



OFFICIAL REPORT
AITHISG OIFIGEIL

DRAFT

Criminal Justice Committee

Wednesday 22 May 2024

Session 6



The Scottish Parliament
Pàrlamaid na h-Alba

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CRIMINAL JUSTICE COMMITTEE
20th Meeting 2024, Session 6

CONVENER

*Audrey Nicoll (Aberdeen South and North Kincardine) (SNP)

DEPUTY CONVENER

*Russell Findlay (West Scotland) (Con)

COMMITTEE MEMBERS

- *Katy Clark (West Scotland) (Lab)
- *Sharon Dowey (South Scotland) (Con)
- *Fulton MacGregor (Coatbridge and Chryston) (SNP)
- *Rona Mackay (Strathkelvin and Bearsden) (SNP)
- *Pauline McNeill (Glasgow) (Lab)

*attended

THE FOLLOWING ALSO PARTICIPATED:

- Chief Superintendent Helen Harrison (Police Scotland)
- Robin Johnston (Scottish Police Authority)
- Katharina Kasper (Scottish Police Authority)
- Fiona McQueen (Scottish Police Authority Board)
- Nicky Page (Police Scotland)
- Deputy Chief Constable Alan Speirs (Police Scotland)

CLERK TO THE COMMITTEE

Stephen Imrie

LOCATION

The David Livingstone Room (CR6)

Scottish Parliament

Criminal Justice Committee

Wednesday 22 May 2024

[The Convener opened the meeting at 10:00]

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

The Convener (Audrey Nicoll): Good morning, and welcome to the 20th meeting in 2024 of the Criminal Justice Committee. We have no apologies this morning.

Our business is the continuation of our stage 1 evidence on the Police (Ethics, Conduct and Scrutiny) (Scotland) Bill. We have two panels of witnesses. We will hear first from the Scottish Police Authority.

I give a warm welcome to Fiona McQueen, who is the vice-chair of the Scottish Police Authority board, Katharina Kasper, who is the chair of the SPA complaints and conduct committee, and Mr Robin Johnston, who is the head of legal at the SPA. I thank them for agreeing to provide evidence to the committee.

I refer members to papers 1 and 2. I intend to allow up to 80 minutes for the evidence session.

I invite Fiona McQueen to make some brief opening remarks.

Fiona McQueen (Scottish Police Authority Board): Good morning, convener and committee members. Thank you for the opportunity to attend and give evidence on stage 1 of the Police (Ethics, Conduct and Scrutiny) (Scotland) Bill on behalf of the Scottish Police Authority.

To improve public confidence and the service that Police Scotland provides to its fellow citizens, the complaints and conduct system, which spans a range of organisations, needs to be simplified, easier to navigate, quicker and more transparent. Significant effort and improvement have been made across the overall system since Lady Elish Angiolini published her review in 2020. The introduction of the bill is a crucial next step in that improvement journey, and the authority welcomes it. We have no doubt that the bill will strengthen the complaints and conduct system for policing and, crucially, have a positive impact on public trust and confidence.

The authority has followed the committee's consideration of the bill to date and the evidence from a broad range of organisations and individuals. We recognise the strength of feeling and the need for greater independence in the

handling of complaints against the police. Realising the ambition of Lady Elish's recommendations is the right way to achieve that.

Although the authority supports the introduction of the bill, it could go further to realise fully the ambitions of the Angiolini review. For example, Lady Elish proposes greater independence and reduced complexity in the handling of relevant complaints about senior officers. Specifically, she proposes that the Police Investigations and Review Commissioner should take on responsibility for the handling of that type of complaint, but the bill does not implement that proposal and the authority considers that to be a missed opportunity.

The bill requires the authority and Police Scotland only to respond to recommendations made by the PIRC in complaint-handling reviews. Lady Elish recommended that the authority and Police Scotland should be under a duty to comply with recommendations, subject to a public interest test. We support the implementation of Lady Elish's recommendation in full.

The bill introduces a duty of candour, which the authority fully supports. However, Lady Elish also recommended that the PIRC be given the power to compel police witnesses to attend interviews when that is necessary and proportionate. At the moment, the bill does not implement Lady Elish's recommendation in full.

Lady Elish also recommended that the PIRC should become a prescribed person under United Kingdom whistleblowing legislation. Although we would not expect that to be in the bill, we understand that the Scottish Government is liaising with the Home Office to secure the necessary change to UK legislation. We fully support that action.

Notwithstanding some of those issues, which we are confident can be addressed through the parliamentary process, the authority believes that the bill will strengthen the complaint and conduct landscape in policing. However, it cannot and will not be the answer to many of the cultural issues that were raised by Lady Elish in 2020, by former officers and staff or by some of the witnesses who attended the committee to talk about their own harrowing and distressing experiences. Only through tackling and addressing cultural issues and eradicating inherent bias and discrimination in all its forms will we make the necessary progress.

I am joined by my fellow board member, Katharina Kasper, who is chair of the Scottish Police Authority's complaints and conduct committee. She can answer any questions that members might have about the current complaints and conduct processes and the authority's oversight of Police Scotland's arrangements.

I am also joined by Robin Johnston, who is the authority's head of legal and can answer members' questions about the bill and the Angiolini review. I will be happy to take any broader questions that members might wish to cover.

Thank you very much for the opportunity to make an opening statement.

The Convener: That is a comprehensive and helpful opening statement. I will start with a question. You spoke about Lady Elish's significant work, which underpins where we are today. We know that many of the recommendations in her report have already been put in place, are under way or are being implemented. My question is about measuring progress. As you said in your opening comments, we have taken evidence from individuals in previous evidence sessions and we have heard from members of the public who described what seemed to be inconsistent and, in some cases, unacceptable standards of response when they made a complaint to Police Scotland about the conduct of officers. In addition, as you reference, we heard evidence that, when police officers are the subject of a complaint, the way that they are treated seems to fall short. We heard from one officer who shared his distressing story with us.

I am interested in exploring a bit more about what work the Scottish Police Authority undertakes to look at the views of those who have made complaints, whether they be police officers and staff or members of the public, to measure their experience in the context of the improvements that we are all trying to make and, in particular, the Scottish Police Authority is trying to make in and around the way that complaints are dealt with.

Katharina Kasper (Scottish Police Authority): Good morning and thank you for the opportunity to give evidence. That is a pertinent question that the complaints and conduct committee of the SPA very much concerns itself with. It is important to remember the subjective experience of the complainers and of officers, which is incredibly important.

There are a number of mechanisms by which we measure that, but it is also important to remember that, because you started talking about the improvement in performance, we also need to look at what data is available to us. The committee is very much concerned with that.

On subjective experience, Police Scotland undertakes user satisfaction surveys and receives data on a monthly basis. That data is scrutinised and any learning points are identified. That process is in place.

For the complaints and conduct committee, it is also important to look at the objective data, such

as the timelines within which the complaints are managed and the numbers of complaints that are upheld. For example, we look at how many complaints are resolved through front-line resolution versus having to go through a full-blown, six-stage investigation process.

All those things are incredibly important, as are independent audits of the processes that are in place. We need to build up an exact picture of the key performance indicators for processes that are inherent in the complaints handling processes and how they improve over time.

From the complaints and conduct committee's perspective, we have certainly seen an improvement. We have had some initial audits through from the PIRC, and there was a joint audit between the PIRC and the SPA. Another PIRC audit report on the six-stage investigation process is due to come out. That will be an important bit of evidence. We have also restarted our internal dip sampling into parts of the complaints handling process that are not currently subject to PIRC audits. That is another bit of evidence that we have.

They are all critical bits of data that, as I say, will over time help us to establish, for example, whether the average timelines for complaint handling are coming down or whether we are managing to solve more complaints through front-line resolution and that type of element.

That is where I see the complaints and conduct committee's work going in the future and I would say that we are at the start. We have a first set of data, but we need to keep repeating that to build that picture over time. That is the only way to objectively measure certain things when it comes to complaints handling.

The Convener: Thank you. You have set out a lot of elements in terms of ultimately monitoring and improving the way that complaints are handled. Can you give any examples of where that work has led to recommendations for change in practice or improvements in policy that can be implemented by Police Scotland?

Katharina Kasper: Yes, absolutely. The learnings probably fall into two broad categories. There will be learnings for the complaints handling process per se—how to improve the existing arrangements—and there will also be learnings for policing practice. That is the organisational learning that we are all really interested in, because that, I suppose, is the real value of analysing complaints and data.

Within the first category, an example would be that, following the PIRC joint audit into the triage and categorisation of complaints, some enhancements were made to the front-line resolution process. For example, there was a

recommendation to look at the timeframes within which the complainer is contacted after submitting the complaint.

There was also a lot of procedural enhancement activity. For example, opportunities for extra training were identified and then delivered by the PIRC to the professional standards department in Police Scotland. That audit has strengthened the way in which Police Scotland deals with complaints.

On the other side, which is the policing practice, we see on a quarterly basis evidence of changes to some of Police Scotland's standard operating procedures as part of its service delivery. We also see that additional training needs are identified, such as enhanced officer safety training to deal with any potential excessive use of force. We see that all the time. It is reported to the committee on a quarterly basis as part of the PSD's standing report and there are ample examples. Some are broader, while some are narrower and more specific, but for us, the important thing is that there is a mechanism and we are seeing evidence of that.

The Convener: Thank you. My final question on that is about the bill. From the perspective of the conduct and complaints committee, which provisions in the bill will help to strengthen the work that you have outlined?

Katharina Kasper: The bill is at a relatively high level, so some secondary legislation may well provide more direct impact on the work of the committee. However, one very clear example that I can see is the potential for the PIRC to call in complaints. That would be another really important data point for us and the PIRC obviously does not have that power just now. Although the PIRC data is incredibly helpful, it does not look at reinvestigating complaints. As our colleagues from the PIRC explained to this committee last week, they look at whether a complaint has been handled to a reasonable standard but they do not necessarily reinvestigate the matter. The ability to call in significant complaints could be helpful.

The Convener: Thank you. I will now bring in other members.

Russell Findlay (West Scotland) (Con): Good morning, panel. Much of the SPA's position seems to be supportive of the PIRC getting new powers and even taking on some of the responsibilities that currently lie with the SPA. However, the PIRC has told us that it cannot—it is unable to, or perhaps it does not want to—take on some of those powers I will not bog you down with the specifics. I am sure—I hope—that you are across some of the PIRC's evidence.

For example, in your responses to sections 11, 12 and 13 of the call for views, I see that you have suggested that the PIRC should take things on.

In the rather unusual set of circumstances in which two bodies are apparently trying to give away or not take powers, are you talking directly with the PIRC, or do you hope that the problem will be resolved through the legislative process?

10:15

Robin Johnston (Scottish Police Authority): I am not aware of direct conversations at the legal level, but they could be facilitated.

The approach that we have taken to the Angiolini review is that we have supported her recommendations and proposals from the outset. That is partly because of the thoroughness and the care that was taken over the review, but also because it focuses on a public interest perspective rather than on the interests of any one organisation.

For example, as Fiona McQueen pointed out, Lady Elish proposed that the PIRC should take on responsibility for handling relevant complaints about senior officers. That would be in the public interest, because it would enhance independence in the handling of the most serious complaints about police officers in Scotland.

Lady Elish stopped short of recommending a wholesale independent regime, such as the one that exists in Northern Ireland and, more recently, in the Republic of Ireland. However, she was very careful to make clear her views on the PIRC taking on that additional responsibility. We have supported that from the outset, not because we are trying to rid ourselves of particular functions but because enhanced independence and enhanced simplicity in the process are in everyone's interest, particularly that of the public.

Russell Findlay: A similar theme arises in respect of the proposed police barred and advisory lists. The bill proposes that those would be managed by the SPA. The SPA's position is that Police Scotland would be better served taking those on, and Police Scotland has told us the same. Does that not perhaps go the other way and risk giving the public the perception that the police are controlling the lists? Is that a good thing? What is your thinking behind why it should be done the way in which you propose?

Robin Johnston: We completely support the barred and advisory lists. The point that we made is that Police Scotland's present infrastructure, which deals with vetting, lends itself much more clearly to taking on that particular function.

In addition to that, most, if not all, of the data that will be included in the lists will arise from

misconduct proceedings that are operated by Police Scotland rather than the SPA. If Police Scotland is dealing with the barred and advisory lists, it avoids a situation in which sensitive personal data is needlessly—in our view—passed between organisations, because the barred and advisory lists fit very well into Police Scotland’s existing apparatus.

Russell Findlay: We have heard evidence from former police officers and members of the public of a lack of trust in Police Scotland on some occasions, and the SPA and Police Scotland work closely together, so it is not as though you are casually bandying information around with third parties, so I wonder whether it might be better that the lists are the responsibility of the Scottish Police Authority, as proposed in the bill.

Robin Johnston: There is an argument for that, but in order for that argument to succeed, there has to be a reasonable suspicion that, for some reason, Police Scotland will not put former officers on the barred and advisory lists, even though they have been dismissed as a result of gross misconduct proceedings, or in the case of former officers, if a decision has been taken that they would have been dismissed if they had remained in service. I do not think that there is a reasonable case for thinking that Police Scotland would not automatically include former officers on those lists and that, therefore, the lists would be required to be operated by a separate body. In England and Wales, the College of Policing operates the barred and advisory lists. However, as I understand it, that is because there are 43 police forces in England and Wales rather than for any ideological reason.

Russell Findlay: The bill also proposes a duty of candour, which the SPA supports. However, from its submission, it is not clear whether the SPA supports the off-duty duty of candour, which is not in the bill. The submission suggests that you might support that. Can you clarify that?

Robin Johnston: The SPA does not have a particular stance on whether the duty should apply to off-duty officers. We raised the issue because the pre-bill consultation asked a specific question about whether the duty should apply to off-duty officers. I think that I am right to say that the policy memorandum records that the majority of respondents were in favour of the duty applying to off-duty officers but there did not seem to be any follow-through in relation to that. The important thing is that, if it is not going to apply to officers in a particular capacity, it should be made clear so that there is no dubiety about it in practice.

Russell Findlay: Does the SPA have a view on whether the duty should apply to police staff and non-police officers?

Robin Johnston: We take the view of the PIRC, in its written submission to the committee. It talks about the duty of candour applying to a particular kind of police staff—police custody and security officers—and the reason why that might make sense is that police staff in those capacities are much more likely to be witnesses to the kinds of incident that the PIRC is investigating. Therefore, to exclude that particular type of police staff might impact on the effectiveness of investigations in the future.

Russell Findlay: Thank you. Ms McQueen, in your opening remarks, you talked about the importance of the process being transparent, efficient and fair for the public and police officers, but we have heard evidence from whistleblowers that the complaints process is sometimes, to use their words, “weaponised” and used against them. There was an example of a former female officer who proved sexist discrimination in an employment tribunal and she has been trapped in a process that is nine—going on 10—years long, which is hardly efficient or swift. That case is still with the SPA, as it happens. She has lost her career, she has lost her health and she has lost every penny that she had. She believes that the process is punishment, and I do not think that her case is unusual, because I have heard of many similar cases. Does the bill adequately protect whistleblowers, and will it do anything to change the culture that exists in the SPA and Police Scotland?

Robin Johnston: I am probably best placed to answer that question. The bill goes as far as it can in relation to whistleblowing, because employment law is reserved to Westminster. There are provisions in the bill that allow the PIRC to audit or keep under review the arrangements for whistleblowing—

Russell Findlay: [*Inaudible.*]—blaming Westminster legislation for 10 years of hell in the police complaints process, you know.

Robin Johnston: No, I am sure that that is the case, but I am talking about the content of the bill and how it might assist whistleblowers. So, there is that provision in the bill. However, the one recommendation that Lady Elish made that cannot be in the bill, but which should be taken care of through amendments to UK legislation, is that the PIRC should become a prescribed person under UK whistleblowing legislation. One of the witnesses who gave evidence to the committee and who was not particularly impressed by the impact that the bill would have said that that recommendation would make a real and significant change, and the authority agrees with that.

The Independent Office for Police Conduct, the police complaints body in England and Wales, is a

prescribed person under UK whistleblowing legislation. In the Republic of Ireland, the police complaints body is a prescribed person under equivalent Irish legislation. There was reference in one of the sessions that there are already prescribed persons that police whistleblowers can go to, such as the Health and Safety Executive and the Scottish Information Commissioner. What Lady Elish identified was a gap in the prescribed person apparatus. That gap is the absence of a dedicated Scottish police oversight body.

Russell Findlay: Section 6 of the bill will allow for the continuation of gross misconduct proceedings once an officer retires or resigns. In response to that, your submission says that, when that happens, it should be subject to a public interest test, which obviously makes sense—it should not be so prescriptive as to require every case to be pursued when there may be good reasons not to do so. Could you offer a definition of what that public interest test might look like, and whether it should be set out in the bill? Does the bill need to be amended so that it is clearer about what sets of circumstances the provision might apply to?

Robin Johnston: The bill provides some basic details. I expect that the bulk of the provisions will be in revised conduct regulations. In terms of a definition of public interest, the point that we made was that, if an allegation emerges against an officer after a period of 12 months has expired since their departure from the organisation, a test should be applied, including a public interest test, before proceedings are continued. For the authority, that test would involve such things as whether the allegation is sufficiently serious to significantly undermine public confidence in policing, and there would also be a provision to state that the public interest requires misconduct proceedings in those cases.

We are talking about quite extreme cases. What we cannot have is a situation in which officers are liable for misconduct allegations in perpetuity, even if they have left the service many years ago.

Russell Findlay: I have perhaps misunderstood the written submission. Are you saying that the public interest test would apply only in cases after the 12-month period had elapsed, if a matter arose, or would it also apply in any case within the 12-month window?

Robin Johnston: If the approach that is being taken in England and Wales is anything to go by, what would happen mandatorily is that every gross misconduct allegation that is made against a former police officer within those time periods would be subject to investigation. That is non-negotiable. Thereafter, there would be a decision either to take gross misconduct proceedings further and have a misconduct hearing, where a

decision would be made about whether the officer would have been dismissed had they remained in service or—this goes to the point that you make, Mr Findlay—a decision would be taken, for example, that there should be no case to answer in relation to the investigative findings.

The point that we make in our written submission is that some discretion has to apply to any officer if they are facing misconduct proceedings. The discretion can be, for example, that the evidence simply does not justify a misconduct hearing and, in those cases, the individual would not be subject to any further proceedings.

The Convener: I know that you have more questions, Mr Findlay, but I will bring in other members at this point and we can perhaps come back to you later.

Rona Mackay (Strathkelvin and Bearsden) (SNP): Fiona McQueen, in your opening statement you said that the bill possibly does not go far enough and that not all of Lady Elish's recommendations have been met. I have two questions. First, do you think that the process would still be overly complicated, despite the bill, because of all the different layers of bodies dealing with complaints, such as professional standards, the SPA and the PIRC?

Secondly, the previous chief constable and the current one have stated publicly that the force is institutionally racist and discriminatory. Do you think that the bill will go any way towards helping in that regard? What steps has the SPA taken to try to address that?

10:30

Fiona McQueen: I will answer your second question, and Katharina Kasper can answer your first question, if that is okay.

On the point about institutionalised discrimination—if I may also refer to Mr Findlay's question—whistleblowing, to me, is the last-chance saloon. What we expect, as an oversight body for Police Scotland, is to see that it has created an environment in which its staff can flourish and in which any issues are raised and dealt with way before you get to whistleblowing. Therefore, the whole culture issue is incredibly important, and the bill does not take that on.

However, in the work that Police Scotland has been doing and in our work as an oversight body—in terms of our proportionate oversight of Police Scotland in the interests of the public—we are making sure that we have evidence of change and cultural shift. That work started before Sir Iain Livingstone talked about institutionalised discrimination. It includes looking at data on, for

example, the turnover of women officers and at what people are saying in the “your voice matters” survey. The recent review of culture by His Majesty’s Inspectorate of Constabulary in Scotland recognises that there has been significant progress but that there is much more work to be done.

In my opening statement, I talked about the fact that the bill alone cannot make all the difference. I believe that it will strengthen the process and that it will be effective, but the work on culture has to go alongside that, so that there is openness and willingness to learn. Katharina spoke about the number of complaints that are upheld, so the challenge on complaints and conduct matters is about whether Police Scotland is listening to the lived experience of its officers or members of the public so that it can learn from that and take it forward.

I am not suggesting that culture needs to be part of the bill—that is not what it is about—but Lady Elish also mentioned that culture is incredibly important, and, as an oversight body, we are expecting to see those changes. We have responded. We have the policing together programme, in which we pull everything together to ensure that we get evidence of improved outcomes so that discrimination is eliminated and we have broad oversight of that.

Rona Mackay: Therefore, you will hold Police Scotland to account on any of those matters. If you hear about or see something happening that should not be happening, you will hold it to account.

Fiona McQueen: Absolutely. We do not wait to see or hear about something happening; we are being proactive in looking at data and evidence and supporting Police Scotland to make that change—because it is not easy to make a culture shift and change—and we are measuring outcomes so that we have evidence of improvement.

Katharina Kasper: I think that Rona Mackay’s question was whether the current system is too complex. It is important to remember that, at the moment, each element plays its unique part. The professional standards department of Police Scotland is the body that handles complaints. If I may say so, the fact that Police Scotland has introduced its national complaints handling model whereby all complaints handling has been taken away from local policing and is now dealt with by a central department in PSD is, in our view, a very good thing, because it creates a centre of excellence and an extra layer of independence. Where, for example, complaints are made against local policing, it is not local policing that is investigating but that central unit. That is really

good. That is the engine room of the complaints handling arrangements.

As Fiona McQueen mentioned, the SPA’s role is that of an oversight body. We do not look at individual complaints; we look at the arrangement as a whole. Again, that is a necessary check and balance. To some degree, the PIRC is the equivalent of the Scottish Public Services Ombudsman—it is the appeals body, so to speak. It will look at whether complaints have been handled to a reasonable standard.

On whether the system is too complex, I was really struck by Lady Elish’s evidence to the committee just last week when a similar question was asked. She said—I am roughly paraphrasing, but it is not far off—that she has been really impressed by what we have in Scotland. In fact, I think that she went so far as to say that this is as good as she has seen it. Considering the level of detail that she went into when she was preparing her report, that is really quite robust evidence.

I can see why there may well be a perception that the system is too complex, but it is up to us, as the bodies involved, to set it out very clearly for everybody, explaining that we all fulfil different functions that are all equally important. In fact, it is necessary to have different bodies with a different focus, because that provides a check and balance that we would not have if everything was lumped together into one single body, which might look more coherent on the surface but would not provide the desired level of robustness.

Rona Mackay: Mr Johnston, are you aware of the use of non-disclosure agreements in complaints procedures?

Robin Johnston: As far as the SPA is concerned, there is a general policy approach whereby NDAs or non-disclosure clauses are not used. My colleague Ms McQueen is probably better placed to comment on the oversight of Police Scotland’s use of them.

Fiona McQueen: As a matter of principle, the authority does not use them, and we would expect Police Scotland to use them only when absolutely necessary. There has been oversight, and the reporting mechanism goes into our legal committee, where the use of NDAs has been scrutinised. I have listened to some of the evidence that you have taken, which suggested that they are routinely used, but that was not the evidence that Police Scotland presented to the authority. They have been used by exception, often at the request of the individual member of staff concerned, and they would all be made in accordance with the guidance from ACAS, the Advisory, Conciliation and Arbitration Service. We understand that Police Scotland uses non-disclosure agreements on occasion, but the

majority of settlements by far are not bound by NDAs.

Rona Mackay: When the police use them, are you made aware of that?

Fiona McQueen: The reporting to our legal committee would provide comprehensive oversight of when they were used and not used.

The Convener: While we are on the subject of policy, practice and process, and sticking with the PIRC, I note that the bill would allow the PIRC to undertake the preliminary assessment of misconduct allegations against senior officers. The committee has received evidence suggesting that either the PIRC or an independent body should carry out that assessment for complaints against all ranks of officers. As members of the public tend to deal with rank officers, rather than senior officers, do you think that, if that initial assessment proposal were extended to all officers, that might enhance public confidence in the complaints system—which Russell Findlay touched on, albeit in a different context? Perhaps Mr Johnston might like to come in with any thoughts on that.

Robin Johnston: The authority has focused very much on its own responsibilities in relation to conduct when it has been discussing issues with Lady Elish Angiolini or in the pre-bill consultation and before the committee. We have been focusing on the need for greater independence in the handling of misconduct allegations against senior officers, as opposed to other ranks. Your question is more about whether a preliminary assessment function should be given to the PIRC in respect of all officers.

The Convener: Yes.

Robin Johnston: We have not considered that in detail, because it was never a proposal or recommendation that was made by Lady Elish. In general, if such a move were to be made, it would be very significant, because it would expand the PIRC's role into misconduct proceedings generally, as opposed to limiting that role to senior officers.

There would have to be a very clear understanding of what the benefits would be in practice. Members of the public might feel that such an arrangement would be an improvement to the current system but, to make that very significant change, you would have to look at the evidence as to whether leaving that function with Police Scotland and having it perform it is causing particular issues.

As far as my understanding goes, when Lady Elish looked at that arrangement, she did not recommend any change at that particular level. Her recommendations were confined to enhancing

independence in relation to misconduct allegations against the most senior officers in Scotland.

Fiona McQueen: Convener, perhaps Katharina Kasper could add something.

Katharina Kasper: Just to add to what Robin Johnston has said, I note that there is always a bit of a trade-off. There are no solutions and there are only trade-offs when it comes to really complex systems. If the proposal is to introduce more independence by giving that responsibility to the PIRC, one of the potential unintended consequences would be extended timeframes, because, if an investigation happens within Police Scotland, there is less friction—it has access to the sources, the data and the system. Investigations are easier for Police Scotland to undertake.

I apologise for quoting Lady Elish Angiolini again but, when asked about the issue by the committee last week, she was quite positive and said that the investigations are of really high quality. Therefore, to Robin Johnston's point, what is the problem that we are trying to solve here? I have some data from last year, although it might well be out of date, and Police Scotland might have slightly more up-to-date data. Police Scotland conducted 368 preliminary conduct assessments last year, so, as you can imagine, that would be quite a substantial increase in the number of cases going to the PIRC if it was to handle them all. What is the problem that we are trying to solve, and will we create unintended consequences by trying to shift that activity?

The Convener: The spirit of my question was more about public confidence, which is critical to what we are looking at. I am aware, from some of the helpful data that Police Scotland has provided—I think that it was from Police Scotland rather than the SPA—that a large proportion of complaints are resolved relatively quickly in-house and that it is a relatively small proportion of the overall number of complaints that find their way into the processes that we are discussing.

This is probably a big question but, staying on public confidence, I would be interested to hear your views on which provisions of the bill—for example, on the code of ethics or the strengthening of the duty of candour—are elements that speak to enhancing public confidence.

Fiona McQueen: I will ask Robin Johnston to come in on that, but I think that you are right about public confidence. As well as things being done, they have to be seen to be done. Although, at times, things might be done absolutely appropriately, if the public do not see that and do not have confidence, it is important to take further steps so that we increase public confidence.

Robin Johnston: Just to follow on from Ms McQueen's comments, I note that, if we are talking about a fully independent complaints system, such as the arrangement in Northern Ireland or the arrangement that is being introduced in the Republic of Ireland, Lady Elish Angiolini's findings in relation to that were that that kind of system is, at this stage, not necessary or proportionate. She did not see the value in all complaints, from the most minor to the most serious, being dealt with independently. Crucially, she said that if, after a period of time, the changes that she has recommended have not had the desired effect and have not resulted in an increase in public confidence, the matter should be reviewed again.

10:45

On the question about aspects of the bill that might enhance public confidence, there are quite a few, in the authority's view. You mentioned the duty of candour, convener, and those are very important provisions. The provisions will amend the constable's declaration to include candour, and the policing principles will be amended to provide that the chief constable must take candour into account when policing Scotland. Moreover, new standards of professional behaviour are being inserted into the conduct regulations; essentially, they provide for candour, but—and this is relevant to some of the previous evidence sessions—they also provide for a duty of co-operation. It is worded slightly differently in the standard, as a duty to

"assist and participate in proceedings".

Taken together, the provisions are really important but, as Ms McQueen said in her opening statement, the bill probably does not go far enough in providing a proper remedy in the very small number of cases, if any, where police officers do not adhere to that duty of candour. Lady Elish Angiolini recommended that the PIRC be given a corresponding power to compel police officers to attend interview and to provide information. The witness from the criminal allegations against the police division, from whom you heard last week, talked about certain implications in that respect with regard to article 6 of the European convention on human rights. I would always defer to the Crown Office on the finer points of criminal procedure, but it is worth noting that, in England and Wales, there is a power to compel police officers to attend interview and a similar power in the Republic of Ireland. In fact, it is a criminal offence not to adhere to that particular obligation.

Closer to home, the Scottish Criminal Cases Review Commission, which investigates alleged miscarriages of justice, has a power allowing it to seek a warrant from a sheriff to compel someone

to be questioned on oath. There are ways and means of including a similar power in this bill.

That is one aspect of the bill that I think enhances public confidence. Another important provision is the call-in provision, whereby the PIRC is able to not just look at the way in which a complaint has been handled but investigate a complaint at first instance. The committee has in previous sessions discussed the potential impact of that on cases such as the Emma Caldwell case, and that is the kind of serious case in which that call-in provision could be used. If a member of a deceased's family complained about a poor-quality investigation into the death, they could make a complaint—and it is, I expect, the kind of complaint that would be given consideration for call-in. It is, as I have said, a very important provision.

The ability to take proceedings against former police officers and to bring them to a conclusion will give a sense of natural justice to complainers who make misconduct allegations, while the barred and advisory lists allow there to be a penalty, as it were, for officers who commit gross misconduct. There are other things, such as the code of ethics, that will allow Police Scotland to reiterate and re-emphasise the crucial importance of ethics in policing. A whole range of provisions in the bill will, I think, serve to enhance public confidence.

The Convener: Thank you, that was really interesting.

Before I bring other members back in, I note that, on the proposal for a statutory code of ethics, some witnesses have questioned what difference a code of ethics will have if there is no sanction for breaching it. I would be very interested in hearing whether you have a view on that and whether such a provision should be considered at stage 2.

Robin Johnston: That is something that the authority has considered not just previous to these evidence sessions but as a result of some of the evidence that has been heard. Essentially, it comes down to whether the code of ethics itself is a discipline code, or whether there is a separate discipline code. As I understand it, the policy intention here is to have two separate sources: a code of ethics, which reflects standards and values, and the conduct regulations, under which officers must adhere to particular professional standards.

There is something to be said for keeping those sources separate. Police Scotland's current code of ethics, which is non-statutory, talks about standards such as honesty and integrity, the breach of which would result in disciplinary proceedings under the conduct regulations. However, the code of ethics goes a bit wider than

that to talk about the need for courage in the exercise of duty, pride in one's work and the need always to develop personally. Those are excellent qualities in any walk of life, but breaching them is not going to result in misconduct proceedings against the individual concerned.

To some extent, then, the code of ethics is trying to achieve a different thing from the discipline code. Essentially, it is a guide that, if followed, will mean that officers can avoid ever having to enter the misconduct regime. As for whether it should or should not be a discipline code, the authority's position is that it should not be and that there should be a separate conduct regime, as at present.

The Convener: Thank you for that.

Sharon Dowey (South Scotland) (Con): I want to follow on from your conversation with the convener and ask again about what difference a code of ethics will have if there are no sanctions. The code has been described as symbolic; you are saying that what we are putting in legislation is really just a guide and that the disciplinary processes should be separate.

Robin Johnston: Yes. If the code of ethics is breached in such a way as to breach the standards of professional behaviour and the conduct regulations, there will be consequences. As I understand it, the code in its present form—and probably in the form that it will take post the legislation—goes much wider than a discipline code. There is some value to that because, as I have said, if it is implemented properly and consistently, it should be a guide to all officers with regard to their behaviour. If they remain within the code of ethics at all times, they will be not only adhering to qualities such as courage, pride in one's work and so forth but avoiding any possible infringement of the conduct regulations.

That is why I am saying that there are two things here that are trying to achieve different things. The conduct regulations are the absolute end point that all officers will want to avoid being involved with, while the code of ethics is a means by which they can avoid doing so.

Sharon Dowey: So, it is something to aspire to. In that case, is there any benefit in putting it in legislation?

Robin Johnston: As far as I understand it, the code itself will not be in legislation. The bill's provisions determine how it should be produced and the level of consultation involved.

I do not think that the code is simply symbolic. We should take into account what the chief constable needs to consider when preparing it—convention rights, international human rights such as anti-discrimination conventions, the standards

of professional behaviour and the policing principles—and how broad the range of mandatory consultees is. There is, for example, mandatory consultation with staff representative bodies representing individuals with particular protected characteristics. It is a very wide consultation, and I hope that a collegiate approach will be taken to the production of the code. If properly implemented, the code can be used successfully to avoid anyone ever entering the conduct regime. Obviously, there will be occasions when that happens, but the code of ethics is, hopefully, a way in which that can be minimised.

Sharon Dowey: Do the police need to update their conduct and performance regulations?

Robin Johnston: As I understand it, the conduct regulations will be reviewed once the bill has been passed. There is a significant need for that, not just to reflect the changes that the bill is making but more generally. Lady Elish Angiolini made numerous recommendations and proposals for improving not the primary legislation but the conduct regulations. If you speak to anybody who is involved in administering the regulations, whether they are for senior officers or non-senior officers, you will find that everyone agrees that they are sorely in need of revision.

Sharon Dowey: Does Katharina want to come in on that?

Katharina Kasper: Not massively. Robin Johnston has said it much more eloquently than I would have been able to, but I absolutely agree. As we scrutinise the conduct side of things in our public sessions, but also much more in the private sessions, the feedback from our Police Scotland stakeholders is that there is room for improvement in the conduct regulations. I just want to add the complaints and conduct committee's support for a review of that.

Sharon Dowey: You said that the conduct regulations would be reviewed once the bill had been passed. Why can they not be reviewed and actioned just now? Why do we have to wait for the bill to be passed? If you are getting complaints and you know what the issues are, why are you not reviewing all the misconduct regulations now? When we had the Scottish Police Federation in to give evidence, it said that performance and misconduct regulations are not being implemented just now. Do you come across that in complaints, and why are the police not currently implementing the regulations that they already have?

Robin Johnston: Based on my personal experience, the bill is required because certain things cannot be achieved by current legislation—for example, the duty of candour. It is not the case that, if conduct regulations were used in a slightly different way, or the performance regulations were

used more regularly, we could avoid the need for the primary legislation that is set out in the bill.

The authority's experience of the senior officer conduct regulations is that they have been helpful to a degree. They look fine on paper, but when you try to administer them in practice, there is often a great deal of uncertainty as to what particular provisions mean.

Your question about why those regulations should not be reviewed now is possibly a question better answered by the Scottish Government, but my understanding is that the primary legislation needs to go through in order to expand the enabling powers that ministers have to make the regulations and to amend existing regulations. That is probably why it is being done in this particular way. I would always expect the bulk of changes to the conduct regime to be in separate conduct regulations. That has been the case in Scotland for many years and is the case throughout the UK.

Sharon Dowey: I perhaps need to get my head around what actually needs legislation and what can be put into your handbook, if you like.

Katy Clark (West Scotland) (Lab): I have a question for Robin Johnston. In previous evidence sessions, we have heard reference to the right of individual police officers not to incriminate themselves. Will you expand on that and explain that? In what circumstances is it appropriate that police officers have that right, given that, presumably, the purpose of the complaints process is to try to get to the truth?

11:00

Robin Johnston: That relates to the duty of candour, about which a number of witnesses have said to the committee that there needs to be article 6 compliance. The bill does not mention article 6 of the ECHR specifically, but any legislation that is produced by this Parliament or the UK Parliament requires to be read through the Human Rights Act 1998 in a way that is compatible with convention rights, which include the right to silence. Even though there is no specific reference to the right to silence in relation to the duty of candour, it is clearly implied once section 3 of the Human Rights Act 1998 is applied to these provisions.

The legislation could go a little further. I mentioned in a previous answer that the duty of candour provisions in the bill contain a standard of professional behaviour that will be inserted into the conduct regulations. There is a very similar standard of professional behaviour in the conduct regulations that apply in England and Wales, but the key difference is that the standard of professional behaviour in England and Wales makes it very clear that the duty of candour

applies only to police witnesses, rather than to anyone who has been suspected of a crime or misconduct.

On your point about the right to silence on the one hand and the need to establish truth on the other, it is a general principle, certainly in criminal procedure, that a search for truth cannot put a suspect in a position where they are forced to admit guilt. An accused person is entitled to have the evidence against them tested in court without having to contribute evidence of their own that might be used in order to secure their conviction.

Katy Clark: That is helpful. I hope that it is possible to ask a supplementary question on non-disclosure agreements. Perhaps Fiona McQueen might be best placed to answer it, because she has raised that issue. Many organisations use non-disclosure agreements as a matter of routine. They use them in almost every situation when there is any kind of payment. I know that your organisation has decided as a matter of policy not to use them. The Police Federation says that non-disclosure agreements are used in 99 per cent of legal cases that are settled. That may or may not be an accurate statistic, but it gives the impression that they are used quite a lot. Police Scotland is a public body that gets public money, and you have referred to the fact that the employee might want to rely on non-disclosure agreements and privacy clauses in certain circumstances. Could you expand now, or perhaps in writing afterwards, on when you think such clauses are appropriate and how we could define when they are appropriate, so that we do not have a situation where they are used as a matter of routine?

Fiona McQueen: It would be helpful if we could follow up in writing, convener.

I know that the legal committee monitored Police Scotland's use of such agreements through 2022, and 16 non-disclosure agreements were signed. Thank you for letting me highlight the fact that under no circumstances would whistleblowing and sexual discrimination complaints be subject to a non-disclosure agreement. It tends to be more where there has been a financial settlement and the individual does not want other people to know how much they have settled for.

If we may, convener, we can send more detailed information that I expect would give you reassurance that that would follow ACAS guidance, and perhaps some examples of what that would look like.

Katy Clark: ACAS guidance is not the only issue if NDAs are used so widely. We know that they are used in a very widespread way by many organisations that ACAS guidance applies to. Information on the public policy issues would be extremely helpful.

Fiona McQueen: We would be happy to give you information about our oversight of that.

Pauline McNeill (Glasgow) (Lab): Good morning. The bill does not say whether the duty of candour will apply to police officers who are off duty. Will you give a view as to why you think that the bill should cover that?

Robin Johnston: The reason why that is raised in our written submission to the committee is that, if it is not clarified in the bill that the duty applies only to officers who are on duty at the time of an incident, it may lead to confusion in the future as to the extent to which the duty applies to officers who are off duty at the time. That is not to say that we think that the duty should apply to off-duty officers. I can understand why it might be better to apply it only to officers who are on duty, because it is in those circumstances that an officer is more likely to have witnessed an incident of the kind that the PIRC might investigate—for example, a death in custody or a death following police contact. The point that we are making is that, if the duty does not apply to off-duty officers, it would be a good idea to make that absolutely clear so that there is no doubt in the future when the provision comes into law.

Pauline McNeill: You just want clarity on that. You are not particularly arguing for off-duty officers to be included.

Robin Johnston: As I said, I can see why it might be best to confine it to on-duty officers, but it would be better to clarify it, nonetheless.

Pauline McNeill: Thank you for that.

My next question relates to whistleblowing. We have only scratched the surface of some of this stuff, to be honest, but I have not encountered any cases of whistleblowing in Police Scotland. We have had cases elsewhere. Is there a need for a definition of whistleblowing, given that it could mean a lot of different things? Some people might have seen something that they want to report, but are there any grey areas? To me, whistleblowing tends to involve a bigger systemic failure that it is in the public interest for someone to report. Can you comment on that?

Robin Johnston: There is a definition in the Employment Rights Act 1996 as amended by the Public Interest Disclosure Act 1998. Essentially, it is an allegation of some form of wrongdoing that falls into one or more categories that are specified in the legislation. For example, allegations of a risk to health and safety, an infringement of a legal obligation or something that indicates that a miscarriage of justice may have occurred would all be whistleblowing allegations. I think that you made the point that those types of allegations are generally about things that matter in the public interest rather than things that concern only the

personal interests of the individual who has made the allegation. A grievance is typically looked on as not being a whistleblowing allegation if it relates simply to something untoward that has happened to the individual, as opposed to an organisational issue.

Katharina Kasper: As Robin Johnston said, a grievance does not constitute whistleblowing per se. However, with my committee hat on, I am interested in understanding how the different processes for grievances, whistleblowing and complaints work together. For example, if a grievance comes through our people committee, our expectation as the SPA is very much that there will be read-across. If, as part of a grievance, somebody investigates something that looks as if it may be more systemic, we would expect that to be raised internally, with people saying, “Hang on—there’s something in this case that doesn’t look right.”

Between the people committee and the complaints and conduct committee, we are discussing how we can look at that more holistically and what we need to do as an organisation to investigate and see whether we need to fix it. We are very interested in how the different processes in the organisation whereby concerns can be raised interlink and how robust they are in identifying broader systemic concerns, because that is a concern to us as well.

Pauline McNeill: That makes sense. Thank you.

My final question might be more difficult to answer. We are wrestling with who does what and the complexities of the interactions between different authorities. The bill’s whole purpose is to simplify the system for the public, but what differences will the public see as a result? Are some parts of it worth highlighting to the public?

Robin Johnston: The authority has considered what impact the bill will have for the public. In fact, that is at the forefront of our minds in relation to pretty much any exercise of our functions.

If we were to call out a particular provision that might be significant and make a difference to members of the public who use the complaints system, it would be the power that the PIRC will have, once the bill has been passed, to call in a complaint and investigate it independently. I gave an example earlier of the kinds of cases where that might happen; they would be serious and exceptional cases where an independent investigation would be in the public interest. It is usually those cases that cry out for some form of independent investigation, and I think that that provision will be very helpful for people who use the system.

Other provisions that I have mentioned in previous answers might not be of that much interest to members of the public who are not frequent users of the system. However, the duty of candour is a very significant development and, if it is coupled with a corresponding power for the PIRC to compel police officers to attend interview, as I suggested earlier, that will enhance the requirements for article 2 and 3 investigations under the European convention.

Pauline McNeill: Is there a particular problem with police officers not attending?

Robin Johnston: As I understand it, no. However, the purpose of the bill is to deal with the admittedly vanishingly small number of cases, if any, where an officer who is subject to the duty does not co-operate. That is why I mentioned a power for the PIRC to compel police officers. It might never be used, but the fact that it exists would help in any independent investigation, because it would ensure that people co-operated, even if they were thinking that they were not going to. As I have said, it would enhance the quality of investigations, particularly in article 2 and 3 cases under the European convention.

Pauline McNeill: It is interesting that you have chosen that. From the start of our consideration of the bill, I have always seen it as something that we should have, because it should be enshrined. I presume that police officers are trained in such duties and that they are covered in recruitment processes. I have to say that I am unaware of any particular issues involving police officers not investigating; I have just seen the provision as something that we should have on the statute book. What you have said implies that you have had some problems with police officers, and I have never heard that.

Robin Johnston: In its written evidence, the PIRC refers to a specific case in which such an issue arose. However, on your point about there not being a particular problem at the moment, that does not mean that there will not be a problem in the future. It is important to future proof legislation and give organisations the powers that they need. Those powers might be exercised only in the rarest of cases, but they are still useful to have as part of the statutory powers.

11:15

Fiona McQueen: As you will see when you look across other regulated professions, when there is a chance to put something in legislation to provide a protection, it is often, on balance, helpful to do so, because it gives the public confidence. Even if the power is never used, it gives the public confidence in the process to know that people can be compelled to do that thing. I do not see the

power to compel officers to attend interview as diminishing current officers. The purpose of the proposals is to strengthen what we are doing and to ensure that the public have absolute confidence that, when they complain or raise concerns, they are dealt with appropriately, timeously, openly and fairly.

Pauline McNeill: Katharina Kasper, do you want to add anything?

Katharina Kasper: I think that my colleagues have covered the issue, and I am mindful of the time.

Pauline McNeill: Thank you. The convener will be happy.

The Convener: We have about 10 minutes left. I invite Fulton MacGregor to ask questions, followed by Russell Findlay.

Fulton MacGregor (Coatbridge and Chryston) (SNP): Good morning. I want to raise the case of a constituent who came to me this week. I will not go into any detail, obviously, and I do not know the rights and wrongs of the issue, but I will speak to the process as they experienced it, which might touch on some of the issues that have been raised today, and perhaps some others.

The main issue that my constituent said that they experienced when making a complaint through the process was the length of time that the whole process took. There was also a feeling that they were intimidated by police while the process was on-going, whether that was intended or not; my constituent accepts that it might not have been, but there was a feeling that my constituent was up against the whole of a local police station, that the PIRC did not have teeth to any great extent, and that their concerns around the complaint were minimised and not taken as seriously as they merited. In fact, the process had an impact on my constituent's health, particularly their emotional health. The complaint was made some time ago, and my constituent has been triggered by the evidence that this committee has been taking.

I realise that my question is quite general and that we cannot comment on the actual facts of the situation or the rights and wrongs of it—and it is important to say that my constituent accepts that the matter is now closed and is trying to move on—but what I have said about their feelings and experiences reflects what we have heard from witnesses. These are general concerns that we have heard from other people who have experienced the process. What do you think that the bill will do to help people with those experiences, particularly on the emotional health aspect? That is probably quite a big thing,

particularly if something has taken a long time to come to any sort of resolution.

Katharina Kasper: Thank you for sharing that story. I might just say that listening to the testimonies has been absolutely heartbreaking, so, unfortunately, I am not surprised that people who have experienced something similar are finding it hard to listen to the evidence sessions.

I know that you asked specifically about what the bill will do, but I can talk about what has happened to the whole system over the past few years, leaving the bill aside, and Robin Johnston can answer the question in relation to the bill.

What you are describing is exactly the sort of thing that the SPA does not want to see. We want a process in which people find it easy to raise complaints and feel supported at the start and throughout, and in which the matter is resolved quickly and to people's satisfaction. That is what we are aiming towards. Since the Angiolini report was issued, quite a big programme of work has been undertaken by various partners across the sector on the non-statutory recommendations, most of which have been closed off. Two of them are with my committee, and we will not close them off until I am satisfied that we have the data and have made the necessary progress.

Some notable changes that have been made to the process—perhaps since your constituent was engaged in the process, unfortunately—include the removal of complaints handling from the local policing divisions and its being taken into a central function. That means that, now, whatever is raised with the police station should automatically go to the PSD. A robust process is now in place. I know that, as an auditor, I should never say that something is robust unless I have data and evidence, but I have certainly seen enough of the design adequacy of the process to suggest to me that, if followed, it should lead to a much better experience for somebody who is complaining.

For example, one of the key things that has been strengthened is the front-line resolution process, which Lady Elish was very much in favour of. Sometimes, when there is a more serious complaint, there must be an investigation but, often, what people who complain want is an apology, an explanation and some sort of assurance that the incident will not happen again. The fact that around 49 per cent of complaints are resolved through front-line resolution is a success. There are checks and balances, so nothing will be closed off through front-line resolution without the complainer's agreement.

As I have said, over time, the system overall is moving in the right direction in terms of making it easier for people to complain. I know that a lot of training has been provided by the PIRC to PSD

and that, within PSD, there has been training on how to deal with complainants who might be vulnerable, have mental health concerns and so on. Work is going on behind the scenes, outside of the work on the bill, that gives me more confidence in the system than I would have had even a few years ago.

As I have said, we are looking for data that shows that things are absolutely moving, and moving at pace in the right direction. Until we have that data, we will not give the system a clean bill of health, but I can say that we are seeing improvements. Unfortunately for your constituent, they would have been through a different process and, for everybody who has had that experience, that is entirely regrettable. However, I would like to think that someone coming to the process now might have a different experience.

I will pass to Robin Johnston to talk about specific provisions of the bill.

Robin Johnston: On the point about the PIRC not having sufficient teeth, the bill places a duty on the SPA and the chief constable to respond to the PIRC's recommendations. That goes some way towards addressing that issue, but it really just reflects the status quo, as the SPA and the chief constable will always respond to recommendations that are made by the PIRC.

What Lady Elish recommended went a good deal further than that. She said that, when the PIRC makes recommendations, there should be a duty on the SPA and the chief constable to comply with them. That is quite different from a duty to respond.

Lady Elish also said that the duty to comply should be subject to a public interest test. For example, where there were overriding operational reasons or practical reasons for not implementing the recommendation, there would be an ability not to do so on the part of the chief constable and the SPA. As I have said, however, that recommendation would go some way towards addressing your point about the PIRC lacking teeth.

The Convener: I invite Russell Findlay to ask the final questions.

Russell Findlay: There have been quite a few references to Lady Elish's testimony to the committee last week, with the suggestion being that everything is pretty good. However, it is probably worth recalling that she produced a report that laid bare a dysfunctional system of police compliance and regulation and which made 111 recommendations, most of which require legislation to enact. In the absence of Martyn Evans, I ask Fiona McQueen whether the Scottish Police Authority considers itself to be institutionally racist, sexist and discriminatory.

The Convener: I am not sure that that necessarily relates to the bill. Mr Findlay might want to rephrase the question, and it is up to you, Ms McQueen, if you want to answer it.

Russell Findlay: As Lady Elish said, both the previous chief constable and the new chief constable have said that Police Scotland considers itself to be institutionally racist, sexist and discriminatory, and much of what the bill does attempts to address that. Does the SPA see itself—and would it categorise itself—the same way?

Fiona McQueen: We have not categorised ourselves the same way. However, I will take that issue back to the chair and have that dialogue.

In the three years that I have been a member of the SPA, we have constantly considered ways of ensuring that there is equality and diversity and that there is no discrimination. However, when we are scrutinising another organisation that has talked about institutionalised discrimination, we need to hold up a mirror to our own organisation and consider, across the functions of the authority, whether we, too, exhibit institutionalised discrimination. We have not considered that we do, but our on-going work to constantly improve and ensure that we are the very best that we can be continues.

The Convener: I now bring the session to an end. Thank you for your attendance this morning—it has been helpful.

We will have a short suspension to allow for a change of witnesses.

11:26

Meeting suspended.

11:32

On resuming—

The Convener: Our next panel of witnesses is from Police Scotland. I welcome to the meeting Alan Speirs, the deputy chief constable, professionalism, strategy and engagement; Helen Harrison, chief superintendent and head of the professional standards department; and Nicky Page, head of human resources. Thank you all for providing written evidence to the committee.

I intend to allow about 80 minutes for this evidence session. I will begin with a question that I put to our witnesses from the Scottish Police Authority. Witnesses will probably be aware that we have heard evidence from members of the public who have described what seems to have been an inconsistent and, in some cases, unacceptable standard of response when they made a complaint to Police Scotland about the

conduct of officers. In addition, we have heard that, when police officers are the subject of a complaint, the way that they are treated falls short of what is expected. One officer, of whom witnesses will probably be aware of, shared his very distressing story with us.

Police Scotland has a lot of work to do internally on handling complaints; that is important because the majority of complaints are probably dealt with internally. I want to ask about the provisions of the bill and about what is required to improve the system of complaints handling. Is there an internal process whereby learning from complaints handling is used? Is there work to monitor complaints trends and issues that arise from them, and is any measuring done so that action can be taken to make changes and so that you can ultimately intervene in complaints of a type that reoccur? Those questions are about quality assurance and the response when complaints are made internally. I ask DCC Speirs to start.

Deputy Chief Constable Alan Speirs (Police Scotland): Good morning. Public trust and confidence is important in policing. A key element of public trust and confidence is our ability to handle complaints; we recognise the importance of that. During any year, we manage a very large proportion of complaints.

Over a number of years—this relates in particular to some of the evidence that you have heard—we have made quite a bit of progress in refining the manner in which we handle complaints. Learning is vital to us, and we are very receptive to recommendations, whether they come from His Majesty's Inspectorate of Constabulary in Scotland, the PIRC or the professional standards function.

When we receive recommendations, we are committed to listening to and acknowledging them, and we will also seek to comply with them.

A big part of the Police Scotland policy team's role is to review the themes that emerge in complaints. It looks for commonality in the types of complaints that we receive, and at how we can embed the learning from them into our policies and procedures. That is key to how we govern our arrangements for handling complaints.

It was very difficult to hear about some of the experiences of people who have been in the system—it is not what we want to hear. I have sympathy with and acknowledge the experiences that a lot of people have had in the system, and I commit to trying to find ways in which we can improve it.

We have done some things in recent years to start that improvement process. We have taken complaints away from local divisions and local officers—where perhaps they check their own

homework more—and the professional standards function now handles all complaints across Scotland. That gives us consistency and allows us to focus on how we train our complaints handlers and to try and improve the experiences of those who come into the system.

The Convener: Thank you. We raised the issue of public trust and confidence, which you spoke about at the beginning of your answer, with the SPA. Are there provisions in the bill that would enhance public trust and confidence? One of the witnesses in the previous session spoke about the call-in provision and the code of ethics, which he felt was of particular value. I am interested in whether there are parts of the bill that are important for public trust and confidence.

Deputy Chief Constable Speirs: I remember meeting Lady Elish when she commenced her review, and throughout the period when she carried it out, Police Scotland always said that we are committed to supporting it and delivering on her recommendations.

Police Scotland welcomes the bill. There is a range of provisions that enhance our ability to handle complaints. You touched on the code of ethics, which is important, because it puts further obligations on our chief constable and it allows us to ensure that training on the code of ethics is embedded when people come into the organisation.

I welcome the ability of the PIRC to scrutinise our complaints handling and, in particular, call in complaints. Transparency is a big part of trust and confidence. Police Scotland is largely fully supportive of the variety of provisions that are outlined in the bill. We are working hard on timescales and how we efficiently and effectively handle complaints.

Our ability to front-line resolve complaints is really important. The complaints are, from our perspective, relatively low level—although they do have an impact on the public—and our aim is to resolve them with the complainer's collaboration as quickly as possible. We are looking at ways of trying to enhance that.

With your indulgence, convener, I would like to invite Chief Superintendent Helen Harrison to come in.

The Convener: I was just about to do that.

Chief Superintendent Helen Harrison (Police Scotland): Mr Speirs talked about a number of elements in the bill that Police Scotland supports. In particular, we welcome the transparency element, the PIRC's ability to call in complaints and complaints-handling reviews at certain points.

In addition, there are the procedures relating to former constables, which will be extremely

important for public trust and confidence. I would also point to the Police Service of Scotland (Conduct) Regulations 2014 as they stand. There has been discussion about the secondary legislation that will follow the bill, but when I look at certain aspects of the conduct regulations and consider how we might deal with the issue of timescales, I think that fast-track hearings, for example, will enable us to assess more swiftly, and opportunities will follow from that. I hope that the provisions on former constables provide an opportunity to have further dialogue and explore issues as the secondary legislation comes through.

That is one of the key points that I want to make about the bill. As we have said, we very much welcome the PIRC being given the ability to call in complaints, and the PIRC and the transparency element. As far as our conduct regulations are concerned, we are looking to the secondary legislation that will follow.

The Convener: I have a final question before I bring in other members. The bill is being scrutinised against the backdrop of the previous chief constable's statement that Police Scotland is "institutionally racist". Does the bill go far enough in addressing that allegation? Obviously, the bill will not resolve that situation by itself—a lot of other actions will be required—but will the bill make a positive contribution, in light of the previous chief constable's comments?

Deputy Chief Constable Speirs: The bill will definitely make some progress in that direction, but, in reality, the challenge that we face is how we change the culture within Police Scotland, and I do not think that all of that will happen as a consequence of the elements in the bill. Being more transparent as an organisation, whether we are talking about complaints, conduct or other such matters, will be vital. Indeed, that is why we are publishing conduct outcomes just now; we want to be as open and as transparent as possible in the circumstances.

However, with regard to our previous chief constable's statement, that has been the focus of the policing together programme, which looks at leadership, training, professional standards and how we communicate across the force. We recognise that we have a lot of work to do, and some of the lived experiences that the committee has heard about will have reflected that. Elements of the bill will enhance a range of activity and programmes of work that are going on just now, but the bill in isolation will probably not be sufficient.

The Convener: Did you want to come back in, chief superintendent?

Chief Superintendent Harrison: I emphasise the policing together programme that DCC Speirs touched on and the contribution that the professional standards and our other work, particularly on the code of ethics, has made to the culture and the development of behaviour.

Over the past year and a half, we have pushed forward with a programme of prevention and professionalism to enhance awareness of the standards of professional behaviour and the code of conduct for police staff, because it is really important that officers and staff are fully aware of and understand the expectations with regard to their behaviour. For me, the code of ethics helps pull in further elements of that statutory duty.

In addition, I would highlight our work on the standard, which is where we publish and share information on complaints trends, information for officers and staff to provide the awareness that I talked about and the gross misconduct outcomes, which are now published in an anonymised way.

11:45

The Convener: I will now open the session up to members and bring in Rona Mackay.

Rona Mackay: Good morning. Some of the issues that witnesses have told us about include the length of time taken to process complaints, a lack of transparency and a lack of communication. Will the bill address any of that? Moreover, the Scottish Police Federation told us that accelerated hearings within 35 days are already possible under the current misconduct regulations, but they do not happen. Can you shed some light on why that is?

Deputy Chief Constable Speirs: Perhaps I can start with the last part of your question. I did hear that evidence, and I make it absolutely clear that that is not what is in the conduct regulations. Under those regulations, there are three phases; after all, we have to give an officer time to respond, and the process itself equates to 60 working days. The 35 days that was referred to relates to the period of notification that we have to give a subject officer before they can attend a gross misconduct hearing. Those 60 days are built into the conduct regulations.

I will probably say this a couple of times this morning, but I would suggest that the regulations, which were introduced in 2014, are no longer fit for purpose. When we progress an investigation, we have to build in those 60 days, no matter what journey we are on, and at times, an officer, whether through their federated representative or their legal team, will be able to extend that period. Timescales are something that we are acutely aware of—and, at times, enormously frustrated by. The bill does not quite address the timescale

issue, but I think that there are some opportunities to do so within the conduct regulations.

We are very often constrained by timescales. If a matter is criminal in nature, we are totally at the behest of the criminal justice system and its associated timescales; if it is a PIRC-related matter, we are totally at the behest of the pace at which the matter is progressed and the constraints and restrictions in the conduct regulations. We are acutely aware of the impact on officers and others involved in the process; indeed, one of our very first considerations is the wellbeing and welfare of our officers, and as a result, we have introduced a wellbeing investigative policy to try to ensure that we put at the forefront of any inquiries and investigations the welfare and wellbeing of everybody involved.

Rona Mackay: I am sorry to interrupt, but when was that introduced?

Deputy Chief Constable Speirs: About three years ago.

Rona Mackay: Okay—thank you. That was helpful. Would anyone else like to comment?

Chief Superintendent Harrison: On the issue of timescales, it is really important that we look at the different parts of the complaints and conduct system, as each element has a different timescale attached to it. A key issue is the initial assessment and where the matter is then directed to. When a complaint or a criminal allegation against the police comes in, our national complaints and resolution unit will have a look at it. If it is a criminal matter, it will go to our criminal investigations team and will then be notified to CAAP division or, if it is an assault, referred across to the PIRC. Those timescales will then kick in. If the matter does not fall within that bracket and we are looking at a non-criminal investigation, we have an opportunity to put in place a front-line resolution.

That is what happens with CAAPs and complaints about the police. When we enter the conduct sphere, we are talking about another dimension with regard to timescales. Unfortunately, a case might well have gone through the criminal process before it comes across to the conduct side, but we work very hard on such investigations and try to move to proceedings as swiftly as we can.

With regard to fast-tracked or accelerated hearings, perhaps I can share with you a little bit of information from last year. As I have said, we now publish the gross misconduct outcomes in an anonymised way.

I looked at some of the 17 cases that we shared in which officers were dismissed or resigned. Some of those related to domestic matters. The

officers in the three cases that are outlined all pled guilty at court but we had to follow the conduct proceedings once they came in. That automatically created a further delay in the timescales for that process. In one of those cases, that took seven months and the officer resigned the day before the hearing. I mention that just to bring the matter to life a little bit.

Rona Mackay: I understand. That is helpful.

The SPA has reported only three dismissals out of 25 gross misconduct hearings. I would think that the bar for being charged with gross misconduct is very high, but three dismissals out of 25 does not seem a lot. Will you explain why the number of dismissals is so low?

Chief Superintendent Harrison: I am not sure about the timescales that the SPA has referenced. In 2023, there were 17 dismissals or resignations over that time. Five of them were dismissals and 12 of them were resignations. Those resignations came in while we were working through the gross misconduct proceedings.

Rona Mackay: We have a completely different set of figures, which might be to do with timescales.

The Convener: I will step outside the bill for a moment. I have become interested in what sort of conduct brings officers to the attention of the PSD or, if it is a higher bar, the PIRC. We understand police assault and other traditional types of allegations. I am thinking more about the issues and challenges that are bearing down on police officers in the 21st century. Are you seeing any shift in the sorts of issues that are impacting police officers and staff compared to, say, 10 years ago?

Deputy Chief Constable Speirs: Yes, we are. The committee will be interested in the fact that the vast majority of conduct matters that we deal with relate to off-duty behaviours. A large proportion of what ultimately comes through the conduct proceedings is things that happened outwith the workplace, such as domestic violence, sexualised behaviour and some instances of substance misuse.

More recently, we have seen a slightly increased number of cases of acquisitive crime. The cost of living has resulted in one or two officers finding themselves involved in low-level crimes such as the theft of petrol or shoplifting. That has definitely been a shift, but I am acutely aware that 75 per cent of the more serious end of our business is criminal and happens off duty and that the victims or witnesses sit outwith Police Scotland.

We give careful consideration to the instigation of proceedings on gross misconduct. The decision to restrict or suspend an officer is taken at a very

senior level, and we look very carefully at the welfare of, and the impact on, those officers. Only about 12 per cent of the conduct matters that we consider are considered to be gross misconduct. You have heard evidence about how we use the conduct regulations, but a large proportion of what we do is about learning for officers. The number of officers who find themselves facing more significant conduct charges is very small.

The Convener: That is fascinating. It is interesting to hear about some of the types of behaviours that are coming to your attention more than previously. Can you say anything about the demographics of that? Are the officers younger or older?

Deputy Chief Constable Speirs: I smile because we look at that continually and the short answer is no. Obviously, with new recruits to the organisation, we can also consider their probationary period in the first couple of years. We have regulations that are aligned to being a probationer, but the behaviours are Scotland-wide at times and there is no significant pattern that would cause an alarm bell to ring for us. However, we continually review and consider that.

Chief Superintendent Harrison: It is important to add that the conduct regulations are underpinned by learning. Is there an opportunity for intervention, learning and reflection? Clearly, gross misconduct is conduct that could result in dismissal or demotion, so such allegations are far more serious, but we also deal with misconduct. A large proportion of the misconduct cases are dealt with by improvement action, in which officers can reflect on their behaviour and standards and seek to develop and improve their behaviour. Last year, when we carried out 471 preliminary assessments on conduct, misconduct was found but improvement action was given in 163 of them. That is an opportunity for an officer to reflect and improve on their behaviours.

The Convener: Thank you for that additional information.

Russell Findlay: Good morning, panel. It is still morning—there are four minutes to go.

The bill comes with a financial memorandum, which initially gave costs of £1.4 million. The costs are now in the region of £5.8 million, with updated figures from Police Scotland. The Scottish Police Federation said that it will cost many multiples of even that later figure. Do you agree with the SPF's assessment? Do you have more up-to-date figures, or are they constantly evolving as the bill progresses?

Deputy Chief Constable Speirs: We have looked at the immediate implications of the bill, so I probably have a slightly different view from the one that the staff associations expressed. We

already have significant costs associated with handling complaints and managing conduct. I perceived some of the staff associations' comments about the costs to relate to the entirety. We looked closely at the additional costs on Police Scotland and that is how we arrived at £5.8 million. That figure is associated with training, legal and proceedings costs and the requirement to uplift the teams that we have.

The costs will largely depend on what final elements are contained in the bill. The team has worked hard to be as precise and accurate as possible with the information that we have. As it stands, we see the £5.8 million as additional costs over and above those that we bear now as a consequence of those processes.

Russell Findlay: The PIRC previously raised with the committee a particular shocking case in which an individual was wrongly arrested, locked up for a number of days and subsequently apologised to and compensated. That was a number of years ago. Are you now confident, post-Angiolini, that that type of incident is not likely to reoccur? Does it require legislation to prevent such matters from reoccurring or will the non-legislative parts of the Angiolini report's recommendations, which are mostly implemented, prevent something like that from happening again?

Deputy Chief Constable Speirs: I know the circumstances of the case to which you refer. One of the reasons for trying to centralise our ability to handle complaints was predicated on cases such as that.

In my experience of previously being in Helen Harrison's job, it was difficult to get consistency in how we handled complaints across Scotland. We now have a high level of confidence that having a centralised complaints and conduct function means that we will be consistent, because we can commit to looking at the profile of people that we want to recruit into the department. We can look at the skill set that they would bring and the training that we would provide.

That said, I am never naive enough not to know that, in handling 7,000 complaints and assessing 500 conduct matters, there will always be areas where we could have done better, been better on timescales and improved. However, with a degree of confidence, I suggest that the circumstances of that case would not come about in 2024.

12:00

Russell Findlay: We have also taken evidence from a solicitor called Margaret Gribbon, who has acted on behalf of a number of police officers, some of whom are female. The cases, which are in the public domain already, were protracted and resulted in huge financial pay-outs. Careers were

destroyed and, in some cases, health was impacted. Margaret Gribbon said to us:

"I am afraid to say that nothing that I have seen has convinced me that there has been sufficient change since the Rhona Malone"—

Rhona Malone was one of her cases—

"judgment. It is inevitable that there is going to be another case or cases of that type."—[*Official Report, Criminal Justice Committee*, 24 April 2024; c 3.]

People who are, and have been, involved for many years in seeing the worst excesses of the system are not confident, given what has gone on previously. Can you reassure them? What in the bill specifically will persuade people that that situation will be fixed?

Deputy Chief Constable Speirs: The experience of some of the women who have been referred to and who have previously given evidence is dreadful. The last thing that we would want as an organisation is for them to have that type of experience and for us to lose the skills and experience that they offer us. On many occasions, it was a dreadful set of circumstances, and there is a fair degree of regret.

One of our frustrations is that we have a reactive function, which can be incredibly frustrating at times. We can take action, suspend officers, move other officers and instigate all sorts of proceedings, but we are reacting to something that has already happened. What Ms Gribbon will not have been as aware of is the activity that we are undertaking under the umbrella of policing together. For example, we have leadership training: over the past 18 months, every single leader in Police Scotland, from the first-line manager to the most senior level and the chief constable, has undertaken a leadership programme.

We are focused on not only leadership but training. This week, a new group of recruits joined Police Scotland. The training programme has changed and now has a far greater focus on equality, diversity and inclusion training, and a focus on mental health and officers' ability to cope. We have enhanced our officer safety training programme. A suite of activity is on-going in the training space.

Helen Harrison has already touched on some of the activity that we are undertaking, more from a professionalism and prevention perspective. All that work is designed to try to shift the culture in our organisation. Through the committees at the SPA, we will clearly be held to account. We have a range of performance measures against which we will try to assess whether we are making progress in that direction.

Chief Superintendent Harrison: If I may, I will bring out something else from the bill. It links to section 13, which relates to investigations of whistleblowing and the PIRC's function in auditing them. As we look back over the development of our policy and procedure, which remains under review, we are keen to ensure that we reflect and learn from previous situations.

We are encouraging people to report wrongdoing; that is really important for the organisation. When that is done, it comes into our national gateway assessment unit. I spoke previously about the importance of that assessment; it is important that we get it right. With the protected disclosure that has been made, the focus is on the investigation of the matter—ensuring that it progresses to the right area and the right team—while we afford the protections to that individual who has made that protected disclosure. There is a lot of work in our policy and practice around that.

Russell Findlay: That leads me directly to the next question. We have heard evidence from people, whether police officers or members of the public, that complaints that they have made have been miscategorised, in their opinion. There have been examples of criminal allegations not being reported to CAAPD, as they should have been, to the extent that Police Scotland's website now advises people that they can report directly to CAAPD. As the head of the professional standards department—I do not know how long you have been in post—can you say whether those problems have been fixed? If not, are you confident that the bill will do that?

Chief Superintendent Harrison: There is investment in training in professional standards, and the assessment functions are in place to ensure that the investigation of complaints goes to the right team. Checks and balances are in place, too, with the referral to CAAPD in relation to criminal matters—we have the duty to notify it of on-duty criminal allegations within 48 hours—and referrals to PIRC under article 3 and article 5 of the ECHR in relation to assaults and unlawful detention in custody. There is a direct instruction from CAAPD in relation to the referral to PIRC. A number of checks and balances are in place, and I hope and have confidence that the team is working to ensure that we use them.

Transparency and engagement with the complainer are another important element. We have done work with third sector organisations that provide support for individuals who are going through the conduct process, which we can try to direct people to.

The Convener: I would like to bring in Nicky Page. You have not had a chance to contribute yet, but you might have a view on that point.

Nicky Page (Police Scotland): I support everything that Helen Harrison has said. I am particularly interested in the internal response, that is, how we support our officers and staff. Whether somebody has done something right or wrong, they still need wraparound support from the organisation. Recently, in order to support that, we have renewed our occupational health unit contract and we have also provided a different employee assistance programme. All that is to support officers and staff as they go through the process.

There are two aspects to that process. First, there is the response to the public, which it is critical that we get right, as Helen has outlined. Secondly, there are people who are trying to do a very hard job, as I am sure that you heard Lady Elish say, and we have a duty to support them, because we have to create an environment where people can come forward and learn. If they have got something wrong, we can create an environment in which they feel that they are enabled to say that they got it wrong and they can learn. That is where my role comes into it.

I am particularly interested in focusing on the welfare standard operating procedure, which Alan Speirs has already mentioned. It is about that wraparound support and creating a different internal culture, so that people feel that they can come forward.

A lot of the work that we are doing in policing together is to create an environment where people can notice things as they are going wrong and come forward before the situation escalates or behaviours escalate, because we then have a better opportunity to step in and assist people before things get worse. Ideally, you always want to be in that early resolution place in these matters.

That has been a significant focus, particularly over the past three years, of the work between human resources, people and development and the professional standards department. It is about that cultural space. It is so difficult to change culture, but getting into that hard space in order to help people and give them the opportunities to get involved in, and improve, the system, and be part of the solution, is critical.

The Convener: Rona Mackay has a supplementary on that topic.

Rona Mackay: You have answered some of my questions there, Nicky, but you have also talked about introducing the wraparound support. We have heard from our witnesses that they did not receive that, quite honestly, so I want to understand the context and the timescale for that. When was it introduced?

Nicky Page: That has taken place in the past three years. We have looked at the welfare SOP and renewed some of its aspects. We have reviewed our occupational health provision and changed our EAP provision only in the past year. A lot of work is on-going in that space.

Rona Mackay: Has an evaluation of that work been done at any point?

Nicky Page: An evaluation was done in the lead-up to our consideration of what we needed in a new contract, so that we could fully inform that tender process. We would take into account feedback from things like this when we are renewing contracts. We understand that there is a strain on people's mental health as they are going through these processes, so getting a mental health focus has been critically important in describing what we need for our new contracts.

Rona Mackay: Could you clarify what role your department plays in any complaint, such as an initial complaint, before it gets farmed out to other places?

Nicky Page: We fall more on the support side. The PSD would make the local area, as well as ourselves, aware of an officer who was going through a process and needed support. We would lean in at that stage.

Rona Mackay: Would it contact you directly?

Nicky Page: Yes, the PSD does that on a regular basis.

Rona Mackay: Does the officer contact human resources?

Nicky Page: Each officer will have a welfare contact. Often, the welfare contact will come to us and say, "What do I need to know? What do I need to understand in order to support this officer through the journey?" That individual will be the direct liaison. The support that we give will be to provide the provisions and the signposting so that the welfare contacts know what they can offer the officer.

Russell Findlay: I have an extension to the question about procedures and what is happening now that perhaps did not used to happen. One thing that we have learned is that, since 21 October, any allegation of assault is automatically reported to the PIRC. Does that include minor offences, such as the classic tightened-handcuff allegation? Would that count as an alleged assault?

Deputy Chief Constable Spiers: We would separate excessive force and assault, but the number of those referrals is quite high. That is because we refer everything to the PIRC for a decision.

Russell Findlay: Do you refer everything, even a complaint about excessive force?

Deputy Chief Constable Spiers: If the complaint from the individual was one of assault—for example, the police officer had deliberately tightened the handcuffs that I had on—we would consider that as assault and refer the matter to the PIRC, which would consider whether to investigate the complaint.

Russell Findlay: Those sorts of issues are, quite suddenly, taking up a huge amount of the PIRC's time. Uniquely, Police Scotland does not have body cameras as standard issue, although that is going to be announced very soon by the Scottish Government. Do you believe—or hope—that that will result in a reduction in the number of complaints in general, but also of those of assault? It seems logical that it would, but I do not want to put words in your mouth.

Deputy Chief Constable Spiers: It absolutely will. There is evidence of that from across the UK. A lot of our work in the move towards the introduction of body-worn video cameras has consisted of looking at best practice across the UK, as we are probably quite late adopters in that respect. I have every confidence that complaints will be either reduced or resolved much quicker, as will some of the other broader matters that are currently referred to the PIRC. It will also help the criminal justice system with the movement of evidence into court.

Russell Findlay: The figures in the financial memorandum might actually go down—you never know.

Deputy Chief Constable Spiers: It is possible.

Sharon Dowey: We heard evidence from the Scottish Police Federation that some issues with the complaints and misconduct processes could be dealt with through the existing conduct and performance regulations, but they have never been enacted properly. They are now seen as a punishment, and the system

"investigates ... at the top level and not at the bottom level".—[*Official Report, Criminal Justice Committee*, 8 May 2024; c 28.]

Could I get your comments on that?

Deputy Chief Constable Spiers: Yes, you can. First, the conduct regulations themselves are regulated. If we were misusing them or adopting them the wrong way, we would know about it, because we would be subject to frequent challenge, either on a legal basis or through staff associations. However, that has simply not been the case. I touched on the fact that only a small proportion of conduct matters are dealt with at the serious end of things, and as Helen Harrison highlighted, the largest proportion of conduct

matters are dealt with through improvement action—that is, what the officer can learn and how they can improve.

As I said at the outset, the conduct regulations were introduced in 2014. Now we are in 2024, they are not fit for purpose, and a number of gaps are restricting our progress, such as the inability to fast track a process; equity or parity of voice at conduct hearings; our inability to proceed without delay, as we have to wait for criminal proceedings to be completed; and our constraints around substance misuse, which is a very modern and real challenge for us. For me, there are numerous gaps in the conduct regulations.

Some of that could be addressed through secondary legislation, but my concern is about the time that that might take. Addressing those elements could make a big difference to us, but I would argue that, with regard to the perception that we do not use the performance regulations or consider matters too seriously, there is no evidence to support that.

12:15

Sharon Dowey: Do you need secondary legislation to enact some of those things? There was mention of random drug tests for officers. Do you need legislation for that? Can it not just be a condition of employment that you must comply with that?

Deputy Chief Constable Speirs: We need secondary legislation. We have some ability to address substance misuse through the conduct regulations now, but it is a particularly difficult area that we would want legislation for. When they were constructed, the conduct regulations were designed to support the subject officer, and much more so than the other people—officers or members of staff—who might participate in that process. There are numerous gaps, as I have outlined, and that suggests to me that, 10 years on, the regulations need reform. However, we also need secondary legislation to tackle some of those issues in the interim.

Sharon Dowey: In the interests of everybody who wants quick resolutions to their problems or complaints, do we need to get that in the bill right now, instead of having to wait for secondary legislation?

Deputy Chief Constable Speirs: That would be my ask of the committee. Helen Harrison used a practical example: if an officer were to be convicted and sentenced in court and then, say, added to the sex offenders register, we would have to start conduct proceedings only when all of that was concluded. That might take us a number of months, and ultimately, that officer will, in all

probability, resign the day before he is meant to appear at the gross misconduct hearing.

Having a fast-track process that we can follow when there is irrefutable evidence, as happens in England and Wales, would have a positive impact, including on those involved in the process. It would reduce costs, and it would give us a quicker outcome, as is right.

Sharon Dowey: When there is irrefutable evidence, do you still have to pay somebody in their employment up to the point that it gets to a court case, even though it is obvious that they will not be able to continue in employment?

Deputy Chief Constable Speirs: Yes. We have an officer who is probably three years into their suspension, and we are frustrated that we are constrained, because the case will be sitting somewhere in the criminal justice system or will just fall into the conduct system. Even at pace, it takes us six months to progress a conduct case from the point of assessing the conduct to getting somebody to a hearing, and that is probably in the best of circumstances.

Sharon Dowey: So you need legislation for some things, but do you need training for other bits? Is there a lack of training in some areas? One of our witnesses heard that he had been put on to restricted duties, but he was never told why; since then, we have heard more evidence that there was no reason why that should have happened. I find it hard to believe that somebody could be either suspended or put on restricted duties without being told why. Is there a training or performance management issue there?

Deputy Chief Constable Speirs: I do not think so, but I can give you assurance in that respect. That particular set of circumstances occurred more than 10 years ago; in 2016, we significantly changed our processes, and I can categorically assure the committee that no officers have been restricted or suspended without their having clarity on the circumstances leading to their restriction or suspension. We might retain and withhold some very sensitive information about the identity of the person from whom the complaint or allegation has come, but, as I have said, the decision to restrict or suspend is taken at a very senior level. I have absolute confidence that my team are really clear about the rationale for restrictions and suspensions.

Sharon Dowey: It is one of the things that committee members need to get their heads around. A lot of non-legislative recommendations seem to have been actioned, and we have heard evidence that there has been a lot of improvement, but we need to make sure that we are putting the right things into the bill. They will be the things that we do not want to wait to put into

secondary legislation; we want to put them in now and ensure that we do not need to put anything else into the bill, as it will not be required.

The Convener: I call Pauline McNeill.

Pauline McNeill: Good afternoon. I want to clarify something in your answer to Russell Findlay's question about complaints about excessive force and handcuffs. Are there two separate heads of complaint for that—assault and excessive force?

Chief Superintendent Harrison: Yes, there are two separate heads of complaint for those matters.

Pauline McNeill: Does that mean that someone decides the line between excessive force and assault before the complaint goes to the PIRC?

Chief Superintendent Harrison: There will be an assessment. We look at the circumstances—for example, has the officer acted fully in accordance with their safety training? At that point, though, any borderline cases between assault and excessive force are referred to the PIRC. If there is an element of assault, it is important that the complaint gets referred.

Pauline McNeill: So, you do not send every complaint to the PIRC. You filter out the ones that you think comply with—

Chief Superintendent Harrison: We send to the PIRC every complaint in which there is an allegation of assault. However, if we are talking about excessive force, and it is a matter of the officer's training—and there is, say, closed-circuit television footage or a use of force form to support that—we would look at the case, rather than send it to the PIRC.

Pauline McNeill: So, you would not look at a simple allegation of assault. You would just send it up to the PIRC.

Chief Superintendent Harrison: There is an expectation from the PIRC in relation to the information that is provided; we notify the PIRC, and then we have 14 days to provide that information. The expectation is not that we will carry out the investigation itself, but that we will do an element of it by gathering statements and providing an exact understanding of the assault allegation.

Pauline McNeill: In other words, some evidence that there was an assault.

Chief Superintendent Harrison: Yes.

Pauline McNeill: An issue that has come up a few times is that police officers are not always notified at the time of the detail of the allegations against them.

Deputy Chief Constable Speirs: This is probably quite a general question. Depending on whether the allegation is a criminal or conduct matter, we will work through exactly what action we need to take. We cannot investigate something that we think is a conduct matter without instigating conduct proceedings right at the outset, which means that the notification comes when we serve documentation on the officer. There will be some instances, as there would be for a member of the public, when we might have to progress a criminal investigation with a degree of discretion, particularly if it is a domestic or sex-related issue. However, we will always ensure that officers are made aware of the detail that they need to know at the right point in time.

Pauline McNeill: What is the right point in time?

Deputy Chief Constable Speirs: It depends on what you are asking me about. A criminal investigation will be determined by the circumstances, and we will treat that officer in exactly the same way that we would treat a member of the public. Quite often, the circumstances relate to matters that happened when the officer was off duty. If the matter is internal to the organisation, we have to instigate proceedings under the conduct regulations, which means that the officer will hear right at the outset.

Pauline McNeill: However, there is no legal reason why someone cannot be told of a criminal allegation against them. Indeed, I asked the Lord Advocate about that last week when she gave evidence, because we had a specific case in front of us. I cannot remember the timescale involved, but the officer was not aware of the allegations for a considerable period of time. It was suggested that there might have been a legal reason for that, but, when I checked with the Lord Advocate last week, she said that there were no such legal reasons.

The Convener: Just for clarification, are you referring to the CAAPD in last week's evidence session?

Pauline McNeill: I think that it was the week before. We heard about a case that took quite a period of time, and, last week, I asked the Lord Advocate whether there was any specific legal reason for an officer not being told. The officer that we heard from was on restricted duties while they were waiting.

The Convener: Are you referring to Lady Elish Angiolini? She is not the Lord Advocate.

Pauline McNeill: I am sorry—yes. She has had many jobs.

Deputy Chief Constable Speirs: I know the particular case that Ms McNeill is talking about; indeed, I referenced it earlier. It was in the early

part of 2014, and as an organisation, we have moved on since then. I would be surprised if the officer had not been aware of the detail but, accepting that that might have been the case, I would just say again that we have moved on dramatically from that.

At the outset, even in a criminal investigation, we think about how we can best protect the public, the organisation and that officer. There are very few instances when we do not, at the earliest possible opportunity, make that officer and his staff association aware of any investigation.

Chief Superintendent Harrison: The DCC has just covered one of the key points. Often, we have to engage with the officer earlier than we would with a member of the public, because we need to make sure that the necessary checks and balances are in place not just for any move to restrict or suspend but for the officer's welfare. We try to be as transparent as we can.

For example, under regulation 9 of the conduct regulations, the allegation is written out, and it will show that, at the end of criminal proceedings, the officer might go on to conduct proceedings. There are checks and balances throughout that process. A suspension notification will detail the general circumstances. Suspensions themselves are subject to strict review; indeed, they have to be reviewed at least every 28 days to see whether there has been a change of circumstances, and that review will be undertaken by the deputy chief constable. In short, there are checks and balances in place, but a key consideration is the welfare of the officer once they are made aware of the allegation.

The Convener: On the duty of candour, which we have not yet explored with you this morning, I am interested in hearing your thoughts as to whether the way that it is set out in the bill is sufficient with regard to who is covered. Do you feel that the duty would ensure timely co-operation from police officers and staff in investigations? Should it be extended to, say, certain police staff? Earlier, we discussed with the SPA the potential extension of the duty to, for example, custody staff. I am interested in hearing your reflections on that particular provision.

Deputy Chief Constable Speirs: First, officers do an incredibly difficult job every day of the week, and at times, we ask them to provide information on really difficult circumstances. In my experience, officers and staff, when required, co-operate fully, providing as much information as they can and as early as they can. I am really impressed by the approach taken by and the support that comes from divisions.

I am pretty content with the duty of candour in the legislation, but I am not convinced that it is an

absolute imperative. I think that the PIRC might have touched on one occasion over the past seven or eight years when it struggled to get a little bit of detail, and I can think of only one instance of its happening in my experience.

As we move forward and get into the space of public inquiries, fatal accident inquiries and more interaction with the PIRC, it will be helpful for that duty to be in the legislation. Care needs to be taken in considering whether the duty of candour extends to circumstances that happen off duty, but I assure you that our officers and staff very much co-operate in those processes.

Nicky Page might have a view on the extension of the duty to certain roles that our police staff perform.

Nicky Page: Thank you—I do.

The issue for me is that front-line staff, as you have heard from the Scottish Police Authority, are more likely to be involved in those investigations, so the suggestion has been to focus on them. One of my departments has been involved in giving information to support an investigation and to lay out the training or other aspects that might be involved.

The service has a civilian workforce and an officer workforce, and they work together in departments. If an investigation needs somebody's expertise, there should, no matter where that expertise comes from, be a willingness to support it, because that is central to public trust and confidence. Your role should not really matter—this should be an obligation on you. It is a privilege to work in policing and your duty is to come forward, to be honest and to assist with any inquiry. It also brings us back to the timescale issues that we have already talked about, and ensuring that the person involved gets a conclusion in reasonable time.

Like Alan Speirs, I am not aware of anything more than the odd case of someone refusing to be involved in the process, but the duty of candour would set the bar and an expectation that those employed in policing in any capacity should, if required to assist with an inquiry and if their knowledge can support it, be willing and able to give that information. My position is that that should be a duty on all who work in policing, and it should be for the PIRC and others to say, "It is you who can assist."

12:30

The Convener: That is very helpful. I have another question, which stays on the subject of recruiting the best candidates possible for what we all know is an extremely difficult job that places

huge demands on police officers and staff. It is on vetting, which we have not covered yet.

We are aware that the HMICS assurance review of vetting policy and procedures included a recommendation that the Scottish Government should place legislative requirements on Police Scotland with regard to vetting. The Cabinet Secretary for Justice and Home Affairs has advised that she is committed to exploring the legislative basis for vetting, particularly in the context of the bill. Is any work already under way in that space? Do you have any additional comments, particularly on the back of the HMICS review?

Deputy Chief Constable Speirs: First, we welcome the review and I recognise the recommendations. I know, and Chief Superintendent Harrison knows, how important vetting is. We have seen too many illustrations across the UK of dysfunctional vetting systems and their consequences. Vetting is another element that is at the heart of trust and confidence.

Over the past couple of years, we have enhanced our vetting team. We have a really high standard in terms of the level of vetting that we carry out. Every new recruit, on day 1, is asked to reconsider their vetting form, and we do a reaffirmation of their vetting before they take the oath of office. That is incredibly important for me.

The gap that exists is in our ability, when somebody's standard falls short of our vetting standard, to have them exit the organisation. We are looking at best practice across the UK, but we would also welcome legislation that allows us, in instances of a failure of revetting, to exit somebody from the organisation. Currently, it is much more difficult to do that than to bring them in. We would want to have a more routine revetting programme, and Lady Elish touched on that in her review. That is absolutely the space that we want to be in. We would welcome further dialogue and solutions through legislation that would help us in the vetting space.

Chief Superintendent Harrison: I endorse everything that Deputy Chief Constable Speirs has covered there. Having legislation that gave us the ability that he spoke of would very much support the vetting regime that we want to have. What is really important is that it would be make the expectations that we have of officers very transparent and clear to them. At the moment, there is the expectation that they meet the recruitment vetting standard to join the organisation, but if that ability were to be put in legislation, there would also be the expectation that they maintain that standard.

Clearly, there are other processes that can kick in, such as the conduct process, but if that proposal were in legislation, the vetting would be able to be utilised when it is the right process to be utilised if there is concern or if an issue arises, and that links back to the service to the public and communities.

The Convener: Nicky Page, do you have further comments to add?

Nicky Page: Not only do I concur with my colleagues, but I think that it should cover staff as well as officers, because it should be about the standard that you reach when working in policing. I would observe that it is really important for both sides—officers and staff—to maintain high levels of public trust and confidence and to make sure that we have absolute confidence in the workforce. We should have the opportunity, if somebody gets through the system but should not be there, to move them, with dignity, out of the organisation.

The Convener: I am assuming that we are talking about a very small number of applicants and officers.

Deputy Chief Constable Speirs: We did an integrity screening exercise in summer last year, as did every other force across the UK. We measured every employee—officers and members of staff—against a number of police systems in Scotland, and we found a tiny number of instances in which we interacted with officers and staff who had a notifiable association or something that they should probably have told us about. That did not result in any removal of vetting, but it gives a little assurance that we are in a reasonable place in that regard. It would be useful if, in the future, there were legislation that allowed us—on occasion, and if required—to exit somebody from the organisation for vetting purposes.

Fulton MacGregor: Good afternoon. I think that each of you was in the room when I asked my question at the end of the previous witness session. I broadly raised the case of a constituent, which I will not go over again, but I want to ask you about the emotional impact of complaints processes on officers and members of the public. That links to evidence that we have heard about the possible weaponisation of the complaints system by PSD, and tactics of intimidation that are used against complainers. We have heard of that from people who have given us evidence. Included in that is the length of time that the processes take. Is PSD best placed to do the job, or can it be done in another way? Have improvements been made and can further improvements be made? What can be done to support people's emotional wellbeing as they go through the system?

Deputy Chief Constable Speirs: As things currently stand, we are best placed. Lady Elish

referenced that. There is a recognition that, when somebody makes a complaint or raises concerns, their state of mind is probably one of frustration, anger, disappointment and a range of other emotions. The staff in PSD have adequate training to interact as best they can in those circumstances.

We continually look for ways of improving the system. I would absolutely like to be able to turn around today and give Helen Harrison an additional number of officers or complaints investigators to support the function. At times, high demand is placed on the business. We look at vetting and carry out integrity screening exercises and a range of other matters. Right now, all those themes are in the public eye. At times, we could be quicker, and, aspirationally, I would like us to be quicker in handling complaints. I accept that, more immediately, the perception for the complainer is perhaps that the experience is a really negative one. Although the staff are absolutely committed to trying to be as efficient and effective as they can be, there are instances when that simply does not happen, and it could be misrepresented as the police just stalling and stumbling.

One important element is that, at the end of every complaint, the complainer is afforded the opportunity to go to the PIRC to say that they are dissatisfied with the manner in which the complaint has been handled. I am heartened that, of all complaints—an average of 7,000 a year—only 2 per cent of complainers go to the PIRC to say that they are dissatisfied, and that, in about 70 per cent of those instances, the PIRC will say that we handled the complaint pretty well. There are checks and balances for us.

In the small number of complaint-handling reviews that find that we could have done better, we take those recommendations on board. My regular ask of Helen Harrison is that we ensure that any broad issues are embedded right across the organisation.

Chief Superintendent Harrison: That is a really important part of our professional standards work—that feedback on organisational learning and the trends and patterns that come out of complaints, which we feed back to divisions. That is how we ultimately improve the service to the public and stop those issues from recurring. The team works hard on that.

In addition, the PIRC's recommendations and the audits that come in enable us to continually review and look at our processes and put measures in place so that we improve our ability to bring a swifter conclusion to such matters for the people who are involved. That is important in terms of our service to the public, but also, internally, in relation to officer and staff wellbeing

in terms of the minimisation of the length of time that officers and staff are involved in those processes. We in PSD are also trying to be more transparent in what we do.

Russell Findlay: I would like a quick clarification on something that Mr Speirs said about numbers of cases. I think that he said that the PIRC had found that 70 per cent or so had been handled satisfactorily by Police Scotland. That means that 30 per cent had not. He described that as a small number. However, three out of 10 being handled badly is not a good rate, is it?

Deputy Chief Constable Speirs: It is 30 per cent of 2 per cent. I look at it against the 7,000 complaints that we receive. In some of the matters on which the PIRC says that we could do more, it is about clarification in a final letter to the PIRC, or it might say that there are two allegations and that we could separate those. Some of that is administrative.

However, I do not want to take away from the importance of addressing those issues. Please do not think that we are dismissive of the recommendations of a complaints-handling review. However, from an organisational perspective, of the 7,000 complainers that we deal with, 140 will go to the PIRC and, for a smaller number, we need to do further work.

A good number of years ago, the PIRC might have come back to us and said, "You've investigated that complaint really poorly. Go and do it again," and we would. Now, we talk about adjustments to the way in which we communicated or clarified a position with a complainer, for example.

Russell Findlay: Sorry, what does the number 140 relate to?

Deputy Chief Constable Speirs: On average, we get about 7,000 complaints a year. About 2 per cent of those complainers will go to the PIRC to say that we could have handled their complaint better. The figure of 140 is 2 per cent of 7,000 complaints.

Russell Findlay: Thank you.

The Convener: I will finish with a couple of quick-fire questions. The first is on the proposals for a barred list. In evidence, we have heard some concerns about the proposals for that list to be public. I am interested in your views on that.

Deputy Chief Constable Speirs: We absolutely support the introduction of a barred list. If we were to say that it should be private and only for a policing purpose, we have to bear in mind that probably very few people would leave the organisation, enter a barred list and re-enter policing; however, they might enter other public

service-type roles. For me, it would be important for broader public sector organisations to have the ability to access the barred list. We would welcome that list's being as transparent as possible.

The Convener: My final question is about timescales. Do you agree that Police Scotland should respond to the PIRC's recommendations within specific timescales? Is that feasible? Is it possible? Is it challenging?

Deputy Chief Constable Speirs: We are committed to delivering against those recommendations. Although it is not legislated for, if I get a recommendation from the commissioner on any investigation that is carried out, we will address that recommendation. I am quite relaxed—if I can say that—about timescales, because it is important that we take forward those recommendations in the learning space. We receive one or two recommendations from the PIRC or HMICS that involve challenges for our systems, but we are open, honest and up front at the outset about our delivery timescales for those.

I am content with the proposal. If it adds to the picture of transparency, I welcome it.

The Convener: I bring the session to a close—it has been helpful, so thank you very much indeed. We now move into private session.

12:43

Meeting continued in private until 13:02.

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Official Report
Room T2.20
Scottish Parliament
Edinburgh
EH99 1SP

Email: official.report@parliament.scot
Telephone: 0131 348 5447
Fax: 0131 348 5423

The deadline for corrections to this edition is:

Monday 24 June 2024

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

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