked in to custody. It was further suggested that police officers and staff could work with them to calm them down and that it may be useful to have some information or questioning repeated when they are settled. The women also felt that the police should use less jargon, as sometimes those in custody were not sure of what was happening.

24.44 In their report to the UK Government in 2019²³⁸, the Committee for the Prevention of Torture stated that "... detained persons with whom the delegation spoke were not aware of the procedure governing complaints against the police, and

²³⁸ <https://rm.coe.int/0900001680982a3e>

several expressed a lack of understanding of and trust in the system. Further, some custody staff informed the delegation that complaints against the police were only possible after the detained person had left the custody facility”. The CPT considered that, “for a complaints mechanism concerning alleged ill-treatment by the police to be effective, the mechanism needs not only to be independent but also readily accessible to detained persons.” I agree with the CPT that accessibility should be made easier and have so recommended in respect of the Letter of Rights.

24.45 I recommend that the Scottish Government should consider adding to the Letter of Rights a contextual reference to the individual’s general rights; and a reference to the individual’s right to complain (either while in custody or thereafter) about their treatment.

Duty of Care

24.46 Police Scotland’s Care and Welfare of Persons in Police Custody Standard Operating Procedure²³⁹ states that police officers and staff should utilise the National Decision Making Model to make informed decisions, and that all key decisions and the reasons for those decisions made in respect of prisoner care should be recorded on the National Custody System (NCS) or paper log. It goes on to stress that the care and welfare of individuals in police custody is paramount; all police officers/police staff should be aware that failure to adhere to procedures may compromise prisoner care and potentially may render them liable to disciplinary, misconduct, civil or criminal proceedings.

The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)

²³⁹ <https://www.scotland.police.uk/spa-media/0mfjn3pa/care-and-welfare-of-persons-in-police-custody-sop.pdf>

24.47 As mentioned earlier in this chapter, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) carried out an inspection of custody suites in Scotland in 2018. The CPT thought that the current police complaints system appeared “opaque”. It raised concerns over the independence of the investigation and prompt accessibility to an independent body, particularly when the complaint is about ‘assault’ or ‘excessive use of force’ by police officers at the point of arrest.

24.48 The Committee found that, of those interviewed, the majority thought they had been treated properly at the time of arrest, although there were also a significant number of complaints about excessive force used by police officers upon apprehension, with a marked increase of allegations compared with the Committee’s previous visit in 2012.

24.49 It was not clear to the Committee that custody sergeants proactively followed up evident injuries, and there did not seem to be an automatic referral to a relevant body to initiate an investigation. The Committee were informed at one police station that it was not the duty of the custody staff to report any complaints of potential abuse by arresting officers. That is contrary to the Police Scotland position. In their response to the CPT²⁴⁰ Police Scotland confirmed that this is not the case and that the process for making complaints about Police Scotland remains the same for all members of the public and is designed to be fair, open and transparent. The response also noted that all Police Scotland staff deployed within custody centres must complete and pass the three-day Custody Officer Induction course which includes content on prisoner rights and on adverse incidents and reporting.

24.50 The CPT considered that persons complaining about alleged police abuse and ill-treatment should not firstly have to exhaust an internal police complaints process, before being able to complain to PIRC. They recommended that “... the Scottish authorities take measures to ensure that the system of handling of complaints made by persons deprived of their liberty, irrespective of the place or situation in which they are held and the legal framework applicable to their

²⁴⁰ <https://rm.coe.int/1680982a02>

deprivation of liberty, observes certain basic principles: availability, accessibility, confidentiality/safety, effectiveness and traceability”.

24.51 All persons in custody should be informed that they have the right to complain to the police or, if it is a criminal allegation, that they can report the crime to Police Scotland custody staff or directly to the Criminal Allegations Against Police Division (CAAP-D) of COPFS. The CPT seem to be unaware of this right of citizens to direct such a complaint to the Procurator Fiscal but, as I comment in the COPFS chapter at page 268, this right is also one which is not well known to people in Scotland.

24.52 I comment on the monitoring of ‘excessive force’ and allegations of assault in the Scottish Parliament Justice Committee chapter at page 64 and on extending the powers of the Police Investigations and Review Commissioner in the PIRC chapter at page 205.

Protecting vulnerable people

24.53 Mental health issues are commonplace in all areas of society. Some of those who are particularly vulnerable experience a wide range of complex issues and increasingly the police are being called to deal with situations which can and do generate complaints against the officers.

24.54 I described the relationship between police custody and mental health in my 2017 review of Deaths and Serious Incidents in Police Custody in England and Wales²⁴¹:

“The issue of mental ill health manifests itself time and again within the police custody context. Frequently, police officers find themselves as the first point of emergency contact for those suffering from mental ill health. The first instinct of most members of the public witnessing such an episode is usually to call the police to deal with the individual because of the disturbed or disorderly nature of their behaviour. Even families may call the police rather

²⁴¹https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/655401/Report_of_Angiolini_Review_ISBN_Accessible.pdf

than an ambulance where they consider their loved one's behaviour may result in injury or danger and is beyond their ability to cope."

24.55 In written evidence to that 2017 review lawyers from Doughty Street Chambers stated that:

"A proportionate policing response should be rooted in an understanding that the police are not the best professionals to deal with those suffering from mental ill health and experiencing mental health crisis. Officers should approach first contact situations with a firm understanding that those experiencing mental health crisis require medical care and specialist services, and that a conventional policing response will not address or resolve the situation."

24.56 I endorse that view as one that highlights a significant challenge faced by police officers in how they deal with a range of situations. Police Scotland recognise that the vulnerability and mental ill-health of individuals places a growing demand on policing and acknowledge that they are not always the right service to provide people with the help that they need. However, as one sergeant in a focus group pointedly described policing, "It's the service that can't say 'No'."

24.57 The Scottish Police Authority and Police Scotland's Annual Police Plan for 2020-21²⁴² commits the service to improving the whole-system approach to mental health by enhanced engagement with partners and groups.

24.58 The Annual Police Plan also includes an objective to create a new officer safety training package to provide officers with a greater awareness and understanding of those suffering from distress and poor mental health. That is timely and should be rolled out as soon as practicable.

24.59 I commend these commitments to training and to a whole-system approach. I believe that as soon as it is reasonable and feasible to do so, HMICS, alongside the appropriate health inspection or audit body, should conduct a Review of the efficiency and effectiveness of that whole-system approach.

²⁴² <https://www.scotland.police.uk/media/lijn5tz2/annual-policing-plan-2020-21-signoff.pdf>

24.60 Feedback to HMICS from vulnerable women who had been in custody was that generally they did not feel that custody staff made much effort to engage with them. The women felt that staff talking to detainees would be the most effective way of dealing with vulnerable people and those in mental distress. I believe that excellent communication skills for police officers in these settings are vital, especially when historically many police officers have been used to being directive in their engagement with members of the public. Different kinds of communication are required in different circumstances. I comment on the value of training in ensuring de-escalation of potentially difficult situations or conflict in the Training chapter at page 348.

24.61 I welcome the Scottish Government's commitment to enhance the handling of mental health calls to the NHS 24 111 service with more specially trained staff providing mental health advice. The 111 telephone number service provides urgent health advice out of hours. NHS 24 believe that support on the call, advice given and the specific skills in mental health are helping to reduce demand both on accident and emergency (A&E) services and on Police Scotland.

24.62 Mental health professionals play a crucial role working alongside police officers. The Scottish Government advised the Review that the Scottish Ambulance Service (SAS), Police Scotland and NHS 24 are taking forward a proposal to improve the care pathway for people suffering from mental illness, mental distress or poor mental wellbeing who present to Police Scotland and/or SAS by increasing access for police officers and SAS staff to designated mental health professionals within NHS 24 and working to provide enhanced mental health triage. The intention is to reduce the volume of police call-outs and attendance at A&E departments.

24.63 Early intervention, advice and referral should ease the burden on the police service but it is inevitable that A&E will still have to deal with some individuals who are in crisis. I therefore believe that A&E facilities should be designed to be able to deal safely with mental health care and acute crises.

24.64 There are some occasions when some services do not know what to do with some very vulnerable people and many people who come into contact with the police

are taken to police stations rather than to a health-based place of safety. In cases where there has been serious criminal wrongdoing this approach may be warranted. However, for more minor offences, healthcare should be a priority where there is an acute need. Even in serious cases the mental fitness of an accused person to be interviewed or detained may require an urgent medical assessment.

Research into The Public Confidence of People with Mental Health Concerns in the Police Complaints System

24.65 The Institute of Mental Health's Centre for Health and Justice at the University of Nottingham 2018 report²⁴³ was commissioned by the Independent Office for Police Conduct (IOPC) to research public confidence of people with mental health concerns in the police complaints system in England and Wales.

24.66 The report found that people with mental health problems find it particularly challenging to make a complaint against the police. This can be because of previous negative experiences with the police, lower resilience and communication challenges. The barriers to making a complaint recorded by participants included:

- a lack of awareness of a complaints system or the grounds for making a complaint;
- a view that their complaint did not match the high-profile cases associated with the IOPC;
- a belief that the IOPC was not separate from the police, so could not be impartial;
- the idea that if the process was a long drawn-out affair it would be detrimental to the individual's mental health;
- fear of harassment;
- a belief they would be treated unfairly or their condition handled insensitively; and
- concern that the process would be so stressful it would make their condition worse.

²⁴³ [https://www.policeconduct.gov.uk/sites/default/files/Documents/research-learning/Research_into_Public_Confidence_of_People_with_Mental_Health_Concerns_in_the_Police Complaints_System_Nov2018.pdf](https://www.policeconduct.gov.uk/sites/default/files/Documents/research-learning/Research_into_Public_Confidence_of_People_with_Mental_Health_Concerns_in_the_Police_Complaints_System_Nov2018.pdf)

24.67 Other concerns from participants included a perception that the process is complex and can take too long, a lack of advocacy or support during the complaints process, a perceived lack of neutrality by the police and the IOPC in handling complaints, and that the police are not adequately trained to deal with people with mental health concerns.

24.68 Initial recommendations in the report included improving access and support in the complaints system, improving the experience of the complaints system and providing mental health awareness training to all IOPC staff. This last finding chimes with my 2017 report which identified an urgent need to ensure that all police officers are trained and competent in recognising and dealing with the most common symptoms of mental ill-health or disability in those victims, witnesses and suspects with whom they engage. They must also be confident and competent in the use of de-escalation and calming techniques which when deployed in many instances can help subdue those suffering from hallucinations until emergency ambulance personnel arrive.

24.69 However, this does not mean that police officers should never take responsibility for dealing with mental ill-health. If someone dies in custody, then there may have been an urgent need for medical care that was missed. According to expert medical opinion, it is too simplistic to argue that the use of police cells to care for mentally ill people can be solely attributed to inadequate health services. It has never been the responsibility of healthcare services to look after less severe cases of personality disorder, for example and there may be individuals with mental ill-health who do not require to be admitted to an acute mental facility. The police need to be properly trained to deal with ill people. In the words of Lord Victor Adebawale in his 2013 Independent Commission into Mental Health and Policing²⁴⁴, “Mental health is part of the core business of policing”.

²⁴⁴ <https://mentalhealthpartnerships.com/resource/independent-commission-on-mental-health-and-policing-report/>

24.70 The Review heard evidence from a member of the public who faced an acute mental health crisis and whose experiences starkly illustrated some of the issues related to mental health.

24.71 One of the individual's complaints against the police centred on their treatment in police custody after mental health services repeatedly refused to see them, even discharging them when they had been detained by the police under Section 297²⁴⁵ of the Mental Health (Care and Treatment) (Scotland) Act 2003²⁴⁶. We were told that neither mental health services nor the burns unit would treat the individual, so they were left at A&E until the police decided to arrest them and take them to the police station.

24.72 They complained about unlawful detention, excessive force, and felt that there was a pattern of harassment towards them. When they did complain, they found the process to be very difficult in respect of getting the police to accept that it was a complaint and had to contact the mental health advocacy service to progress the complaint.

24.73 The case provided a very vivid example of the severe challenges facing Police Scotland and of the challenges in communicating effectively and reasonably with a very vulnerable person. It also provides a very vivid example of an individual with a mental health crisis being dealt with within police cells because of issues related to mental health service capacity or mental health service willingness to deal with their case.

24.74 Having sought a complaint handling review by the PIRC, the individual felt that the response received from them was difficult to understand. Altogether, the process in relation to PIRC took three years. They believed that the absence of a

²⁴⁵ <https://www.legislation.gov.uk/asp/2003/13/section/297> Section 297 provides that where a constable reasonably suspects that a person who is in a public place has a mental disorder and that the relevant person is in immediate need of care or treatment in order to protect them or others, the constable may remove them to a place of safety.

²⁴⁶ <https://www.mentalhealthlawreview.scot/about> Mental health legislation is currently the subject of the independent Scottish Mental Health Law Review chaired by John Scott QC.

PIRC power of direction to order a review of the substance of a case, as opposed to the police's handling of the complaint, meant that the PIRC lacked teeth.

24.75 This example demonstrates that there can be significant delays in dealing with complaints; that this becomes more of an issue when the individual involved is vulnerable and patterns are not identified; and that various areas of the public sector are not communicating or working together to assist a very vulnerable person to whom they all owe a duty of care. It also demonstrates the great benefits of a mental health advocacy service in assisting and facilitating vulnerable individuals who wish to make a complaint.

24.76 The necessary communication, de-escalation and diversion required to prevent unwell detainees being detained by the police requires multi-agency co-operation and a clear understanding of the roles, responsibilities and skillsets of the police and healthcare bodies.

24.77 I continue to consider that if a person requires an urgent mental health assessment this should take precedence over any criminal investigation, in order to ensure the preservation of life, and to ensure the individual is fit to be interviewed and any answers provided to the police are admissible in evidence at any subsequent trial. There should be no circumstances where a person suffering from Acute Behavioural Disturbance is taken to a police station, even if their behaviour is 'difficult to manage'. The key is for police officers being sufficiently trained to be able to recognise a serious medical emergency.

Recommendations in relation to custody

24.78 Recommendation: The Scottish Government should consider adding to the Letter of Rights a contextual reference to the individual's general rights; and a reference to the individual's right to complain (either while in custody or thereafter) about their treatment.

24.79 Recommendation: Independent Custody Visitors should, as a matter of course, check with custody officers and with detainees that a third party has been notified of their detention.

24.80 Recommendation: As soon as it is reasonable and feasible to do so, HMICS, along with the appropriate health inspection or audit body, should conduct a Review of the efficiency and effectiveness of the whole-system approach to mental health.

24.81 Recommendation: NHS accident and emergency facilities should be designed to be able to deal safely with mental health care and acute crises.

Chapter Twenty-five - Complaints arising from deaths in police custody or following police contact

25.1 Of all the possible complaints that can be made against the police or individual police officers, the most serious are those situations in which it is alleged that the actions or omissions of the police have unlawfully contributed to or caused the death or serious injury of any individual in their custody. Indeed, the gravity attached to any deaths that occur in police custody, irrespective of cause, is recognised in both the domestic law in Scotland and through the importation of the provisions of international treaties, including the European Convention on Human Rights²⁴⁷ (ECHR).

Background

25.2 The European Convention on Human Rights is an international treaty to protect human rights and fundamental freedoms. Drafted in 1950 by the Council of Europe, the Convention entered into force on 3 September 1953. The Human Rights Act 1998 and the Scotland Act 1998 together formally enshrined recourse to Convention Rights in Scotland directly through the domestic courts. These rights include those under Article 2, commonly known as the right to life, and Article 3, the prohibition of torture, inhuman or degrading treatment or punishment.

25.3 Deaths which occur during or following police contact may engage Article 2 and/or Article 3 as well as a possible breach of national criminal and/or civil law. Article 2 of the European Convention on Human Rights also imposes a procedural obligation on the UK to conduct an investigation in certain circumstances, including where the person has died while detained by the state; or has attempted suicide while so detained and sustained serious injury (or potentially serious injury); or where the state owed a duty to take reasonable steps to protect the person's life

²⁴⁷ Treaty ETS No. 005, Convention for the Protection of Human Rights and Fundamental Freedoms <https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/005>

because the person was under the state's control or care; or where the person was killed by an agent of the state.

25.4 In 2009 the Commissioner for Human Rights of the Council of Europe published an Opinion²⁴⁸ dealing with complaints against the police in order to promote greater understanding and awareness in member states of how to achieve compliance and effective determinations in dealing with complaints under Articles 2 and 3. He described the five principles developed by the jurisprudence of the European Court of Human Rights as,

1. "Independence: there should not be institutional or hierarchical connections between the investigators and the officer complained against and there should be practical independence;
2. Adequacy: the investigation should be capable of gathering evidence to determine whether police behaviour complained of was unlawful and to identify and punish those responsible;
3. Promptness: the investigation should be conducted promptly and in an expeditious manner in order to maintain confidence in the rule of law;
4. Public scrutiny: procedures and decision-making should be open and transparent in order to ensure accountability; and
5. Victim involvement: the complainant should be involved in the complaints process in order to safeguard his or her legitimate interests."

25.5 The Commissioner also observed that best practice in this context is served by the operation of an independent police complaints body working in partnership with the police²⁴⁹.

25.6 The independence of the initial investigation into deaths in police custody in Scotland is provided for by the PIRC (Police Investigations and Review Commissioner) under the direction of the Procurator Fiscal. PIRC was established in 2013 when the single Police Service of Scotland was also created. The need for an independent investigation where there has been a death in police custody is also

²⁴⁸ (CommDH9(2009)4) <https://rm.coe.int/opinion-of-the-commissioner-for-human-rights-thomas-hammarberg-concern/16806daa54>

²⁴⁹ (CommDH9(2009)4, page 3)

provided for in domestic law by the Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016²⁵⁰ which requires a Fatal Accident Inquiry (FAI) to be held unless the Lord Advocate decides that the circumstances of the death have been sufficiently established in criminal proceedings or certain other public inquiries specified in Section 2 of the Act.

25.7 An investigation conducted for the purposes of Article 2 into a death in custody should open up the circumstances, correct mistakes, identify good practice and learn lessons for the future so as to prevent recurrence of similar incidents. To satisfy this procedural obligation, the state must initiate an investigation that is reasonably prompt, effective, carried out by a person who is entirely independent, provides a sufficient element of public scrutiny and involves the next of kin to an appropriate extent.

25.8 The initial independent investigative function carried out by the PIRC takes place under the direction of the specialist Procurator Fiscal Department known as the Scottish Fatalities Investigation Unit (SFIU). The concluded investigation will then be passed to Crown Counsel²⁵¹ for decision or instruction regarding any potential criminal proceedings, or for a Fatal Accident Inquiry in public conducted by the Procurator Fiscal or Crown Counsel before a Sheriff or Judge. The Sheriff who presides over the FAI will then issue a determination which is made public and published on the Scottish Courts and Tribunals Service (SCTS) website²⁵². In certain circumstances a public inquiry chaired by a senior high court judge may be instructed in place of a Fatal Accident Inquiry.

25.9 Such deaths are not therefore dependent on the receipt of a complaint from the next of kin of the deceased but are automatically the subject of a mandatory independent investigation and hearing in public. Nevertheless, families of those who die in police custody are very often deeply concerned about the actions of the police in connection with the death. In 2017 I published my findings and recommendations

²⁵⁰ <https://www.legislation.gov.uk/asp/2016/2/contents>

²⁵¹ Together, the Lord Advocate, Solicitor General and the Advocate Deputes are known as "Crown Counsel".

²⁵² <https://www.scotcourts.gov.uk/search-judgments/fatal-accident-inquiries>

of an Independent Review of Deaths and Serious Incidents in Police Custody²⁵³ in England and Wales which I carried out at the request of the then Home Secretary. Many of the issues identified in that report are also directly relevant to the Scottish context.

25.10 That report looked at the whole system for the investigation of deaths in police custody in England and Wales. My remit for this Review does not include the responsibilities of the Crown Office and Procurator Fiscal Service or the courts. However it is plain that for a system of complaints against the police to be perceived as truly effective it is also dependent on the efficacy of those other parts of the system charged with dealing with complaints. Accordingly, although I am not asked to consider the role of the Crown Office and Procurator Fiscal Service or the courts, it is clear that these independent constituents of the wider system can have a profound impact on how the state deals with complaints and how the overall system is viewed by the complainers. This is particularly the case in the event of Article 2 deaths.

25.11 The Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016²⁵⁴ updated the legal framework governing the conduct of Fatal Accident Inquiries in Scotland. This statute provides for significant improvements to the system for deaths investigation and provided for the establishment of a Family Liaison Charter of rights for those next of kin whose deceased loved one has had a fatal accident or died suddenly. This provision covers the families of those who have died in police custody or at the hands of the state.

25.12 The Charter sets out very clearly the obligations of the Procurator Fiscal to communicate and involve the family throughout the investigation and the hearing. As one senior prosecutor put it to me in evidence, “You need to have nearest relatives at the front and centre of what you do, along with that search for the truth.”

²⁵³https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/655401/Report_of_Angiolini_Review_ISBN_Accessible.pdf

²⁵⁴ <https://www.legislation.gov.uk/asp/2016/2/contents>

25.13 The Act also provides for the appointment of specialist Sheriffs to preside over Fatal Accident Inquiries and empowers the Sheriff to seek additional information beyond that which the Procurator Fiscal intends to present to the Inquiry. These are very important and welcome reforms.

25.14 Given the responsibility of the PIRC to carry out the investigation into the death it would seem sensible for the terms of the statutory Family Liaison Charter²⁵⁵ of rights to be applied to the operations of the PIRC in this context as well as to the Procurator Fiscal.

Family Support

25.15 While the Family Liaison Charter is a very significant improvement, the need for free independent legal advice from the point of death is also evident to allow families to navigate the distressing processes that follow the death and to vindicate their rights under Article 2. During the course of this review I met with the next of kin, or representatives of next of kin, of individuals whose deaths occurred in circumstances, in one case very many years ago, where the deaths may have engaged Article 2. Their determination to achieve a complete understanding of the cause of death of their loved one has consumed their lives at great emotional cost.

25.16 In my 2017 report on Deaths and Serious Incidents in Police Custody in England and Wales, I commented on the irony that anyone held in police custody has the right of access to a solicitor yet,

“The most serious prospect that could ever arise for an arrestee from the fact of being arrested is death and yet, paradoxically, that event does not trigger the provision of immediate access for next of kin of the deceased to legal advice. The immediate aftermath of a death in custody is the point of the process, more than any other, when families are in urgent need of advice, support and information about their rights, and the processes that will ensue over the coming days and months.” (paragraph 15.7²⁵⁶)

²⁵⁵<https://www.copfs.gov.uk/images/Documents/Deaths/COPFS%20Family%20Liaison%20Charter%20September%202016.pdf>

²⁵⁶https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/655401/Report_of_Angiolini_Review_ISBN_Accessible.pdf

25.17 The implementation of the obligations of the Procurator Fiscal, as set out in the Family Liaison Charter, should represent a huge improvement for next of kin. Where the cause of death engages rights under Article 2 of the ECHR there is, I consider, an additional need to provide immediate access following the death to free independent legal advice, assistance and representation throughout the investigation and at any subsequent Fatal Accident Inquiry or other Public Inquiry. Similarly, the family should have the right to have an independent pathologist observe the post mortem examination or instruct a second post mortem.

25.18 Next of kin who attend the Fatal Accident Inquiry currently must also do so at their own expense unless they are witnesses. Currently Crown witnesses served with an official citation for an FAI are entitled to claim for loss of earnings and travel and subsistence but only for any days on which they give evidence. For those few cases where the Inquiry may last several weeks, the Scottish Government needs to consider the feasibility of a scheme to pay reasonable travel and subsistence and compensation for loss of earnings. Emotional support and assistance should also be made available from Victim Support Scotland as well as referrals from the earliest stages to appropriate bereavement services and to the charity INQUEST²⁵⁷ which provides support to families to navigate the complex investigative and legal processes following a death in custody. This is particularly necessary when the investigation and subsequent hearing are protracted or subject to delay.

Delay

25.19 As I observed about the then Independent Police Complaints Commission (now the Independent Office for Police Conduct) in my 2017 report on cases in England and Wales, investigations involving death or serious injury in police custody are likely to be amongst the most serious and complex cases the PIRC has to investigate and they clearly demand the highest priority in terms of resources and expertise of the organisation. Undoubtedly, delay can only add to the distress of

²⁵⁷ <https://www.inquest.org.uk/about-us>

families but it can also have a severe adverse impact on those police officers involved in the circumstances of the death. I recommend that such cases should be dealt with in the same timescale and with the same urgency as a homicide investigation.

25.20 The investigative and legal resources available to the PIRC also need to be sufficiently resilient to absorb such cases. Similarly, if the resources of the Scottish Courts and Tribunals Service (SCTS) cannot meet the need for a timeous inquiry, the Fatal Accident Inquiry should be held in local authority or community premises to ensure that the pressures created by the main civil and criminal business of the courts do not contribute further to the delay in holding Article 2 death inquiries.

Deaths in police custody or during the course of restraint

25.21 My 2017 report²⁵⁸ deals in some detail with the emerging evidence and knowledge about the causes of deaths in circumstances where the deceased has died in a police vehicle, a police cell or during the course of restraint. I have made a number of recommendations to address issues there. Those issues are not confined to the English and Welsh context but are international and those recommendations should be considered by the Scottish Government.

25.22 I am acutely aware of the death of Mr Sheku Bayoh in Kirkcaldy on 3 May 2015. The circumstances and cause of Mr Bayoh's death are to be the subject of a Public Inquiry chaired by Lord Bracadale, a Scottish High Court Judge. I have no doubt that Lord Bracadale's Inquiry will examine some of the wider issues identified in my own report but it would be improper for me to make any comments about the particular circumstances or investigation of Mr Bayoh's death before that Inquiry is complete.

²⁵⁸https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/655401/Report_of_Angiolini_Review_ISBN_Accessible.pdf

Recommendations in relation to complaints arising from deaths in police custody or following police contact

25.23 Recommendation: Investigations involving death or serious injury in police custody are likely to be amongst the most serious and complex cases the PIRC has to investigate. Delay can add to the distress of families and have an adverse impact on those police officers involved in the circumstances of the death. Such cases should be dealt with in the same timescale and with the same urgency as a homicide investigation.

25.24 Recommendation: In Article 2 cases, in order to facilitate their effective participation in the whole process, there should be access for the immediate family of the deceased to free, non-means tested legal advice, assistance and representation from the earliest point following the death and throughout the Fatal Accident Inquiry.

25.25 Recommendation: Many of the issues identified in the 2017 report of my Independent Review of Deaths and Serious Incidents in Police Custody in England and Wales²⁵⁹ are also directly relevant in the Scottish context. The Scottish Government should consider which of the findings and recommendations made in that report could and should be mirrored by public bodies in Scotland.

25.26 Recommendation: For cases where the Fatal Accident Inquiry may last several weeks, the Scottish Government should consider the feasibility of a scheme to pay reasonable travel and subsistence expenses and compensation for loss of earnings of the next of kin.

²⁵⁹ <https://www.gov.uk/government/publications/deaths-and-serious-incidents-in-police-custody>

Chapter Twenty-six - Officer and support staff welfare

26.1 It goes without saying that police officers do a difficult and often dangerous job in Scottish society. Given the very challenging nature of the role, the police service has an important duty of care to its officers and staff. It also has legal obligations under the Health and Safety at Work Act 1974²⁶⁰.

26.2 Police officers and staff must be valued, supported and carefully debriefed when, in the course of their duties, they have experienced something which was particularly traumatic or difficult. Such experiences are common for frontline police officers and the service must pay particular attention to their welfare needs and the effects of both regular trauma, confrontation or anger in the course of their duties as well as particular issues that can be derived from a major disaster or exceptional incident. Different people react differently to stress and trauma, for some the reaction will be mild but for others their response can be extreme and include self-harm.

26.3 The issue of mental health should be of paramount importance for the police service. As I said in the Custody chapter at page 372, mental health issues are commonplace in all areas of society, so Police Scotland needs to look after every person in the service and has to understand better the people and communities they serve.

26.4 Police officers and staff also need support from Police Scotland when they are the subject of a complaint (which may or may not be justified); when they are the subject of an investigation (and presumed innocent); when they may be suspended from duty; when they pursuing a grievance resulting from discrimination or other cause through an internal process; and when they are the subject of a malicious allegation from whatever source. Being the subject of a complaint can have a serious impact on officers and the Review was told that the resultant risk of losing their job can be a source of grave anxiety for officers. The prospect of a complaint,

²⁶⁰ <https://www.legislation.gov.uk/ukpga/1974/37/contents>

or the possibility of a malicious complaint, might also affect how an officer deals with a situation for fear of the potential repercussions.

26.5 A senior solicitor who represents officers who are the subject of complaints expressed concern about a common feature of cases being the failure to understand even at an early stage when subject officers are displaying signs of mental ill-health, exhaustion, domestic difficulties or other causes of severe stress:

“... when you dismiss an officer you lose all your human capital, so you spend 20 years training them, paying them, they become more and more professional in expertise at the job and then you throw them out the door for a single incident. That to me seems insane from an organisational point of view, you’re disposing of the human capital rather than saying: Can we correct something that has happened? So conciliation, mediation.”

Call for evidence

26.6 The Review received evidence from officers about the impact that complaints can have on them and their families, including damaging effects on their mental health. In order to learn more about how involvement in the police complaints system affects officers and members of the public the Call for Evidence specifically invited evidence about the experiences of people who had been involved in the process. They were asked to describe their experience and a large proportion of the responses centred around officer welfare and support.

26.7 In their written evidence a significant number of the respondents cited a lack of welfare or support from senior or line management. It was also stated that during an investigation, the police were not afforded the same protection as the public. The lack of support, and the time taken for investigations to be completed led to a significant number of respondents (mainly police officers) stating that it caused them stress, anxiety, or had led to depression, and had adversely affected family life. It was also felt that there was a prevailing attitude, before any formal determination had been made, that an officer was guilty. This feeling was compounded by the lack of information given to officers on the progress of the complaint. As one officer put it:

“This ongoing investigation has placed unimaginable stress on my family and I as well as raising questions regarding the future of my career. Not knowing whether or not I will be keeping my job due to an unfounded allegation and having to support my family is absolutely terrifying.”

26.8 That individual example of the reality of being under investigation illustrates the full impact that it can have on the individual complained against and highlights the importance of ensuring a fair and proportionate response to all allegations. We also heard evidence from other officers who had made complaints or grievances who experienced similar pressure or anxiety but felt inadequately supported through a prolonged process.

26.9 In their written evidence the Scottish Public Services Ombudsman highlighted the need to support people who are the subject of a complaint as a critical component of a culture that values complaints. Their thematic report “Making complaints work for everyone”²⁶¹ focused on the impact of complaints on staff and suggested that being subject to a complaint can have an adverse impact on the individual involved and could limit, rather than promote, learning and change. Their report suggested that organisations need actively to support their staff through complaints processes and engage staff in positive and purposeful activities to manage and learn from complaints.

Prevention

26.10 It is important that the police have appropriate processes and services to help and support their people based on early intervention and diversion. Those preventative processes have the potential to resolve issues early and avoid unnecessary and resource-intensive escalation down a potentially punitive avenue such as the conduct regulations. An early intervention approach from line managers, involving professional HR advice and welfare services when necessary, can help to deal with issues and potentially prevent bad behaviours manifesting themselves

²⁶¹ <https://www.spsso.org.uk/news-and-media/making-complaints-work-for-everyone-report>

later. Where it is necessary and proportionate to go down the conduct route the organisation must continue to look after its people throughout that process.

26.11 Police Scotland confirmed in its most recent submission to the Review that following discussions involving Professional Standards Department, People and Development, the Scottish Police Federation and the Association of Scottish Police Superintendents, agreement was reached on the introduction of enhanced support mechanisms related to an officer's welfare and overall wellbeing during an investigation, particularly when they require to be arrested and/or suspended from duty. In situations where an officer is to be placed on restricted duties during investigation, each case will continue to be risk-assessed to determine the individual support package required.

26.12 The Home Office Statutory Guidance on Professional Standards, Performance and Integrity in Policing²⁶² makes an important and relevant point, "It is important that there is a balance between the welfare of the officer concerned and the need for the investigation to progress as quickly as possible in the interests of justice, the police service and the police officer subject to investigation" and quotes the Home Office goal for police wellbeing²⁶³ in England and Wales:

"By 2021, policing will ensure that every member of the police service feels confident that their welfare and wellbeing is actively supported by their police force throughout their career, that a culture supporting this is embedded in every force, and that individuals have access to appropriate support when they need it. This includes physical and mental health as well as the broader concept of wellbeing - which enables individuals to realise their potential, be resilient, and be able to make a productive contribution to the police workforce."

26.13 In 2017 Sir Thomas Winsor, HM Chief Inspector of Constabulary for England and Wales, speaking on the subject of officer and staff welfare said:

"It is vital that the mental health and welfare of police officers and staff are assessed properly by forces, and that they are given the support they need.

²⁶²https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/86382/0/Home_Office_Statutory_Guidance_0502.pdf

²⁶³https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/721646/common-goal-for-wellbeing-version-3.pdf

Not only is this important for the individuals, but on a more systemic level, it matters to the effectiveness and efficiency of the force. If a police force's most important assets – its people – are under undue strain, whether in terms of workload or the nature of the work they do and the effects of that work on them, the force's ability to service the public is compromised.”

26.14 It is clear that this description applies with equal force in the Scottish context.

26.15 Home Office and HMICFRS documents have no status in Scotland, which is a separate jurisdiction, but the extracts above do succinctly capture how all police services should look after their people.

Support services provided by Police Scotland

26.16 Police Scotland's Annual Police Plan 2020-21²⁶⁴ aims to “Enhance the wellbeing programme as part of its people strategy, to support a healthy working environment including the delivery of a wellbeing framework”. Police officers and staff have access to a wide range of support services in relation to their mental and physical wellbeing, including through the Your Wellbeing Matters scheme. Police Scotland launched their wellbeing programme in September 2017. The Police Scotland website contains a very accessible and easy-to-follow description²⁶⁵ of Your Wellbeing Matters and the services available.

26.17 Police Scotland has a small wellbeing team. The wellbeing manager manages the Employee Assistance Programme (EAP) contract, the occupational health contract and the overall wellbeing programme. That programme includes the provision of volunteer wellbeing champions across the service. The wellbeing manager line manages one colleague in a small team that has shrunk from seven staff to two. Such a small number of staff having responsibility for programmes to deal with the needs of all 23,000 support staff and officers in the organisation seems to be insufficient and to lack resilience.

²⁶⁴ <https://www.scotland.police.uk/media/lijn5tz2/annual-policing-plan-2020-21-signoff.pdf>

²⁶⁵ <https://www.scotland.police.uk/wellbeing/>

26.18 The Police Scotland wellbeing programme takes into consideration social, physical, psychological and financial factors. Management information from the Employee Assistance Programme shows that the majority of stress and anxiety originates at home rather than work, with financial, relationship, gambling and alcohol matters topping the list. The service is seeing a higher propensity for people to develop gambling problems and has changed its focus from viewing this as a conduct issue to viewing it as a wellbeing issue.

26.19 The wellbeing programme has three main strands of support available to officers and staff. In April 2015 Police Scotland launched the Occupational Health (OH) contract. OH mainly deals with physical health, whereas the Employee Assistance Programme (EAP) is mostly for mental health or other issues. The third strand is the support provided by wellbeing champions.

26.20 The Employee Assistance Programme (EAP) provides support to staff and officers with mild to moderate psychological issues. After every incident, line managers should be asking individuals if they want to access to the EAP. It is available 24/7 and immediately after any incident. Individuals are offered up to six sessions initially although this can be extended to eight sessions. If there is cause for more than eight sessions, then it is classed as long-term care which is the responsibility of the NHS. If the trained EAP counsellor has a serious concern for an individual's wellbeing, then their GP or Police Scotland will be contacted. Leaflets and wallet-sized cards, along with other promotional material, are distributed to every officer and staff member to raise awareness of how to access the service and to ensure that they (and their families) have easy access to the number whenever it is needed. At Managing Attendance courses managers are told about the EAP resource.

26.21 Monthly management information from the EAP identifies any recorded bullying and harassment; if that shows a trend then an investigation can be triggered to find out how extensive it is in that department. It can also trigger the distribution to managers, officers and staff of information about preventing and dealing with bullying.

26.22 A new EAP contract began in 2019 and usage of the service saw a significant increase to 10%²⁶⁶. The EAP can be used for domestic issues such as legal or childcare advice or for issues as serious as coping with the effects of adverse childhood experiences on an individual's work. In the most serious cases the EAP counsellor would point the individual back to their GP and also provide them with a list of other specialist support organisations.

26.23 Police Scotland have about 200 wellbeing champions across the service, all of whom are trained in mental health first aid; they receive two days of mental health training and a half day's training on the other wellbeing services that are available. Anyone who wants to speak to someone in confidence can contact any of the wellbeing champions as there is no requirement to contact a champion based in the same division or location. All approaches are treated confidentially by the champions.

26.24 As I noted in the preliminary report, individuals are often put in pressurised situations where they may be dealing on a daily basis with crime, violence, vulnerable people, victims, deaths or the bereaved. In the course of their duties police officers and some support staff will experience trauma and may suffer from the vicarious effects of others' trauma.

26.25 Police Scotland and the Scottish Police Authority have a Trauma Risk Management (TRiM) policy²⁶⁷. TRiM is available if an officer or member of staff has had to deal with work-related trauma. The TRiM process is voluntary and starts with a wellbeing check by managers to provide information and determine who might need a TRiM intervention. Officers and staff generally have access to TRiM 72 hours after an incident but individuals can self-refer. The service is made up of a group of around 180 police office volunteers who act as TRiM assessors who receive yearly assessor training. The individual can talk to the assessor about the event and how they are feeling. They are assessed to see if they need the professional

²⁶⁶ Approximately 2,300 interactions per annum i.e. the equivalent of 10% of all officers and staff, although some will use the service more than once.

²⁶⁷ <https://www.scotland.police.uk/spa-media/pv1hlvdi/trim-sop.pdf>

support available under the EAP. TRiM debriefs can be carried out with a group of officers for welfare and therapeutic reasons.

26.26 Police Scotland also provide cognitive behavioural therapy (CBT) for people identified as having symptoms of Post-Traumatic Stress Disorder (PTSD). An officer can initially receive six sessions but more can be prescribed if necessary. Each case will be allocated a reference number in order to anonymise it.

26.27 The system of annual face-to-face resilience assessment with a counsellor was replaced with online resilience screening rolled out to every officer and staff member of Police Scotland. The wellbeing team regard this as a very effective way to catch the subtle changes that might happen in an individual and an exercise that should be repeated online. Previously around 1,200 people qualified for the face-to-face assessment but the take-up was only around 25%.

26.28 Trauma resilience training is provided for high-risk areas such as the Public Protection Unit and armed policing. In Police Scotland the posts which are most exposed to harrowing incidents do not have a set period of tenure. In my 2015 report on The Investigation and Prosecution of Rape in London²⁶⁸ I made the point that working in an isolated environment on distressing cases could have a negative impact on individuals and I suggested that there might be a 'shelf life' for that type of work. It is understandable that officers may be committed to a certain area of policing, but if this is the case, appropriate and regular occupational health supervision must be made available to them.

26.29 Lifelines Scotland²⁶⁹ was set up in 2016 to support the wellbeing of Scotland's volunteer responder community. The project supports the health and wellbeing of all emergency responders, and provides information about how to stay well, beat stress and boost resilience for them, their families and their friends. It is now working with Police Scotland, the Scottish Fire and Rescue Service and the Scottish Ambulance Service to develop resources and training courses for their staff. The Scottish

²⁶⁸https://www.cps.gov.uk/sites/default/files/documents/publications/dame_elish_angiolini_rape_review_2015.pdf

²⁶⁹ <http://lifelinesscotland.org/>

Government has told the Review that it is committed to extending the Lifelines Scotland wellbeing programme to blue-light responders.

The Police Treatment Centres

26.30 In addition to the support provided by Police Scotland, support is also available from the voluntary sector. The Police Treatment Centres²⁷⁰ is a registered charity which provides treatment and support, including intensive, police-specific physiotherapy and rehabilitation for injured and ill police officers and retired officers. The centres are funded almost entirely by donations from serving officers and members of the public. They help officers return to duty more quickly than if they were solely reliant on the National Health Service. Serving and retired officers can attend one of the two treatment centres at Auchterarder or Harrogate.

Evidence from sergeants focus group

26.31 The Review held a focus group with a cross-section of sergeants which provided valuable evidence and insight from men and women serving in this crucial rank. One of the issues discussed was welfare provision and support for officers. One participant described the sergeant rank as the conduit for an increasing administrative workload. The sergeants told the Review that they have to deal with resourcing, with operational matters and with filling out crime files; these responsibilities together with many other matters and outside influences meant that staffing and welfare issues might be missed. On a shift, 50% of the officers whom sergeants are looking after could be probationers. I comment on the issue of supervisory ratios within Police Scotland and the pivotal management role of the sergeant in the Police Scotland chapter at page 81.

26.32 The sergeants explained to the Review that line manager support for officers could be an issue in some remote areas where there could be no opportunity for

²⁷⁰ <https://www.thepolice-treatmentcentres.org/>

having regular face-to-face contact with frontline constables. In one island town where there should be five sergeants there were only two in post and three unfilled posts. The lack of supervision in remote areas was a contributing factor to a lot of complaints reaching Professional Standards Department. It was also noted that experienced constables may not want to move to remote locations so probationers are posted there instead, and probationers, on the whole, would need more support.

26.33 The sergeants made a number of valid points to the Review and provided evidence of geographical inconsistency of approach. They purported that if a police officer is doing their job well they are more likely to get complaints than someone who avoids any conflict.

26.34 The Review was told that the lack of feedback on the course of complaints can be damaging to officers through the uncertainty about what is happening and indicated that updates are quite poor. In some divisions officers only know about the complaints that are upheld. The practice is different in G Division (Glasgow) where an officer finds out about the results of all complaints; the line manager is informed at the same time as the officer, who may be called in for a conversation.

26.35 Sergeants can initiate a welfare action if necessary. The sergeants' consensus was that interventions can be supportive, that wellbeing champions' confidential support is beneficial and that the Scottish Police Federation representatives also provide good support.

Evidence from the Scottish Police Federation representatives focus group

26.36 The Review held a focus group with Scottish Police Federation representatives to hear at first hand about their extensive experience of and involvement in complaints and conduct matters. One representative's view was that for the average police officer the complaints process could be very frustrating because subject officers did not get very much information as the process continued and the process could have a huge impact on their career. Subject officers were investigated by people who are used to investigating crime and the approach varied

according to the region of Scotland in which the investigation took place. One representative characterised PSD's initial approach to conduct as tending to assume the worst and that an allegation should be treated in the most serious category, and contrasted that with practice in the rest of the working world where most organisations take the opposite, bottom-up approach.

26.37 One representative suggested that for low-level complaints the responsibility for dealing with those matters and related complaints should properly lie with the shift sergeant as the person who runs the shift and who should deal with minor HR-type matters. It was noted that in one city on a particular shift one sergeant could be managing up to 18 constables who were responsible to him or her but based at eight police stations across the city. This ratio and the scale of responsibilities made it very difficult for that line manager to deal with all the management, quality of service and welfare issues that could arise.

26.38 One participant suggested that lots of cases going down a misconduct route originated in human error or mistakes that might have been caused by a lack of support or officers being overstretched. Overstretch was occurring across the board and, in many instances, warnings from frontline police officers to management about resources had not been acted upon.

26.39 Another representative believed that there were many young officers who were very stressed in the workplace and that this led to complaints. They were dealing constantly with calls and received little respite. Shift patterns meant that they were now working ten-hour days in a pattern of four days on and three days off. The representative suggested there had been a culture change in the service and now some officers go off duty, switch off entirely from work and do not consider themselves as being police officers after they have gone home.

26.40 Another representative had identified an issue about how line managers speak to their officers. Line managers did not always think about whether there were any underlying issues affecting officers' behaviour. Sometimes the public expected police officers to be spoken to after a complaint, but not to be punished or even sacked.

26.41 According to one participant, being referred to the occupational health service was quite a formal step; officers could not self-refer. There were few HR advisers in divisions, and they had heavy workloads.

26.42 The view of one representative was that although the Employee Assistance Programme (EAP) counsellors were proficient in areas such as bereavement, debt and marital issues, they could not give specific advice in relation to policing. Some counselling or support should be mandatory for people who were in sensitive and very intense posts, for example officers dealing with child pornography or rape cases. One representative felt that the police service was only paying lip-service to welfare and psychological support; another suggested that consultations were limited to six per officer and that Police Scotland did not accept that people might need more consultations than that.

26.43 The group expressed a real concern about anonymous complaints and their potential impact on the private lives of officers and their families. One representative described many police officers as being in fear of complaints and the anxiety that it created when a complaint was made against them.

Evidence from the SEMPER Scotland²⁷¹ members focus group

26.44 One SEMPER member told the Review that mental health post-incident procedures are “stuck in the dark ages” with nothing formal in place; Police Scotland “did not value them much”. In their experience there was only a fleeting mental health check: “Are you alright?”, while the machismo environment prevents people saying that they are not OK. Studies suggest that the drip effect means officers could suffer Post-Traumatic Stress Disorder (PTSD) further down the line and that early mental health checks were advisable in order to avoid this.

²⁷¹ <http://www.semperscotland.org.uk/> SEMPER Scotland is the primary staff association that exists to support and represent all minority ethnic employees on issues of equality in race.

Evidence from the Scottish LGBTI²⁷² Police Association

26.45 The Review also met with representatives and members of the Scottish LGBTI Police Association. One of the main issues for them was that there should be a time limit on concluding complaint investigations. We were also told of one complaint that went on for two years to be investigated before the subject officer was told that there was nothing in it.

26.46 One participant commented that because of inspectors' workloads it was very difficult for them to find time to deal with complaints and provide support to constables. There was no training on welfare, and officers received diversity training only once in their career in the police.

Evidence from the Scottish Women's Development Forum²⁷³

26.47 The Review met with the Scottish Women's Development Forum which represents both police officers and staff. They believed that welfare support was particularly poor in Police Scotland; any monitoring of an officer's behaviour changes and the response to that behaviour was dependent on what kind of line manager you had. One representative said that the organisation was getting a bit better at encouraging people to speak about their welfare issues, but they felt the reality was that if you say you are stressed you might receive a "red" mark against you. The benefits of having wellbeing champions were great, but it was also observed that welfare often gets missed especially if you are not "one of the lads"; the front line can be "quite cliquy".

26.48 One representative said that inspectors' workloads were massive and that sergeants were under enormous pressure. Further, all calls demand sergeants' time

²⁷² <https://www.lgbtipolice.scot/> The Scottish LGBTI Police Association exists to advance LGBTI equality, inclusion and support throughout policing in Scotland and within the communities Police Scotland serves.

²⁷³ The SWDF's aim is to assist and support Police Scotland and the Scottish Police Authority to provide a positive working environment which enables everyone to reach their full potential.

and they had to balance risks; time for staff was difficult to find. A representative also told the Review that where officers who are the subject a complaint are moved to another post or, as they referred to the process, “cupboarded”²⁷⁴, this can have an impact on their mental health. One participant highlighted a lack of transparency in investigations which added to the stress for all those involved. We were told that some people experience severe mental health issues and in consequence leave the organisation. We were told that two women had left Police Scotland because they felt they had been treated poorly as subject officers.

Summary of evidence on welfare and support

26.49 As I said in the preliminary report, there has been some disparity in the evidence gathered on this subject. On the one hand evidence of what is on offer in terms of welfare provision and other support mechanisms suggests provision is adequate; and on the other hand, officers describe difficulties in accessing what is available for any meaningful length of time. The evidence would suggest that although the services available through the EAP, the Occupational Health Service, through wellbeing champions and TrIM Assessors and Co-ordinators appear to be appropriate for officers and staff, the corporate resources to support these services seem disproportionately small; a wellbeing team of two to support the whole of Police Scotland appears astonishingly under-resourced. I understand the constraints of budget, and that it is currently stretched, however the complex and often harrowing nature of policing means that the appropriate support on mental health issues should be prioritised, not least because of its preventative benefits.

26.50 The evidence gathered throughout the Review suggests a lack of recognition that some behaviours may be attributable to the environment in which police officers operate and a need for underlying causes of those behaviours to be identified and

²⁷⁴ <https://www.tandfonline.com/doi/pdf/10.1080/15614263.2020.1772782?needAccess=true> Demou, Hale and Hunt include “cupboarding” as one of the common operational and organisational stressors among officers and staff in Police Scotland. Over the course of the Review a small number of witnesses used the term “cupboarding” for a process whereby an officer is moved to another location, role or duties to be out of the way.

addressed at the earliest opportunity before they manifest themselves in performance or conduct issues.

26.51 The responses to the Call for Evidence and the evidence from the focus groups and diversity staff associations suggest that support for officers who have been the subject of a complaint is inadequate. Lack of information and delays can lead to stress and anxiety that can and does have a detrimental effect on officers' family life. There needs to be frequent and clear communication regarding the progress of the complaint against subject officers.

26.52 Any restricted duties or transfers imposed for the duration of an investigation should take into account, where appropriate, the individual's family circumstances, and subject officers or staff should be offered the opportunity to access appropriate support services provided by Police Scotland.

26.53 Recommendation: Any restricted duties or transfers imposed for the duration of an investigation should take into account, where appropriate, the individual's family circumstances, and subject officers or staff should be offered the opportunity to access appropriate support services provided by Police Scotland.

Chapter Twenty-seven - Capturing best evidence and reducing complaints

27.1 How the state responds to complaints in relation to policing in Scotland is the subject of this review. However, reducing complaints by better policing methods is clearly also highly desirable. Rather than a predominantly reactive mode towards complaints when they occur, the policing bodies should be taking preventative actions and adopting policies that will contribute to a reduction in their number. Much of this report is concerned with the response to complaints but many complaints can be prevented by good psychology, empathetic engagement, a trauma-informed approach and using techniques that de-escalate aggression and create a safer environment for everyone.

Body-worn video cameras

27.2 The availability of a recorded account of an incident provides significant assistance in investigating complaints against the police or wider investigations. Over the last few decades the availability of such evidence has increased significantly and has been of immense assistance in many investigations and subsequent trials.

27.3 In some areas of the public services, body-worn video cameras have been introduced in order to facilitate transparency, trust within the community and to assist courts when addressing the actions of officers. In different parts of the United Kingdom body-worn video cameras have been trialled by prison officers, ambulance crews and traffic wardens. There are approximately 80,000 body-worn video cameras in use by police officers in England and Wales.

27.4 The arguments in favour of the use of body-worn video cameras include keeping the police accountable by providing evidence and corroboration; protecting officers from assaults or false accusation because the action of recording moderates the behaviour of all parties; reducing time and money spent on investigating

complaints; it also reduces time spent in court proceedings and increases the likelihood of guilty pleas.

27.5 The risks associated with the use of body-worn video cameras include violation of the privacy of third parties who are not the subject of interaction, and insufficient capacity of IT systems to store and transmit footage. In order to mitigate those risks, clear and consistent guidelines and Codes of Practice would be necessary to govern operational practice and manage the data in accordance with the relevant legislation.

27.6 Scottish Police Federation representatives gave early evidence to the Review that where all systems were in place in COPFS and Police Scotland, body-worn video cameras could be an asset to the service. However, they considered that the issue of funding was one that has to be addressed.

27.7 Police Scotland have a long-term aim in Policing 2026²⁷⁵, their ten-year strategy document, to expand the use of body-worn video cameras, but this objective will only be a realistic prospect when financial and structural constraints are addressed. The associated Implementation Plan stated that Police Scotland would, “Undertake body-worn video public consultation to inform appropriate implementation and use”.

27.8 There is a range of evidence about the pros and cons of body-worn video cameras but relatively little that deals specifically with the impact on complaints. Research carried out with the Tulsa Police Department in the USA suggests that the benefits in relation to gathering evidence on complaints could be significant: “We have found the body-worn camera system to be very beneficial thus far as the cameras have not only provided transparency, but provided valuable video evidence in investigations.” (Police Chief Chuck Jordan, Tulsa Police Department). A 2014 study²⁷⁶ in the United States found that the likelihood of force being used in control

²⁷⁵ <https://www.scotland.police.uk/spa-media/jjkpn4et/policing-2026-strategy.pdf?view=Standard>

²⁷⁶ Ariel B, Farrar W, Sutherland A (2014) The Effect of Police Body-Worn Cameras on Use of Force and Citizens' Complaints Against the Police: A Randomized Controlled Trial, *Journal of Quantitative Criminology*, September 2015, Volume 31, Issue 3 https://www.researchgate.net/publication/277597837_The_Effect_of_Police_Body-

conditions, that is, without cameras, was roughly twice that when cameras were in use; and analysis of use-of-force and complaints data also supported this result with the number of complaints filed against officers dropping from 0.7 complaints per 1,000 contacts to 0.07 per 1,000 contacts.

27.9 In discussion with the Mayor's Office for Policing and Crime in London it was reported to the Review that the use of body-worn video cameras in the Metropolitan Police Service area had seen a one-third reduction in complaints.

27.10 The Police Ombudsman of Northern Ireland (PONI) published a report in April 2020 on the 'Impact of the introduction of body-worn video by the PSNI on police complaints in Northern Ireland'²⁷⁷. They found a 9% decrease in complaints received by the PONI since the introduction of body-worn video cameras by the Police Service of Northern Ireland (PSNI). Complaints arising from police searches and arrests decreased the most. (A complaint may include more than one allegation.) Allegations of irregularities with a police search, incivility and oppressive behaviour had the largest decreases.

27.11 The report stressed that although the analysis found that both the number of complaints and the number of allegations had decreased after body-worn video cameras were introduced, it was not possible to determine whether this was solely down to the use of body-worn video cameras. A number of other factors may have contributed to the decreases, such as complaint reaction strategies and changes to training, procedures and levels of engagement.

27.12 Video footage was either critical or helpful to the investigation in nearly three-quarters of initial complaints where the investigator viewed the footage. Investigators found it useful in showing the level of force used and any reasons for doing so, gaining an early understanding of the incident, assisting in refuting inaccurate versions of events and enabling clear identification of individuals involved.

[Worn Cameras on Use of Force and Citizens' Complaints Against the Police: A Randomized Controlled Trial](#)

²⁷⁷ <https://www.policeombudsman.org/PONI/files/0b/0b46b087-1f7f-4366-8b82-6dab63c0ccce.pdf>

27.13 The PONI report also quoted City of London Police officers who found the technology “empowering” and said, “video enables one to feel the emotions of an incident”.

27.14 The potential benefits of body-worn video cameras in reducing and resolving complaints against police officers support the aspiration of Police Scotland to make more use of body-worn video cameras. Subject to the supporting infrastructure being in place, cameras should be rolled out nationally to all police officers working in the custody environment or in a public-facing role.

27.15 Police Scotland has acknowledged the potential benefits associated with the introduction of body-worn video cameras, including improved officer safety due to a reduction in assaults, reducing and resolving complaints against officers and an increase in early guilty pleas, saving time and costs. The service has also acknowledged the risk around the absence of the technology. However, budgetary constraints have prevented any further progress on procurement.

27.16 In the preliminary report I recommended that Police Scotland should accelerate its plans to expand the use of body-worn video technology and that remains my position.

[Preliminary report recommendation: Police Scotland should accelerate its plans to expand the use of body-worn video technology.](#)

Chapter Twenty-eight - Time limits

28.1 I have considered whether the relevant Scottish legislation should set statutory time limits for the completion of misconduct processes, other investigations or the submission of complaints by members of the public.

28.2 In their submission to the Review the Law Society of Scotland suggested that:

“There needs to be public confidence in the independence of the complaint-making processes. Timescales of the process from the time of initiation of the complaint to conclusion must be much clearer and shorter. Just as in the case of summary justice reform, though investigations need to be robust, for both the purposes of the police and the complainer, matters need to be resolved as quickly as they can be.”

28.3 Many witnesses gave evidence of long delays on the part of Police Scotland or the Police Investigations and Review Commissioner (PIRC) in dealing with their complaints or complaints handling reviews. The impact of delays in the system on the careers of individual officers can be profound with prolonged periods of anxiety experienced. Many members of the public who gave evidence to the Review were at a loss to understand the delays in dealing with their cases.

28.4 Police Scotland should develop and publish realistic but stretching targets for completing the key stages of the complaints handling process. This should be done in consultation with relevant organisations. These should be consistent with any relevant statutory provisions and the statutory guidance contained in ‘From sanctions to solutions’²⁷⁸ or its successor document. The current guidance states that:

“It may also help to agree reasonable time limits with the complainer, so that they are aware it may take longer if the complaint appears to be complex. If an investigation is likely to be protracted, complainers should be given regular updates on progress. Updates need not be in writing provided that auditable records are kept of those given verbally.”

“The PCCS [now PIRC] therefore expects each police force [now Police Scotland] to acknowledge any complaint received within three working days,

²⁷⁸ https://pirc.scot/media/1211/pccs_statutory_guidance_web.pdf

update all complainers once every calendar month, and complete all non-criminal complaint investigations within 40 working days.”

28.5 It would not be appropriate to put such detailed targets in statute but they should be reviewed and published in the imminent updated guidance. Performance against these targets should be measured and reported on regularly. The Chief Constable should publish annually Police Scotland’s performance in dealing with complaints against the time-scales set out in the statutory guidance. I recommend that the Scottish Police Authority Complaints and Conduct Committee scrutinise that performance and hold Police Scotland to account where the targets are not being achieved.

28.6 PIRC currently publish information about the volume of their business in the Commissioner’s annual report but should also publish their performance against set targets for complaint handling reviews and investigations. This matter is discussed further in the PIRC chapter at page 205 where I recommend that the PIRC publish information on their performance.

28.7 Not only is it in the public interest that this area of Police Scotland activity is transparent, but clear expectations and improved performance will enhance public confidence generally and reduce the anxieties for all individuals involved in the process.

Time limits for the completion of investigations

28.8 In England and Wales The Police (Conduct) Regulations 2020²⁷⁹ and The Police (Complaints and Misconduct) Regulations 2020²⁸⁰ require the relevant investigating body to provide a written explanation to the Police and Crime Commissioner (or other local policing body) if an investigation is not completed within twelve months. I have not recommended that those provisions are replicated in Scotland but I have recommended in the Scottish Police Authority chapter at

²⁷⁹ <https://www.legislation.gov.uk/uksi/2020/4/contents/made>

²⁸⁰ <https://www.legislation.gov.uk/uksi/2020/2/contents/made>

page 176 that where there is evidence of delays, that needs to be subject to rigorous scrutiny and that if investigations are subject to lengthy delays Police Scotland should be held to account for those delays by the SPA. This should be achieved through analysis of the data and reports given to them by the Professional Standards Department (PSD).

Time limits on the public submitting complaints

28.9 In Northern Ireland complaints have to be made to Police Ombudsman for Northern Ireland (PONI) within twelve months of the event, but in special circumstances, the Ombudsman can decide to investigate a complaint about something that happened more than a year before it was reported to them. This happens when the Police Ombudsman believes the complaint to be grave or exceptional. The Northern Ireland approach is fair and pragmatic.

28.10 In Scotland there is no set time period within which a member of the public must submit their complaint to Police Scotland and I do not believe that a statutory limit would be helpful. In principle complaints should be made as soon as possible after the event in question but there are many reasons why people might take longer to do so. I discuss the reasons why some groups and individual are reluctant to complain to the police in the Inclusion, diversity and discrimination chapter at page 130. Patterns of behaviour might only become apparent over time and what might not seem to constitute misconduct or appear to justify a complaint in the first instance might do so if it is repeated.

28.11 I recommend that a non-statutory time limit for the submission of complaints by the public should be made explicit in the PIRC's statutory guidance and publicised on the relevant websites. Complaints made more than twelve months after the event or incident should only be considered where the circumstances are grave or exceptional.

28.12 In Scotland the PIRC must receive an application for a complaint handling review within three months of the date on which the police communicated its findings to the complainer in relation to their complaint. That time limit should remain.

28.13 In considering whether the legislation should set statutory time limits for any of the processes described above, I have concluded that new statutory provision would not be feasible or necessarily result in a reduction of delays.

28.14 I agree with the Law Society of Scotland that matters should be resolved as quickly as they can be but I believe that the focus on effective triage in the early stages, removing frontline resolution from local divisions, the clarity around procedures and the enhanced audit arrangements that I have recommended are more likely, when taken together, to reduce delays and lead to swifter and more appropriate outcomes. All of those improvements need to be accompanied by a greater scrutiny of performance and greater transparency to highlight and address delays in the system. The Scottish Police Authority, the Chief Constable and the Police Investigations and Review Commissioner all have critical roles in holding their respective people to account for delays in the system.

Recommendations in relation to time limits

28.15 Recommendation: The Chief Constable should publish annually Police Scotland's performance in dealing with complaints against the time-scales set out in the statutory guidance.

28.16 Recommendation: The Scottish Police Authority Complaints and Conduct Committee should scrutinise Police Scotland's performance in dealing with complaints and hold the service to account where the targets are not being achieved.

28.17 Recommendation: A non-statutory time limit for the submission of complaints by the public should be made explicit in the PIRC's statutory guidance and publicised on the relevant websites. Complaints made more than twelve months after the event or incident should only be considered where the circumstances are grave or exceptional.

Chapter Twenty-nine - Cross-border jurisdictional issues

29.1 While they are sometimes merited, it is the case that boundaries, demarcations and divisions can bring added complexity in many areas of life. In relation to the handling of complaints, investigations and misconduct, there is a range of such boundaries which can result in jurisdictional challenges.

29.2 In my preliminary report I said that I would welcome further views and evidence on United Kingdom cross-border jurisdictional issues. Since then a cross-agency group has been established to consider those issues. The group, which will put proposals for change to the Strategic Oversight Group for final agreement, includes Police Scotland, the Police Investigations and Review Commissioner (PIRC), the Crown Office and Procurator Fiscal Service (COPFS), the Independent Office for Police Conduct (IOPC), the Police Ombudsman for Northern Ireland (PONI), the Scottish Government and the Home Office. I commend these organisations for this excellent example of collaboration.

29.3 In essence the issue that was brought to my attention is how the actions of police officers who are on duty and temporarily deployed to other nations of the United Kingdom can be investigated. This includes complaints and allegations of misconduct.

29.4 Whatever legislative or administrative arrangements are put in place to clarify these matters they should be based on the fundamental principles that the location of the incident determines which body or bodies have jurisdiction and the duty to investigate; that any criminal proceedings that arise from a constable's actions or inactions during the incident will take place in the jurisdiction in which the incident in question took place; and that any misconduct proceedings arising from the incident should be governed by the regulations in place in the constable's home jurisdiction and dealt with by the appropriate authority there.

29.5 During the course of gathering evidence for my Review contributors raised a number of cross-border jurisdictional issues that require to be clarified in legislation.

These mainly relate to the handling of complaints, misconduct allegations and investigations involving police officers who at the time of the incident, act or omission in question were on duty in a different jurisdiction to their home jurisdiction. This is not uncommon in the United Kingdom where police forces and services in Scotland, England, Wales and Northern Ireland can provide planned mutual aid to other constabularies.

29.6 There are also unplanned circumstances where a police officer in pursuit of their lawful duties can find themselves crossing a border. Additionally, not all policing in Scotland is carried out by Police Scotland, for example, the British Transport Police, the Civil Nuclear Constabulary and the Ministry of Defence Police also carry out policing functions in Scotland, as does the Metropolitan Police Service (MPS) in relation to royal protection duties. Police officers may also have to escort detainees between jurisdictions.

29.7 Police officers who are deployed to assist another force or service do so under an agreement in terms of Section 98 (Cross-border aid of one police force by another) of the Police Act 1996²⁸¹ which provides, amongst other things, that during the period of that deployment they have all the powers and privileges of an officer in that force or service and that they are subject to the control and direction of the chief officer of police of that force or service.

29.8 Although there is nothing to prevent a complaint being directed to the chief officer of an officer's home force or service, if that officer is operating under the control and direction of the Chief Constable of Police Scotland as part of a mutual aid agreement it seems logical that a complaint from a member of the public against that officer should be directed to Police Scotland. In a mutual aid situation the actions of the senior officers who are responsible for the command and direction of operations in Scotland, who inevitably will be officers of Police Scotland, would fall within the PIRC remit but the actions of the individual officers from other forces or services would not.

²⁸¹ <https://www.legislation.gov.uk/ukpga/1996/16/section/98>

29.9 If a complaint relates to a non-serious matter it could be investigated by Police Scotland. However, where it relates to a serious, but non-criminal, matter which was the subject of a referral to the PIRC, the PIRC currently has no power to investigate any person serving with the police who is an officer of the Police Service of Northern Ireland (PSNI) or an English or Welsh force or service.

29.10 The PIRC does not have the power to investigate outwith the Scottish jurisdiction and neither of the other independent investigatory police oversight bodies operating in the United Kingdom nations, namely the IOPC in England and Wales and PONI in Northern Ireland, have powers to carry out investigations within Scotland.

29.11 Police Scotland officers deployed under Section 98, have all the powers and privileges of police officers in the host jurisdiction. Logically, it follows that they should be subject to the same duties or obligations to assist in the investigation of a serious incident occurring in that host jurisdiction, such as the duty to co-operate with an IOPC investigation or PONI investigation into an incident which they witnessed or in which they were involved in some other way.

29.12 The picture is further complicated if an officer from Police Scotland and an officer from an English or Welsh force or service or the PSNI have acted together in the course of an incident in Scotland where an allegation of criminality has to be investigated. In such circumstances the PIRC has the power to investigate the Police Scotland officer, if so directed by COPFS, but because of the current statutory definition of a “person serving with the police” could not investigate the actions of the other officer. Therefore, COPFS may, in such circumstances, have to direct Police Scotland to investigate the officer from outwith Scotland, resulting in two parallel investigations into the one incident.

29.13 As described in the Legislative changes chapter at page 432, the PIRC can only investigate a “person serving with the police”. Section 47 of the Police, Public Order and Criminal Justice (Scotland) Act 2006 (as amended by paragraph 33(11) of Schedule 7 to the Police and Fire Reform (Scotland) Act 2012), defines a person serving with the police as “a constable of the police service of Scotland; a member of

police staff; or a member of staff of the Scottish Police Authority”. Additionally, the Police and Fire Reform (Scotland) Act 2012 (Consequential Provisions and Modifications) Order 2013²⁸² provides that PIRC may enter into agreements with the British Transport Police, the Civil Nuclear Constabulary, the Ministry of Defence Police, the National Crime Agency, HM Revenue and Customs and the relevant Secretary of State (in relation to certain UK borders, customs and immigration enforcement functions) to investigate serious incidents involving their officers. The absence from that list of officers from PSNI and English and Welsh forces or services when they are undertaking a policing function in Scotland is a gap that should be addressed.

29.14 The possible scenarios described in this section are not purely hypothetical. The United Nations climate change summit in Glasgow, the 26th Conference of the Parties (COP26), has been rescheduled to take place in 2021. The imminence of that event has raised the profile of these issues and the attendant risks. Police Scotland will be responsible for protecting world leaders, delegates and event venues as well as policing high-profile demonstrations. Police Scotland has indicated that it is likely to require significant assistance from other UK police services with a large number of mutual aid officers operating in Scotland during the event. Confrontation between the police and protestors has the potential to lead to complaints or serious incidents where it is alleged that Article 3 of ECHR is engaged. The duty on the state to ensure an independent investigation in respect of allegations of a breach of Article 3 (Prohibition of torture - inhuman or degrading treatment or punishment) has been developed in the case law of the European Court of Human Rights.

29.15 Section 41B of the Police, Public Order and Criminal Justice (Scotland) Act 2006²⁸³ (as amended) gives the Police Investigations and Review Commissioner the power to investigate a serious incident involving the police. It defines a “serious incident involving the police” as:

²⁸² <https://www.legislation.gov.uk/uksi/2013/602/article/3/made>

²⁸³ <https://www.legislation.gov.uk/asp/2006/10/contents>

“a circumstance in or in consequence of which a person has died or sustained serious injury where –

the person, at or before the time of death or serious injury, had contact (directly or indirectly) with a person serving with the police acting in the execution of that person’s duties; and

there is an indication that the contact may have caused (directly or indirectly) or contributed to death or serious injury.

Any other circumstance in or in consequence of which –

a person has otherwise sustained a serious injury at a time when the person was being detained or kept in custody by a person serving with the police; or

a person serving with the police has used a firearm or any other weapon of such description as the Scottish Ministers may by regulations specify;”

29.16 Where any such incidents occur that engage Article 3 ECHR rights, the Strasbourg jurisprudence requires that the actions of the police are independently investigated. In Scotland, such investigations are undertaken by the PIRC under the direction of the Procurator Fiscal. I discuss the implications of the need for independent investigation in the Police Scotland chapter at page 81.

29.17 I recommend that the omission in the legislation which has been highlighted in this chapter is rectified by amending the primary legislation at the earliest opportunity by giving the PIRC the power, in clearly defined circumstances, to investigate the actions of officers from PSNI and English and Welsh forces or services, and the other three reserved police forces referred to above, when they are undertaking a policing function in Scotland.

29.18 The Scottish Government should agree with the UK Government and the Northern Ireland Executive how best this can be done and what reciprocal powers should be put in place for the IOPC and the PONI in respect of the actions of Police Scotland officers when they are operating in England, Wales or Northern Ireland.

29.19 Recommendation: The Scottish Government should agree with the UK Government and the Northern Ireland Executive how best to amend the primary legislation to give the PIRC the power, in clearly defined circumstances, to investigate the actions of officers from PSNI and English and Welsh police forces or services, and the other three reserved police forces, when they are undertaking a policing function in Scotland; and explore with the other administrations how reciprocal powers could be put in place for the IOPC and the PONI in respect of the actions of Police Scotland officers when they are operating in England, Wales or Northern Ireland.

Chapter Thirty - Legislative changes

30.1 My terms of reference from the Cabinet Secretary for Justice and the Lord Advocate were, amongst other things, 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; and to assess and report on the effectiveness of the current law and practice. This chapter sets out the areas of primary and secondary legislation where I believe that legislative change is required.

30.2 I preface the suggestions below by re-iterating that one of the themes of my report is that officers, staff and managers within Police Scotland should consider what other less formal avenues are open to them before seeking recourse to statutory procedures. Police Scotland as an organisation should also seek to promote a more flexible and constructive approach to how it deals with behavioural issues in the early stages and invest more in prevention rather than in cure.

30.3 In the preliminary report I noted that over-reliance on the conduct regulations was seen by some contributors as disproportionate escalation. In one focus group the Review was also told that not all line managers understood the management of performance and how to use the Performance Regulations. There was a tendency to shy away from tackling difficult issues, giving negative feedback or telling constables that they were not ready for promotion, and a reluctance to consult HR professionals in Police Scotland to get advice on staffing issues.

Changes required in primary and secondary legislation

30.4 I recommend in the following sections substantive changes, combining the two main sets of conduct regulations and clarification of a number of issues that have been identified in the light of application and practice.

30.5 I deal with each of these pieces of legislation in sequence:

- The Police and Fire Reform (Scotland) Act 2012
- The Police, Public Order and Criminal Justice (Scotland) Act 2006
- The Police Service of Scotland (Conduct) Regulations 2014
- The Police Service of Scotland (Senior Officers) (Conduct) Regulations 2013
- The Police Investigations and Review Commissioner (Investigations Procedure, Serious Incidents and Specified Weapons) Regulations 2013
- The Police Service of Scotland Regulations 2013
- The Police Service of Scotland (Special Constables) Regulations 2013
- The Police Appeals Tribunal (Scotland) Rules 2013
- The Public Interest Disclosure (Prescribed Persons) Order 2014 (which is reserved legislation)
- The Police Barred List and Police Advisory List Regulations 2017 (which is reserved legislation)

30.6 Some of the recommendations that I have made in this report would also require changes to legislation that is reserved to the Westminster Parliament and would therefore require discussion and agreement between the Scottish Government and the UK Government about how best to bring forward legislative proposals.

Conduct regulations

30.7 The Police Service of Scotland (Conduct) Regulations 2014 and The Police Service of Scotland (Senior Officers) (Conduct) Regulations 2013 deal with different ranks of constable but largely mirror each other. Where I have proposed the same change to the former and to the latter, I have not duplicated the descriptions below but have made clear that it applies to both sets of current regulations.

30.8 There is a strong case for combining these two sets of regulations into one. That is a matter for the Scottish Ministers to consider but combined legislation would in my view be more straightforward and user-friendly. Combination would also

facilitate joint misconduct proceedings and investigations where both senior and non-senior officers were involved. Safeguards would need to be built in to protect the rights of all ranks of constable and to make clear that the penalty imposed on a non-senior officer is not capable of being increased simply because it is determined by a joint misconduct hearing.

30.9 In considering changes to the regulations I had regard to certain important principles, not least that the conduct regulations were in part designed to protect the rights of officers by building in appropriate safeguards at various points throughout the processes. It is also important that the penalties available to the appropriate authority where misconduct or gross misconduct are determined should not increase purely because an officer has been promoted since the misconduct took place. Any new regulations made by the Scottish Ministers and approved by the Scottish Parliament should provide that where a senior officer is found guilty of historical misconduct that pre-dates their promotion, they may face a penalty according to the junior officer regulations to which they were subject at the time in question.

The Police and Fire Reform (Scotland) Act 2012

30.10 In my preliminary report I noted that the draft legislation that became the Police and Fire Reform (Scotland) Act 2012 was put together rapidly, that the passage of the Bill was completed by the Scottish Parliament in a relatively short period of time and that the implementation period for the changes was compressed and challenging. I have reviewed the relevant parts of that legislation and have a number of alterations to recommend.

Section 10 - The constable's declaration

30.11 In the preliminary report I said that assumption of co-operation by police officers in an investigation should be put beyond doubt in the primary legislation,

including in the wording of the constable's declaration²⁸⁴. I expand on this proposal in the Police Scotland chapter of this report and further suggest that in primary legislation there should be an explicit duty of candour on Police Scotland to co-operate fully with all investigations into allegations against its officers. That duty should also be reflected in the statutory Standards of Professional Behaviour (see below).

New Section - Code of Ethics

30.12 Police Scotland's Code of Ethics should be given a basis in statute in the 2012 Act.

New section - Jurisdiction over former police officers

30.13 In the Former police officers chapter at page 168 I recommend that the Scottish Government should develop proposals for primary legislation that would allow misconduct proceedings in respect of any police officer or former police officer to continue, or commence, after the individual ceases to hold the office of constable. That would require amendment of the 2012 Act. It would also require amendment of the relevant conduct regulations, as set out below, to ensure that they can apply to persons who cease to hold the office of constable after resigning or retiring.

New section - Power of Scottish Ministers to issue guidance

30.14 In the Evidence from other jurisdictions chapter at page 296 I recommend that the 2012 Act should be amended to confer on Scottish Ministers a power to issue statutory guidance in respect of conduct and a duty to consult on any such guidance, and confer a duty on policing bodies to have regard to any such guidance; and

²⁸⁴ The constable's declaration on appointment is prescribed in Section 10 of the Police and Fire Reform (Scotland) Act 2012 <http://www.legislation.gov.uk/asp/2012/8/section/10>

recommend that Scottish Ministers should use that power at the earliest opportunity to issue guidance on a new Reflective Practice Review Process.

The Police, Public Order and Criminal Justice (Scotland) Act 2006

30.15 In the PIRC chapter I recommend changing the accountability arrangements for the Police Investigations and Review Commissioner and giving the Commissioner significant additional statutory powers. These would require amendment to the 2006 Act and to the relevant secondary legislation.

Section 33 (The Police Investigations and Review Commissioner)

30.16 In the PIRC chapter I recommend that the Commissioner should be accountable to the Scottish Parliament through the Scottish Parliamentary Corporate Body and the committees of the Parliament. The 2006 Act should also provide that the Commissioner should be an individual appointed by Her Majesty The Queen on the nomination of the Scottish Parliament, and that two Deputy Commissioners should also be appointed.

30.17 In that chapter I also recommend the re-designation of PIRC as a Commission comprising one Police Investigations and Review Commissioner and two Deputy Commissioners, the creation of a statutory Board and the necessary appointment arrangements should be enshrined in primary legislation.

Section 33A (General functions of the Commissioner)

30.18 In the PIRC chapter I propose that the PIRC, rather than the Scottish Police Authority (SPA), should be the recipient of all complaints about senior officers of the rank of Assistant Chief Constable and above. The 2006 Act would require to be amended to make clear that the appropriate authority for senior officer complaints is the Commissioner and that the SPA is only the appropriate authority for the SPA and

its staff. This would also require amendment of the relevant conduct regulations as set out below.

Section 33A(b)(ii) (Investigation of deaths)

30.19 The Review received evidence that this sub-section is ambiguous in that it is not clear whether the provision encompasses the death of a serving police officer. The 2006 Act should be amended to put this beyond doubt.

30.20 In the PIRC chapter I make a number of proposals for new powers for the PIRC that would require amendment of the 2006 Act.

Section 34 (“Relevant complaint” and “person serving with the police”)

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

New power to investigate a current practice or policy

30.22 Currently the PIRC has the power to investigate relevant police matters in the public interest. I propose that the PIRC should have an additional 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.

New power to call in from Police Scotland the investigation of a complaint

30.23 I propose that the PIRC should be given a statutory power to take over an investigation of a complaint if there is sufficient evidence that Police Scotland has not dealt with the complaint properly in the most serious, non-criminal cases. The decision to call in an investigation is entirely one for the Commissioner, taken independently and in the public interest.

New power to make recommendations in relation to complaint handling reviews

30.24 In the PIRC chapter I recommend (as I did in the preliminary report) a power for the PIRC to make recommendations with statutory force in relation to complaint handling reviews or audits and a corresponding duty on the police to implement them. 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 with a PIRC recommendation which the Chief Constable must intimate to the Commissioner or a Deputy Commissioner. Where the Chief Constable implements the recommendation there should be an obligation on the Professional Standards Department to report progress back to the PIRC on its implementation.

New power to audit information on the Police Scotland Centurion database

30.25 In the Police Scotland chapter of this report I recommend a specific legislative power that would enable PIRC staff to access from its own offices the Police Scotland Centurion complaints and conduct database so that contemporaneous audit is possible. Providing a basis in law for accessing any information relevant to the PIRC's statutory functions should ensure compatibility with GDPR and any other relevant data protection legislation.

Section 47 (Interpretation of Chapter 2) - Definition of a “person serving with the police”

30.26 In the Police Scotland chapter of this report I recommend that the Scottish Government should amend the relevant provisions of the 2006 Act at the earliest opportunity to put beyond doubt the definition of a “person serving with the police”.

New reserved/devolved powers

30.27 In the Cross-border jurisdictional issues chapter of this report I recommend that the Scottish Government should agree with the UK Government and the Northern Ireland Executive how best to amend the primary legislation to give the PIRC the power, in clearly defined circumstances, to investigate the actions of officers from PSNI and English and Welsh police forces or services, and the other three reserved police forces, when they are undertaking a policing function in Scotland; and explore with the other administrations how reciprocal powers could be put in place for the Independent Office for Police Conduct (IOPC) and the Police Ombudsman for Northern Ireland (PONI) in respect of the actions of Police Scotland officers when they are operating in England, Wales or Northern Ireland. The legislative vehicle for these powers is likely to involve enactment and amendment of a combination of both devolved and reserved legislation.

The Police Service of Scotland (Conduct) Regulations 2014

Regulation 2 (Interpretation)

30.28 The definition of “misconduct allegation” should be clarified by the addition of the words in parenthesis below:

‘ “misconduct allegation” means any report, allegation or complaint from which it can reasonably be inferred [both from the evidence and the source of the evidence] that any conduct of the constable may amount to misconduct or gross misconduct;’

30.29 This applies to both sets of current regulations.

Regulation 2 (Interpretation)

30.30 The definition of “misconduct” in England and Wales contained in Regulation 2 of The Police (Conduct) Regulations 2020²⁸⁵ is ‘... a breach of the Standards of Professional Behaviour that is so serious as to justify disciplinary action’. This sets a higher threshold for misconduct than in Scotland where the definition in both sets of Regulations is “‘misconduct’ means conduct which amounts to a breach of the Standards of Professional Behaviour”. Adopting the English and Welsh definition would help to clarify and raise the threshold for matters which should go down the statutory route.

Regulation 8 (Suspension)

30.31 I recommend in the Evidence from other jurisdictions chapter that an additional statutory suspension condition for all constables should be created replicating the first statutory suspension condition that must be met before an appropriate authority in England and Wales can suspend an officer, namely:

“11(4)(a) having considered temporary redeployment to alternative duties or an alternative location as an alternative to suspension, the appropriate authority has determined that such redeployment is not appropriate in all the circumstances of the case, and”²⁸⁶

30.32 Such a statutory suspension condition in relation to all ranks of constable would help to ensure that suspension is not used precipitately either by Police Scotland, or by the Scottish Police Authority in respect of senior police officers.

²⁸⁵ <https://www.legislation.gov.uk/uksi/2020/4/regulation/1/made>

²⁸⁶ <http://www.legislation.gov.uk/uksi/2020/4/regulation/11>

30.33 Provision should be made for regular review of the suspension of an officer.

30.34 These two recommendations on suspension apply to both sets of current regulations.

Regulation 11 (Notice of investigation)

30.35 Regulation 11 (Regulation 12 of the senior officer regulations) provides the subject officer with “an opportunity to make written or oral representations”. The Review received evidence of a significant case where the officer under investigation was precluded by the regulations from making written representations at a particular point in the process. It would be reasonable to allow an officer to submit written representations at any point during the investigation and the regulations should not be written in such a way that subject officers are precluded from, or restricted in, offering their side of the story. Both sets of regulations should be amended to make clear that the investigating authority (Police Scotland or the PIRC) should consider any representations made by the officer under investigation rather than being restricted to only one opportunity. Written representations should be made available to the Chair of any misconduct proceedings at an appropriate point in the process.

30.36 This applies to both sets of current regulations.

Regulation 16 (Appointment of panel)

30.37 In the Scottish Police Authority chapter I recommend that all panels which consider gross misconduct hearings should consist of three members and have an independent legally qualified chair. The Chair should be appointed by the Lord President from the list of legally qualified persons maintained by him for the purposes of appointing members of Police Appeals Tribunals. All panels should also have an independent lay member appointed by the Lord President, and a policing member. (The Lord President should also be responsible for the appointment of the expert in senior policing for senior officer panels.)

30.38 For all gross misconduct hearings the Lord President should appoint the lay member from a pool of persons recruited through a publicly advertised process. The lay member should always be someone capable of understanding complex disciplinary issues. The Lord President should be consulted on this matter.

30.39 Panels must be seen to have a sufficient degree of impartiality in the process and it is certainly the case that, in all gross misconduct panels, the policing member should not previously have worked with the subject officer.

30.40 For officers of ranks up to and including superintendent the policing member should be a serving Police Scotland officer at least two ranks higher than the constable who is the subject of the misconduct allegation; that policing member should be appointed by the Chief Constable.

30.41 For officers of chief superintendent rank the policing member should be a senior officer from a police service or force other than Police Scotland or a retired senior officer or an Inspector of Constabulary; that policing member should be appointed by the Chief Constable.

30.42 For officers of assistant chief constable rank and above, the policing member should be a senior expert in policing; that policing member should be appointed by the Lord President.

30.43 Amendments would be required to both sets of current regulations.

Regulation 20 (Attendance of third parties)

30.44 In the Evidence from other jurisdictions chapter I recommend that gross misconduct hearings should be held in public. Regulation 20 (Regulation 21 in the senior officer regulations) currently states that, with the exception of specified third parties, “the misconduct proceedings are to be held in private”.

30.45 This applies to both sets of current regulations.

Regulation 23 (Notification of determination and action to be taken)

30.46 In the Evidence from other jurisdictions chapter I recommend that the outcome of gross misconduct proceedings should be made public and that the Chair's report, subject to any necessary redactions, should be published by the Scottish Police Authority (SPA) on its website for a period of no less than 28 days.

30.47 This applies to both sets of current regulations.

New Regulation (Misconduct pre-hearing)

30.48 In England and Wales Regulation 33 of The Police (Conduct) Regulations 2020²⁸⁷ defines the stages of the misconduct pre-hearing. Setting out the stages in this way would be a valuable addition to the Scottish regulations and may prevent unnecessary delay in the proceedings.

30.49 This applies to both sets of current regulations.

New Regulation (Accelerated misconduct hearings)

30.50 In the Evidence from other jurisdictions chapter I recommend the use of accelerated misconduct hearings. 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, I believe that the ability to conclude formal misconduct proceedings without delay is in the public interest and is fair to the officer concerned. Such

²⁸⁷ <https://www.legislation.gov.uk/uksi/2020/4/regulation/1/made>

provision should be included in regulations for all ranks of constable, as is the case in England and Wales.

30.51 This applies to both sets of current regulations.

New Regulation (Undisputed misconduct)

30.52 In their early submission to the Review Police Scotland suggested an amendment to The Police Service of Scotland (Conduct) Regulations 2014 which would allow the application of sanctions up to and including a verbal or written warning and thereby permit a prompt conclusion to a conduct matter where the officer does not dispute the facts or alleged conduct. I believe that such an amendment would be in the public interest provided there are sufficient safeguards to protect any officer from being pressurised into accepting a sanction.

30.53 This applies to both sets of current regulations.

New Regulation (Reporting restrictions, participation and exclusions from proceedings)

30.54 In England and Wales Regulation 39 of The Police (Conduct) Regulations 2020²⁸⁸ allows the person chairing the proceedings the discretion to apply a harm test intended to prevent the disclosure of information about the identity of a police witness, or prevent the disclosure of information which could cause a range of harms or not otherwise be in the public interest. In such circumstances the Chair may restrict attendance at the proceedings. This would be a useful discretion for the Chair of a misconduct hearing to have and should be provided for in the Scottish regulations.

30.55 This applies to both sets of current regulations.

²⁸⁸ <https://www.legislation.gov.uk/uksi/2020/4/regulation/1/made>

Schedule 1 - Standards of Professional Behaviour (Duty to assist)

30.56 In the Police Scotland chapter I recommend (as I did in the preliminary report) that the assumption of co-operation should be put beyond doubt in primary legislation (see above). I also recommend in that chapter that a statutory duty to assist should be included in both sets of conduct regulations, or any future combined regulations, to make explicit the duty to assist as below.

“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.”

30.57 This applies to both sets of current regulations.

The Police Service of Scotland (Senior Officers) (Conduct) Regulations 2013

30.58 There are currently three sets of senior officer conduct regulations which could be relevant to misconduct proceedings, the 1996, the 1999 and the 2013 regulations. The paragraphs in this section deal only with the most recent 2013 regulations which apply only to conduct of a senior officer occurring on or after 1 April 2013.

30.59 In the PIRC section I recommend that the key stages of the senior officer misconduct proceedings (both misconduct and gross misconduct) should in future be removed from the responsibility of the SPA and made subject to consideration by an independent legally chaired panel. I recommend the transfer of the preliminary assessment function from the SPA to the PIRC and that three related functions should also be transferred to the PIRC. The PIRC should take on the functions of receipt of complaints/allegations, preliminary assessment, referral to COPFS of criminal allegations and, where appropriate, referral to an independent legally chaired panel. Taken together these recommendations and others in this report require comprehensive amendment of The Police Service of Scotland (Senior

Officers) (Conduct) Regulations 2013 but the most significant amendments required would be to the individual regulations listed below.

30.60 In the PIRC chapter I also recommend that the PIRC should be given a new statutory function and power to present a case at a senior officer gross misconduct hearing.

30.61 Consideration should be given to the arrangements that will be in place until such time as responsibility for the senior officer functions have been transferred from the SPA to the PIRC.

Regulation 6 (Suspension)

30.62 I recommend that the Commissioner should have the power to recommend suspension of a senior officer to the SPA if she or he believes that not suspending the officer may prejudice an effective misconduct investigation. The PIRC should provide supporting reasons when they make such a recommendation to the SPA that a senior officer should be suspended.

Regulation 7 (Alleged offences)

30.63 I recommend that where the PIRC considers that it can be reasonably inferred that a senior officer may have committed a criminal offence the Commissioner must refer the matter to the Procurator Fiscal. This duty is currently placed on the SPA but should transfer to the PIRC.

Regulation 8 (Preliminary assessment)

30.64 I have recommended that the preliminary assessment function transfer from the SPA to the PIRC. Currently the SPA's preliminary assessment is followed, on referral, by an assessment by the Commissioner. The effect of what I am proposing

is that these two assessments should be combined in a duty placed on the PIRC. Similarly, the investigation by the SPA provided for in Regulation 11 would fall as all assessment and investigation would be conducted by the PIRC.

30.65 Where the SPA receives any complaint about a senior officer, they should be under a duty to refer all the allegations to the PIRC forthwith.

30.66 There should be a duty on the PIRC to keep the Scottish Police Authority informed, to an appropriate level, of progress in relation to an investigation or the decision on a hearing.

30.67 Having completed the preliminary assessment and decided not to proceed to the next stage, the PIRC may return the allegation to the SPA so that it can be dealt with through improvement action, HR action, the grievance procedure or the new Reflective Practice Review Process that I recommend in the Evidence from other jurisdictions chapter.

Regulation 10 (Investigation by the Commissioner)

30.68 Regulation 10 should be amended to provide that the Commissioner may investigate the conduct of any constable as part of any senior officer misconduct investigation where there is evidence that the subject senior officer has acted with a non-senior officer. This flexibility would streamline the investigation process and reflect a common-sense approach. Where it makes practical and operational sense to extend an ongoing investigation about alleged senior officer misconduct that should happen. This could also reduce duplication of inquiries and multiple interviews of witnesses.

30.69 In the Evidence from other jurisdictions chapter I recommend that provision should be made to allow for two or more officers to appear before a misconduct meeting or a hearing in relation to the same matter. The alleged misconduct may relate to different actions by each officer involved but relate to the same event but it will normally be considered appropriate to deal with all the matters together. There

may be particular circumstances where it is more appropriate to have separate hearings but the ability to hold a joint hearing would be a valuable addition to the procedures. Subject to safeguards needed to protect the rights of each individual officer, the regulations should provide for joint proceedings to deal with any officers, including senior officers.

30.70 The proposed provision for joint misconduct proceedings applies to both sets of current regulations.

Regulation 15 (Referral to a misconduct hearing)

30.71 In the PIRC chapter I recommend that the Commissioner herself or himself, or a Deputy Commissioner, should determine if there is a case to answer in respect of a senior officer and, if there is, should refer the misconduct allegation to a misconduct hearing the members of which are appointed by the Lord President.

Regulation 16 (Arrangement of misconduct hearing)

30.72 Currently Regulation 16(3)(d) specifies information that must be sent in a misconduct form to the senior officer not less than 20 days before the misconduct hearing. Amongst other things, that form must give notice of:

“(d) why, in the Authority’s opinion, it can be inferred from the established facts that the conduct which is the subject matter of the misconduct allegation amounts to — (i) misconduct; or (ii) (as the case may be) gross misconduct;”

30.73 Two minor amendments would clarify the meaning of this regulation, as follows:

“(d) why, in the Authority’s opinion, it can be **reasonably** inferred from the **evidence** in the report that the conduct which is the subject matter of the

misconduct allegation amounts to — (i) misconduct; or (ii) (as the case may be) gross misconduct;”

30.74 The equivalent wording in Regulation 15 of The Police Service of Scotland (Conduct) Regulations 2014 varies slightly but the amendments I propose apply equally to both sets of current regulations.

Regulation 19 (Procedure at misconduct hearing)

30.75 I also recommend in the PIRC chapter the creation a new function and power to enable the PIRC to present a case at a gross misconduct hearing for a senior officer. This function does not currently exist in the Scottish regulations but is a power available to the Independent Office for Police Conduct (IOPC) in England and Wales.

Regulation 24 (Notification of determination and action to be taken)

30.76 Regulation 24(4) provides that the SPA must notify, in writing, a member of the public who made a complaint relevant to the hearing of “the determination” of the hearing. This responsibility should transfer to the PIRC along with the other functions recommended for transfer in the PIRC chapter. The equivalent regulation in The Police Service of Scotland (Conduct) Regulations 2014 provides that a member of the public should be notified of “the determination and any disciplinary action ordered”. Regulation 24(4) should be amended to make it consistent with Regulation 23(4).

Regulation 26 (Appeal procedure)

30.77 In the SPA chapter I recommend that after the misconduct hearing chaired by an independent legally qualified person there should be only one route of appeal and that should be to a Police Appeals Tribunal, as at present. That recommendation is

subject to the Police Appeals Tribunals being transferred into the Scottish Courts and Tribunals Service (SCTS).

30.78 This applies to both sets of current regulations.

30.79 Regulation 26(8)(e) refers to Regulation 23 (Senior officer performance) of The Police Service of Scotland (Performance) Regulations 2013²⁸⁹. Regulation 23 was revoked by Section 42 (Revocation) of The Police Service of Scotland (Senior Officers) (Performance) Regulations 2016²⁹⁰. Regulation 26(8)(e) therefore needs to be appropriately amended to reflect that revocation.

New Regulation (Misconduct prior to 1 April 2013)

30.80 The 2013 regulations apply to conduct occurring on or after 1 April 2013. For conduct prior to 1 April 2013 the regulations only make provision (in Schedule 2) for any “transferred senior officer” who was an officer who was serving with one of the legacy forces transferred over to the Police Service of Scotland on 1 April 2013.

There is therefore a gap in provision in relation to a senior officer who is not a transferred senior officer and where the conduct is alleged to have occurred prior to 1 April 2013. All senior officers within Police Scotland should be subject to the same regime and therefore provision is required to deal with allegations of pre-2013 misconduct against those senior officers who are not transferred senior officers.

30.81 This issue been raised with the Review and does require to be rectified in the Regulations. It is likely that any legislative solution dealing with pre-2013 misconduct could only be applied prospectively because of the general presumption against retrospective legislation. That being the case, any new provision could only affect senior officers transferring to posts in Police Scotland from the point of commencement of the legislation onwards, but that is ultimately a matter for the Scottish Parliament to decide.

²⁸⁹ <https://www.legislation.gov.uk/ssi/2013/61/contents/made>

²⁹⁰ <https://www.legislation.gov.uk/ssi/2016/51/contents/made>

New Regulation (Misconduct prior to promotion to senior rank)

30.82 A new provision is required in the regulations to cover the circumstances where a senior officer faces an allegation of misconduct arising from the period when they were a junior officer but where the allegation does not come to light until after they had been promoted to the rank of assistant chief constable or above (i.e. a senior officer governed by the senior officer regulations).

30.83 The regulations should be amended to provide that the subject officer in question is dealt with under the senior officer regulations but that the penalties available to the panel are those which were in place at the time of the acts, omissions or relevant incidents. The provision should only apply to events taking place after commencement of the amending legislation.

The Police Investigations and Review Commissioner (Investigations Procedure, Serious Incidents and Specified Weapons) Regulations 2013

30.84 These regulations make provision about investigations which may be carried out by the Police Investigations and Review Commissioner.

Regulation 5 (Co-operation and assistance)

30.85 Regulation 5 places duties on the SPA and Police Scotland to co-operate with and assist the Commissioner in relation to investigations carried out under Section 33A(c) or 33A(d) of the Police, Public Order and Criminal Justice (Scotland) Act 2006²⁹¹ i.e. investigations at the request of the Scottish Police Authority, the Chief Constable or an investigation initiated by the Commissioner in the public interest. Regulation 5 does not apply to investigations directed by the Crown Office and

²⁹¹ <https://www.legislation.gov.uk/asp/2006/10/contents>

Procurator Fiscal Service (COPFS) under Section 33A(b) of the 2006 Act relating to investigations of criminality or deaths. PIRC investigators therefore have weaker enforcement powers when undertaking an investigation instructed by COPFS.

30.86 Regulation 5 should therefore be amended to provide the same powers to the Commissioner for COPFS-directed investigations as for investigations carried out under Section 33A(c) or 33A(d).

30.87 In oral evidence to the Justice Committee on 6 November 2018 the Scottish Human Rights Commission (SHRC) suggested that Regulation 5 should be amended to remove any doubt about whether former police officers and staff were under the same duty to co-operate and assist as serving police officers and staff are. I support that suggestion and propose that Regulation 5 should be amended accordingly.

30.88 I recommend that Regulation 5 should be amended in respect of both of these matters.

The Police Service of Scotland Regulations 2013

Regulation 9 (Discharge of probationer)

30.89 Where there is an allegation of misconduct against a probationary constable, this must be dealt with via the Police Service of Scotland (Conduct) Regulations 2014 in the first instance, rather than through the Police Service of Scotland Regulations 2013²⁹² which include provisions in relation to probationary constables. Regulation 9 of the 2013 Regulations deals with circumstances during the probationary period where it becomes apparent that it is unlikely that the constable on probation will become “an efficient or well conducted constable”. Police Scotland, in their submission to the Review, suggested that it would be more appropriate and

²⁹² <https://www.legislation.gov.uk/ssi/2013/35/contents/made>

proportionate to deal with such matters via Regulation 9 of the 2013 Regulations in the first instance.

30.90 I take the view that purpose of a probationary period is to inform the assessment of whether an individual is suited to their position and that assessment should take into account their conduct. I therefore recommend in the Evidence from other jurisdictions chapter of this report that the regulations governing probation should be amended so that a fair and speedy consideration of any allegation of misconduct can be dealt with during the probation period.

The Police Service of Scotland (Special Constables) Regulations 2013

30.91 Police Scotland in their submission to the Review suggested a revision of the Police Service of Scotland (Special Constables) Regulations 2013²⁹³ in respect of special constable misconduct to align them with The Police Service of Scotland (Conduct) Regulations 2014. The intention would be to ensure consistency in assessment and investigation of misconduct by special constables and regular police officers. I support that principle and therefore suggest that such a revision is carried out, taking into account any other relevant changes to the conduct regulations that are made following the recommendations in this report.

The Police Appeals Tribunal (Scotland) Rules 2013

30.92 The Police Appeals Tribunal (Scotland) Rules 2013²⁹⁴ may require minor consequential amendment as a result of the implementation of some of the changes to the conduct regulations described above.

²⁹³ <https://www.legislation.gov.uk/ssi/2013/43/made>

²⁹⁴ <https://www.legislation.gov.uk/ssi/2013/63/made#:~:text=The%20Police%20Appeals%20Tribunals%20%28Scotland%29%20Rules%202013.%20The,all%20other%20powers%20enabling%20them%20to%20do%20so.>

Reserved legislation

The Public Interest Disclosure (Prescribed Persons) Order 2014

30.93 In the Whistleblowing chapter of this report I recommend that the Police Investigations and Review Commissioner should be added to the list of prescribed persons in The Public Interest Disclosure (Prescribed Persons) Order 2014²⁹⁵ 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. That would require amendment of the Public Interest Disclosure (Prescribed Persons) Order 2014 which is legislation that is reserved to the Westminster Parliament.

The Police Barred List and Police Advisory List Regulations 2017²⁹⁶

30.94 In the Former police officers chapter of this report I recommend that the Scottish Government should develop proposals for primary legislation that would allow misconduct proceedings in respect of any police officer or former police officer to continue, or commence, after the individual ceases to hold the office of constable; and that the Scottish Government should engage with the UK Government with a view to adopting Police Barred and Advisory Lists, to learn from experience south of the border and to ensure compatibility and reciprocal arrangements across jurisdictions.

30.95 Taking forward these recommendations would involve a combination of devolved and reserved legislation, both primary and secondary.

²⁹⁵ https://www.legislation.gov.uk/uksi/2014/2418/pdfs/uksi_20142418_en.pdf

²⁹⁶ <https://www.legislation.gov.uk/uksi/2017/1135/made>

LIST OF ALL FINAL REPORT RECOMMENDATIONS (1-81)

Code of Ethics

1. Recommendation: 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.

Review of 'assault' and 'excessive force' categorised complaints

2. Recommendation: The Criminal Allegations Against Police Division (CAAP-D) of COPFS should repeat on a regular basis the review that they carried out of all the 'assault' and 'excessive force' categorised complaints that had been received by Police Scotland in the month of March 2020.

Police Scotland

3. Recommendation: Other than for pressing operational reasons, police officers involved in a death in custody or serious incident, whether as principal officers or witnesses to the incident should not confer or speak to each other following that incident and prior to producing their initial accounts and statements on any matter concerning their individual recollections of the incident, even about seemingly minor details. As with civilian witnesses, all statements should be the honestly held recollection of the individual officer.
4. Recommendation: The quarterly Police Scotland performance report to the SPA Complaints and Conduct Committee should identify five-year trends.
5. Recommendation: Police Scotland and the Scottish Police Authority should consider expanding the collection of diversity data and the publication of information in order to enhance their understanding, and public understanding, of attitudes and concerns in different communities.

6. Recommendation: All officers and support staff in Police Scotland's Professional Standards Department (PSD) should receive comprehensive induction training on taking up post and regular refresher development opportunities thereafter.
7. Recommendation: The next follow-up audit of the six-stage complaint handling process or audit of frontline resolution should be carried out by the PIRC as an independent third party.
8. Recommendation: The Scottish Government should amend the relevant provisions of the Police, Public Order and Criminal Justice (Scotland) Act 2006 at the earliest opportunity to put beyond doubt the definition of a "person serving with the police".
9. Recommendation: It is inappropriate to involve local officers in the frontline complaints process and therefore all frontline resolution should be carried out by Professional Standards Department.
10. Recommendation: The Scottish Government should propose amendment of the Police and Fire Reform (Scotland) Act 2012 to the following effect: There should be an explicit duty of candour on the police to co-operate fully with all investigations into allegations against its officers.
11. Recommendation: Police Scotland should consider the workload of the sergeant rank at the front line and the supervisory ratio of sergeants to constables in order to give create sufficient capacity for management, coaching and mentoring duties.
12. Recommendation: 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."

13.Recommendation: The Scottish Government should consider the case for giving the PIRC a specific legislative power that would enable staff to access the Centurion database from its own offices so that contemporaneous audit is possible. Providing a basis in law for accessing any information relevant to the PIRC's statutory functions should ensure compatibility with GDPR and any other relevant data protection legislation.

14.Recommendation: Police Scotland's Executive team should consider in depth and review the criteria and competencies that it uses to assess police officers' readiness for promotion.

Inclusion, diversity and discrimination

15.Recommendation: Police Scotland should make use of staff surveys to enhance their understanding of the experience of all minority groups in the service and senior officers should make more use of face-to-face meetings and focus groups with members of these groups to gain a more acute understanding of the impacts of discrimination, prejudice and unconscious bias.

16.Recommendation: Police Scotland should implement, where it is in their gift, the SEMPER Scotland proposal that the composition of panel members for disciplinary hearings should be more diverse.

17.Recommendation: Appropriate support for anyone in Police Scotland who is the subject of internal or external discrimination should be enhanced.

18.Recommendation: In the light of the very worrying evidence that I have received, I consider that issues related to discrimination and their impact on public confidence in Police Scotland should be the subject of a broader, fundamental review of equality matters by an independent organisation. That review should take into account HMICS's proposed inspection of Training and

Development that is to concentrate on the recruitment, retention, development and promotion of under-represented groups.

19. Recommendation: Police Scotland should develop its diversity data collection and analysis to inform a proper understanding of issues related to discrimination so that progress can be made and those issues addressed. The service should consider what it can learn from how this is done by the Police Ombudsman for Northern Ireland and the Garda Síochána Ombudsman Commission respectively.

Whistleblowing

20. Recommendation: The Police Investigations and Review Commissioner should be added to the list of prescribed persons in The Public Interest Disclosure (Prescribed Persons) Order 2014 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.
21. Recommendation: Whistleblowing can be an indicator of what is happening within an organisation and therefore Police Scotland should review and audit its whistleblowing arrangements and data on a regular basis.

Former police officers

22. Recommendation: The Scottish Government should develop proposals for primary legislation that would allow, from the point of enactment, gross misconduct proceedings in respect of any police officer or former police officer to continue, or commence, after the individual ceases to hold the office of constable.
23. Recommendation: In gross misconduct cases, for all ranks, the Police Investigations and Review Commissioner should determine if it is reasonable and proportionate to pursue disciplinary proceedings in relation to former police officers 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.

24. Recommendation: The Scottish Government should engage with the UK Government with a view to adopting Police Barred and Advisory Lists, to learn from experience south of the border and to ensure compatibility and reciprocal arrangements across jurisdictions.

The Scottish Police Authority

25. Recommendation: The statutory preliminary assessment function should be transferred from the SPA to the 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. The preliminary assessment should be carried out by the Commissioner or a Deputy Commissioner.

26. Recommendation: PIRC should work collaboratively with the SPA to agree and embed a proportionate and effective approach to preliminary assessment (for Regulation 8 of the senior officer conduct regulations) until such time as new regulations come into effect.

27. Recommendation: Gross misconduct hearings for all ranks should have 1) an independent legally qualified chair 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.

28. Recommendation: 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. This

recommendation is subject to the Police Appeals Tribunals being transferred into the Scottish Courts and Tribunals Service.

29. Recommendation: The SPA Complaints and Conduct Committee should hold Police Scotland to account for delays in investigations into complaints and misconduct. Where there is evidence of excessive delays in PIRC investigations having an effect on policing in Scotland the Committee should raise the matter with the Commissioner.

30. Recommendation: To increase public confidence in the system the SPA Complaints and Conduct Committee should consider using its minutes as a means of sharing with the public more of their substantive discussions and how Police Scotland is being held to account in this area; and consider whether some content of the minutes of the private sessions, where some strategic and policy matters are discussed, could be included in the published minutes.

31. Recommendation: The SPA Complaints and Conduct Committee's scrutiny function should be reported on in the SPA annual report, drawing out particular trends, highlighting improvements or concerns and using complaints data as an indicator of communities' satisfaction or dissatisfaction with policing services.

32. Recommendation: The Scottish Police Authority and Police Scotland should consider together what role the SPA Complaints and Conduct Committee, or the Policing Performance Committee, might have in relation to the discussion of ethical issues in policing in Scotland.

Local scrutiny committees

33. Recommendation: Local scrutiny committees should consider, in consultation with Police Scotland's local divisional commanders and the COSLA Police Scrutiny Convenors Forum, what further complaints information or discussion would assist their scrutiny of the police.

The Police Investigations and Review Commissioner

34. Recommendation: The 2006 Act should be amended to re-designate PIRC as a Commission comprising one Police Investigations and Review Commissioner and two Deputy Commissioners, to create a statutory Board and to provide for the necessary appointment arrangements. Given the sensitivity of the office of the Commissioner, the role should be strengthened by the appointment of two Deputies with relevant legal expertise or other relevant experience who are not former senior police officers.
35. Recommendation: The Police Investigations and Review Commissioner should be appointed by Her Majesty The Queen on the nomination of the Scottish Parliament and should be made accountable to the Scottish Parliament through the Scottish Parliamentary Corporate Body and the committees of the Parliament, but not for criminal matters, for which the Commissioner is accountable to the Lord Advocate, and not for operational matters or decisions in which she acts independently. This 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.
36. Recommendation: The ultimate ability of a member of the public to take a complaint against the PIRC or the Commissioner to the Scottish Public Services Ombudsman when they are dissatisfied with how that complaint has been handled by the PIRC in the first instance should be highlighted more prominently on the PIRC website.
37. Recommendation: The PIRC should be given a statutory power to call in an investigation of a complaint if there is sufficient evidence that Police Scotland has not dealt with a complaint properly, where the complainer provides compelling evidence of a failure on the part of Police Scotland and where the

Commissioner assesses that it would be in the public interest to carry out an independent re-investigation.

38. Recommendation: The PIRC should have an additional power, similar to the PONI's, to investigate a current practice or policy of Police Scotland if she believes that it would be in the public interest to do so; this power should be used to focus on broad themes or trends, or practices which might be of particular public concern.
39. Recommendation: The PIRC should take on responsibility for the key stages of the senior officer misconduct proceedings (both misconduct and gross misconduct) i.e. the functions of receipt of complaints/allegations, preliminary assessment, referral to COPFS of criminal allegations and, where appropriate, referral to an independent legally chaired panel.
40. Recommendation: The PIRC should be given a new statutory function and power to present a case at a senior officer gross misconduct hearing where the case would be determined by a three-person panel comprising an independent legally qualified chair, a lay person and an expert in senior policing.
41. Recommendation: The PIRC should have the power to recommend suspension of a senior officer if she or he believes that not suspending the officer may prejudice an effective misconduct investigation. The PIRC should provide supporting reasons when they make such a recommendation to the SPA that a senior officer should be suspended.
42. Recommendation: The PIRC should conduct an annual audit of triage within PSD of public complaints against the police to ensure that matters that can be resolved by FLR, or misconduct, or potential criminality are being properly identified and routed accordingly, and to provide assurance that Article 3 and Article 5 cases are being correctly identified and reported forthwith to COPFS.

43. Recommendation: The case for all complaints being received by an independent police complaints body such as the PIRC 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.
44. Recommendation: The PIRC should ensure that discrimination issues are considered as an integral part of their work. A systematic approach should be adopted across the organisation and in all cases investigators should consider if discriminatory attitudes have played a part.
45. Recommendation: PIRC should publish their performance against set targets for complaint handling reviews and investigations in the Commissioner's annual report.

The Crown Office and Procurator Fiscal Service

46. Recommendation: The ability to report directly to the Criminal Allegations Against Police Division of COPFS a complaint of a crime by a police officer should be much better publicised and made more accessible to the public by COPFS, by Police Scotland and by the PIRC.
47. Recommendation: Where the terms of a complaint made allege a breach of Article 3 by a police officer, and therefore that a crime may have been committed, the Crown Office and Procurator Fiscal Service should instruct the PIRC to carry out an independent investigation rather than directing Police Scotland to investigate it; breaches of Article 5 may, depending on the circumstances and seriousness of the case, likewise require early independent investigation.

Accessibility and communication

48. Recommendation: Police Scotland should publicise the right to complain as well as how to complain by displaying posters in police stations and other public buildings on how to make a complaint about, pay a compliment to, or submit a comment on Police Scotland.

49. Recommendation: The Know your Rights section of the Police Scotland website for young people should be amended to make clear their right to make a complaint.

50. Recommendation: Police Scotland should have discussions with a number of the third-party reporting centres for hate crime, including those representing minority groups, and secure their agreement to offer third-party support for those who wish to make a complaint against the police.

Recommendations based on evidence from other jurisdictions

51. Recommendation: Provision equivalent to that in England and Wales for 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.

52. Recommendation: Police officer gross misconduct hearings should be held in public. The Chair should have discretion to restrict attendance as appropriate but the aim should be to ensure that as much of a hearing is held in public as possible.

53. Recommendation: In addition to the existing protections for witnesses, the Chair of the gross misconduct hearing should consider whether the evidence of any vulnerable witnesses should be heard in private and they should also be under an obligation to consider any other reasonable adjustments that they

believe to be necessary to ensure the protection of such vulnerable witnesses. This may include the officer who is the subject of the proceedings.

54. Recommendation: The 2012 Act should be amended to confer on Scottish Ministers a power to issue statutory guidance in respect of conduct and a duty to consult on any such guidance, and confer a duty on policing bodies to have regard to any such guidance. Scottish Ministers should use that power at the earliest opportunity to issue guidance in respect of a new Reflective Practice Review Process. That guidance should build on the spirit of existing Scottish guidance and take into account any valuable elements of English and Welsh best practice.
55. Recommendation: Subject to safeguards needed to protect the rights of each individual officer, the regulations should make provision for the possibility of joint misconduct proceedings to deal with any number of officers, including senior officers.
56. Recommendation: The regulations governing probation (the Police Service of Scotland Regulations 2013) should be amended so that a fair and speedy consideration of any allegation of misconduct can be dealt with during the probation period.
57. Recommendation: A statutory suspension condition in England and Wales that temporary redeployment to alternative duties or an alternative location should have been considered as an alternative to suspension should be replicated in Scottish regulations in relation to all ranks of constable. Provision should also be made for regular review of the suspension of an officer.
58. Recommendation: The outcome of gross misconduct proceedings should be made public. The Chair's report, subject to any necessary redactions, should be published by the Scottish Police Authority on its website for a period of no less than 28 days.

Audit

59. Recommendation: In order to ensure public confidence in the police, the SPA should confirm each year in its annual report whether or not in its view, based on an informed assessment by the Complaints and Conduct Committee and evidence from the relevant audits, the Chief Constable has suitable complaint handling arrangements in place.
60. Recommendation: At the point at which people make complaints Police Scotland should collect and analyse data to enable them to undertake demographic modelling and gain a better understanding of different groups and communities' experience of the police service.
61. Recommendation: Both Police Scotland and the PIRC should consider drawing on the expertise of Audit Scotland and the Scottish Public Services Ombudsman in re-designing the audit arrangements in respect of police complaints.

Training

62. Recommendation: Police Scotland should appoint a PSD training officer to maintain the momentum in training and development arising from its internal Risk, Assurance and Inspection (RAI) team audit, and to liaise with the SPSO, the PIRC and the SPA on joint training, best practice and other relevant development opportunities.
63. Recommendation: PIRC complaint handling review officers and trainee investigators should work-shadow police officers at peak times to see at first hand the atmosphere and environment in which police officers are obliged to make decisions that can have serious implications.

64. Recommendation: PIRC should deploy the in-house expertise that the organisation has to deliver internal training for investigators in the law of evidence.
65. Recommendation: PIRC and Police Scotland should work together to develop training and development opportunities that take the theoretical learning from thematic analysis of complaints and embed it in practical learning for individual officers.
66. Recommendation: All Police Scotland officers and staff should receive training on unconscious bias, equality legislation and diversity; this should be updated throughout their career, with the opportunity for refresher courses at regular intervals.
67. Recommendation: Police Scotland officers should receive regular training inputs on how to deal effectively with individuals who display mental ill-health symptoms or related behaviours.

Public sector best practice

68. Recommendation: The Strategic Oversight Group or the National Complaint Handling Development Group should take an early opportunity to engage with the SPSO to agree where their contribution and advice would be most useful.

Custody

69. Recommendation: The Scottish Government should consider adding to the Letter of Rights a contextual reference to the individual's general rights; and a reference to the individual's right to complain (either while in custody or thereafter) about their treatment.
70. Recommendation: Independent Custody Visitors should, as a matter of course, check with custody officers and with detainees that a third party has been notified of their detention.

71. Recommendation: As soon as it is reasonable and feasible to do so, HMICS, along with the appropriate health inspection or audit body, should conduct a Review of the efficiency and effectiveness of the whole-system approach to mental health.

72. Recommendation: NHS accident and emergency facilities should be designed to be able to deal safely with mental health care and acute crises.

Complaints arising from deaths in police custody or following police contact

73. Recommendation: Investigations involving death or serious injury in police custody are likely to be amongst the most serious and complex cases the PIRC has to investigate. Delay can add to the distress of families and have an adverse impact on those police officers involved in the circumstances of the death. Such cases should be dealt with in the same timescale and with the same urgency as a homicide investigation.

74. Recommendation: In Article 2 cases, in order to facilitate their effective participation in the whole process, there should be access for the immediate family of the deceased to free, non-means tested legal advice, assistance and representation from the earliest point following the death and throughout the Fatal Accident Inquiry.

75. Recommendation: Many of the issues identified in the 2017 report of my Independent Review of Deaths and Serious Incidents in Police Custody in England and Wales are also directly relevant in the Scottish context. The Scottish Government should consider which of the findings and recommendations made in that report could and should be mirrored by public bodies in Scotland.

76. Recommendation: For cases where the Fatal Accident Inquiry may last several weeks, the Scottish Government should consider the feasibility of a

scheme to pay reasonable travel and subsistence expenses and compensation for loss of earnings of the next of kin.

Officer and support staff welfare

77.Recommendation: Any restricted duties or transfers imposed for the duration of an investigation should take into account, where appropriate, the individual's family circumstances, and subject officers or staff should be offered the opportunity to access appropriate support services provided by Police Scotland.

Time limits

78.Recommendation: The Chief Constable should publish annually Police Scotland's performance in dealing with complaints against the time-scales set out in the statutory guidance.

79.Recommendation: The Scottish Police Authority Complaints and Conduct Committee should scrutinise Police Scotland's performance in dealing with complaints and hold the service to account where the targets are not being achieved.

80.Recommendation: A non-statutory time limit for the submission of complaints by the public should be made explicit in the PIRC's statutory guidance and publicised on the relevant websites. Complaints made more than twelve months after the event or incident should only be considered where the circumstances are grave or exceptional.

Cross-border jurisdictional issues

81.Recommendation: The Scottish Government should agree with the UK Government and the Northern Ireland Executive how best to amend the primary legislation to give the PIRC the power, in clearly defined circumstances, to investigate the actions of officers from PSNI and English

and Welsh police forces or services, and the other three reserved police forces, when they are undertaking a policing function in Scotland; and explore with the other administrations how reciprocal powers could be put in place for the IOPC and the PONI in respect of the actions of Police Scotland officers when they are operating in England, Wales or Northern Ireland.

November 2020

**LIST OF ALL PRELIMINARY REPORT RECOMMENDATIONS (1-30) AND
UPDATES ON PROGRESS SINCE JUNE 2019**

1. Recommendation: Given the importance and sensitivity of such allegations it is recommended that all such allegations of excessive force should continue to be reported immediately by PSD to CAAP-D for instruction and investigation by the independent Procurator Fiscal or by PIRC on the directions of the Procurator Fiscal of CAAP-D.

(Update: CAAP-D and PSD agreed to revise the procedures and practice for reporting cases to ensure that allegations were being suitably assessed and categorised by PSD.)

2. Recommendation: Police Scotland should review the service-wide capability of its line managers to line manage effectively, including the adequacy of training and mechanisms of support for line managers.

(Update: Police Scotland have developed an action plan that includes ensuring all managers are trained and aware of their responsibilities and accountabilities.)

3. Recommendation: Police Scotland should consider the scope for employing more non-police officer support staff in PSD with appropriate seniority, skills and level of knowledge of complaints handling. This is an option that Police Scotland may wish to ask HMICS to review.

(Update: Not yet progressed.)

4. Recommendation: Police Scotland should scrutinise complaints thoroughly on receipt so as to ensure that grievance matters that would in any other walk of life be treated in an HR context are not artificially elevated and dealt with as conduct matters.

(Update: Cases are now discussed at weekly PSD meetings to prevent matters being artificially elevated to conduct and to ensure any grievance cases are referred to HR.)

5. Recommendation: Frontline resolution of complaints should be subject to close and regular monitoring through regular, meaningful internal and external audits, and monitoring of decision-making.

(Update: A methodology has been developed for a yearly internal audit of the end-to-end complaints process. The National Complaint Handling Development Group is developing arrangements for an annual multi-agency audit of Police Scotland's complaint handling involving the SPA, Police Scotland and the PIRC.)

6. Recommendation: Police Scotland should adjust its practice in respect of "Early intervention". Officers should be made aware that they are the subject of a complaint against them at the earliest practicable point, provided that such early disclosure would not prejudice any investigation of a complaint.

(Update: A nationally consistent process has been agreed; where an officer is identified through a complaint they are notified through their supervisor before the case is closed in order to ensure any learning requirements or wider issues are addressed.)

7. Recommendation: PIRC should be given appropriate access to the Police Scotland Centurion system for the purposes of contemporaneous audit of complaints and to help facilitate early PIRC awareness of criminal allegations.

(Update: PSD has offered access through PIRC attending at a designated police station. The PIRC and PSD will continue to pursue the possibility of remote access in the longer term.)

8. Recommendation: Police Scotland should simplify and streamline systems to make it as straightforward as possible for members of the public to navigate this rather opaque landscape and as easy as possible for them to access and understand information on how to make a complaint. In particular the online complaints form on the Police Scotland website should be made more prominent.

(Update: Police Scotland has reviewed, improved and tested access to the website to ensure that the online complaint form is simple to access and that sufficient guidance is provided regarding the complaints process. As a result, searching online for how to complain is now easier and quicker. The SPA Complaints web page has also been updated and simplified.)

9. Recommendation: To encourage appropriate use of mediation and grievance procedures Police Scotland should raise awareness and understanding

amongst all members of the service of their own internal systems and which matters belong where in order to ensure a proportionate response.

(Update: As part of the national training programme, probationers are given an overview of the role of the PSD with a focus on Standards of Professional Behaviour.)

10.Recommendation: Police Scotland should consider the importance of providing all officers involved in frontline resolution with training in mediation and customer handling.

(Update: Police Scotland are reviewing internal mediation services and developing a bespoke mediation and customer handling training package for Complaints Assessment and Resolution Units and Contact, Command and Control Division.)

11.Recommendation: Police Scotland should accelerate its plans to expand the use of body-worn video technology.

(Update: Police Scotland has acknowledged the potential benefits associated with the introduction of body-worn video cameras. Budgetary constraints have prevented any further progress on procurement.)

12.Recommendation: Police Scotland is a young but now established national organisation with a stable leadership team. This is a good opportunity to reflect on the culture of the new service, address any long-standing issues and consider how everyone in the organisation can help to change that culture for the better.

(Update: Police Scotland has now established a team within the Professional Standards function to lead on the development of preventative and awareness-raising strategies to protect, educate and support people in relation to the organisation's values and Code of Ethics.)

13.Recommendation: The Scottish Government should consider the case for amending the legislation to include a provision to deal with vexatious complainers.

(Update: This recommendation is dependent on changes to legislation. In the meantime Police Scotland, the SPA and the PIRC are aligning their unacceptable actions policies for dealing with vexatious or malicious complaints to ensure that they are consistent, robust and efficient.)

14.Recommendation: Subject to the fundamental right to silence or privilege against self-incrimination of a suspect under Article 6 of Convention Rights,

police officers should give every assistance after a serious incident. That assumption of co-operation should be put beyond doubt in the primary legislation, including in the wording of the constable's declaration.

(Update: This recommendation is dependent on changes to legislation. I further recommend in the Police Scotland chapter of this report that a specific statutory duty to assist be added to the Standards of Professional Behaviour.)

15. Recommendation: Where a serious incident is being investigated by the PIRC, the investigators should also have a power, where it is necessary and proportionate, to compel police officers to attend within a reasonable timescale for interview.

(Update: This recommendation is dependent on changes to legislation. I further recommend in the Police Scotland chapter of this report that constables should 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.)

16. Recommendation: Complaints against senior officers should be prioritised and dealt with, by both the PIRC and the SPA, as speedily as is reasonable, because of the destabilising impact a prolonged investigation can have.

(Update: The Commissioner and her senior management team have taken steps to speed up processes within PIRC.)

17. Recommendation: Further training for complaints and conduct officers in SPA should be consolidated and broadened in order to ensure the right skillset and up-to-date knowledge of complaint handling best practice in other sectors.

(Update: SPA offer their staff the opportunity to attend Queen Margaret University's course in Complaints and Ombuds Techniques which looks at how organisations can respond effectively to complaints and how they can learn from complaints.)

18. Recommendation: The range of options available to the SPA when a senior police officer is under investigation under the conduct regulations should be clarified and expanded, to provide alternatives to suspension.

(Update: This recommendation is dependent on changes to legislation.)

19. Recommendation: Any process for preliminary assessment of senior officer misconduct should require the relevant authority both to take into account whether the allegation is made anonymously, is specific in time and location,

or whether it appears, on the face of the allegation, to be either vexatious or malicious. Scottish Government should consider amending the conduct regulations to reflect this process.

(Update: This recommendation is dependent on changes to legislation. The SPA has consulted the Scottish Chief Police Officers' Staff Association and PIRC on draft amendments to the 'SPA Complaints Handling Procedures' and 'Guidance on the Police Service of Scotland (Senior Officers) (Conduct) Regulations 2013'.)

20. Recommendation: The PIRC should consider the case for creating some measure of regional presence to enhance its capacity to respond immediately to the most serious incidents wherever they occur.

(Update: The Commissioner has confirmed that PIRC has an MoU with Police Scotland which provides that Police Scotland will secure the scene of the incident with the PIRC taking over on arrival. I have also suggested in the PIRC chapter that it may be possible for PIRC to create a regional presence by employing investigators who work from home for most of the working week or for PIRC staff to have access, in the rare instances when it would be required, to a contracted helicopter service or the Police Scotland helicopter in order for them to access remote locations as speedily as possible.)

21. Recommendation: 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.

(Update: 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.)

22. Recommendation: The Commissioner, or potentially a Deputy Commissioner, should be vested with a statutory power to make recommendations in addition to the existing powers to direct reconsideration of complaints. The corollary to that is 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 with a PIRC recommendation and an obligation on PSD to report progress back to the PIRC. Those statutory arrangements should be supported by agreement

between the PIRC and Police Scotland on how the PIRC will be kept advised of progress.

(Update: This recommendation is dependent on changes to legislation.)

23.Recommendation: The PIRC should consider the case for building into its structure legal support and advice capacity.

(Update: The Commissioner has agreed that the PIRC requires more legal expertise and capacity and that the option of a legally qualified Deputy Commissioner would be of distinct benefit.)

24.Recommendation: 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.

(Update: In the period since this recommendation was made in June 2019 there has been no requirement to recruit to the most senior PIRC posts.)

25.Recommendation: There should be a management review by an independent expert to ensure that the PIRC has appropriate leadership, skills and culture to carry out its functions in the future, and to examine interactions with other stakeholders and how they can be improved.

(Update: The new Commissioner has made a number of significant changes within the PIRC organisation and has indicated that PIRC may not require to pursue a management review.)

26.Recommendation: There should be the immediate establishment of a senior cross-agency joint Working Group involving the SPA, Police Scotland and the PIRC to develop appropriate and up-to-date guidance.

(Update: The Strategic Oversight Group (SOG) evolved from the previous Quad meeting, which brought together senior representatives of Police Scotland, the SPA, the PIRC and COPFS. The National Complaint Handling Development Group reports to the SOG and includes representatives from the PIRC, the Scottish Police Authority and the Professional Standards Department. There has been progress in revising the statutory guidance. Other new guidance will be dependent on the findings of this report.)

27.Recommendation: All the audit arrangements, including regular dip-sampling, designed to identify poor practice, good practice and emerging trends should

be prioritised and co-ordinated to support the common objective of improving standards and service to the public.

(Update: The National Complaint Handling Development Group is developing arrangements for an annual multi-agency audit of Police Scotland's complaint handling involving the SPA, Police Scotland and the PIRC.)

28.Recommendation: The Scottish Government should introduce Barred and Advisory lists and should engage with the UK Government to ensure compatibility and learn from their experience.

(Update: This recommendation is dependent on changes to legislation.)

29.Recommendation: The Scottish Government should amend the relevant provisions at the earliest opportunity to put beyond doubt the definition of a "person serving with the police".

(Update: This recommendation is dependent on changes to legislation.)

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

(Update: This recommendation is dependent on changes to legislation.)

Terms of Reference

The purpose of the Review is 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.

Whilst the Review will encompass the investigation of criminal allegations against the police, it will not address the separate role of the Lord Advocate in investigating criminal complaints against the police or the role of HMICS in scrutinising the state, effectiveness and efficiency of both the Police Service of Scotland (Police Scotland) and the Scottish Police Authority (SPA). The consideration of specific complaints and investigations will not form part of the review beyond informing an overall assessment of the efficacy of current systems and processes.

The Review will consist of two phases:

- The **first phase** will include a consideration of current procedures and guidance to identify areas for immediate improvement;
- The **second phase** will include a wider assessment of the frameworks and practice in relation to complaints handling, investigations and misconduct issues, covering the Police Investigations and Review Commissioner, the SPA and Police Scotland. Recommendations in the final report should take into account human rights considerations, as well as seeking to identify longer-term improvements.

Relevant legislation and guidance

- [Police, Public Order and Criminal Justice \(Scotland\) Act 2006 as amended](#)
- [Police and Fire Reform \(Scotland\) Act 2012](#)
- [Ethical Standards in Public Life etc. \(Scotland\) Act 2000](#)
- [Equality Act 2010](#)
- [The Police \(Conduct\) \(Senior Officers\) \(Scotland\) Regulations 1996](#)
- [The Police \(Conduct\) \(Senior Officers\) \(Scotland\) Regulations 1999](#)
- [The Police Service of Scotland \(Senior Officers\) \(Conduct\) Regulations 2013](#)
- [The Police \(Conduct\) \(Scotland\) Regulations 1996](#)
- [The Police Service of Scotland \(Conduct\) Regulations 2013](#)
- [The Police Service of Scotland \(Conduct\) Regulations 2014](#)
- [The Police Service of Scotland \(Senior Officers\) \(Performance\) Regulations 2016](#)
- [The Police Service of Scotland \(Performance\) Regulations 2013](#)
- [The Police Investigations and Review Commissioner \(Investigations Procedure, Serious Incidents and Specified Weapons\) Regulations 2013](#)
- [The Police Service of Scotland Regulations 2013](#)
- [The Police Service of Scotland \(Special Constables\) Regulations 2013](#)
- [The Police Appeals Tribunal \(Scotland\) Rules 2013](#)
- [The Public Interest Disclosure \(Prescribed Persons\) Order 2014](#)
- [The Police Barred List and Police Advisory List Regulations 2017](#)
- [From sanctions to solutions PCCS/PIRC Statutory Complaints Handling Guidance](#)
- [Revisions to sanctions to solutions, following creation of PIRC on 1 April 2013](#)
- [SPA Code of Conduct for members](#)

Standards of Professional Behaviour

(Replicated from Schedule 1 to The Police Service of Scotland (Conduct) Regulations 2014)

- **Honesty and integrity**

Constables are honest, act with integrity and do not compromise or abuse their position.

- **Authority, respect and courtesy**

Constables act with self-control and tolerance, treating members of the public and colleagues with respect and courtesy.

Constables do not abuse their powers or authority and respect the rights of all individuals.

- **Equality and diversity**

Constables act with fairness and impartiality. They do not discriminate unlawfully or unfairly.

- **Use of force**

Constables use force only to the extent that it is necessary, proportionate and reasonable in all the circumstances.

- **Orders and instructions**

Constables give and carry out only lawful orders and instructions.

- **Duties and responsibilities**

Constables are diligent in the exercise of their duties and responsibilities.

- **Confidentiality**

Constables treat information with respect and access or disclose it only in the proper course of their duties.

- **Fitness for duty**

Constables when on duty or presenting themselves for duty are fit to carry out their responsibilities.

- **Discreditable conduct**

Constables behave in a manner which does not discredit the Police Service or undermine public confidence in it, whether on or off duty.

Constables report any action taken against them for a criminal offence, any conditions imposed on them by a court or the receipt of any penalty notice.

- **Challenging and reporting improper conduct**

Constables report, challenge or take action against the conduct of other constables which has fallen below the Standards of Professional Behaviour.

List of written submissions to the call for evidence

94 individuals made written submissions

1. Police Scotland
2. Her Majesty's Inspectorate of Constabulary in Scotland
3. Scottish Chief Police Officers' Staff Association
4. Scottish Public Services Ombudsman
5. Law Society of Scotland
6. Police Investigations and Review Commissioner
7. Association of Scottish Police Superintendents
8. Scottish Women's Rights Centre
9. Scottish Police Authority
10. Scottish Police Federation
11. Retired Police Officers' Association Scotland
12. Scottish Legal Complaints Commission

Code of Ethics for policing in Scotland

This Code of Ethics for Policing in Scotland sets out the standards expected of all of those who contribute to policing in Scotland. This is neither a discipline code nor an unattainable aspirational tool.

Rather this Code is a practical set of measures, which reflect the values of the Police Service of Scotland. We are all responsible for delivering a professional policing service to all people across the country. This Code sets out both what the public can expect from us and what we should expect from one another.

Integrity

I recognise my role in policing as being a symbol of public faith and trust and the obligation this places upon me to act with integrity, fairness and respect.

I shall behave in a way which reflects the values of policing in Scotland.

I understand I am personally responsible for my own actions and will appropriately exercise my discretion.

I shall act as a positive role model in delivering a professional, impartial service, placing service to communities before my personal aims.

I will not accept any gift or gratuity that could, or could be perceived to, compromise my impartiality.

I shall avoid all behaviour, which is or may be reasonably considered as abusive, bullying, harassing or victimising.

I will demonstrate and promote good conduct and I will challenge the conduct of colleagues where I reasonably believe they have fallen below the standards set out in this Code.

Fairness

I will act with courage and composure and shall face all challenges with self-control, tolerance and impartiality.

I will promote a positive wellbeing within the community and service and ensure that all people have fair and equal access to police services according to their needs.

I shall maintain an open attitude and continue to improve my understanding and awareness of cultural, social and community issues.

I will carry out my duties in a fair manner, guided by the principles of impartiality and non-discrimination.

Respect

I take pride in working as part of a team dedicated to protecting people.

I will show respect for all people and their beliefs, values, cultures and individual needs.

I will have respect for all human dignity as I understand that my attitude and the way I behave contributes to the consent communities have for policing.

I will respect and uphold the law in order to maintain public confidence and, by enhancing my personal knowledge and experience, contributing to the professional development of policing.

I shall treat all people, including detained people, in a humane and dignified manner.

I shall ensure that my relationships with colleagues is based on mutual respect and understanding and shall, therefore, conduct all communications on that basis.

Human Rights

I shall ensure my actions and policing operations respect the human rights of all people and officers whilst understanding that I will also enjoy these same human rights.

I will not undertake high-risk activities or use force other than where strictly necessary in order to attain a legitimate objective and only after I have balanced all the competing priorities I am aware of. (Article 2)

I will not encourage, instigate or tolerate any act of torture or inhuman or degrading treatment under any circumstance nor will I stand by and allow others to do the same. I understand that the humane treatment of prisoners is an essential element of policing and that the dignity of all those I am trusted to care for remains my responsibility. (Article 3)

I understand that people have an equal right to liberty and security. Accordingly, I will not deprive any person of that liberty, except in accordance with the law. (Article 5)

I will investigate crimes objectively and be sensitive to the particular needs of affected individuals whilst following the principle that everyone who is the subject of criminal investigation is innocent until found guilty by a court. (Article 6)

In carrying out my duties I shall respect everyone's fundamental rights. I will only interfere with privacy or family life when I am legally authorized to do so. (Article 8)

I will respect individual freedoms of thought, conscience or religion, expression, peaceful assembly, movement and the peaceful enjoyment of possessions. (Articles 9,10,11)

Glossary

A&E	- Accident and emergency
ACAS	- Advisory, Conciliation and Arbitration Service
ACC	- Assistant Chief Constable
ACPOS	- Association of Chief Police Officers (Scotland)
ACU	- Anti-Corruption Unit (part of Police Scotland)
ADHD	- Attention Deficit Hyperactivity Disorder
AGS	- An Garda Síochána
AGS	- Auditor General for Scotland
ASPS	- Association of Scottish Police Superintendents
C3	- Contact, Command and Control Division
CAAP-D	- Criminal Allegations Against Police Division (part of COPFS)
CARU	- Complaints Assessment and Resolution Unit
CBT	- Cognitive Behavioural Therapy
Centurion	- Police Scotland's complaints and conduct database
CHR	- Complaint Handling Review
CHRWG	- Complaint Handling Review Working Group
CHS	- Criminal History System
CJI	- Criminal Justice Inspection Northern Ireland
CJSD	- Criminal Justice Services Division
COMS	- Custody and Offender Medicine Services
CoP	- College of Policing (England and Wales)
COPFS	- Crown Office and Procurator Fiscal Service
COSLA	- Convention of Scottish Local Authorities
CPD	- Continuing professional development
CPT	- European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
CRER	- Coalition for Racial Equality and Rights
CRI	- Custody Review Inspector
DCC	- Deputy Chief Constable
EAP	- Employee Assistance Programme

EAP	- Ethics Advisory Panel
ECHR	- European Convention on Human Rights
ECS	- Emergency Care Summary
ECtHR	- European Court of Human Rights
FAI	- Fatal Accident Inquiry
FCI	- Force Custody Inspector
FLO	- Family Liaison Officer
Frontline Resolution	- Early discussion of a complaint with the complainer
GBV	- Gender-based violence
GSOC	- Garda Síochána Ombudsman Commission
HMCIC	- Her Majesty's Chief Inspector of Constabulary
HMICS	- Her Majesty's Inspectorate of Constabulary in Scotland
ICV	- Independent Custody Visitor
Integrity Matters	- Police Scotland's confidential anonymous reporting system
IOPC	- Independent Office for Police Conduct (England and Wales)
ISA	- Information Sharing Agreement
ITPP	- Introduction to Policing Programme
MOU	- Memorandum of Understanding
NCHDWG	- National Complaint Handling Development Working Group
NCS	- National Custody System
NDPB	- Non-Departmental Public Body
NGAU	- National Gateway Assessment Unit
NISAG	- National Independent Strategic Advisory Group
NPCC	- National Police Chiefs' Council
NPM	- National Preventive Mechanism
OPCAT	- UN Optional Protocol on the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment
PCCS	- Police Complaints Commissioner for Scotland
PIP	- Post-incident procedures
PIRC	- Police Investigations and Review Commissioner
PND	- Police National Database
PONI	- Police Ombudsman for Northern Ireland
PRG	- Professional Reference Group
PRI	- Practice requiring improvement

PSD	- Professional Standards Department
PSNI	- Police Service of Northern Ireland
PSoS	- Police Service of Scotland (known as Police Scotland)
PTSD	- Post-Traumatic Stress Disorder
RAI	- Risk, Assurance and Inspection
Relevant complaint	- A complaint against the police, as defined in the Police, Public Order and Criminal Justice (Scotland) Act 2006, as amended
RPOAS	- Retired Police Officers' Association Scotland
RPRP	- Reflective Practice Review Process (England and Wales)
SAS	- Scottish Ambulance Service
SCPOSA	- Scottish Chief Police Officers' Staff Association
SCTS	- Scottish Courts and Tribunals Service
SEMPER Scotland	- SEMPER stands for Supporting Ethnic Minority Police employees for Equality in Race
Senior officer	- Any constable holding rank of chief constable, deputy chief constable or assistant chief constable
SFIU	- Scottish Fatalities Investigation Unit
SOP	- Standard Operating Procedure - Police Scotland has multiple SOPs covering a wide range of subjects
SPA	- Scottish Police Authority
SPC	- Scottish Police College
SPCB	- Scottish Parliamentary Corporate Body
SPCF	- Scottish Police Consultative Forum
SPF	- Scottish Police Federation
SPSO	- Scottish Public Services Ombudsman
SQA	- Scottish Qualifications Authority
SWDF	- Scottish Women's Development Forum
SWRC	- Scottish Women's Rights Centre
The 2012 Act	- Police and Fire Reform (Scotland) Act 2012
The 2006 Act	- Police, Public Order and Criminal Justice (Scotland) Act 2006
TrIM	- Trauma Incident Management
UWS	- University of the West of Scotland
VIA	- Victim Information and Advice service (part of COPFS)
WIP	- Women in Policing



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