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## **Criminal Justice Committee**

**11<sup>th</sup> Meeting, 2024 (Session 6), Wednesday 13 March 2024**

### **Police (Ethics, Conduct and Scrutiny) (Scotland) Bill: analysis of the call for views**

#### **Introduction**

The Criminal Justice Committee launched its call for views on the Police (Ethics, Conduct and Scrutiny) (Scotland) Bill on 26 September 2023. It closed on 8 December.

The intention of this paper is not to be exhaustive, rather it is to provide an overview of the main issues raised in the submissions. [The submissions are published online.](#)

A [SPICe Briefing on the Bill](#) provides more information on the background to and provisions within this Bill.

#### **Responses**

The Committee received 35 submissions to the call for views. Of these submissions, 14 were from organisations, with the rest from individuals. One individual submitted two separate responses. It should be noted that not every respondent answered all of the questions.

#### **Ethics of the police**

Sections 2 and 3 of the Bill would amend the [Police and Fire Reform \(Scotland\) Act 2012](#). They would require the Chief Constable to prepare and maintain a Code of Ethics and would place an explicit duty of candour on both individual officers and Police Scotland as a whole.

When asked about their views on the sections within this part of the Bill, the submissions were generally supportive of both the introduction of a statutory obligation on Police Scotland to prepare a Code of Ethics, and for there to be a statutory duty of candour.

Respondents did have comments about where they felt further clarity was required, or on additional elements which they felt should be considered. These comments are summarised below, along with any key aspects of disagreement.

## Section 2 – Code of Ethics

Most respondents agreed with the introduction of a statutory obligation on Police Scotland to prepare a Code of Ethics. There was disagreement by some individual respondents, and by the Scottish Police Federation (SPF). This was due to the fact that some individuals along with the SPF felt that Police Scotland's non-statutory [Code of Ethics](#), as well as the Conduct Regulations which cover police conduct, means there is not a need for this to be placed in legislation. The response from HM Inspectorate of Constabulary in Scotland (HMICS) also recognised this point but went on to outline the reasons that they did support the statutory requirement within the Bill:

“It could be argued that police officers and staff should not require a statutory code of ethics to ensure ethical behaviour, but it is an important guide and leadership tool in order that Police Scotland and the Chief Constable may clearly and consistently articulate their expectations to all within the organisation. It also allows those served by Police Scotland to understand what they may expect in the delivery of that service.”

While Victim Support Scotland (VSS) agreed with this provision, they also made it clear that while legislation may be important it is not always enough.

“People affected by crime have often highlighted to VSS the importance of legislation and policy translating from theory to improved professional practice. Connected to this, it is crucially important that the Code is both read and fully understood by all constables and police staff who must abide by the Code.”

### *Accountability*

While a number of respondents agreed with this provision, they did not believe it went far enough in terms of ensuring accountability.

Some individual respondents spoke of the need for accountability of police officers and for there to be consequences if the Code of Ethics was breached. Some organisations also raised the point that a commitment to follow the Code is not the same as having to comply with it, and some provided more information on what they felt needed to be addressed to achieve this.

The [Explanatory Notes](#) published along with the Bill state the following in terms of the consequences of not complying with the Code (para 21):

“The Code will not have any particular legal effect. A failure to comply with the Code will not of itself give rise to grounds for any legal action. Neither will a breach necessarily constitute misconduct, which will continue to be measured by the standards of professional behaviour alone.”

The Coalition for Racial Equality and Rights (CRER) stated that the Code of Ethics should be given the same statutory status as the Standards of Professional Behaviour (contained in the Police Scotland Conduct Regulations), while the Scottish Institute of Policing Research (SIPR) stated that the Code should be a “discipline code”. This would mean that any failure to meet the Code of Ethics may result in a finding of misconduct. Amnesty International UK responded that:

“Although the Statutory Code will be referred to within the Constable’s declaration, the Bill does not frame the Statutory Code in terms of the duties on constables and staff at all, and this should be amended to put the issue beyond doubt. We also consider that ‘to have regard’ is a very low standard and does not give the Statutory Code the required respect. Officers and staff should be required to comply with the Statutory Code.”

It should be noted that the Bill will include the following being included in the constable’s declaration:

“...that I will follow the Code of Ethics for Policing in Scotland”.

HMICS stated that there should be a clarity of where the Conduct Regulations, or other legislation, has primacy where the Code of Ethics could also be considered applicable. With SIPR stating that if the Code was not made into a discipline code then it was still necessary to “identify when a breach of the Code is an element of disciplinary action”.

An individual respondent (Richard Cockbain), however, stated that there was a “fundamentally negative spirit to the legislation” and that it “fails to recognise the inherently positive influence of ethics and risks conflating ethics with standards of professional behaviour”.

Amnesty International UK highlighted that the [Council of Europe Code of Police Ethics](#) has a significant number of articles relating directly to the issue of accountability and that this Bill offers the opportunity to bring the Police Scotland Code of Ethics fully in line with this. They also believe, as per the Northern Irish model,<sup>1</sup> that responsibility for the Code of Ethics should lie with the Scottish Police Authority (SPA) and not the Chief Constable as this would “offer greater public reassurance of independence and accountability”. The Bill currently places responsibility for producing the code of ethics, consulting on it, making it available to police officers and staff, and reviewing it, with the Chief Constable, with assistance by the SPA. Dame Elish Angiolini recommended that this be a joint power for the Chief Constable and the SPA.<sup>2</sup>

Multiple organisations also highlighted the need for reporting measures to be included within the Bill. The Scottish Biometrics Commissioner suggested the introduction of a reporting mechanism as is contained within the Scottish Biometrics

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<sup>1</sup> Dame Elish Angiolini’s final report: [Northern Ireland model](#). (Page 56).

<sup>2</sup> [Dame Elish Angiolini’s recommendation](#): Police Scotland’s Code of Ethics should be given a basis in statute. The Scottish Police Authority and the Chief Constable should have a duty jointly to prepare, consult widely on, and publish the Code of Ethics, and have a power to revise the Code when necessary.

Commissioner Act 2020. SIPR also raised this as an issue, suggesting the SPA carries this out using the model used by the Northern Irish Policing Board. CRER stated that “compliance with the Code of Ethics should be reported publicly on an annual basis”.

Victim Support Scotland included in their response the views of one of their service users around the need for monitoring:

“There should be due diligence about how that Code of Ethics would be monitored, that it’s being upheld properly.”

### *Human Rights and Equality Duties*

Amnesty International UK (AIUK) and SIPR raised the issue of there being a specific commitment to human rights within any code of ethics.

“A Code of Ethics should not only reflect the values of Police Scotland, but also aid the police in comprehending and adhering to those values. To achieve this, the Bill could broaden the purposes of the Code, mirroring the requirement under the Police (Northern Ireland) Act 2000, s.52(1)(b) whereby a purpose of the Code of Ethics is to make ‘police officers aware of the rights and obligations arising out of the Convention rights (within the meaning of the Human Rights Act 1998)’. This should be added to the proposed s.36A(2).”  
(SPIR)

“In order to ensure clarity, avoid duplication and to contribute to the development of a human rights culture in Scotland, the duties on the drafters of the Statutory Code should be sufficiently broad to align with the interpretative obligation under the proposed Human Rights Bill for Scotland.”  
(AIUK)

Some respondents noted that the list of mandatory consultees for the draft Code proposed in the Bill should be expanded to include the Scottish Human Rights Commission, relevant organisations which represent the interests of people with lived experience of police interventions and that the protected characteristics included should mirror those in the Equality Act 2010.

### **Section 3 – Duty of Candour**

There was general agreement with this provision from respondents to the call for views.

Victim Support Scotland included in their response the views of one of their service users around the need for a duty of candour:

“I can only go by my experience. There definitely should be an explicit duty of candour. They should cooperate fully with all investigations into allegations against its officers. I have found that the officers have not done that in my case.”

A small number of individual respondents felt that this duty was already covered by the Conduct Regulations' requirement for integrity and cooperation in investigations. The SPF also disagreed that this provision was required stating:

“The Duty of Candour insinuates that Police Officers would be dishonest and be unwilling to provide a statement re an incident. We have found this insinuation to be false and apart from an officer invoking their lawful rights as an individual when accused of a crime we have not been shown any examples as to when an individual's Duty of Candour has been called into question. The advice given by crown was in fact not to ask for any statements from subject officers when they were being complained about re an allegation and that advice has been followed.”<sup>3</sup>

HMICS highlighted that police officers should understand the need for candour without a specific duty but added that:

“The creation of a specific duty does not imply that officers currently may seek to be less than candid but, again, provides additional clarity and leadership to those delivering Police Scotland's service at all levels of seniority.”

#### *Aspects which require clarity*

Of the respondents who were supportive of this section of the Bill, some believed further clarity, and in some cases additional provision, was required.

The Police Investigations and Review Commissioner (PIRC) raised the issue that they do not believe the provisions within the Bill go “far enough in terms of a duty of candour applying on an organisational level”.

While the SPA highlighted that “it is unclear from the Bill whether the duty of candour applies to matters occurring while a police officer is off-duty”.

The [Independent Review of Complaints Handling, Investigations and Misconduct Issues in Relation to Policing](#) carried out by Dame Elish Angiolini (the “Angiolini Review”) recommended that the Scottish Government consult on a statutory duty of cooperation. This duty was not included in the Bill as the Scottish Government felt that a duty of cooperation is “a facet of the duty of candour and not a freestanding duty”. The PIRC believe that this is not the case. They state that under current provisions, while the Police, Public Order and Criminal Justice (Scotland) Act 2006 can be used to compel the provision of existing operational statements it cannot empower the PIRC to compel a police witness to provide an operational statement that does not exist. They go on to note that:

“Due to the agreement of a Memorandum of Understanding – between Police Scotland, SPA and PIRC, such difficulties have since been avoided. However, if this agreement were to change or breakdown, PIRC would find themselves

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<sup>3</sup> The Crown Office and Procurator Fiscal Service did not respond to the call for views.

again in a position where key police witnesses (not suspects) could not be compelled to provide operational statements.”

Both the PIRC and Police Scotland responded that there should be a requirement for the individual duty of candour to be extended to police staff. This was particularly in relation to those who undertake operational roles and have statutory powers and duties such as Police Custody and Security Officers. While this duty could be placed on some specific roles through amending current legislation, Police Scotland note that to place this on all police staff would require amending their terms and conditions and is not something which could be achieved via this Bill.

Police Scotland raised two areas where they believe further clarity is required:

“In respect of the wording under Section 3, paragraph (4) “Constables act with candour and are open and truthful in their dealings...”, clarity would be welcomed regards with whom it is required that police officers are open and truthful. If it is intended that police officers are open and truthful in their dealings with each other, the public, the police service, or all three, it is suggested that this be made clear.

In relation to “...without favour to their own interests or the interests of the Police Service”, Police Scotland considers that there could be circumstances where it may be appropriate for officers to favour “the interests of the Police Service”, provided that this is not taken to mean covering up for wrongdoing. Police Scotland suggests that further consideration is given to the drafting of this aspect of the Standard of Professional Behaviour.”

### *Accountability*

CRER and Prof. Denise Martin raised the issue of it being unclear what the outcomes were for breaches of this duty, with no provisions for a legal effect being placed in the Bill. The Association of Scottish Police Superintendents (ASPS) also commented on this aspect:

“The Association recognises that the legislation makes no provision as to the legal effect of duty of candour, its enforcement, or sanctions for breach. However, understands that by introducing duty of candour into the Conduct Regulations a breach may be considered misconduct. In either case, it is the opinion of the Association, that any sanction imposed is likely to be subject of legal challenge.”

Prof. Denise Martin felt that there could be learning from the placing of a duty of candour on a statutory footing in healthcare, where she advises the success of this has been questioned. She states that “while the duty of candour is a starting point it will not be successful unless other broader organisational culture shifts to allow staff to feel secure in being open and honest”.

### *Legal Rights*

Of those who were supportive of this provision, some raised the need to ensure that the legal rights of police officers and staff were protected, for example around self-incrimination. This included the PIRC and ASPs. SPF also raised this issue, while disagreeing with the need for the provision overall.

Police Scotland note this has been addressed in the English and Welsh Standards of Professional Behaviour by including text relating to this aspect as below:

“Police officers have a responsibility to give appropriate co-operation during investigations, inquiries and formal proceedings, participating openly and professionally in line with the expectations of a police officer when identified as a witness.”

### *Equality*

The issue of ensuring equality within any duty of candour was raised by the Equality and Human Rights Commission. They note that:

“There is limited detail in the equality impact assessment about accessibility options for those constables who may find it difficult to travel to and participate in interviews and therefore fulfil the duty of candour, due to one or more PCs [protected characteristics]. The duty of candour must be supported with accessibility arrangements, as per the EA’s [Equality Act 2010] reasonable adjustment duty.”

## **Police Conduct**

Sections 4 to 8 of the Bill would also amend the [Police and Fire Reform \(Scotland\) Act 2012](#). They concern the procedures for dealing with, and the consequences of, certain conduct by police officers. They aim to ensure there is greater transparency and consistency within these procedures and improve public confidence in how misconduct allegations are dealt with.

When asked about their views on these sections of the Bill there was general agreement by respondents across the sections.

The sections which saw further comment provided by respondents, or greater disagreement, are outlined in further detail below.

### **Section 5 – Procedures for misconduct: functions of the Police Investigations and Review Commissioner**

This section of the Bill would broaden the powers of the PIRC by allowing functions to be conferred on to them relating to any aspect of the procedures dealing with police officers whose standard of behaviour is unsatisfactory, not simply the investigation stage as is the case currently. The details of these wider functions would be set out in secondary legislation which the Scottish Government have indicated they intend to bring forward following this Bill.

The [SPICe Briefing for this Bill](#) contains information on the PIRC's current role in the misconduct process.

While there was general agreement with this provision, some individual respondents disagreed with broadening the functions of the PIRC. Some respondents also highlighted that were this broadening out to occur there would require to be further funding provided to support the performing of any additional duties. This is not addressed in the [Financial Memorandum](#) accompanying the Bill as the provision in the Bill is an enabling provision only, and the detail of further changes to the functions of the PIRC will be made under secondary legislation.

Organisations which supported this section of the Bill included HMICS who noted the following in terms of the preliminary assessment function for misconduct allegations:

“HMICS believes that this assessment is best conducted by the PIRC from a transparency, independence and public trust and confidence perspective but also when considering the PIRC's natural skill set as opposed to that of the SPA. HMICS supports proposals for the assessor to take into account whether the allegation is made anonymously, is specific in time and location, or whether it appears, on the face of the allegation, to be either vexatious or malicious.”

The Scottish Community Safety Network was supportive of this proposal but went on to state:

“We support the proposal for an independent body to investigate complaints against the police however would like to see more information with regards to the auditing of the PIRC and how their findings are assessed and the weight of evidence that leads them to their conclusions.”

This provision in the Bill is an enabling power and does not itself provide details on the scope of the functions that may be placed on the PIRC. The PIRC in their response raised concerns around this, stating that:

“While we are content to assume responsibility for the preliminary assessment and to retain responsibility for investigating such allegations, further functions cannot be implemented without full and detailed consultation.”

They highlight the example, which was a recommendation of the Angiolini Review (recommendation 40), that the PIRC assume responsibility for the presentation of senior officer gross misconduct cases. They point out the PIRC does not have the skillset nor resource to perform this function. They also question how this would sit with the PIRC's oversight role, stating:

“There is also the concern that there would be a lack of appropriate checks and balances if PIRC is to undertake the preliminary assessment, the investigation and present cases of gross misconduct.”

ASPS also highlight the additional resources and funding challenges should the functions of the PIRC be broadened. Going on to say:



“It would be helpful to better understand the extent to which those functions will be broadened, and an impact assessment made to ascertain the effect on existing procedures.”

CRER supported the principle of this provision but believed that the “potential bias in favour of Police Scotland” required to be removed. They recommended that the PIRC be reformed to ensure their independence from Police Scotland and the SPA before there was any clarification of their investigatory powers.

In her final report, Dame Elish Angiolini referred to the number of ex-police officers employed by the PIRC. Stating that: “Former police officers currently make up 51% of the PIRC’s investigators. PIRC reports that if the organisation was at full complement, the percentage of investigators employed who are former police officers would be 57%, or 37% of all PIRC employees”.<sup>4</sup>

CRER were also concerned about the wording, with the change to enable the PIRC to be involved in all stages of the misconduct process rather than just the investigation seeing a removal of the word “misconduct” and instead a reference to “the procedures for a constable whose standard of behaviour is unsatisfactory”. They believe that this phrase is too vague.

The SPF disagreed with this provision enabling a broadening of the functions of the PIRC stating:

“The powers open to the PIRC are akin to having another Police service and we have to consider ethical and financial issues in their power being used in wider circumstances of disciplinary action and the unintended consequences of doing so.”

## **Section 6 – Procedures for misconduct: former constables**

There was general support for this provision from respondents, which would see gross misconduct procedures being able to be applied to former police officers who have retired or resigned. Two respondents with experience of the misconduct process, from the side of the complainer and the subject of a complaint, noted the particular importance of this provision:

“We Kevin’s parents believe that each and every recommendation made by Dame Elish Angiolini in relation to the conduct by Police Scotland, PIRC, and the SPA, must be implemented by the Scottish Government. In particular, the recommendation that would enable disciplinary procedures for misconduct to continue to be applied should an officer retire or resign from the service. This recommendation will hopefully ensure that no other family in Scotland suffers like we have for over two decades...” (June and Hugh Mcleod)

“I am an officer who retired during the misconduct process. I would have preferred that process was seen to a conclusion after my retirement. Instead,

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<sup>4</sup> [Dame Elish Angiolini’s final report: PIRC. \(Page 234\).](#)

it is left hanging over me. To be accused of something and to have no formal resolution is wrong. It allows the guilty to walk away with no consequences and the innocent to have suspicion hanging over them for the rest of their lives, especially when the accusations attract public interest through the media [...] If the disciplinary process had to continue after I had retired, Police Scotland would have to record that there had been no misconduct on my part. Instead, under the present system, the process is closed, with no resolution. I would have preferred a misconduct hearing, where the false claims and failure to disclose exculpatory evidence had to be formally recorded.” (Ian Clarke)

CRER highlighted that this change was extremely important for black and minority ethnic communities in Scotland in particular, where a lack of accountability on the part of police officers had contributed to distrust between these communities and the police.

The importance of the victims in alleged misconduct investigations was also raised by Victim Support Scotland. They highlighted that it was important that decisions about these investigations were made in consultation with any identified victims, and that they were provided with appropriate support during the process.

A small number of individual respondents disagreed with this provision. For some this was down to not seeing what would be gained as the individuals could not be dismissed as they had already left their role. While the Scottish Community Safety Network was supportive of this change, they did want to know what the sanctions would be if any complaint was upheld. Where individual respondents spoke of the outcome they would like to see where police officers were found guilty in these cases, they mentioned the removal of their pension or the imposition of a fine, as well as the fact they could be added to a barred list as introduced by this Bill.

The fact that this continuation of disciplinary procedures does not occur in any other profession was also raised:

“Disciplinary procedures relate to a person’s employment and so I see no compelling reason for a former constable to be held to account by an organisation they no longer work for unless they have done something that any regular member of the public would be held to account for. I know of no other profession where this would be acceptable.” (Richard Cockbain)

HMICS recognised these points within their submission but went on to say:

“The ability to conduct what are essentially internal conduct proceedings once a police officer has left the organisation could be considered disproportionate and would subject police officers to processes which cannot be applied to other members of society. HMICS has considered this and believes that the new provision is reasonable and proportionate given the powers that police officers may deploy in respect of their fellow citizens. Such powers may pose a particular risk where a police officer who avoided misconduct proceedings by means of resignation or retirement is able to join a force in another jurisdiction.”

Notably, ASPS and SPF disagreed with the provision in this section.

“As the ultimate sanction/disposal that the chairperson of a Misconduct Hearing can apply is dismissal without notice, it does not appear to be proportionate nor efficient for an officer’s retirement/resignation to be delayed subject to conclusion of misconduct proceedings [...] ASPS would challenge, what are the actual and tangible benefits that are realised by pursuing an officer into retirement/resignation? The associated costs of both salary and the investigation and hearing processes including legal representation can be avoided and the effect is still the same: An officer who may not be suitable for the office of constable has removed themselves from policing, at the earliest moment. To suggest that public confidence is somehow improved by holding at gross misconduct hearing (at which a subject officer cannot be compelled to appear) is not grounded in evidence or fact.” (ASPS)

“Lady Elish Angiolini made these recommendations in England and Wales and it is clear that this recommendation has not worked and is an expensive way of trying to bring into existence something that you would find hard to see in any other walk of life.” (SPF)

#### *Further clarity / alternative proposals*

The PIRC agreed with this provision but felt that it did not make clear their remit in respect of extending the misconduct process to former officers, in terms of carrying out a preliminary assessment of the allegation.

Section 5 of this Bill will enable the preliminary assessment function for senior officers to be moved from the SPA to the PIRC. Where the regulations are then amended under this provision to also apply to former officers this would see the PIRC carrying out this function here as well. However, the [Policy Memorandum](#) for the Bill stated the following in terms of the procedures which would be in place relating to former police officers:

“The procedures would apply where a preliminary assessment of the misconduct allegation made by the PIRC finds that the conduct of the person while the person was a constable would, if proved, amount to gross misconduct.” (para 77)

This suggests this preliminary assessment function would fall to the PIRC in respect of all ranks who had ceased to be a police officer.

A further assessment function in terms of allegations against former officers was made in the Angiolini Review (recommendation 23), and is highlighted by the PIRC in their response:

“In gross misconduct cases, for all ranks, the Police Investigations and Review Commissioner should determine if it is reasonable and proportionate to pursue disciplinary proceedings in relation to former police officers after the twelve month period, taking into account the seriousness of the alleged

misconduct, the impact of the allegation on public confidence in the police, and the public interest.” (p 175)

The PIRC went on to state in their response that they therefore feel they should only be responsible for conducting a preliminary assessment of whether the allegation would amount to gross misconduct in relation to former senior officers. They believe they should only carry out a further preliminary assessment function for all ranks where the allegation is made more than 12 months after the date the person ceased to be a police officer, in order to determine if it is reasonable and proportionate to pursue disciplinary proceedings after this period.

Police Scotland supported the proposals but raised the issue of “streamlining processes in favour of fast track / accelerated hearings” stating:

“It is considered this would achieve the same outcome with significantly less expense and would, more importantly, minimise the adverse impact on victims and witnesses having to engage in a further process.”

#### *Time limits*

When asked about the time limit on these procedures being able to continue, many individual respondents did not feel that 12 months was long enough, with some stating this period should be indefinite. Though there was also some confusion in a small number of these responses between misconduct and criminal proceedings. CRER also disagreed with any time limit being put on this.

It should be noted that the Bill does not actually specify this time period and that the Scottish Government intends that regulations will set this period at 12 months from the date the person ceases to be a police officer. They also intend that the regulations will include additional criteria which would enable proceedings to continue after this length of time.

Victim Support Scotland reflected the views of victims where there were time limits placed on processes within the justice system:

“Individuals affected by crime have often told Victim Support Scotland about their frustration with a wider justice system that sets what can seem to individuals like arbitrary time limits on bringing forward complaints. As a result, this can make individuals feel that their complaint is not valid, or that their voice has not been heard. This is exacerbated further by delays in other justice system processes that might mean that the ability to raise a complaint becomes delayed.”

Family’s United indicate that:

“The length of time after retirement at around 12 months should be the window in which a complaint can be raised, not completed. We believe that there should be the principle of an extension of up to 5 years if there is significant findings/developments in an officers previous actions”.

## **Section 7 – Scottish police advisory list and Scottish police barred list**

There was general agreement with the provisions which would allow the creation of a Scottish police advisory list and Scottish police barred list. Individuals would be added to the advisory list where disciplinary proceedings have been brought against them for gross misconduct and they either ceased to be a police officer before the proceedings were brought or before they were concluded. They would be added to a barred list if they were dismissed for gross misconduct or would have been dismissed if they had not already ceased to be a police officer at that point.

The SPA did, however, feel that the most appropriate body to administer these lists was Police Scotland and not the SPA, as is set out in the Bill, although the SPA can delegate this responsibility. Police Scotland also felt responsibility to administer these lists should be placed on them, either directly or by delegation by the SPA.

While ASPS did support the lists, they also sought clarification about the scope and the bar for gross misconduct which would see inclusion on such lists:

“But what is less clear is the scope of such lists and to specify what roles they apply to. The bar for Gross Misconduct must be set higher than present and reflect intentions of previous reviews into police misconduct that recommended shifting the outcomes from ‘sanctions to solutions’ and where appropriate, performance management measures. The draft legislation does not prescribe the scope or levels at this time. It is a matter of concern that as a personnel policy, the Police Service of Scotland chooses to not provide references for retired officers/staff other than certificates of service when leaving. In some circumstances it feels that it would be appropriate for the service to disclose the simple position that they would not reemploy a police officer.”

The SPF disagreed with the need for, and the legality in terms of human rights of, these lists:

“An advisory list in our view would breach the human rights of an individual and be grossly unfair to them to be placed on a list without any trial or any appeal. Proper HR processes would stop the need for any list like this having to be required and the abuse that could come from this would undoubtedly mean further expense in legal challenges. Following on to the Scottish Police Barred list we have not been made aware of any officer who has left the service prior to any misconduct proceedings taking place who has been accepted by another similar body in Scotland, Ireland or in England and Wales. The reason for this is simply due to proper diligence and proper HR procedures being in place. The introduction of such a list is not required in Scotland.”

CRER felt it was important that one of the criteria for inclusion on this list must be where allegations involved racism.

Victim Support Scotland raised the issue of the barred list being publicly accessible, as it is in England and Wales.

“In England and Wales, the barred list is publicly accessible. This for example, means that the list is available to organisations who might perform searches when vetting potential employees. This functionality for a Scottish barred list would mean an additional layer of protection and accountability for individuals in Scotland.”

### **Section 8 – Procedures for misconduct: senior officers**

This section of the Bill would enable an independent panel to determine a conduct case against a senior officer (the rank of Assistant Chief Constable and above) rather than the Scottish Police Authority (SPA). The details of the composition of this panel would require to be taken forward through secondary legislation.

The Angiolini Review made the following recommendation in terms of this independent panel ([para 12.31](#)):

“The key stages of the senior officer misconduct proceedings (both misconduct and gross misconduct) should in future be removed from the responsibility of the SPA and made subject to consideration by an independent legally chaired panel whose Chair and members are appointed by the Lord President. The Lord President should be consulted on this matter. The members of the panel should consist of a legally qualified chair, an expert in senior policing and a lay person.”

This section of the Bill would also provide senior officers with an additional right of appeal to the Police Appeals Tribunal (PAT) in cases of any disciplinary action against them in relation to conduct matters. This is currently restricted to cases where there is dismissal or demotion.

The [SPICe Briefing for this Bill](#) outlines the current misconduct process, and organisations involved at each stage, for senior officers.

Respondents who answered this question were almost all supportive of the provisions in this section. Victim Support Scotland highlighted why this change may benefit victims:

“Some individuals affected by crime have in the past provided feedback that their experience has led to them feel that justice agencies govern themselves. Having a mix of police and non-police members on the panel for these particular cases would potentially enhance public confidence in this process.”

Some organisations did raise the issue of representation on any independent panel involved in this process.

“Regulations made under Clause 8 governing independent panels relating to conduct of senior officers, should ensure that the panels will include

representation from a diverse range of backgrounds and experiences including minoritized groups and human rights experts.” (AIUK)

“Any independent panel should be subject to measures to ensure that their operation does not have a disproportionate impact on minority ethnic police officers and should learn from recent findings of bodies like the GMC [General Medical Council] who are now acting to address discrimination.” (CRER)

CRER went on to state that to be able to understand issues relating to discrimination, data relating to these panels should be collected and published, including diversity data.

While the Bill provides for independent panels for senior officers only, CRER did state in their response that they believed this should take place for all officers. While also stating that it should not delay the hearing of misconduct cases.

ASPS indicated that this was an issue on which it would be appropriate for the Scottish Chief Police Officers Staff Association (SCPOSA) to comment. SCPOSA did not respond to the call for evidence. However, in their [response](#) to the Scottish Government’s consultation they indicated that: “... it is the view of SCPOSA that the changes outlined above, i.e. the appointment of an Independent Legally Qualified Chair, an independent lay person and a senior expert in policing are essential to allow fairness to any senior officer who is the subject of a Misconduct Hearing”.

HMICS indicated agreement with Lady Elish Angiolini that such hearings should be chaired by the legally qualified member appointed by the Lord President. The Lord President indicated in his submission to the Scottish Government consultation that he would carry out this function.

### *Police Appeals Tribunal*

In respect of the changes to the right to appeal to the Police Appeals Tribunal (PAT), SPF note that changes made by this provision, which extends the rights of senior officers to appeal to a PAT against any decision to take disciplinary action not only that resulting in dismissal or demotion, would mean that the appeals process would differ between senior and non-senior officers. Currently any police officer may appeal to the PAT against a decision to dismiss or demote them only. They stated that there should be parity across all ranks.

## **Functions of the Police Investigations and Review Commissioner**

Sections 9 to 16 of the Bill would amend the [Police, Public Order and Criminal Justice \(Scotland\) Act 2006](#) in relation to the functions of the Police Investigations and Review Commissioner (PIRC). More detail about the current functions of the PIRC can be found in the [SPICe Briefing on this Bill](#).

When asked about their views on the sections within this part of the Bill there was general agreement with most of the provisions. Where there was greater

disagreement, or extra information provided by those who did agree to the provisions, this is set out below.

## **Section 9 – Investigations into matters involving persons serving with the police**

There was general agreement amongst respondents of the need to clarify the definition of “a person serving with the police”. This section of the Bill provides clarification that the PIRC can investigate allegations of criminality committed by a person serving with the police before they joined, during their time with, or after they have left, the relevant policing body.

Some individual respondents disagreed that this should be extended to cover the behaviour of those who are off-duty at the time or prior to them becoming a police officer. They believed that existing criminal and conduct legislation covered these aspects.

Some respondents also raised the issue of cost should this result in more work for the PIRC.

“This is an interesting extension of the scope and power of PIRC just at the time when budgets are shrinking and there is a move to have fewer ex-police officers appointed as investigators. Is this a proposal towards a PIRC more aligned to IOPC [Independent Office for Police Conduct] standards which are generally regarded as poorer performers than PIRC?” (ASPS)

There was also potentially confusion among the responses over whether the PIRC was required to investigate the death of a police officer, and in what circumstances. The Angiolini Review (p 437) had stated that:

“The Review received evidence that this sub-section [section 33A(b)(ii) of the Police, Public Order and Criminal Justice (Scotland) Act 2006] is ambiguous in that it is not clear whether the provision encompasses the death of a serving police officer. The 2006 Act should be amended to put this beyond doubt.”

Some responses to the consultation suggest the provision in section 9 has not done this, for example, issues were raised in terms of the wording within this provision by the SPA, PIRC and Police Scotland.

“As amended, section 33A(b)(ii) provides that the PIRC may investigate a death involving a person serving with the police, which the procurator fiscal is “required” to investigate under section 1 of the Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016. The PIRC may do so whether or not the circumstances occurred in the course of the person’s duty, employment or appointment. However, sections 1 and 2(3) of the 2016 Act require the procurator fiscal to investigate only those accidents occurring while the person was acting in the course of their employment or occupation. The reference to “required” in amended section 33A(b)(ii) is therefore potentially confusing.” (SPA)



“Police Scotland supports the proposed additional powers to enable the PIRC to investigate the death of a person serving with the police, regardless of whether the death occurred in the course of their duty, however queries whether this amendment contradicts – or at least may be thought materially incongruent to - the terms of the Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016. The 2016 Act provides that the Procurator Fiscal is only required to investigate deaths which occur while the person was acting in the course of the person’s employment or occupation.” (Police Scotland)

The Crown Office and Procurator Fiscal Service did not provide a response to the call for views.

### **Section 10 – Complaints made by persons serving with the police**

Almost all respondents who answered this question agreed with this provision in the Bill, which provides clarification around who can make a complaint to include those who are currently defined as people serving with the police.

The PIRC did highlight that the wording within this provision means that the definition of a relevant complaint includes that which directly affects someone in their personal capacity (rather than in their capacity as a person serving with the police), but not something which is witnessed by someone in this capacity. This was also raised as a “worrying” omission by CRER.

There were also comments made by some respondents around the use of the phrase “relevant complaint”. This was in respect of the fact it was felt it suggested that some complaints could therefore be viewed by members of the public as being seen as “irrelevant”.

“In the Authority’s experience, the term sometimes causes confusion among the public and the media who have interpreted it as meaning that some complaints are “relevant”, while others are “irrelevant”. This can be unhelpful when communicating with members of the public in relation to their complaints. In the Authority’s view, the term used to describe complaints by members of the public should be plain and unambiguous (e.g. “public complaint”).” (SPA)

The resourcing requirement as well as the rationale for this change was also raised:

“The purpose and objectives of such an extension to the investigatory remit needs to be better explained with regards to rational and resourcing.” (ASPS)

Police Scotland wished there to remain clarity around the fact that a relevant complaint “does not include a statement made a person serving with, or who has served with, the police regarding any matter which is related to a person’s employment or service with the police”. The Police, Public Order and Criminal Justice (Scotland) Act 2006 currently states that a relevant complaint does not include “any statement made by a person serving with, or who has served with, the police, about the terms and conditions of that person's service with the police”.

CRER highlighted that a policing survey demonstrated that black and minority ethnic officers can be reluctant to report out of fear of backlash or as a result of policing culture. They recommend that support must be given to those who are making the complaint, especially if there is a discriminatory element to their complaint.

## **Section 11 – Complaint Handling Reviews**

This section of the Bill enables the PIRC to carry out a complaint handling review without a request having to be made by the complainer, or by Police Scotland or the SPA, as long as it was in the public interest to carry out this review. It also enables the PIRC to make recommendations in its review of a complaint and requires the SPA or Police Scotland to respond to these recommendations in terms of what they plan to do, have done, or explaining why nothing has been done.

There was general agreement with this provision, though some individual respondents believed that the PIRC should not have this extra power. They believed there could be pressure exerted on the PIRC through this provision to carry out certain complaint handling reviews.

CRER and Amnesty International UK raised the issue of the reporting of the outcomes of these reviews, stating there should be “a presumption that these documents would only be withheld from public scrutiny in exceptional circumstances”. The Equality and Human Rights Commission raised a wider point in their response which would apply here, which is ensuring that all communication is accessible.

While Victim Support Scotland supported this provision, they highlighted that where a complaint review was conducted without a complainer requesting this that “involving the complainer wherever possible in the review should be regarded as best practice”. They note that they had heard previously from people affected by crime who appreciated the transparency of processes which publish the findings of complaints anonymously, as is the approach of the Scottish Public Service Ombudsman. If this was done, particularly where not arising from a request from the complainer, they state that it:

“should also be done fully respecting the full privacy and confidentiality of the complainer in order for members of the public to feel safe and comfortable in making complaints to PIRC in the future. Complainers should be informed wherever possible if the complaint they made is to be subject to a review that will enter the public domain.”

Victim Support Scotland also raised the issue that should the Victims, Witnesses and Justice Reform (Scotland) Bill establish a Victims and Witnesses Commissioner as it proposes to do then they would expect that the PIRC would fully cooperate with this Commissioner in their role around complaints review.

In relation to accountability and monitoring, ASPS raised the issue of how the effectiveness of the PIRC in this role would be evaluated and their accountability ensured.

ASPS and Police Scotland both raised the issue of the additional financial and resource demand required to support this change.

## **Section 12 – Call-in of relevant complaints**

Section 12 provides for the ability of the PIRC to call-in complaints in certain circumstances and outlines the processes around this. Further details around what this means and the circumstances this could occur in can be found in the [SPICe Briefing on this Bill](#).

There was general agreement with this provision, though some individual respondents questioned the “power” that this gave to the PIRC.

The response from Family’s United highlighted from the respondent’s own experience the importance of this provision:

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

One individual respondent stated that this change would be “too costly, too lengthy”.

Organisations who broadly agreed with the provision did raise points where they felt further clarification was required. This included around the point of the threshold level for requests and how the PIRC could respond where there were repeated complaints from the same person.

In the response from the PIRC they note:

“The proposed new power relates solely to complaints of a non criminal nature. PIRC sought and received reassurance that the provision does not mean that the Commissioner must call in a complaint upon the request. This is to ensure difficult complaints are not simply passed to PIRC for expediency or related to resourcing issues for the relevant authority.”

The SPA also raised the issue of there not being clarification in the Bill of “whether or not a complainer who is dissatisfied with the PIRC’s handling of a “called-in” complaint has any further recourse by way of an appeal, review etc”. ASPS also questioned how the effectiveness of this provision would be measured.

To ensure transparency, Amnesty International UK felt the Bill should ensure that the PIRC’s recommendations and the responses to them were published unless there are “exceptional circumstances”.

The financial implications of this change were highlighted by ASPS and the PIRC:

“Further, such investigations are likely to be complex and prolonged. PIRC has concerns – already raised in response to the Financial Memorandum of the Bill - that there is the potential for PIRC to become overwhelmed. To

examine such complaints – even with a ‘serious’ threshold imposed – would require the creation of a standalone assessment unit and create further resource implications.” (PIRC)

### **Section 13 – Review of arrangements for investigation of whistleblowing complaints**

Most respondents were supportive of this provision, which requires the PIRC to audit the SPA and Chief Constable’s arrangements for the investigation of information provided in whistleblowing complaints. The PIRC would also be able to make recommendations or give advice on the arrangements for handling such complaints.

While supportive, CRER raised the issue of needing clarification of what having oversight means and that the PIRC may not be able to do this impartially. They also raised the role of equality in this process as well as the fact support may be needed by black or minority ethnic officers during this process.

“Additionally, any audit report must be performed by appropriate professionals with an understanding of equality and include an equality impact assessment.” (CRER)

The SPF disagreed with this provision, stating that changes to the PIRC’s remit which would give them an oversight of the SPA and Police Scotland, rather than the functions of being an independent reviewer of policing “would change their remit dramatically and would leave the question again to who watches the watchers”.

Again, the ASPS and the PIRC raised the funding implications of this provision, with PIRC stating, “this would not be cost neutral and would require consideration within the financial memorandum to the Bill”.

The SPA also raised the issue of the PIRC being added to the list of prescribed persons, as recommended in the Angiolini Review but not addressed in the Policy Memorandum accompanying the Bill. This would require an amendment to [The Public Interest Disclosure \(Prescribed Persons\) Order 2014](#) which is a reserved piece of legislation.

The SPA refers to the Angiolini Review recommendation addressing this in their submission, stating that:

“Lady Angiolini concluded: “Having weighed up the evidence, I believe that the absence of a prescribed independent third-party person to whom whistleblowers in policing can report wrongdoing is a significant gap that should be filled.”

The SPA states that it understands that the Scottish Government is to work with the UK Government with a view to the PIRC being included as a prescribed person in the Order. Adding that, “The Authority very much supports these efforts”.

## **Section 14 – Investigations involving constables from outwith Scotland**

There was overall agreement with this provision between respondents who answered this question, which would allow the PIRC to investigate serious incidents or allegations of criminality involving police officers of forces from other parts of the UK who are carrying out policing functions in Scotland.

The SPF did raise that they had concerns that any investigation of criminal offending would be better investigated by the police rather than the PIRC. ASPS also highlighted that this change may have an impact on the willingness of chief constables to provide mutual aid.

The financial implications were again raised by ASPS and the PIRC in their responses:

“It is noted that this provision will have resource implications particularly when there are large events in Scotland requiring mutual aid and assistance (the recent Conference of the Parties being an example). This should be detailed within the financial memorandum and discussions regarding potential funding will require to be undertaken at the time that any Section 104 Order was agreed / implemented.” (PIRC)

## **Section 15 – Review of, and recommendations about, practices and policies of the police**

There was general agreement, particularly by individual respondents, that the PIRC should be able to review the practices and policies of Police Scotland and the SPA as well as make recommendations with regards to this.

There was notably disagreement by HMICS and ASPS, and issues raised by the SPA and Police Scotland in terms of the similarities of this to the existing statutory function of HMICS.

“The 2012 Act already places a duty on the PIRC and HMICS to coordinate activity. This is supported by a memorandum of understanding between the PIRC and HMICS which lays out the framework to facilitate this collaborative working. This framework is designed to optimise the skills and expertise involved in conducting inspections, reviews or investigations whilst also avoiding duplication and minimising the burden of scrutiny. This approach to collaborative working also provides for consideration of which body has the skill set most suitable for each undertaking [...] HMICS, as an inspection body, trained and experienced in the use of the EFQM model, is the independent body best suited to review practices and policies.” (HMICS)

“There is a very real risk that this proposal would result in PIRC encroaching on the legislative space currently occupied by HMICS. It is the opinion of ASPS the current governance framework around practice and policies should remain the preserve of the SPA and HMICS. (ASPS)

“It is therefore unclear what these proposed powers would add to HMICS’s existing powers. However, given that section 85 of the 2012 Act requires the PIRC to coordinate activity with HMICS to prevent unnecessary duplication of work, the Authority does not oppose this new provision.” (SPA)

The PIRC themselves are supportive of the provision, while accepting that it is predominantly for HMICS to undertake this role. They believe that “providing PIRC with the ability to undertake thematic reviews will add capacity in this area”. Noting that there have been occasions where HMICS has not been in a position to undertake a review due to resources.

HMICS note that should the decision be to proceed with this provision that:

“HMICS believes that the provisions should be limited to the PIRC making a referral to HMICS and creating a duty for HMICS to give such a referral due consideration. This consideration would allow HMICS to assess whether the practice or policy in question is already being addressed by means of an existing recommendation from a previous inspection, will form the basis for a recommendation in an ongoing inspection or should be considered in the course of a future inspection. Where HMICS considers the work to be urgent, the review of the practice or policy could be expedited as a bespoke piece of work.”

The Bill provides for the PIRC to be able to publish these reports “in such a manner as the Commissioner considers appropriate”. Going on to state that it must withhold information which allows an individual to be identified and any part of the report that they consider it is in the public interest to withhold. CRER recommend that instead every report is published openly. The Equality and Human Rights Commission raised a wider point in their response which would apply here, which is ensuring that all communication is accessible.

Victim Support Scotland note the following in terms of publication of responses from the victims’ point of view:

“...published responses to recommendations around individual complaints should also be done fully respecting the full privacy and confidentiality of the complainer, in order for members of the public to feel safe and comfortable in making complaints to PIRC in the future. Complainers should be informed wherever possible if the complaint they made is to be subject to a review that will enter the public domain.”

The financial and resource implications of these changes were raised by Police Scotland. This was in relation to any requirement to assist the PIRC in these reviews and to provide a written implementation plan within set timescales.

CRER and Family’s United both raised a concern about accountability and non-compliance. For example, they question what the sanctions would be for the SPA or the Chief Constable if they did not deliver an effective solution within an adequate timescale.

## Section 16 – Provision of information to the PIRC

There was general agreement with this provision, which would enable Scottish Ministers to make regulations allowing the PIRC to access Police Scotland's conduct and complaints electronic storage system, or an SPA electronic storage system. Some individual respondents did disagree with this provision. Notably ASPS and SPF also disagreed:

“What effect is being sought here? The extent of the expansion of PIRC's ability to reach into PSoS is not explained in context of what the problem is just now. Again, surely it is the function of HMICS to inspect such matters of where pertinent in a specific instance for PIRC be granted access to that complaint and the data held. Therefore ASPS is not supportive of remote access being granted where the scope and purpose is not clearly defined.” (ASPS)

Some organisations while being supportive did highlight the need for appropriate security measures to be in place.

“Whilst this will be a positive development in terms of transparency and efficiency it is important that the legislation takes due consideration of security (including vetting levels of those with access), regular audit and data protection.” (HMICS)

“Police Scotland supports the proposal for the PIRC to be given access to electronic databases which hold information it may require, predicated upon appropriate governance arrangements and robust information security and data protection measures being in place.” (Police Scotland)

Victim Support Scotland also highlighted the rights of complainers in this regard:

“We would emphasise that any access to information must be done alongside full respect of the rights and data protection of individual complainers or anyone else affected by the complaints.”

Amnesty International UK felt that this section of the Bill should be amended to ensure that the PIRC monitors Police Scotland's human rights compliance and publishes an analysis of equality evidence disaggregated by protected characteristics.

## Governance of the Police Investigations and Review Commissioner

Section 17 of the Bill would amend the [Police, Public Order and Criminal Justice \(Scotland\) Act 2006](#). It is concerned with improving the scrutiny, accountability and transparency within the PIRC through requiring them to establish a statutory advisory board. Most respondents who answered this question were supportive of this provision.

Notably, the PIRC were not. They advised in their response that the PIRC already has an Audit and Accountability Committee which has a remit and responsibilities they believe would mirror the functions of an Advisory Board. Members of this Committee are appointed through an appointment panel on which there is Scottish Government representation. They stated that they sought clarity as to why the appointment process for any Advisory Board would be one for Scottish Ministers and what the process for raising issues with Ministers around this would be.

In the Angiolini Review final report, Dame Elish made the following recommendation ([para 14.23](#)):

“I believe that the Commissioner should have no role in the appointment of the PIRC statutory Board members, all of whom should be independent persons. In the meantime, the Commissioner has confirmed that she is planning to transform the Audit and Accountability Committee into a more formal Board structure with non-executive members being appointed through a transparent public appointments process”.

Several respondents also felt that the Bill should reflect the requirements around representation on this board. For example, by Police Scotland, ordinary citizens, human rights legal and policy advisers, and ensuring the membership reflects diverse and intersectional experiences of protected characteristic groups.

CRER noted that it was essential that any Board was transparent, with all minutes and decisions published and the work of the Board subject to freedom of information.

The Scottish Community Safety Network felt that the powers of this statutory board could be strengthened by including the ability to review a PIRC investigation by an independent board.

CRER also stated within their response that they would support the Angiolini Review's recommendation that the PIRC be re-designated as a Commission, with one Police Investigations and Review Commissioner and two Deputy Commissioners ([para 14.27](#)). This recommendation was not addressed within this Bill, with the Scottish Government outlining their reasons for this in the [Policy Memorandum](#) (paras 171 and 172).

## **Provisions not in the Bill**

Respondents were asked if there were any provisions which they felt were missing from the Bill. While a number of respondents did provide aspects they felt were missing, one respondent (David Mitchell) made it clear that he felt “collaborative working relationships” were what was needed to ensure success rather than further additions to the Bill.

Some respondents provided additional aspects which would be dealt with through secondary legislation including:



- Fast track / accelerated hearings
- Amending probationer conduct regulations
- Holding gross misconduct hearings in public
- Publicly recording the outcome of misconduct hearings

Respondents also raised issues around the fact the Bill did not address the following:

- concerns around miscarriages of justice
- the prevention of the use of Non-Disclosure Agreements in misconduct cases
- consequences of misconduct findings – for example, the withdrawal of pension or imposition of a fine if an offence is committed while in office or if guilty of misconduct
- introducing statutory duties on SPA around their commitment to enforcing and upholding human rights
- that the misconduct, disciplinary, complaints and whistleblowing processes should require collection, analysis and (where lawful and relevant) publication of information to enable the relevant authority to carry out its duties under the Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012
- that the PIRC should be a Scottish Parliament appointment
- that essential criteria for Police Scotland/SPA Independent Advisory Groups should be built into regulations
- that there should be statutory provisions to recognise misconduct or corruption in public office through the introduction of offences such as corruption in public office and breach of duty in public office (recommended by the Law Commission for England and Wales in a recent review of the offence of misconduct in public office)
- that legislation is required which provides statutory powers to Police Scotland to provide ‘with cause’ samples and permit random drug and alcohol testing amongst police officers and members of police staff and to compel them to provide samples for this purpose
- committing the PIRC to publishing clear and publicly available operational guidelines and standards of communication between the PIRC and the Crown Office and Procurator Fiscal Service when the PIRC is fulfilling functions relating to the investigation of criminal allegations against the police and the circumstances of any death involving a person serving with the police
- ensuring there is parity between the PIRC’s powers in relation to investigations under section 33A(b), (c) and (d) of the Police, Public Order and Criminal Justice (Scotland) Act 2006 (e.g. investigating alleged criminality

or deaths involving a person serving with the police, serious incidents involving the police, and other matters that it would be in the public interest to investigate). Currently, provisions around obstructing investigations contained in section 41F of the 2006 Act only apply to sections 33A(c) and (d). As does Regulation 5 of the PIRC (Investigations Procedure, Serious Incidents and Specified Weapons) Regulations 2013, relating to the provision of documents, entry to premises and provision of assistance to the PIRC by Police Scotland and the SPA. Therefore, neither apply to investigations directed by the Crown Office and Procurator Fiscal Service.

### *Vetting*

The [HMICS Assurance review of vetting policy and procedures within Police Scotland](#), published on 3 October 2023, highlighted a number of issues including the following recommendation to the Scottish Government:

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

The [Cabinet Secretary for Justice and Home Affairs, Angela Constance MSP, wrote to the Criminal Justice Committee](#) on 6 October indicating that she was giving consideration to amending the Police (Ethics, Conduct and Scrutiny) (Scotland) Bill to include a provision on vetting.

Police Scotland’s response to this call for views included that they “would welcome the opportunity to work with Scottish Government to enhance or implement legislative provision in relation to vetting”.

### *Complaints – Senior Officers*

In their response to this call for views the SPA outlined that they believed that all complaints made against senior officers should be assessed by the PIRC, rather than simply those relating to alleged misconduct. Where they are alleged not to relate to misconduct they would then be referred to the SPA. This was proposed within the Angiolini Review but was not a recommendation.

“Any ‘relevant complaint’ about a senior officer should be assessed by the PIRC. Where it relates to potential misconduct it should be dealt with as such; where it does not relate to potential misconduct but should instead be dealt with under the grievance procedure, or other HR processes, then it should be passed to the SPA to deal with. The SPA would continue to be the recipient of complaints about its own members of staff.” ([para 12.49](#))

The SPA state that if this is not implemented through this Bill then they “would wish to see the arrangements between the two bodies for handling senior officer complaints, including the threshold for referring potential conduct complaints to the PIRC, to be set out in legislation”.

The PIRC address this proposition in their response, stating that they do not agree with this change in their role. They highlight that as an oversight and audit body they should not have a role in investigating every complaint as this would impact their ability to then oversee how a complaint has been dealt with. They also raise the issue of the fact they have this oversight role not only for Police Scotland, but for all policing bodies operating in Scotland but yet, if these changes were made, would only have this expanded role in relation to Police Scotland.

## **Implementation of 72 non-legislative recommendations made by the Angiolini Review**

There were 72 non-legislative recommendations made by Lady Elish Angiolini across her two reports. As of May 2023, 58 recommendations have been marked as complete, 12 are in progress and two are being kept under review. In response to the two reports, work has been undertaken by the policing bodies to address the non-legislative issues raised about the complaints handling systems. These include a lack of transparency, accountability, clarity, time taken to deal with complaints, impartiality, robustness, confidentiality, and fairness.

Some of the submissions from individuals refer to lengthy complaints processes and a lack of transparency:

“The whole process from initial incident to the not guilty verdict took exactly 900 days, during which time I took early retirement.” (Ian Clarke)

“In my case I was informed I was a suspect in a criminal enquiry, told no specifics, removed from my post and waited three months for a copy complaint with the exact specifics of the charge.” (Derek Bolton)

“PIRC recommendations given to Police Standards Scotland July 2023 to be implemented within 28 days has still not been actioned and the current date is 16th Jan 2024.” (Robert Claase)

Victim Support Scotland stated that:

“We would like to highlight that progressing promptly the pending non-legislative actions recommended by Lady Elish Angiolini is vital. With the recent results of the 2021/2022 Scottish Crime and Justice Survey highlighting that there has been a fall in confidence in the police over recent years, this programme of improvement is timely and vital.”

[Scottish Crime and Justice Survey 2021/22: Main Findings - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/scottish-crime-and-justice-survey-2021-22-main-findings/pages/12.aspx)

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