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Police Investigations &
Review Commissioner



SCOTTISH POLICE
AUTHORITY

MEMORANDUM OF UNDERSTANDING

Between

The Police Investigations and Review
Commissioner

and

Police Scotland

and

The Scottish Police Authority

OFFICIAL

For the purposes of ensuring effective co-operation between PS, PIRC and SPA in the provision, sharing and exchange of information or services, to allow each organisation to fulfil their statutory functions and obligations.

Document Details	
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Glossary of Terms

The following acronyms and abbreviations are used throughout this document:

PS	Police Scotland
the Authority	Scottish Police Authority
PIRC	Police Investigations and Review Commissioner
COPFS	Crown Office and Procurator Fiscal Service
ECHR	European Convention on Human Rights
ISA	Information Sharing Agreement
The 2006 Act	The Police Public Order and Criminal Justice (Scotland) Act 2006
The 2012 Act	The Police and Fire Reform (Scotland) Act 2012
The Order	The Police and Fire Reform (Scotland) Act 2012 (Consequential Provisions and Modifications) Order 2013
the Regulations	The Police Investigations and Review Commissioner (Investigations Procedure, Serious Incidents and Specified Weapons) Regulations 2013
the Conduct Regulations	The Police Service of Scotland (Senior Officers) (Conduct) Regulations 2013
The 2016 Act	The Criminal Justice (Scotland) Act 2016
GDPR	The General Data Protection Regulations
DPA	The Data Protection Act 2018
senior officer	An officer of Chief Constable, Deputy Chief Constable or Assistant Chief Constable rank.
PAVA	Pelargonic Acid Vanillylamide (Incapacitant Spray)
NIB	National Intelligence Bureau (Police Scotland)
SPR	Standard Prosecution Report
CAAPD	Criminal Allegations Against the Police Division

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1. Introduction

1.1 This document details a Memorandum of Understanding (MoU) between:

- The Chief Constable of the Police Service of Scotland (hereinafter referred to as Police Scotland), having its headquarters at Tulliallan Castle, Kincardine, Fife. FK10 4BE,
 - The Police Investigations and Review Commissioner (hereinafter referred to as the PIRC), having its Head Office at Hamilton House, Hamilton Business Park, Caird Park, Hamilton. ML3 0QA.
- and
- The Chief Executive of the Scottish Police Authority (hereinafter referred to as the Authority) having its headquarters at 1 Pacific Quay, Glasgow, G51 1DZ.

1.2 This MOU takes account of the functions, powers, duties and obligations of each of the organisations in accordance with all applicable legislative provisions.¹ In applying the MoU, all of the organisations will work collaboratively and in a spirit of mutual co-operation to fulfil their respective functions and responsibilities.

2. Purpose

2.1 To fulfil their functions in accordance with all relevant legislation, the Chief Constable of Police Scotland, the Police Investigations and Review Commissioner (PIRC) and the Chief Executive Officer of the Scottish Police Authority agree that, any member of their staff or police officer will seek to adhere to the procedures or processes outlined in this MoU in respect of the provision, sharing and exchange of information or services to allow each organisation to fulfil their functions and obligations. The MOU will support the sharing and exchange of information, through the shared understanding of the processes involved. It is acknowledged, however, that circumstances may arise in which it is necessary for one or more of the parties, acting in good faith, to depart from the terms of this MoU.

3. Effective Date and Periodic Review

3.1 This MOU becomes effective on 24 August 2020.

3.2 This MOU will be reviewed after three years. Any Party to this MOU may request a Review, in writing, at any time and interim reviews must be implemented should any changes to the legislative framework the MOU operates within be made.

¹ See Annex A

3.3 Any party may seek to end this MOU, giving 1 months' notice, in writing to all other parties.

PART 1 – INVESTIGATIONS

4. PIRC Investigations

4.1 The primary legislative functions of the PIRC and the Authority are set out at Appendix A.

4.2 The PIRC's investigative function covers the following circumstances:

- Where there is an indication that a person serving with the police may have committed an offence (directed by COPFS)²
- Any death in police custody or following police contact (directed by COPFS)³
- Serious Incidents⁴ directly or indirectly linked to police contact⁵ (referred by the Authority or Police Scotland) - including:
 - where a person has died or sustained serious injury where, at or before the time of death or serious injury, the person had had direct or indirect contact 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 the death or serious injury;

Any other circumstance in or in consequence of which:

- A person has otherwise sustained a serious injury 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 specified in regulations.
- Any other circumstance involving the Authority the Police Service or a person serving with the police as specified in regulations.
- Any matters relating to the Authority or Police Scotland where the PIRC considers it in the public interest⁶
- Misconduct allegations against Senior Officers of Police Scotland (Assistant Chief Constable or above) in which the PIRC assesses that the conduct would, if proved, amount to misconduct or gross misconduct (following referral by the Authority).

² Section 33A(b)(i) of the 2006 Act

³ Section 33A(b)(ii) of the 2006 Act

⁴ Section 41B of the 2006 Act - Excludes matters being investigated in terms of S33A (b) (i) or criminal proceedings have been brought following an investigation

⁵ Section 33A (c) and 41B(1) of the 2006 Act

⁶ Section 33A (d) and S41C of the 2006 Act

5. Referrals by Police Scotland / the Authority to PIRC

- 5.1 The Chief Constable or the Authority, as appropriate, must request the PIRC to investigate any serious incident involving a constable, member of police staff or member of the Authority's staff.
- 5.2 Notification timescales are set out in Section 6.
- 5.3 Referrals by Police Scotland will be made via Professional Standards Department (PSD), except for Pelargonic Acid Vanillylimide (PAVA) referrals. Referrals by the Authority will be made by its Chief Executive Officer.
- 5.4 The referral to the PIRC will normally take the form of a briefing document outlining the full circumstances of the incident. The briefing document may be accompanied by statements, CCTV or any other material considered appropriate by the police or the Authority to allow the PIRC to gain an understanding of the incident.
- 5.5 Where insufficient information is available to allow the PIRC to determine whether or not an investigation is required, the PIRC may request additional material from the police or Authority to assist their assessment.
- 5.6 The PIRC will assess the referral from the police or the Authority and decide whether to investigate the incident. The PIRC undertakes to complete its assessment within 7 Days of receipt of the referral (and any additional material provided) and notify the police or the Authority of its decision.
- 5.7 Referrals in respect of the use of PAVA by all officers will be made on agreed pro-forma documents via Officer Safety Training.
- 5.8 Deaths and serious injury in police custody, deaths following police contact or discharge of conventional firearms leading to injury may be referred verbally to the PIRC by PSD to allow immediate decisions to be taken. A follow up briefing document and other relevant material will be provided to the PIRC as soon as practicable thereafter.
- 5.9 Where Police Scotland instigate Post Incident Procedures (PIP) following a death or serious injury, the PIRC will be notified immediately of the decision by PSD and afforded the opportunity to attend the incident and PIP suite. Such a notification will be considered a referral to the PIRC.
- 5.10 Where Police Scotland or the Authority refer an investigation which arises from a 'Whistle-blower', the status of the Whistle-blower will be clearly identified to the PIRC and all the rights and protection enshrined in legislation will be afforded by the PIRC, to ensure a consistent approach.

6. Notification Timescales

6.1 Notification timescales:

- For a death following police contact and where it is considered that there may be contributable or causal factors notification will occur as soon after the incident as reasonably practicable;
- For incidents where serious injury has occurred and the person's life may be at risk given the nature of the injuries, notification will occur as soon after the incident as reasonably practicable.
- For an incident where conventional firearms have been discharged resulting in injury but not death, and in all instances where a PIP is instigated, notification will occur immediately after the incident to allow consideration of PIRC attendance.
- For all other incidents, including use of Taser, notification will occur within 24 hours of PSD being informed of the incident or on the Monday following an incident occurring at a weekend.
- For a PAVA discharge, notification will occur within 5 days of the incident.

7. COPFS directed investigations

7.1 The COPFS may direct the PIRC to undertake investigation of:

- Criminal allegations against serving police officers, members of police staff or members of the Authority's staff.
- Death in custody or death following police contact.

7.2 Police Scotland will notify the COPFS of any death in police custody.

7.3 Police Scotland will notify the COPFS and the PIRC of any death following police contact, where it is considered that there may be contributable or causal factors. The COPFS may direct the PIRC to investigate the circumstances (Section 33A(b)(ii) of the 2006 Act) or if Police Scotland referral only, the PIRC may decide to investigate the circumstances (Section 33A(c) of the 2006 Act).

7.4 Notification timescales

- Notification by Police Scotland to the COPFS and the PIRC should occur as soon after the incident as reasonably practicable. In the case of a death occurring 'out of hours' Police Scotland should notify COPFS at the earliest opportunity.

- Where the PIRC are directed by the COPFS to investigate a criminal allegation against a police officer or member of police or Authority staff, the PIRC will notify Police Scotland or the Authority, as appropriate, within two working days.

8. Misconduct

- 8.1 The PIRC has no powers or authority to undertake misconduct investigations against officers of Federated or Superintendent ranks, members of police staff, or members of Authority staff.

Conduct issues relating to Senior Officers

- 8.2 The Police Service of Scotland (Senior Officers) (Conduct) Regulations 2013 (“the Conduct Regulations”), apply to conduct of a senior officer occurring on or after 1 April 2013. Under the Conduct Regulations, a senior officer is an officer of Chief Constable, Deputy Chief Constable or Assistant Chief Constable rank.
- 8.3 The Conduct Regulations outline the processes and procedures to be followed in respect of misconduct allegations against senior officers. This MoU provides the timescales and processes to be followed.
- 8.4 Where Police Scotland receives an allegation of misconduct against a senior officer they will provide the Authority with all details of the allegation to allow them to conduct an assessment.
- 8.5 Where a misconduct allegation comes to the attention of the Authority, the Authority will assess whether the conduct would, if proved, amount to misconduct, gross misconduct or neither. Where the Authority assesses that the conduct would, if proved, amount to misconduct or gross misconduct, it must decide whether the misconduct allegation is to be investigated. If the allegation is to be investigated, the Authority must refer the allegation to the PIRC. The Authority will contact PSD to establish any further information that may inform their assessment.
- 8.6 On receipt of a misconduct allegation, the PIRC will assess whether the alleged conduct would, if proved, amount to: misconduct, gross misconduct or neither. Where the PIRC assesses that the alleged conduct, if proved, would amount to gross misconduct it must investigate the allegation. Where the PIRC assesses that the alleged conduct if proved, would amount to misconduct, the PIRC may investigate the allegation or refer the allegation back to the Authority (with such recommendations as are considered appropriate). Where the PIRC assesses that the alleged conduct would amount to neither misconduct nor gross misconduct, the PIRC must refer the allegation back to the Authority (with such recommendations as are considered appropriate).
- 8.7 The PIRC undertakes to complete its assessment of any referrals from the Authority within 7 days, unless additional information is required to allow the assessment to be completed. Where this is the case, the PIRC will complete its assessment within 5 days of receipt of any additional material. On completion of its assessment, the PIRC will notify the Authority of its decision.

- 8.8 Where the Authority hold any relevant material that may assist the PIRC to complete its assessment, the Authority will provide such material to the PIRC at the same time as the referral.
- 8.9 The PIRC undertakes to complete any investigation timeously. In this regard, the Authority and Police Scotland will provide all necessary assistance to facilitate access to witnesses as soon as possible. Where a person is on sick leave, the PIRC will ascertain if there is a medical reason why they cannot be interviewed. Where there is no medical reason why the person cannot be interviewed, the PIRC will seek to interview the person in order not to delay the overall investigation.
- 8.10 The Authority and Police Scotland undertake to provide the PIRC with all documents or other material requested, as part of such a conduct investigation, within 7 days of receipt of a request. Where it is not practicable to meet this timescale, the Authority and Police Scotland will notify the PIRC accordingly and seek to agree a timescale within which such documents or material can be provided.
- 8.11 Where further allegations are made during the course of an investigation, which are referred by the Authority to the PIRC, the PIRC undertakes to complete its assessment of these referrals within 7 days, unless additional information is required to allow the assessment to be completed. Where this is the case, the PIRC will complete its assessment within 7 days of receipt of any additional material. On completion of its assessment, the PIRC will notify the Authority of its decision.

Conduct issues relating to Federated or Superintendent ranks and members of police or Authority staff

- 8.12 When undertaking any type of investigation, the PIRC may identify potential misconduct by Federated or Superintendent ranks or members of police or Authority staff. The PIRC has no legislative authority to investigate such matters.
- 8.13 The PIRC recognises that where it identifies actions by those listed in paragraph 8.12 above which may breach the Standards of Professional Behaviour (refer Appendix G) or may be considered a performance or disciplinary matter and where there is scope for improvement(s), there is a legitimate public interest and expectation that such matters will be investigated or considered and ultimately improved. Where the PIRC identifies potential breaches of Standards of Professional Behaviour or a performance or disciplinary issue(s) during an investigation referred by Police Scotland or the Authority , it will notify PSD or the Authority accordingly and provide all relevant information to allow those organisations to examine the matter. Issues identified during a COPFS directed investigation are covered by the provisions of Appendix D
- 8.14 Section 46 of the 2006 Act provides that the PIRC may disclose information obtained during the course of an investigation for the purpose of enabling Police Scotland or the Authority to carry out any function. Nothing in that section requires or authorises the disclosure of any information relating to a particular investigation carried out by the Commissioner on the direction of the appropriate prosecutor in pursuance of paragraph

(b) of section 33A of the Act (unless the appropriate prosecutor consents to such disclosure).

9. Co-operation, Assistance and the Provision of Information

9.1 (1) Regulation 5 of the regulations provides for co-operation and assistance. A relevant person must, where required to do so by the Commissioner, for the purposes of an investigation under section 33A(c) or (d) of the 2006 Act :

(a) produce, in a form acceptable to the Commissioner, any document, record or other information the Commissioner may require;

(b) permit the Commissioner or a member of the investigation staff to:

(i) enter any premises which are used by the Authority or the Police Service;

(ii) inspect those premises and anything on those premises which the Commissioner or, as the case may be, member of the investigation staff considers to be relevant to the investigation; and

(iii) remove from those premises anything which the Commissioner or, as the case may be, member of the investigation staff considers to be relevant to the investigation; and

(c) provide such other assistance as the Commissioner may reasonably require.

(2) Investigations under section 33A(c) or (d) of the 2006 Act relate to (c) those investigations requested by the Authority or Chief Constable and (d) those matters where the commissioner considers that it would be in the public interest to do so.

9.2 A relevant person is:

- A constable;
- A member of police staff;
- A member of the Authority's staff.

9.3 Section 44 of the 2006 Act allows for the provision of information to the PIRC and states:

(1) The Authority and the Chief Constable must, at such times, in such circumstances and in accordance with such requirements as may be set out in regulations made by the Scottish Ministers, provide the Commissioner with all such information and documents as may be specified or described in regulations so made.

(2) The Authority and the Chief Constable must:

(a) provide the Commissioner with all such other information and documents specified or described in a notification given by the Commissioner to the Authority or, as the case may be, the Chief Constable; and

(b) produce to the Commissioner all such evidence and other things so specified or described,

as appear to the Commissioner to be required by the Commissioner for the purposes of the carrying out of any of the Commissioner's functions.

(3) Anything falling to be provided or produced by the Authority or the Chief Constable in pursuance of a requirement imposed under subsection (2) must be provided or produced in such form, in such manner and within such period as may be specified in:

(a) the notification imposing the requirement; or

(b) in any subsequent notification given by the Commissioner to that person for the purposes of this subsection.

(4) Nothing in this section requires the Authority or the Chief Constable to provide the Commissioner with any information or document, or to produce any other thing, before the earliest time at which it is practicable for the Authority or, as the case may be, the Chief Constable to do so.

(5) A requirement imposed by any notification or regulations under this section may authorise or require information or documents to which it relates to be provided to the Commissioner electronically.

9.4 Section 46 of the 2006 Act allows for the disclosure of information by and to the PIRC. Information obtained by the Commissioner in connection with any of the Commissioner's functions may be disclosed by the Commissioner to any public body or office-holder:

(a) for any purpose connected with the carrying out of any of the Commissioner's functions; or

(b) for the purpose of enabling or assisting the public body or office-holder to carry out any function.

Any person may disclose information to the PIRC if the disclosure is made for the purposes of the carrying out of any of the PIRC's functions.

A disclosure under section 46 does not breach any obligation of confidence owed by the person making the disclosure, or any other restriction on the disclosure of information (however imposed).

Nothing in section 46 requires or authorises the disclosure of any information relating to a particular investigation carried out by the Commissioner on the direction of the appropriate prosecutor in pursuance of paragraph (b) of section 33A (unless the appropriate prosecutor consents to such disclosure).

Information Sharing for Conduct or Misconduct Proceedings where a Criminal Investigation Occurs

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- 9.5 Information may be provided by the PIRC to Police Scotland or the Authority for the purpose of conduct or misconduct proceedings. Such information will advise of the nature of any allegations at the outset, whether there is likely to be additional offences, the evidence at the conclusion of the investigation and following a decision by the COPFS to prosecute or not.
- 9.6 During the investigation if there are any significant developments that substantially weakens or strengthens the case against the officer, the timing and disclosure of such information will be discussed and agreed with the COPFS to ensure that the ongoing investigation and any potential criminal proceedings are not compromised.
- 9.7 Such information will be provided on a confidential basis **solely** for the purpose of disciplinary considerations and not for any other purpose such as civil proceedings.
- 9.8 The PIRC will notify Police Scotland or the Authority within 48 hours when they submit a report to CAAPD and advise of the category of report in order for Police Scotland to notify Subject Officers and, when there is a reasonable inference of criminality, provide specific detail of the allegation in order that they comply with Regulation 9 of the Police Service of Scotland (Conduct) Regulations 2014 or regulation 7 of the Conduct Regulations, as appropriate. It will also allow for other measures, including welfare considerations, for a subject officer or member of police or Authority staff to be considered. Police Scotland or the Authority will notify the subject officer, member of police staff or member of the Authority's staff that they are subject to a criminal investigation by the PIRC.
- 9.9 The agreement on the sharing of Information between Police Scotland, the PIRC and the COPFS is contained at Appendix D

Witness Statements

- 9.10 Regulation 5 of the 2013 Regulations provides for co-operation and assistance. A relevant person must, where required to do so for the purposes of an investigation under section 33A(c) or (d) of the 2006 Act, produce, in a form acceptable to the Commissioner, any document, record or other information the Commissioner may require. Where an officer, member of police staff or member of the Authority's staff is a witness to the matter being investigated, covered by the legislation, the PIRC may require them to produce information in the form of a witness statement or have the information produced in the form of a witness statement taken from them by PIRC investigators.
- 9.11 Police Scotland or the Authority, as appropriate, may request any police officer, member of police staff or member of the Authority's staff who is a witness in a PIRC investigation to co-operate with the investigation and provide any document, record or other information, which may include the provision of a witness statement or witness account.
- 9.12 Where a police officer, member of police staff or member of the Authority's staff refuses without reasonable excuse to co-operate with a PIRC investigation through the provision of information, the PIRC will notify Police Scotland or the Authority accordingly for their consideration of misconduct or disciplinary proceedings.
- 9.13 Police Scotland, the Authority and the PIRC will work co-operatively in the obtaining (by the PIRC) of any witness testimony provided by any person identified as a potential witness in a PIRC investigation.

- 9.14 The PIRC will take cognisance of the needs of any person identified (to the PIRC) as having or who identifies that they have a 'relevant protected characteristic' and put in place any necessary or reasonable adjustments in order to facilitate the gathering of their evidence.

10. Investigation Processes

- 10.1 The PIRC will notify the Assistant Chief Constable, Professionalism and Assurance, in writing, of any decision to investigate or the COPFS instruction to investigate an incident or criminal allegation as soon as reasonably practicable.
- 10.2 The PIRC will also notify the Head of PSD and relevant Superintendent PSD of the decision or instruction to investigate.
- 10.3 The PIRC will notify the Chief Executive of the Authority, as soon as reasonably practicable, of any decision to investigate or instruction to investigate a member of the Authority's staff or Senior officer of Police Scotland.
- 10.4 The letter of notification will include a notification under the 2006 Act or a notification under the 2006 Act and 2013 PIRC Regulations, requiring the Chief Constable or the Authority to provide any document, record or other information the PIRC may require to undertake its investigation. Specimen notification letters are at Appendix F.
- 10.5 The PIRC will make clear the status of any person involved in an investigation (witness or suspect). If a person's status changes, Police Scotland or the Authority and the person will be notified accordingly. Police Scotland or the Authority will notify any officer or member of staff when they are the subject of a criminal investigation by the PIRC, unless the investigation may be hampered in doing so. The PIRC will ensure Police Scotland or the Authority are informed when they can advise these officers or staff at the earliest opportunity to allow appropriate welfare support.
- 10.6 The PIRC will appoint a member of its Investigations staff as the lead investigator for any investigation and notify Police Scotland or the Authority of that person.
- 10.7 Police Scotland or the Authority will appoint an appropriate 'single point of contact' (SPOC) for every PIRC investigation to facilitate the acquisition and provision of any document, record or other information to the PIRC. The SPOC will also be the conduit for facilitating any witness or other interviews of Police Scotland or the Authority's staff. Where a SPOC is on annual leave or absent during a PIRC investigation, they will identify another person to undertake their role.
- 10.8 For complex investigations, involving more than one business area of Police Scotland, it may be necessary to appoint additional SPOCs to facilitate the provision of information, etc.

11. PIRC Reports

- 11.1 PIRC produce different reports dependent on the type of investigation:

- Standard Prosecution Report (SPRs) – submitted to the COPFS
- CAAPD reports – submitted to the COPFS;
- Death investigation reports – submitted to the COPFS;
- Investigation reports – submitted to Police Scotland or the Authority;
- Misconduct reports – submitted to the Authority.

Report Publication

11.2 The PIRC may publish:

- Police Scotland referred investigation reports;
- COPFS death reports where the COPFS have decided that no Fatal Accident Inquiry will take place; and where agreement has been obtained from the COPFS prior to publication; and
- Public Interest reports.

11.3 The PIRC will not publish:

- SPRs or CAAPD reports;
- Death reports where a FAI is to be or has been held;
- Misconduct reports.

11.4 The PIRC produces two types of report in respect of investigations referred by the Chief Constable or the Authority under Section 33A(c) of the 2006 Act:

- Full reports; and
- Public Facing reports.

11.5 Full reports contain all the details of the PIRC investigation and are for consideration by the Chief Constable or the Authority (dependent on who referred the matter). Full reports contain the names of any person relevant to the investigation. Full reports are not published.

11.6 Public facing reports are published and contain a summary of the investigation, findings and recommendations but do not normally identify any person.

11.7 Prior to publication of the public facing report, the PIRC will submit a draft of the full report and Public Facing report to Police Scotland (or the Authority) for factual accuracy checking. The PIRC will take cognisance of any identified error of fact, omission or additional representation made by the Chief Constable (or the Authority), before finalising the report. Where significant changes are requested, the PIRC will re-submit the draft report for a further factual accuracy check prior to publication.

11.8 Where Police Scotland or the Authority have taken steps, implemented change or introduced revised policies and procedures as a result of their own internal review of the matter subject to investigation, the PIRC should be notified during the factual accuracy check and will make mention of these measures within their published report.

11.9 Where the PIRC identify any matter, during the course of any investigation, which may impact on public, officer or staff safety and require immediate action by Police Scotland or the Authority, the PIRC will notify them at that time and not wait until the issuance of its report.

11.10 The PIRC will issue its reports to:

- Full Report – Chief Constable or the Authority (dependent on who referred the matter);
- Public Report – Chief Constable or the Authority (dependent on who referred the matter)

11.11 The PIRC may issue its reports to;

- Public Report - the Authority, The COPFS, HMICS and the Scottish Government.

11.12 Prior to publication of a Public Facing report, the PIRC will provide the Chief Constable (or the Authority) with at least 48 hours' notice of the date and time of publication.

Sensitive and Intelligence Material

11.13 Where a PIRC investigation has examined 'sensitive or intelligence material' during the course of the investigation and it may be necessary to make mention of that material or the content of that material in a report, albeit in a heavily redacted or anonymised form, a copy of the draft report will also be provided to the Police Scotland National Intelligence Bureau (NIB). The NIB can identify any concerns it has in respect of the report or section of the report containing the material. The PIRC will examine the NIB concerns and may, thereafter, adapt the report to address those concerns.

11.14 Where a PIRC investigation examines highly sensitive material during the course of an investigation, the final report may require to be protectively marked and may not or cannot be published. Such concerns would be identified by the NIB in accord with para 11.13.

Findings and Recommendations

11.15 The PIRC's reports may contain Findings and Recommendations.

11.16 Recommendations are designed to address any issues identified as a result of the investigation. Recommendations may be specific to the investigation or to address wider issues identified as a result of the investigation.

11.17 Police Scotland or the Authority will notify the PIRC within 3 months of receiving the report of any steps taken or measures implemented to address the Recommendations.

11.18 Where Police Scotland or the Authority disagree with any Findings or Recommendations, they should identify this during consideration of the draft report and their view will be taken cognisance of by the PIRC prior to finalising the report.

COPFS directed Investigations

- 11.19 In terms of a COPFS directed investigation, the PIRC will submit its report to the appropriate prosecutor.
- 11.20 The PIRC will notify Police Scotland (or the Authority), at the time it is directed to investigate any matter, of the nature of the investigation.
- 11.21 Where the PIRC are directed to undertake a criminal investigation, it will notify Police Scotland or the Authority of the identity of any police officer, member of police staff or member of the Authority's staff who are subject to investigation and the nature of the allegations. This is to allow Police Scotland or the Authority to consider implementing certain decisions to mitigate the risk to the public, the officer and the Police Service or Authority. This may include 'Duty Restrictions' or on the rare occasion suspension from duty. It will also allow for other measures, including welfare considerations, for a subject officer or member of police or Authority staff. Police Scotland or the Authority will notify the subject officer, member of police staff or member of the Authority's staff that they are subject to a criminal investigation by PIRC.
- 11.22 The PIRC will notify Police Scotland or the Authority when it submits an SPR or CAAPD report to the COPFS. This notification will provide details of the alleged offences and the category of the submitted report in order for Police Scotland or the Authority to consider their obligations under applicable conduct regulations or disciplinary procedures. Police Scotland or the Authority have the responsibility to ensure suitable welfare arrangements are in place for the subject officer through an appointed welfare officer

12. Suspension or Duty Restrictions

- 12.1 The PIRC do not take decisions on whether an officer, member of police staff or member of the Authority's staff is to be suspended or have restrictions placed on their duties.
- 12.2 Where the PIRC identify that allowing the person to remain in their current role may prejudice an effective criminal or misconduct investigation by the PIRC, or otherwise that suspension may be required in the public interest, they will notify Police Scotland or the Authority, as appropriate, outlining their reasons and concerns. It will be a decision for Police Scotland or the Authority as to what action should be taken to address any concerns.
- 12.3 Where a person is suspended during a PIRC investigation, the PIRC undertake to complete its investigation as quickly as possible. It will notify Police Scotland or the Authority as soon as its investigation is complete and a report submitted to the COPFS. This will allow for appropriate welfare considerations to be implemented.
- 12.4 In circumstances where the Authority requires to undertake a review of a senior officer's suspension, the PIRC agrees to provide the Authority with such information as it may require regarding the status of the investigation and any relevant findings. Such information will be disclosed by the PIRC under section 46(1)(b) of the 2006 Act solely for the purposes of assisting the Authority in carrying out suspension reviews under regulation 6(5)(b) of the Conduct Regulations.

12.5 The PIRC will continue to work with Divisional and staff association welfare points of contact to minimise any detrimental impact of the PIRC contact in relation to the investigation.

13. Charging for Services

13.1 The Scottish Government have outlined their policy intent that Police Scotland and the Authority will not charge the PIRC for any services, information, documents, forensic or scene examinations or any other support provided to a PIRC investigation.

13.2 Where the PIRC request Police Scotland or the Authority to deliver a bespoke training course to or on behalf of the PIRC then this may be charged to the PIRC.

14. Suspect Interviews and Arrest procedures

14.1 PIRC investigators have all the powers and privileges of a constable when undertaking any investigation on behalf of the Commissioner.

14.2 During the course of a criminal investigation PIRC investigators may require to interview a police officer, member of police staff or member of the Authority's staff as a suspect.

14.3 The PIRC will notify PSD or the Authority, as appropriate, of any intention to interview an officer or member of staff as a suspect.

14.4 The PIRC will not normally arrest any police officer, member of police staff or member of the Authority's staff at their home or place of work, unless in specific circumstances this is deemed appropriate.

14.5 PSD or the Authority (as appropriate) will notify the police officer, member of police staff or member of the Authority's staff that they are to be subject to a suspect interview and invite them to present themselves at a suitably identified time and date, at an identified police office, for the purposes of interview.

14.6 PSD or the Authority (as appropriate) will appoint a dedicated liaison officer to any PIRC investigation where an officer, member of police staff or member of the Authority's staff is to be subject to a suspect interview. The role of that PSD or Authority liaison officer will be to facilitate all aspects of the PIRC interview including, identification of suitable premises, access to premises, video and audio recording equipment and briefing of custody staff.

14.7 The PIRC undertakes, insofar as may be practicable, that if an officer, member of police staff or member of the Authority's staff attend for interview under caution or are arrested (not officially accused), their attendance / arrest will be in a police area or Sub-Division other than that in which they serve. These matters will be facilitated by PSD or the Authority, as appropriate.

- 14.8 Where it is necessary to arrest an officer, member of police staff or member of the Authority's staff, other than a person who has attended a pre-arranged suspect interview, PSD/Authority staff will accompany the PIRC investigators at the arrest.
- 14.9 PIRC arrests will be planned in advance and the appropriate Criminal Justice Services Division (CJSD) Area Commander will be alerted by PSD staff, allowing the Cluster Inspector (CI) and the relevant Custody Review Inspector (CRI) and Force Custody Inspector (FCI) to be informed. In the event that a spontaneous arrest has to be presented by PIRC at a PS custody suite then the CI, Area Commander or on call CJSD Chief Inspector and the on duty CRI and FCI should be notified immediately. When a PIRC arrest is within a custody suite the relevant on duty supervisors will require to consider the wider impact on the routine running of the custody suite and to consider any protections or limitations that require to be put in place.
- 14.10 Care and Welfare - whilst an officer, member of police staff, or member of the Authority's staff is under arrest in custody, responsibility for the individual's care and welfare rests with Police Scotland.
- 14.11 Where possible the PIRC will undertake to provide Police Scotland or the Authority prior notification of Interviews/ arrest to ensure that appropriate aftercare welfare measures can be implemented.
- 14.12 The PIRC will inform the custody supervisor at the custody suite of the identity of the nominated PIRC investigator who will be responsible for custody decisions relating to the investigation.
- 14.13 The National Custody System (NCS) will remain the recording platform for all matters relating to the care and welfare of an individual whilst they are in custody. PIRC staff are not NCS trained and will have no access to the system.
- 14.14 Police Scotland custody staff will record on the NCS all required information other than the rationale for PIRC custody decisions which will be recorded as '*Decision taken by PIRC and recorded on the PIRC Policy File*'. Police Scotland Custody Staff will ensure NCS custody record for the individual under arrest is restricted viewing to prevent unauthorised access by any other staff members.
- 14.15 A PIRC Deputy Senior Investigator (DSI) (or above) will undertake all custody related decisions in respect of:
- Authorisation for keeping in custody
 - Custody Review
 - Investigative Liberation – release on conditions
 - Modification or removal of conditions
 - Release on Undertaking
 - Rights to have a solicitor present
 - Right to have intimation sent to another person
 - Right to have intimation sent to a solicitor
 - Right to consult with a solicitor

- 14.16 The 6 hour review process and any extension beyond 12 hours are duties that are normally completed by the CRI. A PIRC Senior Investigator (SI) will undertake this role and will consult with the CRI to ensure the decision is recorded on NCS.
- 14.17 Where a PIRC DSI authorises the taking of Criminal Justice (CJ) samples these will be taken by Police Scotland staff.
- 14.18 The PIRC will take cognisance of the needs of any person identified (to the PIRC) as having or who identifies that they have a 'relevant protected characteristic' and notify Police Scotland custody staff of any necessary or reasonable adjustments required to be put in place for any person.
- 14.19 During COVID-19 the health and wellbeing of all stakeholders should be the first consideration when deciding on the necessity to interview.
- 14.20 Should it be necessary for a suspect persons interview to proceed a policy will be documented which considers the risks and control measures for solicitor consultation, medical examination, seizure of clothing and how the interview itself will be conducted.

15. Sensitive and Intelligence Material

- 15.1 The PIRC Regulations 2013 and 2006 Act provides that the Chief Constable and the Authority must provide the PIRC with all information and documents as it appears to the PIRC to be required for the purposes of carrying out an investigation (see Section 11).
- 15.2 The legislation does not differentiate 'classes' of material which may be required by or provided to the PIRC to allow it to investigate any matter.
- 15.3 The provision of sensitive and intelligence material gives rise to additional concerns regarding its use, storage and handling. The PIRC recognise the fundamental requirement to manage intelligence material appropriately, particularly that arising from secret or sensitive sources and give due weight to any concerns expressed by Police Scotland or the Authority in respect of such material and sources.
- 15.4 Police Scotland will maintain responsibility and undertake a duty of care in protecting sources of intelligence.

Included Material

- 15.5 All intelligence material which may have a bearing in respect of a PIRC investigation will be provided to the PIRC (under necessary handling safeguards). This includes material obtained from secret or sensitive sources, but excludes intercept material.

Excluded Material

- 15.6 Sections 53 to 58 of the Investigatory Powers Act 2016 creates legislative (safeguards) in respect of the disclosure of intercept material. Intercept material will not be disclosed to the PIRC.

15.7 Where such material has a bearing on the duty of the COPFS to investigate a death or serious crime, it is for Police Scotland to consider what relevant disclosure should be made to the COPFS. Where such material has a bearing on an investigation in which Article 2 of ECHR is engaged, i.e. death following police contact, and that material has a bearing on a PIRC investigation, Police Scotland will consider how that information can be disclosed to the PIRC in a non-attributable format while meeting their obligations under the safeguards.

Determination of Relevance

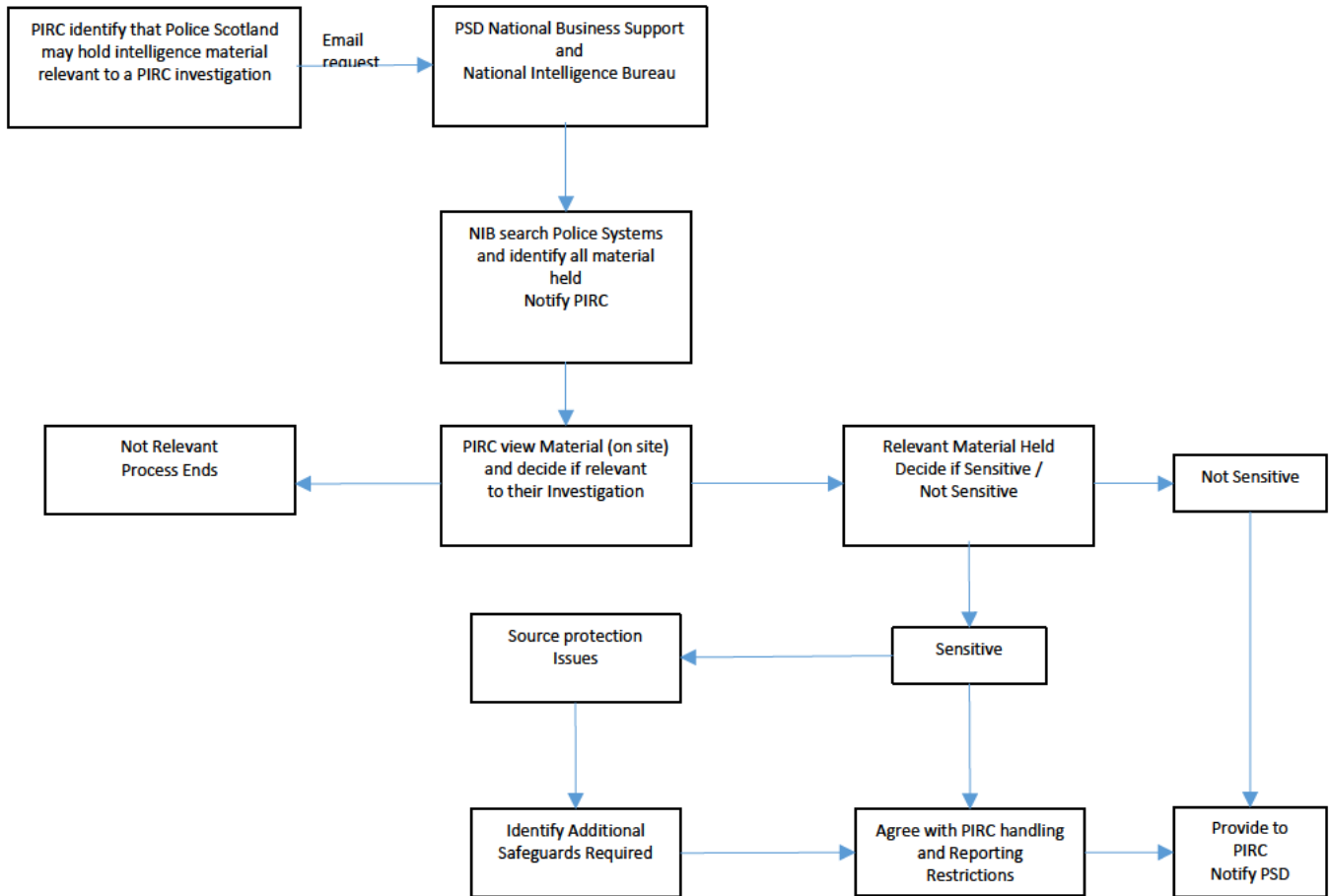
15.8 Relevance to a matter under investigation is determined by the PIRC as, in law, the PIRC are the investigating agency. Police Scotland or the Authority should not decide what is relevant to a PIRC investigation or to decide what material should or should not be provided to allow the PIRC to undertake an effective investigation.

15.9 The PIRC and Police Scotland recognise the need to work co-operatively when managing and handling intelligence material and to give due consideration to any concerns raised by the organisations in respect of such matters.

Process

15.10 The chart and explanatory provisions below outline how intelligence material will be provided to the PIRC, conditions, safeguards and processes to be applied.

Disclosure of Intelligence Material to PIRC
(for the purposes of a PIRC investigation)



Stages

15.11 Stages:

1. PIRC email request to PSD National Business Support and [REDACTED] and the National Intelligence Bureau [REDACTED]
2. PSD & NIB acknowledge receipt of email.
3. PSD save request on Centurion file adding progress entry outlining request for intelligence.
4. NIB undertake research of police systems, identify all intelligence held and notify PIRC within 7 days of receipt.
5. PIRC view intelligence 'on site' and determine whether it is of relevance to their investigation. Given the impact of the COVID-19 pandemic, where possible technical solutions will be considered for remotely viewing of intelligence, including

'Microsoft Teams'.

6. Not relevant – process ends – no intelligence provided.
7. Relevant material held. NIB identify to the PIRC if there are any source protection or sensitivities attached to the material, its disclosure or publication.
8. The NIB provide the material to the PIRC:
 - a. Not sensitive / No source protection issues –The PIRC may reference the material in its investigation reports – send via PSD for factual accuracy check prior to publication. Any concerns should be identified.
 - b. Sensitive / Source Protection issues – supply material to the PIRC, protectively mark material, agree with PIRC restrictions on handling and use, including further reference to the material in reports and submissions – send via PSD/NIB for check prior to publication. Any concerns should be identified.
9. The PIRC will manage and safeguard protectively marked material and restrict access to vetted NPPV staff who need access for the purposes of a specific investigation. Staff who are briefed on information, which may identify the source of intelligence, will be made fully aware of their responsibilities in relation to the handling restrictions.
10. The PIRC will maintain a record of all persons who have had access to material, including the COPFS and other agency staff.
11. Once the PIRC investigation is complete and in accord with the PIRC weeding policy, PIRC will notify Police Scotland PSD that the material is to be destroyed and either:
 - i. return the material to Police Scotland at their request; or
 - ii. securely destroy the material and record its destruction.
12. Should the PIRC consider it necessary, to make an approach to a source of intelligence, including following direction from the COPFS, consultation will be held with Police Scotland prior to undertaking such action. This will enable agreement to be reached as to a mechanism to enable Police Scotland to ensure appropriate safeguards and duty of care requirements are in place.

16. Provision of Support

- 16.1 Regulation 5 of the PIRC Regulations 2013 provides that a relevant person (the Authority, a member of the Authority's staff, any constable, any member of police staff) must, where required to do so for the purposes of an (PIRC) investigation under Section 33A (c) or (d) of the 2006 Act – provide such other assistance as the PIRC may reasonably require.

Incident Scenes and Investigation Considerations

- 16.2 Police Scotland or the Authority may, on request, provide assistance to the PIRC in scene examination and evidence recovery.

- 16.3 Following any incident which may give rise to a PIRC investigation, Police Scotland will inevitably be first on the scene and will be responsible for initial scene management.
- 16.4 Whilst the PIRC has its own scene managers, Police Scotland passing control and scene management responsibilities to the PIRC during the course of a scene examination may present a fragmented approach to evidence gathering. Consequently, where the PIRC take over investigative responsibility but Police Scotland (or members of the Authority's staff) has begun scene examination, Police Scotland or the Authority's scene examiners should complete their work.
- 16.5 The PIRC may request Police Scotland or the Authority's scene examiners to undertake additional actions in respect of incident scene examination and evidence gathering.
- 16.6 Situations may arise where a dual investigation occurs: Police Scotland and the PIRC investigating separate and distinct aspects of an incident, e.g. Police Scotland deploy armed resources in response to a crime and a person posing a threat to the lives of the public or police is shot by officers during the incident. Police Scotland would investigate the crime, with the PIRC investigating the police shooting. In such circumstances, the senior staff in charge of both investigations (Police Scotland and the PIRC) will liaise and determine which investigation or aspect of the investigation may take primacy in respect of the need for evidence gathering and scene examination.
- 16.7 Where required, investigation strategy meetings will be held to ensure remit and roles are understood and key actions agreed. This will include forensic strategies which will be documented and all decisions made in relation to the examination of the scene will be recorded.
- 16.8 Once scene examination has been completed the PIRC and Police Scotland lead investigators and scene examiners should meet and agree a strategy for the submission and examination of the productions.

Family Liaison

- 16.9 Following any death investigated by Police Scotland or the PIRC, Family Liaison Officers (FLOs) may be deployed.
- 16.10 Responsibility for notification of the death to family members (immediately following the death) rests with Police Scotland. This will be the case irrespective of who the investigating agency will be.
- 16.11 The PIRC FLOs will be considered for deployment in the following instances:
- Death in Police custody,
 - Death following Police contact or
 - In investigations, not involving death, where the involvement of FLOs may enhance the gathering of evidence from family members and/or the provision of information and assistance.
- 16.12 Where Police Scotland has deployed FLOs following a death, as the initial investigating agency, and there is a later decision that the investigation should be undertaken by the

PIRC, responsibility for family liaison should transfer to the PIRC FLOs. Taking cognisance of the need to effectively support the family, it is imperative that during the initial decision making stage and any handover there are no gaps in the provision of support to the family. All decisions will be documented. This will be covered and agreed within any initial strategy meeting or discussions.

- 16.13 The PIRC FLOs will take cognisance of the needs of any person identified (to the PIRC) as having or who identifies that they have a 'relevant protected characteristic' and put in place any necessary or reasonable adjustments in order to facilitate the gathering of their evidence or the provision of information to them.

17. Communications & the Media

- 17.1 Police Scotland, the Authority and the PIRC have communication teams that manage liaison with the media.
- 17.2 Following any incident which involves a matter falling within the scope of the 2006 Act, the PIRC Regulations 2013, or The Police Service of Scotland (Senior Officers) (Conduct) Regulations 2013 requiring Police Scotland or the Authority to refer a matter to the PIRC for consideration of investigation, or an instruction by the COPFS to the PIRC to investigate any matter, there may be media interest or media requests for information.
- 17.3 Each organisation recognises the demand that can arise for an immediate news release or statement following any incident.
- 17.4 In order to ensure consistency of the facts provided to the media, the communications teams of Police Scotland, the Authority and the PIRC should, where feasible, liaise before issuing statements to the media.
- 17.5 In any investigation instructed by the COPFS, the PIRC, Police Scotland and the Authority (as appropriate) will liaise with the COPFS communication team before making any media release.
- 17.6 Prior to the publication of any PIRC investigation report, an 'embargoed' copy of the report and associated media release will be provided to Police Scotland or the Authority at least 48 hours in advance of publication for information purposes only.
- 17.7 The PIRC, the Authority and Police Scotland will liaise in respect of any request by the media for comment in respect of a Senior Officer Misconduct investigation.
- 17.8 The PIRC may publish an initial statement confirming they have been instructed by the COPFS to investigate a criminal matter, but give no other details.
- 17.9 Active' proceedings (i.e. following an arrest)
- Where the media intend to publish anything where proceedings are 'active' the PIRC and Police Scotland communication teams will ensure that the media are made aware of the 'active' status of the proceedings.

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- Proceedings are 'active' on arrest, the granting of a warrant for arrest, the service of an indictment or complaint, or the grant of a warrant to cite.
- [Amended Guidelines](#) issued by the Lord Advocate for Police and the Media will be adhered to.

PART 2 – COMPLAINT HANDLING REVIEWS

In 2011, the Police Complaints Commissioner for Scotland (PCCS) issued guidance to the police on the handling of complaints, titled 'From Sanctions to Solutions'. The guidance was updated on 1 April 2013 by the PIRC, to reflect the changes introduced by the Police and Fire Reform (Scotland) Act 2012.

Enactment: This Memorandum comes into effect on [date]

Signatories to the Memorandum of Understanding

Name: [Redacted] Position **COMMISSIONER**

Signed

[Redacted Signature]

Date 31 July 2020

On Behalf of Police Investigations & Review Commissioner

Name: [Redacted] Position: Assistant Chief Constable

Signed:

[Redacted Signature]

Date: 07 August 2020

On Behalf of Chief Constable of Police Scotland

Name: [Redacted] Position: Interim Chief Executive

Signed:

[Redacted Signature]

Date: 20 August 2020

On behalf of Chief Executive of the Scottish Police Authority

Appendix A

Legislative Framework for the PIRC and the Authority

The PIRC

- A.1 Section 33A of the The Police Public Order and Criminal Justice (Scotland) Act 2006, as amended by the Police and Fire Reform (Scotland) Act 2012, outlines the general functions of the PIRC.
- A.2 Section 33A(b) of the 2006 Act provides that the PIRC, where directed to do so by the appropriate prosecutor, (i) investigate any circumstances in which there is an indication that a person serving with the police may have committed an offence; (ii) investigate, on behalf of the relevant procurator fiscal, the circumstances of any death involving a person serving with the police which that procurator fiscal is required to investigate under Section 1 of the Inquiries into Fatal Accidents and Sudden Deaths (Scotland) Act 2016.
- A.3 Section 33A(c) of the 2006 Act provides that the PIRC, where requested to do so by the Authority or the Chief Constable, investigate and report on certain serious incidents involving the police.
- A.4 Section 33A (d) of the 2006 Act provides that the PIRC may 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.
- A.5 Section 41B of the 2012 Act provides that a serious incident involving the police 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 firearm or any other weapon of such description as the Scottish Ministers may by regulations specify; or
 - (c) any other circumstance involving the Authority, the Police Service or a person serving with the police as may be specified in regulations made by the Scottish Ministers.
- (2) But a matter is not a "serious incident involving the police" if it is:

(a) a matter–:

- (i) which the Commissioner is investigating in pursuance of paragraph (b)(i) of section 33A; or
- (ii) in respect of which criminal proceedings have been brought following such an investigation by the Commissioner; or

(b) a matter which is being, or has been, investigated:

- (i) by the Commissioner in pursuance of paragraph (b)(ii) of section 33A; or
- (ii) by any other person under the Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016.

A.6 Regulation 3 of the 2013 Regulations provides that the Authority must request the Commissioner to investigate any serious incident involving the police which is a circumstance involving a member of the Authority's staff.

A.7 Applicable legislation:

- The Human Rights Act 1998;
- The Police Public Order and Criminal Justice (Scotland) Act 2006 Act, (the 2006 Act);
- The Police and Fire Reform (Scotland) Act 2012 (the 2012 Act);
- The Police and Fire Reform (Scotland) Act 2012 (Consequential Provisions and Modifications) Order 2013 (the Order)
- The Police Investigations and Review Commissioner (Investigations Procedure, Serious Incidents and Specified Weapons) Regulations 2013 (the PIRC Regulations);
- The Police Service of Scotland (Senior Officers) (Conduct) Regulations 2013
- The Criminal Justice (Scotland) Act 2016;
- The General Data Protection Regulations (GDPR);
- The Data Protection Act 2018 (DPA)

The SPA

A.8 Section 2 of the Police and Fire Reform (Scotland) Act 2012 provides that the Authority has the following main functions:

- (a) to maintain Police Scotland,
- (b) to promote the policing principles set out in section 32 of the Act,
- (c) to promote and support the continuous improvement in the policing of Scotland,
- (d) to keep under review the policing of Scotland,
- (e) to hold the chief constable to account for the policing of Scotland (including, in particular, the chief constable's carrying out of the duties referred to in section 17 of the Act).

A.9 The SPA is also responsible for the provision of forensic services to Police Scotland, the PIRC, and the Lord Advocate and procurators fiscal (section 31); and for making arrangements to ensure that independent custody visitors may visit detainees and monitor their treatment (section 94).

A.10 Section 7 of the Act provides that the Authority must appoint –

- (a) the chief constable,
- (b) one of more deputy chief constables, and
- (c) one or more assistant chief constables.

A.11 The Authority may also appoint police staff to assist in the carrying out of the police functions. Such staff may be employed by the Authority, or provided under arrangements between the Authority and a third party (section 26).

A.12 Section 60 of the Act provides that the Authority and the chief constable must maintain suitable arrangements for the handling of relevant complaints (as defined in section 34 of the 2006 Act). The Authority and the chief constable must seek the views of others as to what those arrangements should be. The Authority must also 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 for handling relevant complaints are suitable.

A.13 The Authority also performs functions under the Police Service of Scotland (Senior Officers) (Conduct) Regulations 2013. These include:

- referring possible criminal offences by senior officers to the appropriate prosecutor (regulation 7);
- conducting preliminary assessments of misconduct allegations and, where appropriate, referring these to the PIRC for possible investigation (regulation 8);
- following receipt of the investigator’s report, determining whether the senior officer has a case to answer to misconduct, gross misconduct or neither (regulation 15);
- appointing panels to conduct misconduct hearings (regulation 18);
- determining appeals of panels’ decisions (regulation 25).

A.14 The Authority is also the “appropriate authority” for relevant complaints about the Authority itself, members of its staff, and senior officers of Police Scotland (section 41 of the 2006 Act).

APPENDIX B

INITIAL OPERATIONAL RESPONSE

Stage 1

DEATH IN CUSTODY OR DEATH DIRECTLY LINKED TO POLICE INVOLVEMENT/CONTACT

POLICE NOTIFY COPFS AND PIRC

COPFS ASSESS CIRCUMSTANCES AND DETERMINE MODE OF INVESTIGATION

THE PIRC TAKES NO ACTION PENDING INSTRUCTION FROM COPFS

Stage 2

PIRC INVESTIGATION

POLICE INVESTIGATION

FOLLOWING INITIAL INVESTIGATION COPFS DETERMINE THAT THEY HAVE NO FURTHER ROLE IN INCIDENT

COPFS NOTIFY THE PIRC OF THEIR DECISION

Stage 3

AS DIRECTED BY COPFS, PIRC ASSUME PRIMACY OVER SCENE AND INVESTIGATION INTO DEATH

POLICE CONDUCT INVESTIGATION AND REPORT TO COPFS

PIRC ASSESS AND DECIDE ON REQUIREMENT FOR PIRC INVESTIGATION

PIRC ASSUMES PRIMACY OVER SCENE AND INVESTIGATION INTO DEATH

PIRC CONDUCT INVESTIGATION AND REPORT FINDINGS AND RECOMMENDATIONS TO POLICE

APPENDIX C

INITIAL OPERATIONAL RESPONSE

Stage 1

DEATH INDIRECTLY LINKED OR SERIOUS INJURY DIRECTLY OR INDIRECTLY LINKED TO POLICE INVOLVEMENT/CONTACT

POLICE NOTIFY PIRC

Stage 2

COPFS ASSESS AND DETERMINE MODE OF INVESTIGATION

FOLLOWING PIRC ASSESSMENT INFERENCE OF CRIMINALITY EMERGES

PIRC ASSESSES AND DECIDE ON REQUIREMENT FOR PIRC TO INVESTIGATE

Stage 3

PIRC INVESTIGATION

POLICE INVESTIGATION

FOLLOWING INITIAL INVESTIGATION COPFS DETERMINE THAT THEY HAVE NO FURTHER ROLE IN INCIDENT

SERIOUS INJURY RESULTS IN DEATH, INFORM COPFS AND AWAIT INSTRUCTION

PIRC ASSUMES PRIMACY OVER SCENE AND INVESTIGATION INTO INJURY

AS DIRECTED BY COPFS, PIRC ASSUME PRIMACY OVER SCENE AND INVESTIGATION

POLICE CONDUCT INVESTIGATION AND REPORT TO COPFS

PIRC CONDUCT INVESTIGATION AND REPORT FINDINGS AND RECOMMENDATIONS TO POLICE

APPENDIX D

**Sharing of Information between Police Scotland, the Authority, the PIRC and the
COPFS
in conduct matters**

Information may be provided with the prosecutors consent to PSD or the Authority for the purpose of conduct or misconduct proceedings. Such information will advise PSD or the Authority of the nature of any allegations at the outset, advise if there is likely to be additional offences and of the evidence at the conclusion of the investigation and following a decision by the COPFS to prosecute or not.

During an investigation, if there are any significant developments that substantially weakens or strengthens the case against the officer, member of staff or member of the Authority's staff, the timing and disclosure of such information will be discussed and agreed with the COPFS to ensure that the ongoing investigation and any potential criminal proceedings are not compromised.

Such information will be provided on a confidential basis **solely** for the purpose of conduct considerations and not for any other purpose such as civil proceedings.

APPENDIX E

PROTOCOL FOR SECONDMENT OF POLICE OFFICERS TO THE POLICE INVESTIGATION AND REVIEW COMMISSIONER

Introduction

- E.1 Investigations need to be carried out by properly skilled, professional and experienced investigators and, where required, by specialist staff. It may therefore be necessary, from time to time, for the PIRC to supplement its resources with secondments of staff from other policing or scrutiny bodies. The 2006 Act provides for such secondments from Police Scotland.

Agreeing secondments

- E.2 Where it is evident to the PIRC that it requires additional or specialist resources in order to carry out an investigation effectively, the Commissioner will present a business case in writing to the Deputy Chief Constable (People & Professionalism).
- E.3 The business case will outline:
- A summary of the key issues under investigation
 - The number of staff required to undertake the investigation
 - The type of staff required to undertake the investigation
 - The anticipated duration of the secondment
 - The terms and conditions that will apply
 - The PIRC's role in conducting the investigation
- E.4. Where necessary, the relevant managers or their nominated representatives will meet for further discussion of the business case. However, Police Scotland recognise that the PIRC may be legally constrained from providing further details about the investigation. Police Scotland will confirm in writing if it agrees to the PIRC's request.
- E.5 If, during the course of an investigation, the PIRC identifies a need to extend the anticipated duration of a secondment, it will present Police Scotland with a supplementary business case that:
- outlines the reasons for the extension, and
 - confirms a revised termination date.

Key principles

Duties of seconded staff

- E.6 Staff seconded to the PIRC will be involved only in conducting the investigation for which they were seconded. The PIRC will not use such staff for any other investigation or any

other task unless this has been subject to a separate business case submitted to Police Scotland. Seconded staff will not have access to information on any other investigation.

- E.7 A constable appointed under secondment has all the powers and privileges of a constable throughout Scotland and is subject to the direction and control of the PIRC.

Independence of seconded staff

- E.8 Police Scotland undertakes to second staff who have no personal or operational connection to the matter or the individual(s) subject to investigation and who do not operate within the command of the individual or individuals subject to investigation. Seconded members of staff will be asked by the PIRC to disclose such connections. Where possible, seconded staff will normally come from an area geographically distant from the area in which the matter under investigation took place.

Independent oversight

- E.9 PIRC will appoint an investigator of the appropriate level to oversee the work of seconded staff. The appointed PIRC investigator will lead the investigation, be responsible for directing the activities of seconded staff and for assuring the quality of their work relating to the investigation.

Terms and conditions

Pay, travel and subsistence

- E.10 Primary responsibility for assuring that staff act with integrity while performing their duties lies with their employers. On this basis Police Scotland agree that seconding personnel to undertake investigations relating to their staff is cost-neutral. They agree to continue paying the salaries of staff seconded to the PIRC, including overtime payments, and to meet subsistence costs incurred during the course of the investigation. Seconded staff submitting paper copies of their claims to Police Scotland will receive confirmation from the PIRC senior manager conducting the investigation that the staff member incurred the expenses claimed. Police Scotland agree to make appropriate transport available, and fuel costs payable, to their seconded staff to enable them to travel to and from the investigation and to carry out the investigation.

Annual leave

- E.11 Seconded staff will receive their contractual annual leave and public holiday entitlement and follow Police Scotland procedures for submitting requests for leave. At the outset of the investigation they will notify the relevant PIRC senior manager of any pre-authorised leave to enable him or her to plan the investigation. When planning further leave, seconded staff will endeavour to take due account of the demands of the investigation.

Working hours and overtime

E.12 Normal working pattern for seconded staff will be Monday to Friday 8.00 to 16.00, including refreshment time. Overtime may be necessary from time to time to complete an investigation. This will be payable at the relevant Police Scotland rates. Any claims submitted by seconded staff will be supported by confirmation by the PIRC senior manager that the number of hours claimed is accurate. The PIRC undertakes to minimise the amount of overtime worked and out-of-pocket expenses accrued by seconded staff, other than in exceptional circumstances. Should such circumstances arise, the PIRC will discuss the matter with Police Scotland.

Sickness

E.13 Seconded staff will follow Police Scotland procedures for reporting periods of sick leave to their line managers. In addition, they will notify the PIRC senior manager conducting the investigation.

Performance appraisal and performance monitoring

E.14 Following the period of secondment, PIRC will provide an assessment of the member of staff's performance for inclusion, if desired, in the member of staff's annual appraisal. Should the PIRC have any concerns during an investigation about a member of staff's performance and the PIRC is unable to resolve this, the matter will be referred to Police Scotland for further discussion.

Employee liability insurance

E.15 Staff seconded to the PIRC will remain covered by Police Scotland employee liability insurance during the period of secondment.

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**APPENDIX F
(SPECIMEN LETTERS)**

SPECIMEN NOTIFICATION -A COPFS Instructed investigation into a Death

Recipient Details
Assistant Chief Constable
Police Service of Scotland
Police Headquarters
Tulliallan Castle
Kincardine
Fife
FK10 4BE

Operation Name
PIRC Ref Number

cc: Head of PSD

Date

Dear XXXX

**Death in Custody –
Date and Locus**

The Crown Office and Procurator Fiscal Service (COPFS) has instructed the PIRC under the terms of Section 33A(b)(ii) of the Police, Public Order and Criminal Justice (Scotland) Act 2006 (as amended) to investigate the death of xxxx, who died on xxxx.

The PIRC has been instructed to investigate the circumstances of xxxx arrest and demise from the point at which police officers were alerted to attend at xxxx until his being declared dead in xxxx at xxxx hours.

Under the terms of Section of 44(2) of the 2006 Act I hereby give notice that the information or documents specified below should be produced to the PIRC within 7 days.

I understand that Police Scotland will appoint a single point of contact (SPOC) to facilitate the production of the specified information or documents and to deal with any subsequent notifications of specification under the '2006 Act'.

As you are aware, the PIRC is required to give the Chief Constable a reasonable time to comply with the notice of specification and, in this regard, should the appointed SPOC encounter any

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difficulties in complying with the timeframes for the production of information or documents, I will be obliged if they can inform the appointed PIRC investigator accordingly.

I have appointed xxxx Deputy Senior Investigator (DSI) with PIRC to undertake the investigation.

I will be obliged if you will arrange for the specified information and documents outlined hereafter to be submitted to xxxx Deputy Senior Investigator (DSI) by specific date. Please note that the documents or other information should be produced in the form specified.

Please provide documents in Microsoft Word format or Adobe pdf format, any audio material in WAV format, and ensure that any video material supplied can be viewed/played in Windows Media files.

Please provide all witness statements from civilian witnesses and police officers and staff in MS Word format on the National Standard statement form. In this regard, please ensure that all appropriate sections of the statement form are fully completed with the relevant details of the witness, including rank or occupation of witness, police identification or shoulder number, full citation address including post code for citation purposes, all relevant contact details, including landline telephone number, mobile number and email address where relevant.

Documents of Information specified:

1. Witness statements from all police officers or members of police staff, involved in the incident from the time that the deceased xxxx was reported to be at xxxx until he was pronounced life extinct at xxxx;
2. Copies of witness statements from all civilian witnesses, including paramedics and other medical personnel obtained during the course of the police investigation;
3. Copies of recordings of all telephone communications and Airwave radio traffic related to the incident and index of content to show file number/dates/times of recordings and identification of police officers and police staff;
4. Copies of relevant command and control incident logs (Full STORM prints);
5. Copies of all minutes and other documentation from all Police Scotland Gold Group meetings and any other briefing documents held in furtherance of this investigation;
6. Copies of Police Scotland Death Report and medical records/background in relation to xxxx;
7. Copies of any records held by Police Scotland in relation to the deceased xxxx, including any records from the Scottish Intelligence Database (SID), Interim Vulnerable Persons Database (IVPD) or other relevant databases (CHS and PNC);

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8. Copies of custody records and CCTV footage from xxxx at xxxx, in relation to the deceased;
9. Copies of public space CCTV in relation to the report of xxxx at;
10. A full list of productions seized by Police Scotland as part of their investigation.
11. Copies of SPA Forensic Services reports, photographs and video footage taken in relation to the deceased;

Police Scotland may consider or be aware of other documents or information which are connected to this incident and which have not been initially specified above. I would be obliged if you can identify any such document in order that I can provide Police Scotland with a specification under Section 44(2) to recover these documents or information.

Where possible all documents should be transmitted electronically to the following secure email address at [REDACTED]. The availability of the hard copy material should be notified to xxxx PIRC DSI who will arrange collection.

xxxx DSI can be contacted on telephone number on xxxx or by email to xxxx@pirc.gov.scot

Should you have any queries in respect of this matter please do not hesitate to contact me.

Yours sincerely

Head of Investigations

SPECIMEN NOTIFICATION - Police Scotland Referral

xxxx
Assistant Chief Constable
Police Service of Scotland
Police Headquarters
Tulliallan Castle
Kincardine
Fife
FK10 4BE

Operation Name
PIRC Ref No

cc: xxxx PSD

Date

Dear xxxx

Police Referred Investigation – (Nature of Serious Incident)

On (date), (officer) of PSD, referred the above incident to the Police Investigations and Review Commissioner (PIRC) in terms of Section 33A(c) of the Police, Public Order and Criminal Justice (Scotland) Act 2006 (as amended) and the Police Investigations and Review Commissioner (Investigations Procedure, Serious Incidents and Specified Weapons) Regulations 2013, in relation to (describe serious incident).

I have decided that the PIRC will investigate this matter. The investigation will examine (terms of reference of the investigation).

Under the terms of Section 44(1) of the 2006 Act and Regulation 5 of the 2013 Regulations I hereby give notice that the information, records or documents specified below should be produced to the PIRC within 7 days.

I understand that Inspector xxxx has been appointed as the Single Point of Contact (SPOC) to facilitate the production of the specified information or documents and who may deal with any subsequent notifications of specification under the Act and Regulations.

As you are aware, the PIRC is required to give the Chief Constable a reasonable time to comply with the notice of specification and, in this regard, should Inspector xxxx encounter any difficulties in complying with the timeframes for the production of information or documents I will be obliged if xxxx could inform the appointed PIRC investigator accordingly.

I have appointed xxxx, Investigator with PIRC to undertake the investigation.

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I will be obliged if you will arrange for the specified information and documents outlined hereafter to be submitted to PIRC Investigator xxxx by xxxx hours on xxxx. Please note that the documents or other information should be produced in the form specified.

Please provide documents in Microsoft Word format or Adobe pdf format, any audio material in WAV format, and ensure that any video material supplied can be viewed/played in Windows Media files.

Please provide all witness statements from civilian witnesses and police officers and staff in MS Word format on the National Standard statement form. In this regard, please ensure that all appropriate sections of the statement form are fully completed with the relevant details of the witness, including rank or occupation of witness, police identification or shoulder number, full citation address including post code for citation purposes, all relevant contact details, including landline telephone number, mobile number and email address where relevant.

Documents of information specified:

1. Copies of witness statements from police officers and civilian witnesses, including xxxx and medical personnel which are in possession of Police Scotland and which are relevant to this incident.
2. Copies of relevant Command and Control incident logs (full STORM prints) in relation to the initial report regarding xxxx and xxxx subsequent apprehension.
3. List of any known witnesses (police or civilian) who have not yet provided witness statements and attended this incident. Please provide full contact details for these individuals.
4. Copies of any medical related reports obtained regarding the serious injury to xxxx.
5. Copies of any other relevant public space CCTV, police vehicle CCTV or Body Worn Camera footage of the incident. In this regard, please identify any officers who feature in this footage.
6. A copy of any Standard Prosecution Report and Crime Report submitted in relation to the preceding incident involving xxxx.
7. A copy of any relevant Airwave transmissions relating to the initial report relating to xxxx and also broadcasts made during xxxx arrest and thereafter.
8. Copy of any other Police Scotland forms created in relation to the arrest of xxxx.
9. Details of any complaint against the police made by xxxx relating to this incident.

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Police Scotland may consider or be aware of other documents, records or information which are connected to this incident and which have not been initially specified above. I would be obliged if you can identify any such documents, records or information in order that I can provide Police Scotland with a specification in terms of the "2006 Act" and "the 2013" Regulations to recover these documents, records or information.

Where possible all documents should be transmitted electronically to the following secure email address [REDACTED]. The availability of any hard copy material should be notified to Investigator xxxx who will arrange collection.

Investigator xxxx can be contacted on xxxx, by mobile telephone number on xxxx or by email on xxxx@pirc.scot.gov

Should you have any queries in respect of this matter please do not hesitate to contact me.

Yours sincerely

Head of Investigations

OFFICIAL

SPECIMEN NOTIFICATION - A COPFS Instructed Criminal Investigation

xxxx
Assistant Chief Constable
Police Service of Scotland
Police Headquarters
Tulliallan Castle
Kincardine
Fife
FK10 4BE

Operation Name
PIRC Ref No

cc: xxxx PSD

Date

Dear xxxx

COPFS Instructed Investigation – (Nature of Investigation)

On (date), the COPFS, instructed the Police Investigations and Review Commissioner (PIRC) in terms of Section 33A(b) of the Police, Public Order and Criminal Justice (Scotland) Act 2006 (as amended) to investigate (outline the nature of the investigation).

Under the terms of Section 44(2) of the 2006 Act. I hereby give notice that the information, records or documents specified below should be produced to the PIRC within 7 days.

I understand that Inspector xxxx has been appointed as the Single Point of Contact (SPOC) to facilitate the production of the specified information or documents and who may deal with any subsequent notifications of specification under the Act.

As you are aware, the PIRC is required to give the Chief Constable a reasonable time to comply with the notice of specification and, in this regard, should Inspector xxxx encounter any difficulties in complying with the timeframes for the production of information or documents I will be obliged if xxxx could inform the appointed PIRC investigator accordingly.

I have appointed xxxx, Investigator with PIRC to undertake the investigation.

I will be obliged if you will arrange for the specified information and documents outlined hereafter to be submitted to PIRC Investigator xxxx by xxxx hours on xxxx. Please note that the documents or other information should be produced in the form specified.

Please provide documents in Microsoft Word format or Adobe pdf format, any audio material in WAV format, and ensure that any video material supplied can be viewed/played in Windows Media files.

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Please provide all witness statements from civilian witnesses and police officers and staff in MS Word format on the National Standard statement form. In this regard, please ensure that all appropriate sections of the statement form are fully completed with the relevant details of the witness, including rank or occupation of witness, police identification or shoulder number, full citation address including post code for citation purposes, all relevant contact details, including landline telephone number, mobile number and email address where relevant.

Documents of information specified:

1. Copies of witness statements from police officers and civilian witnesses, including xxxx and medical personnel which are in possession of Police Scotland and which are relevant to this incident.
2. Copies of relevant Command and Control incident logs (full STORM prints) in relation to the initial report regarding xxxx and xxxx subsequent apprehension.
3. List of any known witnesses (police or civilian) who have not yet provided witness statements and attended this incident. Please provide full contact details for these individuals.
4. Copies of any medical related reports obtained regarding the serious injury to xxxx.
5. Copies of any other relevant public space CCTV, police vehicle CCTV or Body Worn Camera footage of the incident. In this regard, please identify any officers who feature in this footage.
6. A copy of any Standard Prosecution Report and Crime Report submitted in relation to the preceding incident involving xxxx.
7. A copy of any relevant Airwave transmissions relating to the initial report relating to xxxx and also broadcasts made during xxxx arrest and thereafter.
8. Copy of any other Police Scotland forms created in relation to the arrest of xxxx.
9. Details of any complaint against the police made by xxxx relating to this incident.

Police Scotland may consider or be aware of other documents, records or information which are connected to this incident and which have not been initially specified above. I would be obliged if you can identify any such documents, records or information in order that I can provide Police Scotland with a specification in terms of the '2006 Act' to recover these documents, records or information.

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Where possible all documents should be transmitted electronically to the following secure email address [REDACTED]. The availability of any hard copy material should be notified to Investigator xxxx who will arrange collection.

Investigator xxxx can be contacted on xxxx, by mobile telephone number on xxxx or by email on xxxx@pirc.scot.gov

Should you have any queries in respect of this matter please do not hesitate to contact me.

Yours sincerely

Head of Investigations

OFFICIAL

SPECIMEN NOTIFICATION - Notification that a matter will not be Investigated

Name
Rank
Police Service of Scotland
Police Headquarters
Tulliallan Castle
Kincardine
Fife
FK10 4BE

cc: xxxx PSD

Date

Dear,

Serious Injury Following Police Contact, etc. – NAME on DATE

Thank you for your referral on **** in respect of the above incident.

Having considered the circumstances and the information provided, I have concluded that we will not be carrying out an investigation into this matter at this time.

Should you subsequently become aware of any additional information regarding this incident please notify me accordingly.

Yours sincerely,

Head of Investigations

OFFICIAL

SPECIMEN – Request for Factual Accuracy Check

xxxx
Assistant Chief Constable
Police Service of Scotland
Police Headquarters
Tulliallan Castle
Kincardine
Fife
FK10 4BE

Operation Name
PIRC Ref No

cc: xxxx PSD

Date

Dear XXXX

[INSERT NATURE AND DATE OF INCIDENT]

I attach for your consideration a draft report of the PIRC investigation in respect of the incident on [INSERT] in [INSERT] where [INSERT].

I will be obliged if you can arrange for the report to be checked for factual accuracy and notify me within 5 working days of any errors of fact that you consider require amendment.

Following your response I will issue the final report to Police Scotland. This will be published on the PIRC website.

Yours sincerely

Head of Investigations

OFFICIAL

APPENDIX G

Police Scotland Standards of Professional Behaviour

These standards reflect our expectations of our officers, whether on or off duty.

Honesty and integrity

We act with honesty and integrity and do not compromise or abuse our position.

Authority, respect and courtesy

We act with self-control and tolerance, treating members of the public and colleagues with respect and courtesy in line with our values.

We do not abuse our powers or authority and respect the rights of all individuals.

Equality and diversity

We act with fairness and impartiality. We do not discriminate unlawfully or unfairly.

Use of force

We use force only to the extent that it is necessary, proportionate and reasonable in all the circumstances.

Orders and instructions

We give and carry out only lawful orders and instructions.

Duties and responsibilities

We are diligent in the exercise of our duties and responsibilities.

Confidentiality

We treat information with respect and access or disclose it only in the proper course of our duties.

Fitness for duty

When on duty or presenting ourselves for duty, we are fit to carry out our responsibilities.

Discreditable conduct

We behave in a manner which does not discredit the Police Service or undermine public confidence in it, whether on or off duty.

Challenging and reporting improper conduct

We report, challenge or take action against the conduct of others which has fallen below the Standards of Professional Behaviour.