



OFFICIAL REPORT  
AITHISG OIFIGEIL

DRAFT

# Criminal Justice Committee

Wednesday 29 May 2024

Session 6



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**CRIMINAL JUSTICE COMMITTEE**

**22<sup>nd</sup> 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:**

Steven Bunch (Scottish Government)

Angela Constance (Cabinet Secretary for Justice and Home Affairs)

Caroline Kubala (Scottish Government)

Kevin Lee (Scottish Government)

**CLERK TO THE COMMITTEE**

Stephen Imrie

**LOCATION**

The David Livingstone Room (CR6)



# Scottish Parliament

## Criminal Justice Committee

Wednesday 29 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 22nd meeting in 2024 of the Criminal Justice Committee. We have received no apologies.

Our business today is our final stage 1 evidence session on the Police (Ethics, Conduct and Scrutiny) (Scotland) Bill. I welcome to the meeting the Cabinet Secretary for Justice and Home Affairs, Angela Constance; Kevin Lee and Steven Bunch from the Scottish Government's police division; and Caroline Kubala from the Scottish Government legal directorate. Thank you for agreeing to provide evidence to the committee today.

I refer members to papers 1 and 2. I intend to allow up to 90 minutes for this evidence session.

I invite the cabinet secretary to make some opening remarks.

**The Cabinet Secretary for Justice and Home Affairs (Angela Constance):** Good morning. Thank you for the opportunity to speak to the committee about the Police (Ethics, Conduct and Scrutiny) (Scotland) Bill.

The bill will embed ethics in the legislative framework to ensure that human rights are front and centre of policing in Scotland. It will pave the way to reforming how police conduct is dealt with and will enhance the independent scrutiny of policing.

The bill draws on evidence led by the former Lord Advocate Dame Elish Angiolini, who undertook an independent review of police complaints investigation and misconduct issues. She heard from many individuals from different organisations and members of the public, as well as numerous focus groups.

In 2022, a 12-week public consultation was held. That consultation demonstrated broad support for the legislative changes that were recommended by Dame Elish Angiolini. The measures in the bill build on the non-legislative improvements that have already been made by policing partners. It is important that the bill has been shaped by those who have lived experience of the police complaints system, many of whom

felt that the whole system was against them, that they became the victim and that there was no independent body to turn to.

In seeking to raise and embed ethical standards, the bill places a statutory obligation on the chief constable to prepare, regularly review and disseminate the code of ethics, reflecting its significance. Those who hold the office of constable and the powers of that office have a higher duty than others to account for their actions and record what they did or saw in the execution of their duties. Therefore, an explicit duty of candour on individuals, constables and Police Scotland as a whole will be introduced.

To enhance independent scrutiny and remove any perception of familiarity in relation to misconduct proceedings, the bill will amend regulation-making powers to allow the transfer of certain functions from the Scottish Police Authority to the Police Investigations and Review Commissioner. It provides that the legislation governing disciplinary procedures can be amended to apply to former constables in particularly serious cases, and it provides for the consequences of gross misconduct by the application of barred and advisory lists to ensure that constables who do not meet the standards required of the police service are prevented from being able to work in policing.

To avoid the police investigating someone with whom they have a connection or with whom they might even have worked, the PIRC will have the ability to investigate when it is suspected that the offence was committed by a person who formerly served with the police. If officers and staff experience poor service in a personal capacity, the bill clarifies that their complaint to Police Scotland will be able to be reviewed by the PIRC. That will give constables and staff an external body to go to.

To strengthen the role of the PIRC with regard to any recommendation that it makes to Police Scotland on its handling of individual complaints, there is a requirement that the outcomes of those reviews are published and that the chief constable must respond.

The bill provides the PIRC with the power to take over the consideration of complaints that are being dealt with by the chief constable or the Scottish Police Authority. To improve the transparency of processes around how public interest matters are investigated, the PIRC will have a duty to audit the arrangements for investigating whistleblowing complaints. That will encourage people to speak up when they see wrongdoing.

The PIRC will also be given new functions to investigate serious incidents or criminal offending

that occur in Scotland that involve constables from forces outside Scotland. To support Police Scotland to improve, the PIRC will have a new power to review a policy or practice of the authority or Police Scotland if the PIRC considers that that would be in the public interest.

To improve efficiency, transparency, independence and public confidence in the police complaints process, the bill paves the way for the PIRC to independently and remotely have direct access to audit and review files in Police Scotland's complaints database. To strengthen the PIRC's decision making, the bill puts in place a statutory advisory board to advise the PIRC on governance and administrative matters.

I want to ensure that the public have confidence in the police complaints and misconduct system, and I am committed to working with members, policing partners and, importantly, people with lived experience to ensure that the bill achieves its aims.

**The Convener:** Thank you very much for that helpful opening and setting of the scene.

I will kick things off. As you said, the Scottish Government's aspiration is that the bill will ensure that there are robust, clear and transparent mechanisms for investigating complaints and allegations of misconduct. During our evidence sessions, the issue of culture has come up. Witnesses have told us that, for them to have real confidence in the police complaints system, the culture in Police Scotland must change. It is clear that a lot of work has been going on in policing to implement the non-legislative recommendations in Lady Elish Angiolini's review. That was particularly highlighted last week by the chief inspector of His Majesty's Inspectorate of Constabulary in Scotland, who reflected on his recent inspection on organisational culture. He said:

"there was a real gap in the provision of leadership training and cultural change during the first five or six years"—

of Police Scotland's existence—

"and it was a very different organisation to the one that we see today. I see that as positive."—[*Official Report, Criminal Justice Committee, 23 May 2024; c 2.*]

From your perspective and in the context of what the bill is seeking to do, do you feel that we are starting to see the necessary culture change in Police Scotland?

**Angela Constance:** I do. Your point about culture is very important, and HMICS has done a significant amount of work on scrutinising and making recommendations on how to embed a good organisational structure. I would never pretend that legislation alone was the magic bullet or the entire answer. However, the Scottish

Government's response to the independent Dame Elish Angiolini review was overwhelmingly positive. The vast majority of the recommendations were accepted. About two thirds of the recommendations were non-statutory, and 58 recommendations have already been implemented.

With regard to the oversight of that work, I chair a ministerial group that is about giving ministers assurance that policing partners are implementing recommendations, particularly non-legislative ones. That work was also supported by a strategic oversight group and a practitioners group. It is important to stress—I hope that I managed to do this in my opening remarks—that we have regularly informed the Parliament through Government-initiated questions and by writing to the committee a number of times on the thematic reviews.

We can group Dame Elish's recommendations into categories, such as training and human resources and effectiveness and efficiency. There are many well-organised themes in her work and her recommendations, which has been of assistance in respect of policing partners' reporting and in the correspondence that we have sent to the committee over a number of years.

We now have to move forward, build on the change that has begun and deliver on the commitments that we made to introduce legislation on the minority of Dame Elish's recommendations that required statutory provision, including those relating to the code of ethics, the duty of candour and strengthening the independence and broadening the role of the PIRC.

**The Convener:** On the complaints process, the committee heard evidence from a number of witnesses that, although they feel that the bill's provisions are fine in themselves, they would like to see a more radical overhaul of the complaints process so that it is as independent as possible. Does the bill go far enough to meet those aspirations, particularly the aspirations of members of the public and former officers who have had experience of the complaints system and have indicated that an independent process would be more transparent and effective?

**Angela Constance:** The processes are independent. Nonetheless, I understand the position that many of the witnesses who have given evidence to the committee have come from, the fact that they have felt disenfranchised with regard to the system and the fact that they have not been treated well under the historical system. People are raising questions about fairness as well as about effectiveness and efficiency.

With regard to the work that has already been delivered or that has been in train since before the

bill was introduced, there has been work on transparency and accessibility. There were eight recommendations in the Angiolini review on improving transparency and accessibility, including those on publicising the right to complain, the recourse—beyond the PIRC—to the Scottish Public Services Ombudsman and greater public sharing of the work of the SPA's complaints and conduct committee, for example. The recommendations were very focused on training and human resources—for example, with regard to mediation and customer handling training and support for front-line managers. The changes that have taken place in the police standards department, which is much more focused on early engagement and early resolution, and Police Scotland's work on front-line resolution are particularly important.

Over a number of years, the PIRC has adapted its recruiting practices. In 2013, when the PIRC was established under the Police and Fire Reform (Scotland) Act 2012, there was a preponderance of recruitment of former police officers, given their skills and experience in investigation. However, recruitment policies have now changed, and there is acceptance that broader diversity among the people coming into the organisation is needed and that policing is not the only area in which people develop experience and skills in investigation.

A number of changes have taken place in the Police Scotland professional standards department, and the PIRC has made changes in its governance in response to the Angiolini interim review.

10:15

**The Convener:** Last week, HMICS picked up on the point that you made about the inclusion of former officers in the PIRC. It highlighted the balance between independence and staff in the PIRC having the skill set to run complex investigations involving things such as mobile telephony and data. It seems to be about getting that balance right.

I will open up the questions to members.

**Sharon Dowey (South Scotland) (Con):** Good morning. Section 15 of the bill gives the PIRC the power to review practices and policies of the police in general, and not just in relation to a particular incident. Although the PIRC supports that, HMICS does not. However, when we heard from Craig Naylor last week, he said that, in the two years that he has been in his role, the PIRC has not passed a single policy or procedure of Police Scotland to HMICS for review. Is the section 15 power necessary for the PIRC? HMICS suggested that it could blur responsibilities.

**Angela Constance:** It is important that we are alert to any risks of duplication, because duplication of functions leads to confusion or inefficiency.

I was heartened by the contribution of Michelle Macleod, who spoke to the PIRC's commitment to work closely with HMICS. However, to pick up on the point that you raised, Ms Dowey, I am aware that Mr Naylor raised the prospect of the bill being amended to give the PIRC the power to refer particular matters to HMICS should that be appropriate. I assure you that I will give that all due consideration.

In broad terms, HMICS provides close scrutiny, commentary and recommendations on whether policy and procedures are appropriate and in the right domain, whereas the PIRC is often more concerned with the application of existing policies and procedures. However, based on the recommendations that it can make to police and partners, the PIRC is well placed to highlight any gaps and measures that are needed and to inform partners of any vital learning.

**Sharon Dowey:** Are you surprised that the PIRC has not sent any policies to HMICS to review?

**Angela Constance:** I do not have an opinion either way on that, but I am alert to the evidence that the committee has heard that there is, perhaps, a need for an explicit power for the PIRC to do so when appropriate.

**Sharon Dowey:** It has been highlighted a lot in the evidence that we have received. I will come on to that in a wee minute, but it looks as if it needs to be examined in great detail.

The Scottish ministers can also direct HMICS to undertake research or inspection activity in relation to any aspect of policing in Scotland. Have you directed HMICS to look at any aspects of police regulations or conduct procedures?

**Angela Constance:** No, not in my time as cabinet secretary.

**Sharon Dowey:** Do you know of any direction that has been given to HMICS to look into any of the policies and procedures of Police Scotland?

**Angela Constance:** I am not aware of any, but I can ask officials if they know what the position is historically—I will let them contemplate that. When it comes to improvements in relation to misconduct and complaints, I have been focused on the bill.

**Sharon Dowey:** Police Scotland felt that a lot of what was holding it back related to the fact that many of the regulations were out of date. We have heard that in our evidence, and you will have heard that in your regular meetings. Has anyone

been given an instruction to look at and update the current policies, procedures and regulations?

**Angela Constance:** The bill enables existing regulations to be revisited under the small number of enabling powers that it includes; it is an amending bill that provides the opportunity for that to be done, particularly where secondary legislation is required. Ms Dowey and other committee members will be aware that police conduct regulations are all contained in secondary legislation and have been for many years. The appropriate parts of the bill provide an opportunity to revisit current procedures and policies in consultation with organisations, such as the Scottish police consultative forum. The bill provides the vehicle for that, as opposed to me inadvertently stepping into Police Scotland's operational matters.

It is important to remember that Police Scotland is directly accountable to the Scottish Police Authority, because of the separation of powers. The Police and Fire Reform (Scotland) Act 2012 is crafted to ensure that. Perhaps officials want to add something at this point.

**Steven Bunch (Scottish Government):** HMICS sets out a work plan for the inspections that it will carry out; that is publicly available online. I am not aware that it has been directed by the Scottish ministers to review any current policies or procedures. We can look into that and come back to the committee.

**Sharon Dowey:** It seems that, as the issue has been highlighted quite a few times in our evidence, ministers might want to direct a review.

**Angela Constance:** I suppose that that is an argument for the bill.

**Sharon Dowey:** That is what I am saying: a lot of that work would fix some of the problems that we have had with the bill.

**Angela Constance:** The way to do it is through the bill as opposed to through a directive from ministers. I think that I am right in saying that.

**Caroline Kubala (Scottish Government):** Yes.

**Sharon Dowey:** David Kennedy of the Scottish Police Federation told us that, in England and Wales, a lot of Lady Elish Angiolini's

"recommendations are getting turned back. They are now reversing what she recommended, because they have realised that a lot of it does not work."—[*Official Report, Criminal Justice Committee*, 8 May 2024; c 47.]

A number of non-legislative recommendations have been implemented. From our evidence, a lot of improvements seem to have been made, and there have been a lot of positive comments. Has anyone done a full review of the impact and benefits that are now in place, rather than pushing

ahead with the legislative recommendations? Has anyone reviewed the comments that David Kennedy made about England and Wales to see what the issues were and whether it is still worth going ahead with the legislative process?

**Angela Constance:** In broad terms, the bill should not be looked at in isolation. I hope that I made that clear in my remarks to the convener. The non-legislative work is fundamentally important, but we need to complete the process of the statutory requirements and the statutory recommendations that were made by Lady Elish. I see the legislation and the non-legislative recommendations as being part of a bigger package. Given that we all value the principle of policing by consent, it is important that we continue to do everything that we can to ensure that there are rigorous processes in place for dealing with issues of misconduct and gross misconduct. That is imperative to there being public confidence in policing.

On what is happening in England and Wales, I will happily pick up on any specific issues that you want to raise. Generally, we look at what is happening south of the border as they are the jurisdictions that are nearest to us. As you would expect, there is cross-border co-operation in the course of day-to-day business, and there is an important cross-border issue related to the barred and advisory lists, which is an issue that we might come to.

**Sharon Dowey:** I am sticking with the theme of regulations. The Scottish Police Federation told us that the current performance regulations, which came in alongside the conduct regulations in 2014, have never been used. That was disputed by Police Scotland. Deputy Chief Constable Speirs said:

"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 a few other things.

When asked if we needed to get those things into the bill now, instead of having to wait for secondary legislation, he said:

"That would be my ask of the committee."—[*Official Report, Criminal Justice Committee*, 22 May 2024; c 41.]

**Angela Constance:** The difficulty with that is that conduct regulations are in secondary legislation and the way to change them is via secondary legislation. There would also need to be extensive engagement and consultation on any proposed changes. Again, that is due to the obligations that are placed on us by the 2012 act. The way forward, or the vehicle for change for the



practicalities that Ms Dowey has spoken about, is the primary legislation, which enables us to revisit secondary legislation. Do officials have any finer points of detail that they want to add?

**Caroline Kubala:** Yes. The bill is needed in order to widen some of the enabling powers for the legislation. The rest of it is being done in secondary legislation. We are not entirely sure about the extent of what the deputy chief constable was asking for, but some of his requests seem to be beyond what might have been in Dame Elish's original recommendations and, therefore, they have not been consulted on in any shape or form. There would be a difficulty in us proceeding with trying to add to the bill 50 pages of amendments that relate to conduct recommendations that have not been consulted on at all. For that reason alone, it would be better to proceed with the secondary legislation process, because a detailed consultation process is inherent in that.

**The Convener:** Does the cabinet secretary want to come back in, before I move on to another member?

**Angela Constance:** The only point that I would add is that we have to avoid a piecemeal approach. The Government made a commitment to lodge primary legislation to cover the necessary legislative changes that I referenced in my opening remarks. That needs to be supported by secondary legislation where necessary. The way that matters are phased and sequenced will be important, as will how we bring together aspects of the work that specifically relate to conduct regulations, because, even though the secondary legislation that flows from the bill will be required, we need to move forward in a planned and phased manner and not in a piecemeal way. I wanted to add that to give some assurance to Ms Dowey.

**Russell Findlay (West Scotland) (Con):** One of the key recommendations that Dame Elish made was for the PIRC to be made answerable and accountable to the Parliament. That is not in the bill. Will you explain your thinking as to why that recommendation has been disregarded?

10:30

**Angela Constance:** There have been a number of developments. For clarity, I note that some of the recommendations of the Angiolini review were on having two deputy commissioners and redesignating the PIRC from a commissioner to a commission. I understand that the underlying *raison d'être* of those recommendations was to ensure accountability to the Parliament.

After some consideration, it became apparent that we could not establish a commission as well as accommodate two deputies. The reason is that

there has to be a clear line of accountability. If all commissioners share legal accountability, some commissioners—the deputy commissioners—are subservient to the primary commissioner.

That was a bit of a wander into the detail, but a more simple point is that Dame Elish was initially inspired by the Irish model. However, with the passage of time, the Irish model, too, is now moving towards the commissioner model, as opposed to other models.

**Russell Findlay:** Is there a technical reason why you cannot do it, or are you opposed to the suggestion that the PIRC should be answerable and accountable to the Parliament?

**Angela Constance:** I have tried, in the most basic way possible, to talk through some of the technical issues. If members want more information, officials can come in, or we can follow up in writing.

I argue that the PIRC is already accountable to the Parliament via parliamentary attendance—whether that is through Scottish ministers or the commissioner. It is accountable to other organisations for its other functions, but I contend that it is also accountable to the Parliament.

**Russell Findlay:** It might be, but Dame Elish called for a change in status in the legislation, and that is not happening.

**Angela Constance:** It is not happening, for reasons that I outlined.

**Russell Findlay:** The Finance and Public Administration Committee raised concerns about the bill's cost, which is projected to have risen from £1.4 million to £5.8 million—possibly higher. I have read the *Official Reports* of finance committee meetings, and it seems that we are a bunch of softies compared to it, during its recent exchanges with you.

The finance committee convener said that the Scottish Government provided the committee with

"figures that it knew were completely inaccurate."—[*Official Report, Finance and Public Administration Committee, 7 May 2024; c 52.*]

He wrote to the Presiding Officer on 16 April to say that the Scottish Government had known for six months that the figures were out of date, but that it did not tell the committee. That is quite a charge. How do you respond to that and how can we trust the new figure of £5.8 million?

**Angela Constance:** You are quite correct that there was a robust exchange of views between me and the convener of the finance committee; it was all in the interest of transparency and scrutiny. My officials had a session with the finance committee and, a few weeks later, I also went in and had that pleasure.

I have repeatedly stated, verbally and in writing, that at the time of the bill's introduction, the financial memorandum was the best estimate of costs. Those costs have now been revised because of different information from Police Scotland and the Scottish Police Federation.

**Russell Findlay:** What about the specific charge that the Government had known that for six months and did not tell the committee?

**Angela Constance:** No. If I have not already followed that up in writing to this committee, I am happy to do that, but I went through the timeline, and what I said should be in the *Official Report* of the Finance and Public Administration Committee meeting that I attended.

The bill was introduced in June 2023. In autumn, my officials were told informally that policing partners were doing some work to revise the costs, because now that they had seen the text of the bill, they would need to be revised.

The evidence of the policing partners was published on 8 November last year, and my officials were aware of it on 6 November. As I said to the finance committee, I do not just accept what people tell me something is going to cost; I expect my officials to robustly examine it.

In March of this year, we got to the point at which the Government accepted the revised costs. The financial memorandum was the best estimate based on the information that I and my officials had at the time.

**Russell Findlay:** I have a general question, now. We heard evidence about good police officers' careers being destroyed and innocent members of the public being treated like criminals. Often, the original failing is not the most important issue; it is the subsequent process that people experience. They often experience cover-ups, delays, disregard and weaponisation of the process.

During the past few weeks, we have also heard quite a bit from senior policing figures that they have been doing a great deal of work to change the culture. Are you confident that the bill will protect good officers and the public, or is there a fairly deeply ingrained culture in policing that the bill alone cannot fix?

**Angela Constance:** The bill is about fairness of process, and about the aspects of processes that require to be independent. We have to be fair to all parties. The Parliament and the Government have obligations to uphold the European convention on human rights, which means that we have to be fair to people who are making a complaint and to those people about whom the complaint is made.

On your broader point about ingrained culture, Dame Elish Angiolini accurately said that cultural

changes do not happen overnight and, if they do, they will not be sustained. We need to be committed to the journey, for now and for the longer term. Do I think that culture is changing? Yes, I do. That is in part because of the work that Police Scotland does on diversity and inclusion and because of how the organisation is moving forward to actively tackle racism and misogyny.

Monitoring, accountability and auditing processes have improved in the PIRC, Police Scotland and the Scottish Police Federation. We have a much more robust package now, but we need to continue that journey and the bill is part of that.

**Russell Findlay:** His Majesty's chief inspector of constabulary told the committee that he would like the bill to include a provision whereby a chief constable would be able to sack officers, following due process. He said that he has been in discussion with the bill team for more than a year. Will that be included in the bill?

**Angela Constance:** I am considering that. We will do some further work on it during the summer.

**Russell Findlay:** We have a strange situation in which the bill attempts to give the PIRC new powers, but the PIRC has told us that it is not able to have some powers for financial reasons, or that it does not want other powers. In respect of section 5 of the bill it said that "further detail is critical" and it strenuously opposes being given one particular function, which is the holding of senior officer gross misconduct cases. It says that it does not have the skills or resources to hold such cases, that there would be a lack of oversight of the PIRC, and even that such cases would impact on the PIRC's ability to operate. Have you listened to those concerns and are you doing anything to address them in the legislation?

**Angela Constance:** Of course. I met the commissioner just last week—it was not my first engagement with her. I engage regularly with all policing partners. I note and pay attention to where there are differences of opinion among the PIRC, Police Scotland, HMICS and the Scottish Police Federation. When we get into the detail of a bill, not everybody faces the same direction all the time. The Government has to come to a view and, ultimately, the Parliament has to come to a view.

There are some aspects that we might come on to later, such as whether the commissioner should be on the prescribed persons list. There are practical arguments that the commissioner is deploying effectively, in my view. However, in a more global sense, while the bill either clarifies the role of the PIRC or extends an existing role by taking some narrow roles or duties and broadening them out, it is important that, particularly in senior officer cases, the role of the

PIRC is expanded and that those functions are transferred from the Scottish Police Authority to the PIRC.

That is for pragmatic reasons. We have one police force in Scotland and a comparatively small number of senior police officers who all have a proximity to the Scottish Police Authority. The role of the PIRC is as a credible partner in policing and the cornerstone of policing in holding the police to account on behalf of the public and that is important.

**Russell Findlay:** If I understand you correctly, you are sympathetic to the PIRC's view that it should not be designated as a prescribed organisation for the purpose of whistleblowers. It wants to be a gateway rather than a particular recipient of whistleblower complaints.

**Angela Constance:** Yes.

**Russell Findlay:** HMICS takes a different view. It believes that the PIRC should have that power and, furthermore, that that power should also be given to the SPA. That would give officers in Scotland the option of going to the PIRC or the SPA. It sounds as though you are more minded not to go down the route of making the PIRC a prescribed organisation.

**Angela Constance:** The legislation on whistleblowing is reserved. We are, of course, in discussion with the UK Government and with the PIRC. That is an example of where the commissioner makes a fair point, in my opinion, although the Parliament may have a different view.

I am committed to the transfer of functions from the SPA to the PIRC, because that is the prudent thing to do, given the perception of proximity between senior police officers and the Scottish Police Authority.

**Russell Findlay:** Okay. Thank you.

**Rona Mackay (Strathkelvin and Bearsden) (SNP):** Good morning, cabinet secretary. I want to ask you about the duty of candour. The Scottish Police Authority has questioned whether the duty of candour will apply to an off-duty police officer and, if so, to what extent? Does there need to be a bit of clarity around that?

**Angela Constance:** It does apply to off-duty officers.

**Rona Mackay:** There seems to be some—

**Angela Constance:** I am not sure that any more clarity is required on that.

**Rona Mackay:** Thank you, that is great. Should the duty of candour apply to police staff, or only to police officers? The PIRC, Police Scotland and HMICS think that it should apply to staff, but Unison opposes that.

**Angela Constance:** We have to remember that staff are employed on a different basis to police constables. Police staff are employed in the traditional manner, as most people in the world or in this country are. However, constables are not employees. They are office-holders who have very particular rights and responsibilities and they are in a heightened position of trust. Therefore, the roles are quite distinct. One is employed in the traditional sense and the other is an office-holder who is safeguarded with particular responsibilities and duties.

10:45

With regard to the public's confidence in policing and how we continue to ensure that public confidence is high, recognition of the heightened role and responsibilities of constables is important. That does not mean that ethics are not important to police staff. There is also an ethics and values framework that applies to police staff.

**Rona Mackay:** Thank you. That clears that up.

Does the 12-month time limit on the PIRC assessing allegations against former officers apply to all former officers or just senior officers?

**Angela Constance:** If I have understood you correctly, you are asking whether there is a 12-month limit for the PIRC to investigate or continue proceedings with regard to people who are no longer serving senior officers. Officials will correct me if I am wrong, but that is not actually in the bill. It is an issue of practice on which guidance has been made public—the PIRC has shared that—with regard to the fact that there are times when it needs to make decisions on what is in the public interest with regard to pursuing matters. However, that is a very high-level answer. Steven Bunch might want to add to that.

**Steven Bunch:** Section 6 of the bill provides for the PIRC to allow misconduct procedures to be applied to former police officers, but that is for senior and non-senior officers—

**Rona Mackay:** Did you say senior officers only—not all officers?

**Steven Bunch:** No, it applies to non-senior officers as well. It is for all officers in cases of gross misconduct.

**Rona Mackay:** Thank you. That clarifies that point.

**The Convener:** In its evidence, the Scottish Police Authority expressed support for the provision that relates to calling in complaints being a function of the PIRC. It felt that that was a positive step forward. I am interested in the backdrop to the inclusion of that provision.

**Angela Constance:** In essence, that provision is about reassuring the public, police officers and staff that the PIRC can conduct independent investigations into the most serious non-criminal cases of complaint at any time if there is sufficient evidence that the complaint is not being properly considered by Police Scotland. With regard to the call-in of relevant complaints, it is important that that can be done of the PIRC's own volition or that it can consider the request of a complainer, so it does not have to wait to be asked.

**The Convener:** As I said, the SPA was broadly supportive of that provision. The committee also heard other evidence that that provision would enhance the investigation process.

The bill places an individual duty of candour on police officers only, although staff would be covered by a separate organisational duty of candour, achieved by amending the policing principles. Should that individual duty also apply to all police staff or at least to those with the same powers and responsibilities as police officers, such as custody staff, who have a particular role? They are not police officers—they are staff—but they have a type of role about which there is the potential for complaints to be made. That is the view of the PIRC, Police Scotland and HMICS, although that is opposed by Unison. I am interested in your response to that.

**Angela Constance:** I do not want to repeat myself. The core of that issue is about the distinction between being employed and being an office-holder, although I understand the logic of some of the arguments that have been marshalled around the fact that some police staff have particular responsibilities, such as the example that you have given. I do not have anything further to add on our overall position but I will check with Steven Bunch and Caroline Kubala.

**Caroline Kubala:** I could also add that, in the case of police officers, that duty is being added to their standards of professional behaviour, because those have to sit in legislation. For staff, there is a code of conduct, which is part of their terms and conditions of employment, so that sits outside legislation. It is possible that some duties with regard to conduct could be added by the SPA through the terms and conditions of staff, but that would have to be discussed further and it would have to decide whether it thought that that was appropriate, fair and proportionate in the staff's circumstances.

**The Convener:** We are aware that, over the years, more and more roles and responsibilities in Police Scotland that were once undertaken by officers are being undertaken by staff. It is important that that is recognised.

**Sharon Dowey:** I will go back to the previous question. I am still quite confused about what we need secondary legislation for and what can just be put into terms and conditions of employment with the police. Is any of the bill needed in order to update and modernise the policy, procedures and regulations of Police Scotland or can it do that outwith the bill?

**Angela Constance:** I would argue that the bill is needed.

**Sharon Dowey:** So, the bill is needed.

**Angela Constance:** I would argue that the bill is needed—otherwise I would not be doing it.

**Sharon Dowey:** On some of the things that we have heard from Police Scotland, I asked last week:

“In the interests of everybody who wants quick resolutions to their problems ... do we need to get that in the bill right now, instead of having to wait for secondary legislation?”

The answer from Deputy Chief Constable Speirs was:

“That would be my ask of the committee.”—[*Official Report, Criminal Justice Committee, 22 May 2024; c 41.*]

Therefore, I wonder whether it would speed things up for the victims and for the people who are the subject of the allegations of a complaint to bring the secondary legislation in more quickly. There was an example of a case of someone who has now been suspended for three years. Will anything in the bill speed up that process? I wonder how much communication you would have with a victim who wants something to be done with regard to a police officer who is still on full pay in a case that has been on-going for three years and is lost somewhere in the justice system. I cannot imagine that that victim will get a regular phone call, when it has taken three years to deal with it. That is where they feel let down.

Also, we are talking about the public purse and the fact that finances are finite, so is there anything in the bill that will solve that situation?

**Angela Constance:** The point that you make about the need for accelerated hearings is important. Of course, accelerated hearings are not always possible or appropriate if we are committed to a process that is fair to all parties.

You are correct that there can be a connection with criminal proceedings, and there is a programme of work on court efficiency and court catch-up, so I accept the point about the efficiency of proceedings. Of course, that was subject to some of the non-legislative recommendations.

With regard to the bill, the gateway to addressing some of the issues that we would like to address via secondary legislation is primary

legislation. We currently have a situation in which police conduct regulations are all in secondary legislation, and have been for years, and you heard earlier from Caroline Kubala that that level of detail would not be put in a bill.

Timescales are important. If Parliament consents, the bill will pass at the end of the year and will get royal assent in the first quarter of next year, so the earliest that aspects of the bill can be implemented would be next summer. We will want to have a cohesive programme, particularly in and around conduct regulations, because I do not want to take a piecemeal approach to pursuing matters that need to be addressed. I do not want to come to committee with statutory instruments in dribs and drabs.

On the overall delivery of the bill, when secondary legislation is required, we will probably do it on three or four occasions and group things together in a way that makes sense, particularly in and around conduct.

**Sharon Dowey:** That is why I was asking whether any instruction would be given to HMICS to review any of what is being done. Given that, as you have said, it will take time after the legislation is passed before anything is implemented, is any work being done just now to speed up the process?

The representatives of Police Scotland to whom we have spoken have told us that they can say what the problems are. Last week, Craig Naylor said that there are lengthy delays for victims who have made a criminal allegation, and that that is a matter for the Lord Advocate. Are discussions being held with the Lord Advocate about whether we can change some of the things that are wrong? Is the Lord Advocate looking at ensuring that, if there is irrefutable evidence that means that somebody should be dismissed from their role, they can be dismissed at that point, instead of having to wait for the criminal proceedings to take place?

**Angela Constance:** I am not sure that the policy around the power that HMICS has recommended that the chief constable should have in certain high-threshold circumstances in and around dismissal would be a matter for the Lord Advocate. However, work is being done at pace, and 58 of Elish Angiolini's non-legislative recommendations have been implemented. Further, HMICS carries out substantial reviews. It has done one on vetting, and we spoke earlier about the one on organisational culture. Primarily, it makes recommendations to police and partners, and occasionally to the Government.

It is for the SPA to hold Police Scotland to account. Much of the SPA's proceedings are held in public, and I also engage with the SPA and

Police Scotland, collectively and individually. Kevin Lee might want to add something to that.

11:00

**Kevin Lee (Scottish Government):** On the comments that DCC Speirs made about the conduct regulations and how effective they are, we are learning about that pretty much at the same time as the committee is, so I would say that it is a new development.

We have looked at the conduct regulations, and our reading is that they do not stop misconduct proceedings from continuing. A deputy chief constable can postpone proceedings, at their discretion, while criminal proceedings are in play, but the conduct regulations do not stop misconduct proceedings from happening. We intend to pick that up with Police Scotland and the Crown Office to see whether something is going on outside the conduct regulations that is feeding into the scenario that was described to the committee last week. However, we are pretty clear that the conduct regulations are not getting in the way of proceedings continuing, if a deputy chief constable considers it appropriate that they do. Caroline Kubala might want to add to that.

**Caroline Kubala:** What Kevin Lee says is correct. All that the conduct regulations do is give the deputy chief constable who is dealing with the conduct process a power to suspend or postpone proceedings until the prosecutor says that criminal proceedings will not be brought or that they have been completed. They do not say that that has to happen. We would need to investigate further to see whether it is happening as a matter of course and to determine what the reasons for it happening were before we could usefully assist.

**Sharon Dowey:** I am under the impression that—

**The Convener:** I am sorry, Ms Dowey, but I need to bring in other members.

**Pauline McNeill (Glasgow) (Lab):** Good morning. There is quite a lot to get our heads around because of the mechanics of the different organisations. I am glad that it is not just me.

I have been trying to pursue some lines of questioning around what difference the public would see and to make things a bit real for myself with regard to the difference that the proposals would make on the ground. Today, we received a helpful briefing from Victim Support Scotland that sets out different categories of complaints and gives a couple of examples. I will mention one of the examples because, when I read it, I thought that I remembered the case, which concerns a complaint that Victim Support Scotland supported against a police officer who had shared WhatsApp

messages, including details of injuries. The incident was investigated by the anti-corruption unit on the basis of criminal charges, and 13 officers were referred to the national conduct unit. There were no criminal proceedings in that case, but the officer concerned resigned. It struck me that Police Scotland could investigate that on the grounds of gross misconduct using the 12-month rule, so I ask myself why it was not pursued on the grounds of gross misconduct in the first place. Would that be right?

**Angela Constance:** That would be my understanding.

**Pauline McNeill:** Thank you. I want to come to another point, which involves public complaints about, for example, belongings not being returned and misconduct allegations of some kind being made. That can be an issue in high-profile criminal cases involving victims and their families. I do not think that there are any time limits when the public complain and it goes to the PIRC. Am I right in saying that? The reason that I think that there are no time limits is because Victim Support Scotland quoted a person who had been affected by crime as saying:

“PIRC should have stronger powers to insist within the statutes of law that Police Scotland return responses within the time limit.”

Actually, that says “the time limit”, so there might be time limits.

We have been discussing time limits with regard to the conduct of police officers, but I am thinking about what happens when the public complain. I would have thought that that was quite an important thing to address, given that one of the purposes of the bill is to give the public more confidence when they make complaints.

**Angela Constance:** There are no statutory time limits in the bill. I understand the point that Ms McNeill makes, which is about efficiency and fairness. It is also about how the person who is being complained about and the complainer are treated. Across the justice system, we talk a lot about trauma-informed practice. That is germane to the matter.

A number of strands of work on police complaints handling processes are being carried out by Police Scotland and the PIRC and they should improve timescales. I mentioned the front-line resolution process. That is about broadening the opportunities for early engagement and, where possible, early resolution. That has coincided with some structural changes in the professional standards department. There is also the PIRC statutory guidance that was introduced in 2021.

There have also been further improvements to audit and review practices in Police Scotland, the PIRC and the SPA. That is about the regular cycle

of monitoring and understanding where people are in the resolution of complaints to avoid backlogs, for example. However, there are no statutory time limits.

**Pauline McNeill:** I believe that those who complain are not entitled to information about the outcome of a misconduct investigation.

**Angela Constance:** Do you mean just now?

**Pauline McNeill:** Yes. Does the bill help with that?

**Angela Constance:** The bill helps with it in that, if the PIRC makes recommendations to Police Scotland or the SPA, those recommendations can be published. Where there are time limits, it is for the chief constable to give an initial response and a progress update. I think that an initial response to recommendations should be made within eight weeks but a progress update can be given within 12 months.

**Pauline McNeill:** So it is possible for families to be told of the outcome of a gross misconduct or misconduct complaint.

**Steven Bunch:** I understand that Police Scotland has started publishing the outcomes of gross misconduct hearings. Part of our plan is for secondary legislation to put that into statute.

**Pauline McNeill:** That is helpful.

In relation to the proposed 12-month time limit in the bill, have you considered fairness for officers who have left and gone on to other employment and might be unaware that there is a complaint? I am concerned not about officers who leave when they know that there is a complaint but those who, having no knowledge, are caught within the 12 months. Following that, they would have the right to defend themselves and appeal against the decision.

I am not minded to support extensions of that 12-month limit, especially if it is the limit for the time when you can pursue an officer, so it could be a much longer time before the proceedings are held, after which the officer could appeal the decision. Have I misunderstood how that would work?

**Angela Constance:** The 12-month timescale is not in the bill. It is not a hard and fast statutory requirement. It is for the PIRC to make a judgment on public interest and fairness. It needs to be a rounded decision based on all the facts and circumstances.

Is there anything that you would like to add, Steven?

**Steven Bunch:** The bill allows former constables to be pursued but it does not set a time period, as the cabinet secretary said.

**Pauline McNeill:** So there is a bit of gate keeping in deciding which cases will be pursued but it is not in the bill that the PIRC can do that up to 12 months.

**Angela Constance:** It is a professional judgment.

**Pauline McNeill:** Could it be longer than 12 months?

**Angela Constance:** It is a professional judgment made by the PIRC on the merits and details of the case and what is in the public interest.

**Pauline McNeill:** Does the PIRC to take into account the point that, if it takes longer than 12 months, the officer would need to get a form of representation? They might not be covered by the Scottish Police Federation if they have left, for example.

**Angela Constance:** Yes. The PIRC is well aware of processes, people's rights and their right to defend themselves.

**Pauline McNeill:** My next question is another way of looking at an area that Sharon Dowey has pursued. I have looked at cases where there are allegations of assault. That is a criminal matter and it can take quite a time to get to court. We know that those periods are getting shorter, but Police Scotland often proceeds against officers when there have been no criminal proceedings on the same facts.

That seems to be a waste of police resources if the court has decided that no guilt attaches to the officers. I could understand there being civil proceedings for gross misconduct or misconduct if there were other matters. Is it your view that Police Scotland should not necessarily automatically hold disciplinary proceedings where a not guilty verdict has been given on the same facts?

**Angela Constance:** It is a different threshold.

**Pauline McNeill:** Yes, but it is still the same facts.

**Angela Constance:** Yes. A criminal matter has to be proven beyond reasonable doubt.

**Pauline McNeill:** That is what others have said, but I do not really understand it. I could understand if there were also matters other than the assault. In other words, in my view, Police Scotland should not conduct a mini civil trial about an assault being committed if there are no other matters. It should not be automatic, because it could be construed as Police Scotland not being happy that it lost the case. It just seems odd that, in all cases, it would still proceed against police officers who have been tried in a criminal court in a case that could have taken two or three years to come to court.

**Angela Constance:** Although the context of our discussion is police officers, who have a higher threshold, we can think of many scenarios in any workplace where it is not proven beyond reasonable doubt in court that someone is guilty in a criminal offence but they might still be guilty of a misconduct offence, which would be determined on the balance of probabilities. It is not that there is an automatic assumption or conclusion. It is just not unusual for criminal proceedings not to proceed or to come to an end but, thereafter, for there to be a fair process in relation to whether someone has committed a breach of conduct.

**Pauline McNeill:** I have a question about the duty of candour. The current standards of professional behaviour refer to

"Honesty and integrity ...

Authority, respect ...

Equality and diversity ...

Use of force"

and

"Duties and responsibilities".

The standards might be written differently, but they are strongly worded and could be read as a similar duty of candour. What is your take on that? Is the duty of candour just a modernisation of the standards?

I will explain why I am asking that. Obviously, we would expect all police officers to co-operate and to be honest, and a lot of police officers say that they are honest and they sign up to such regulations when they join the force. What is the difference between that and a legislative duty of candour? Is it meaningful?

11:15

**Angela Constance:** I suppose that the duty of candour, being rooted in legislation, recognises what is already implied. Legislation makes it crystal clear, and the expectations are crystal clear around that culture of co-operation. That raises the significance of the duty of candour. It was a clear recommendation in the Angiolini review that the office of constables needs to be held to a higher level of duty. Raising the significance of that by locating it in legislation would allow case law in and around this area to grow.

**The Convener:** Three members still want to come in. We have 15 minutes or so left, so I ask for succinct questions and responses.

**Fulton MacGregor (Coatbridge and Chryston) (SNP):** I have a few questions, but I will try to be as quick as possible. Good morning, cabinet secretary and the officials.

The bill does not address the recommendation in the Angiolini review around holding gross misconduct hearings in public. We have heard mixed views on that in taking evidence, with some police organisations being completely opposed to the proposal and stating good reasons why that should not happen, while other organisations, such as HMICS, think that such hearings should be held in public, and they cite examples where that is the case for other professions.

What is your view on that? You have said that you will not bring about such a measure through the bill, but that you might introduce other legislation. Is that still the Government's view? Has there been any change on that?

**Angela Constance:** When it comes to holding gross misconduct hearings in public, I am not instinctively agin it. There are arguments for it. However, we will continue to engage with our policing partners. As you have indicated, there are a range of views. We will take the opportunity that we have in the time that we have to consider the impact of public hearings south of the border. As with any secondary legislation or other propositions, we have the opportunity to engage and consult further through the Scottish police consultative forum. As I say, I am not instinctively agin the idea, but I am still listening to the range of views.

**Fulton MacGregor:** I turn to the other area that I want to ask about. The bill confers a duty on the SPA to establish and maintain police advisory and barred lists. Why did the Scottish Government choose the SPA, not Police Scotland, to establish and maintain those lists? Is it the intention to publish the barred list? Both Police Scotland and the SPA told us that they would rather that the list was maintained by Police Scotland.

**Angela Constance:** Those lists are important, particularly in cross-jurisdiction terms. To be candid, we need to bring Scotland in line with other partners in Great Britain. It is not acceptable for anyone who has been dismissed from Police Scotland to turn up and get a policing job elsewhere on these islands. That was a recommendation from Dame Elish. As things stand, in terms of corporate cross-jurisdiction responsibility, we have put the administration of the lists on to the Scottish Police Authority, although there is a power for the SPA to delegate that to Police Scotland, for example.

It is important that lists in Scotland speak to lists that exist elsewhere on our islands as well as the lists that cover the non-territorial forces, whether that is the British Transport Police, the Ministry of Defence Police or the Civil Nuclear Police Authority. Those lists can be published, but I will ask officials to speak more about the nature of publishing and how that is achieved.

**Steven Bunch:** I can come in on that. In England and Wales, the barred list is published, but the advisory list is not published when an outcome has not been reached. The College of Policing in England and Wales publishes those lists. The detail of the lists will be set out in secondary legislation, but the bill gives the Scottish Police Authority the power to create them. Does that answer your question?

**Fulton MacGregor:** Yes—thank you.

Finally, I know that the cabinet secretary and her officials will be aware from having watched our evidence sessions that, last week, I raised the case of a constituent who came to my surgery to detail their experience of the complaints system. For clarity, they consider the case to be closed. I sent them a link to the video of last week's session and they reviewed the evidence. I want to highlight that they feel assured that things are moving forward and that changes have been made since the time that they went through the complaints process. I express the gratitude that they have passed on to me to all committee members, the Government and the clerks that the issue is being looked at, because it had a significant impact on my constituent's life and wellbeing.

I want to go through some of the thoughts that they shared with me in correspondence. There is probably no need for the cabinet secretary to respond to all the points that I will raise, because members have already covered some of them. My constituent made further comments on the PSD. They said that they had to sign a heads of complaint document and were told that, if they did not do that, no further action could be taken. My constituent felt as though they were being put in a position with that, because they were also told that, by signing the heads of complaint, if anything criminal was suggested about the complainer's behaviour, criminal action could be taken against them. They feel that something needs to be looked at in that part of the process. They also said that they do not feel that the PIRC is particularly independent. The sergeant who dealt with their case constantly referenced knowing senior officers who were involved in the case.

I know that many of those points have been covered. However, I want to get a response on my constituent's final point in their email to me. They said that, in their experience, no front-line resolution was offered, no apology was given and there was a complete blanket response from the PSD. When cases have come to an end, can anything be done to reflect the experience of complainers, whatever the outcome? I said at the outset last week and today that I will not go into the rights and wrongs of the case, because my constituent does not want me to do that: they want me to raise their case in a general sense. There



must be a better way to bring things to a close that reflects the experiences that people have had, whether they are complainers or officers, or whether the complainers are officers.

**Angela Constance:** I take the point about closure. It is important for all parties that, irrespective of the outcome, everyone has confidence in the process. At its heart, the bill is about ensuring that our public have confidence in the processes that are set up to deal with the minority of misconduct cases that involve police officers. More broadly, to address the point about a more welcoming and solution-focused approach to complaints resolution, I will not repeat what I said earlier about the importance of the measures that are already in train on the efficiency and effectiveness of processes, or the work that is being done on timescales, which is about engaging earlier in the process and seeking earlier resolution, where appropriate.

I will ask officials to speak to the issue of heads of complaint.

With regard to the PIRC, I will not repeat what I said earlier about its cornerstone role in the policing family in holding policing to account. However, it might be of interest to Mr MacGregor's constituent to know that it is now a minority of PIRC staff who are former police officers; 52 per cent of PIRC staff come from a non-policing background. That speaks to the diversity of talents and skills, and to the independence of the organisation.

I do not know which of my officials would like to speak to the heads of complaint issue.

**Steven Bunch:** I can come in on that; I think that it would be useful to clarify exactly what the issue was. From what I was jotting down there, Mr MacGregor, you said that the complainer signs the heads of complaint and then, if there are any criminal matters alleged in those heads of complaint, that could have repercussions, or something.

**Fulton MacGregor:** Yes—I will just get it up on my screen and I will be able to tell you exactly what I was told.

**Angela Constance:** I would be happy to correspond with you, Mr MacGregor, because I realise that you are walking a tightrope in citing an individual case while also wanting to make broader points that are relevant to the legislative and non-legislative recommendations that have been, or are about to be, implemented.

I am happy to correspond with Mr MacGregor in detail about that, convener.

**The Convener:** That would be helpful—follow-up correspondence would allow for more time now.

**Fulton MacGregor:** I think that that would be good.

**The Convener:** I will bring in Katy Clark, and then I will bring Russell Findlay back in very quickly.

**Katy Clark (West Scotland) (Lab):** I will pick up on the issue of lists and vetting, which, as you know, cabinet secretary, has been a massive issue in recent times. That issue might not necessarily be dealt with in the bill before us, but perhaps you could provide an update on the implementation of the recommendations from HM Inspectorate of Constabulary in Scotland.

As you know, HMICS has advised the committee that it thinks that the chief constable should be provided with the power of dismissal in cases where a person cannot retain their vetting status. Indeed, Lady Elish Angiolini also advised that there should be a power of summary dismissal in some cases.

Given the massive nature of some of the issues that have been coming forward recently, what consideration have you given as to whether the legislative framework around vetting is strong enough, and what more could be done to ensure that there is an on-going focus on vetting as we move forward?

I appreciate that there may be one-off reviews, but we want that focus to be embedded. Are you actively considering that?

**Angela Constance:** Absolutely. I am pleased that the committee, along with Government, is very much focused on the work of HMICS in that regard. If we want the public to continue to have confidence in policing, it is vital that we have robust vetting in place. Vetting is a key strand in providing that assurance. As you would expect, I welcome the "HMICS Assurance review of vetting policy and procedures within Police Scotland" report.

In a broader sense, we are committed to exploring the legislative basis for vetting; I know that officials are talking to Police Scotland, the SPA and HMICS in that regard. Back in 2021, Police Scotland introduced some additional checks for new recruits, which were very welcome. It has also massively increased its vetting resource, by 50 per cent since 2020, with the number of Police Scotland staff who are involved in the area going up from 29 to 50. All that work, which flows from the HMICS report, is under way in Police Scotland to address the recommendations in that report. The SPA will hold Police Scotland regularly to account, and all SPA meetings are in public.

I also take some comfort from what Craig Naylor said last October: that Police Scotland vetting is

very good and HMICS thinks that the risks are diminishing every day.

11:30

**Katy Clark:** So there is work on-going.

More generally, with regard to the bill before us and the models that the Scottish Government is taking forward, one witness told the committee that an independent complaints process

“would be the gold standard.”—[*Official Report, Criminal Justice Committee*, 8 May 2024; c 18.]

Witnesses have made it clear not only that there needs to be public confidence in the complaints process, but that the police cannot police themselves.

What are your views on the role of Police Scotland’s professional standards department in continuing to internally assess and categorise, and investigate, complaints? More generally, is there scope for more independence in the current system in Scotland? What have your considerations been in that regard?

**Angela Constance:** First, I consider the PIRC to be an independent and robust organisation. With regard to the bill, there are a range of measures—I will not go through them all, as I will not test your patience, convener; I referred to them in my opening remarks—that broaden, strengthen or clarify the role of the PIRC.

On the role of Police Scotland’s professional standards department, it is entirely proportionate and reasonable for any front-line operational organisation, where appropriate, to be the first port of call to deal with complaints and issues. There are ways in which such matters can be escalated. A number of changes have been made by the professional standards department, to which I referred earlier, including earlier engagement and earlier resolution where it is appropriate.

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

**The Convener:** We have a final question from Russell Findlay.

**Russell Findlay:** I go back to the issue with the duty of candour. The bill would require all officers to adhere to that duty, but it would also apply to the 6,000 or so civilian staff. Unison has explicitly said that, if that were the case, it would immediately seek a pay rise for every single one of its members involved. I wonder, therefore, whether you are going to pursue that requirement in respect of non-police officer staff, and how much it

will potentially cost. Has that cost been factored into the £5.8 million?

**Angela Constance:** I have already—I hope—addressed the point that police staff are employed and are not office-holders, so the duties on them are very different from the duties on constables. They are, however, subject to Police Scotland’s competency and values framework, which supports all professionals, and to the code of ethics, which is at the core of that framework.

With regard to matters of pay, that involves a separate process that commences annually.

**Russell Findlay:** So there is no plan to change direction—the duty of candour in the bill will apply to civilian staff, and that will not be changed.

**Angela Constance:** Where there is an organisational duty, it applies to everybody collectively.

**Russell Findlay:** But does it not worry you to hear what Unison has said?

**Angela Constance:** Sorry?

**The Deputy Convener:** Does it not concern you slightly that Unison is saying that, if the duty of candour applies in that respect, all those civilian staff—6,000 of them—will be a regulated workforce in the same way as police officers are, and they will expect a pay rise.

**Angela Constance:** But they are not regulated in the same way as police officers are. That is the point that I was trying to make.

**Russell Findlay:** So Unison, in taking its position, has perhaps misunderstood the legislation.

**Angela Constance:** I am happy to discuss and engage on those matters with Unison—in fact, I think that I am due to meet its representatives soon.

**Russell Findlay:** Okay—thank you.

**The Convener:** That brings us slightly over time. I thank the cabinet secretary and her officials for their attendance this morning—it has been most helpful.

With that, we move into private session.

11:34

*Meeting continued in private until 12:34.*

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