

Criminal Justice Committee
Wednesday 15 May 2024
18th Meeting, 2024 (Session 6)

Police (Ethics, Conduct and Scrutiny) (Scotland) Bill

Note by the clerk

Background

1. The Committee is taking evidence on the [Police \(Ethics, Conduct and Scrutiny\) \(Scotland\) Bill](#) at [Stage 1 of the Parliament's legislative process](#).
2. The Bill proposes changes to the law to, in the view of the Scottish Government, ensure there are robust, clear and transparent mechanisms in place for investigating complaints, allegations of misconduct, or other issues of concern in relation to the conduct of police officers in Scotland.
3. The Committee expects to take Stage 1 evidence on the Bill from 17 April until the end of May 2024.

Today's evidence on the Bill

4. At today's meeting, the Committee will take evidence from two panels of witnesses. The Committee will hear from the Police Investigations & Review Commissioner (PIRC), followed by a representative from the Crown Office and Procurator Fiscal Service.

Panel 1

- **Michelle Macleod**, Police Investigations & Review Commissioner [PIRC];
- **Phillip Chapman**, Director of Operations; and
- **Sharon Clelland**, Head of Legal Services

Panel 2

- **Justin Farrell**, Head of the Criminal Allegations Against [the] Police Division of the Crown Office and Procurator Fiscal Service [CAAP-D]
5. The following submissions have been provided to the Committee for panels 1 and 2, and are reproduced at the Annex—
 - [PIRC](#)
 - [CAAP-D](#)

Further reading

6. The Bill and supporting documents [can be found online](#).
7. A SPICe briefing on the Bill [can be found online](#).

8. The responses to the Committee's call for views on the Bill [can be found online](#).
9. A [SPICe analysis of the call for views](#) was circulated with the committee papers for the meeting on 13 March 2024.
10. A [briefing](#) on the background to the Police (Ethics, Conduct & Scrutiny) (Scotland) Bill and a review of police complaints systems in other jurisdictions was published in 2023.

**Clerks to the Committee
May 2024**

Annexe A: submission from the Police Investigations & Review Commissioner

7. Information about your organisation

The Police Investigations and Review Commissioner (PIRC) was introduced in 2013 when the single Police Service of Scotland (Police Scotland) was established.

The Commissioner, who is appointed by Scottish Ministers, is independent of the police and delivers a free and impartial service.

Independent Investigations - We independently investigate incidents involving policing bodies in Scotland. These can include incidents such as: Serious injuries or death following police contact, Allegations of criminality by on-duty officers and Senior officer misconduct cases

Complaint Handling Reviews - We can review the way policing bodies in Scotland handle complaints made about them by members of the public.

Section 3: Duty of candour

9. What are your views on the proposal to introduce a duty of candour for constables as set out in section 3?

The Police Investigations and Review Commissioner ('PIRC') agrees with the terms of the explicit statutory duty of candour to be placed on police officers of all ranks within the standards of professional behaviour.

This call for views states that section 3 of the Bill will also introduce an organisational duty of candour by adding an additional policing principle to the Police and Fire Reform (Scotland) Act 2012 that Police Scotland should be candid and co-operative with proceedings, including investigations against constables.

It is noted that section 3 of the Bill in fact amends section 32 of the Police and Fire Reform (Scotland) Act 2012 by inserting an additional policing principle to state: "(c) that the Police Service should be candid and co-operative in proceedings, including investigations against constables."

While section 17 of the 2012 Act places an obligation upon the Chief Constable to ensure that policing in Scotland is undertaken in line with 'the Policing Principles', it is not considered that this goes far enough in terms of a duty of candour applying on an organisational level.

More particularly, in response to the Consultation on the Angiolini Review, PIRC proposed that consideration should be given to extending any specific statutory duty of candour to duty to those members of police staff who undertake operational roles and have statutory powers and duties such as Police Custody and Security Officers ['PCSOs']. While PCSOs are staff and, therefore, not subject to the various conduct regulations, Section 28(5) of the 2012 Act does make them subject to certain duties in the same way as police officers (criminal of neglect of duty). It is proposed that the requirement to follow the Code of Ethics – and therefore statutory duty of candour –

could be inserted into section 28 of the 2012 Act. The benefits being ensuring effective investigation and recovery of key evidence from witnesses as early as possible.

It is also noted that the statutory duty of cooperation has not been included as a separate duty within the Bill provisions. In PIRC's view, the duty of candour does not satisfy the requirement for a duty of cooperation.

Under the current regime, there are no provisions which, in specific terms, empower PIRC to compel a police witness to provide evidence to PIRC by way of an operational statement during an investigation under section 33A(b) of the 2006 Act. While section 44(1) of the 2006 Act requires the Chief Constable to provide PIRC with operational statements (prepared by his or her officers) that already exist, it is less clear as to whether a notification under section 44(2), could compel the Chief Constable to order the production of statements where they do not already exist.

It is essential to the undertaking of timeous and thorough investigations that police officers and staff provide statements at the earliest opportunity. PIRC has already seen the impact of a high profile investigation where – despite officers being advised that their status was that of witness – key police witnesses refused to give statements after the event. The statements were ultimately obtained after a period of two months. This had a significant impact upon progress of said investigation. 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 again in a position where key police witnesses (not suspects) could not be compelled to provide operational statements.

A legislative duty of co-operation for police officers - and police staff - would compel police officers to provide operational statements and attend within a reasonable timescale for interview. Taking into account the right not to self-incriminate, the duty should apply only to officers and staff whose status has already been confirmed as that of a witness.

It is noted that there are similar provisions for other investigative bodies, for example, The Director of the Serious Fraud Office has powers under section 2(2) of the Criminal Justice Act 1987 to require persons to answer questions at a specified time and place.

Safeguards

PIRC acknowledges that the production of information by the police — whether in documentary, oral or any other form — cannot erode or dilute the fact that police officers have fundamental human rights, including the right not to self-incriminate. The legislation requires to build sufficient safeguards into the process to ensure this right is protected. The status of the police officer at the time of giving an operational and/or voluntary statement to PIRC would be a crucial determining factor. Any legislative regime would require to contain safeguards reflecting this position.

Section 5: Misconduct procedures: functions of the Police Investigations and Review Commissioner

11. What are your views on the proposal to broaden the functions of the PIRC to include any aspect of the regulatory disciplinary procedures, not just misconduct investigations?

PIRC has significant concerns as to the scope of the functions that may be considered. It is understood that Section 5 of the Bill is an enabling power and that the detail will be in subordinate legislation, however, no indication has been provided on the scope of the functions. This further detail is critical.

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. For example, one area that has been advocated, is the proposition that PIRC assume responsibility for the presentation of Senior Officer Gross Misconduct cases. This is strenuously opposed. PIRC is an independent investigatory body. It does not have the requisite skills, nor resource to present Senior Officer Gross Misconduct hearings. The resource implications in terms of staffing and outsourcing requirements (to instruct suitably experienced Senior King's Counsel) would significantly impact on PIRC's budget and ability to operate.

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.

Section 6: Procedures for misconduct: former constables

12. What are your views on the proposals to continue disciplinary procedures for gross misconduct, should an officer retire or resign?

As a matter of general proposition, PIRC has no opposition to the proposed provision that disciplinary procedures for allegations that would amount to gross misconduct should continue should an officer retire or resign. However, PIRC is of the view that the proposed amendment does not make it suitably clear that PIRC's remit relates to conducting a preliminary assessment of whether the conduct would, if proved, amount to gross misconduct in relation to former senior officers only. This is in line with PIRC's extant statutory remit in relation to serving senior officers, as set out in the Police Service of Scotland (Senior Officers)(Conduct) Regulation 2013. Further, in any event, if it is proposed that the PIRC should have remit in respect of former officers below senior rank, this should only apply in the circumstances as set out within the Angiolini Report.

More particularly Recommendations 22 and 23 state:

"22. Recommendation: The Scottish Government should develop proposals for primary legislation that would allow, from the point of enactment, gross misconduct proceedings in respect of any police officer or former police officer to continue, or commence, after the individual ceases to hold the office of constable.

23. Recommendation: In gross misconduct cases, for all ranks, the Police Investigations and Review Commissioner should determine if it is reasonable and proportionate to pursue disciplinary proceedings in relation to former police officers after the twelve month period, taking into account the seriousness of the alleged misconduct, the impact of the allegation on public confidence in the police, and the public interest.” [Our emphasis].

The recommendations make clear that gross misconduct proceedings in respect of any police officer should be able to continue after they cease to be a police officer; and should be able to commence in respect of any former police officer. This is not opposed.

The safeguard in respect of the latter provision is that out with a 12 month period of any police officer ceasing to hold the office of constable (via resignation or retirement), proceedings should only be pursued where this is determined to be reasonable and proportionate to do so (taking into account the relevant criteria). It was Lady Angiolini’s view that the determination taken in such circumstance (being that the period of 12 months had passed since the officer held the office of constable) should rest with the PIRC.

It is submitted that a distinction requires to be drawn in respect of allegations made while an officer still holds the office of constable but resigns or retires prior to conclusion of an investigation / commencement of a hearing; and allegations made subsequent to the officer holding the office of constable (i.e., made after resignation or retirement).

In respect of the former, the Angiolini Report makes no mention of the PIRC determining whether an allegation made against a serving officer (below Senior Officer rank) would amount to gross misconduct and thus should proceed to a hearing. The preliminary assessment of whether an allegation – if proved – would amount to gross misconduct rests with the Deputy Chief Constable (Designate) as per Regulation 10(2)(b) of the Police Service of Scotland (Conduct) Regulations 2014. The DCC(D) also has the responsibility, following receipt of the investigator’s report, to determine whether the constable has a case to answer and is to be referred to a misconduct hearing (as per Regulation 14(3) of the 2014 Regulations).

It would, therefore, be incongruous to suggest that in order to allow proceedings to continue in respect of an officer who resigns or retires in advance of any gross misconduct hearing being convened would first require additional assessment and determination by the PIRC as to whether the allegation would amount to gross misconduct: that determination already having been made by the DCC(D). To do so would usurp the powers of the DCC(D) and render his / her decision making in such regard inert.

It is submitted that the determination as to whether to continue proceedings in relation to allegations of gross misconduct should – in line with Regulations 10 and 14 - rest with the DCC(D).

If it is proposed that PIRC is asked to ‘oversee’ / reconsider the decision of the DCC(D) not to proceed to a hearing (be that by the former officer or indeed on behalf of the DCC(D)), then the likely outcome will be litigation against that decision. Litigation should be anticipated on the part of the former officer who, having been

informed by the DCC(D) that no proceedings for gross misconduct will take place, then finds themselves (following a review by the PIRC) proceeding to a hearing. Such circumstances will undoubtedly result in Petitions for Judicial Review being lodged in the Court of Session against the Commissioner taken on behalf of the former officer and also potential claims for damages either for personal injury or loss of employability / earnings.

In respect of those officers who resign or retire and an allegation is subsequently received, it is submitted that the responsibility for the preliminary assessment of the allegation should only rest with the PIRC where the allegation relates to senior officers (and thus is in line with PIRC's responsibilities as set out in Regulation 9(1)(b) of the Police Service of Scotland (Senior Officers)(Conduct) Regulations 2013).

However, if the responsibility for such preliminary assessment for non-senior officers is to rest with the PIRC, this encroaches into new territory for PIRC. This would require to be resourced and it is submitted that this should only be in limited circumstances, i.e., where the allegation is received more than 12 months following their ceasing to hold the office of constable: in line with the Angiolini Report.

13. Do you have any views on the proposed time period after which no steps, or only certain steps in the misconduct procedures would be applied unless additional criteria were met?

The restriction on time is welcomed as it recognises the need to restrict the power which otherwise would have potentially oppressive demands and require significant resourcing.

Section 7: Scottish police advisory list and Scottish police barred list

14. What are your views on the proposals to establish Scottish police barred and advisory lists and the criteria for the inclusion of an officer to either list?

This is a sensible proposal, however, there needs to be a lawful gateway for information sharing.

Section 8: Procedures for misconduct: senior officers

15. What are your views on the proposal to have an independent panel determine misconduct cases against senior officers?

PIRC agrees that there should be an independent panel to determine misconduct cases against senior officers.

Section 9: Investigations into possible offences by persons serving with the police

16. What are your views on the proposals to clarify the PIRC’s investigatory powers in relation to criminal conduct and incidents involving deaths of serving police officers, as set out in section 9?

The question posed directly above appears to suggest that PIRC is to have responsibility to investigate deaths of serving police officers as opposed to deaths occurring following contact with police officers. However, we have confirmed with the Bill team that there is no intention that the PIRC will have a duty to examine all deaths of serving officers as opposed to deaths of persons who have had contact with police officers or staff.

It is for Crown Office and Procurator Fiscal Service (COPFS) to instruct PIRC in such matters.

Section 10: Investigations of complaints made by persons serving with the police

17. What are your views on the proposals to clearly define who can make a “relevant complaint” to the PIRC and in what circumstances?

While PIRC is of the view that the current interpretation of members of the public does include police officers, the amendment of language from ‘member of the public’ to ‘person’ now makes the position explicit.

Notwithstanding this, it would be helpful to clarify the intention of s10(1)(b) of the Bill which introduces a new section 34 (3A)(b) that a complaint does not include any statement made by a person serving with the police if it relates to the following:

- (3A) An act or omission referred to in subsection (3)(aa) is one which-
- (a) took place in relation to, or adversely affected, the person in the person's capacity as a person serving with the police, or
- (b) was witnessed by the person (whether or not in that capacity).

It is our understanding that a relevant complaint can include a complaint regarding an act or omission witnessed by a person serving with the police if witnessed not in their capacity as a person serving with the police. The inclusion of the section in brackets (whether or not in that capacity) seems to be contradictory to the intention. It would be beneficial to have clarification of the position.

Section 11: Complaint handling reviews

18. What are your views on the proposals to enable the PIRC to carry out complaint handling reviews of its own volition and make recommendations in relation to complaints in a review report?

It is noted that PIRC already has a power to make recommendations.

Notwithstanding this, it is considered of assistance that the new provision requires Chief Constables and policing bodies to respond setting out the action taken or planned in response to the PIRC’s recommendations, or explaining why nothing has been done within set timescales.

Section 12: Call-in of relevant complaints

19. What are your views on the proposal to give the PIRC a statutory power to take over investigation of complaints being dealt with by the Chief Constable or the SPA under the circumstances set out in section 12?

Section 12 provides PIRC with power to take over consideration of (or call in) complaints being dealt with by the Chief Constable or SPA under the following circumstances:

- where PIRC determines, following a CHR that the complaint is to be reconsidered by PIRC;
- when requested to do so by the authority to which the complaint was made; or,
- of PIRC's own volition, and following consultation with the authority which dealt with the complaint initially, if the Commissioner has reasonable grounds to believe that the appropriate authority is not handling, or has not handled, the complaint properly and it is in the public interest for the Commissioner to consider the complaint.

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.

Otherwise, as highlighted by Lady Angiolini, there is a concern that the power to call in complaints will create a process whereby every complainer – irrespective of case merit – seeks an automatic review of any decision with which they are dissatisfied. The industry that this may generate would be significant in terms of work load and resource intensive requiring consideration of staffing and infrastructure to manage.

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.

Section 13: Review of investigation of whistleblowing complaints

20. What are your views on the proposals for the PIRC to audit and have oversight of the SPA and Chief Constable's arrangements for handling whistleblowing complaints and to report and make recommendations on the arrangements?

With reference to the PIRC response to the Consultation on the Angiolini Report, PIRC agrees that it would be of material benefit for PIRC to conduct audits of how whistleblowing within SPA and Police Scotland are dealt with and undertaken. However, it is noted that that this would not be cost neutral and would require consideration within the financial memorandum to the Bill.

Section 14: Investigations involving constables from outwith Scotland

21. What are your views on the proposals to allow the PIRC to investigate serious incidents, potential criminal offending and some deaths involving English, Welsh and Northern Irish constables who are carrying out policing functions in Scotland?

PIRC supports the proposals to allow the PIRC to investigate serious incidents, potential criminal offending and some deaths involving English, Welsh and Northern Irish constables who are carrying out policing functions in Scotland.

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.

Section 15: Review of, and recommendations about, practices and policies of the police

22. What are your views on the proposals for the PIRC to review and make recommendations on the practices and policies of Police Scotland or the SPA, either in relation to a specific complaint or more generally?

PIRC is supportive of this provision, however, it accepts that it is predominantly for HMICS to undertake such a role. It is noted, that there have been occasions where at the conclusion of investigations, matters have been highlighted to HMICS for review, however, due to capacity, HMICS has not been in a position to undertake same. Providing PIRC with the ability to undertake thematic reviews will add capacity in this area.

It is also noted that continued regular liaison with HMICS, will avoid unnecessary duplication of work in this regard.

While it is accepted that – technically – PIRC can make thematic recommendations at present, there is no requirement for Police Scotland (or other policing bodies) to follow or implement the recommendations. By introducing this power, Police Scotland would require to comply / provide the information requested or provide an explanation if they choose not to implement a recommendation.

The new sections 411 – 41L of the 2006 Act (introduced by section 15 of the Bill) will allow additional resilience to the process of review of police practices and policies to further strengthen public confidence that suitable resilience and resources are available to undertake this critical work.

Section 16: Provision of information to the Commissioner

23. What are your views on the proposal to allow the PIRC to have remote access to Police Scotland's complaints management database?

Police Scotland has confirmed that they are content for PIRC to have access to the Centurion system. However, to provide both organisations with clarity as to the

responsibilities upon each as data controllers and processors, the legislative basis for the sharing and access is welcomed.

Section 17: Advisory board to the Commissioner

24. What are your views on the proposal to establish a statutory advisory board for the PIRC?

PIRC's Audit and Accountability Committee (AAC) has a formal board-similar structure: Committee Members are appointed through an open and transparent appointment process including Scottish Government representation on the appointments panel. In addition external and internal auditors attend the meetings of the Committee. PIRC year-end financial accounts are approved and certified by external auditors. The remit and responsibilities of the PIRC AAC mirror the functions that would fall to an Advisory Board.

It is envisaged that the existing AAC Committee could transition into an Advisory Board but we question if it is only an Advisory Board why is the appointment process one for Scottish Ministers?

Further, if decisions to terminate membership of the Board rest only with Scottish Ministers, how will any issues of non-performance be dealt with? It seems incongruous that the Commissioner should determine the practices of the Board but could not terminate members in relevant circumstances. PIRC therefore seeks clarity as to why the appointments process is one for Scottish Ministers and detail as to the process for raising issues with Scottish Ministers?

Recommendations made by Lady Elish Angiolini

25. What are your views on the implementation of these recommendations?

PIRC NON – LEGISLATIVE RECOMMENDATIONS

PIRC has implemented all of the non-legislative recommendations that were specifically directed to our organisation. The recommendations covered several areas and some of the actions undertaken to achieve the issue identified are discussed below.

Investigation of criminal allegations

Of most significance to the workload of PIRC was the implementation of the recommendation that where there was a criminal allegation of a breach of Article 3 or Article 5 of European Convention on Human Rights (ECHR) by a police officer or member of police staff, COPFS should instruct PIRC to carry out an independent investigation rather than directing Police Scotland to investigate it (Recommendation 47).

As a result, on 4 October 2021, COPFS issued a standing instruction to Police Scotland and PIRC that all on-duty allegations of assault made against police officers and police staff should be referred to PIRC for independent assessment and / or investigation. The implementation of this instruction has had a significant impact on the workload of PIRC investigations department.

The role of PIRC in investigating allegations of breaches of Article 3 (assaults), in particular, provides an independent, impartial investigation that should increase members of the public's confidence to complain where appropriate.

Prioritisation of cases

To ensure that cases involving death or serious injury are prioritised, PIRC reports against performance in its Annual Report and Accounts which details performance against strategic objectives (Recommendation 45) . There is a strategic objective to conclude 80% of such investigations within 90 days of receiving case papers (Recommendation 73).

There is therefore more transparency of management of reviews and investigations.

Complaints

To assist members of the public navigate through the complaints system, the PIRC website has been updated to highlight more prominently the role of Scottish Public Services Ombudsman (SPSO) in dealing with complaints about PIRC (Recommendation 36). PIRC's Statutory Guidance has been updated to clarify timescales for complaints made to the police and where they are entitled to exercise discretion (Recommendation 80) . PIRC has taken account of the expertise of Audit Scotland and the SPSO in complaints handling and undertaking audits (Recommendation 61).

These measures hopefully make the process more accessible for the public.

The continued evolution of the National Complaint Handling Development Group (NCHDG) seeks to further enhance complaint handling through the adoption of joint learning and understanding of best practice involving COPFS / SPA / PSOS and PIRC.

Training

Several recommendations focused on training. PIRC provides in-house training through shadowing and mentoring, and our trainees attend the Police Scotland training facilities and an accredited university course as part of their trainee continuous professional development programme. PIRC has secured in-house legal expertise through the recruitment of a Head of Legal Services, which will be instrumental in supporting the delivery of a programme of internal continuous professional development (Recommendation 64).

Investigations and Reviews staff from PIRC provide collaborative training and development inputs with Police Scotland to courses at the Scottish Police College. PIRC and Police Scotland's Police Standards Department (PSD) training cadre have established training materials and will jointly deliver on Police Scotland's internal PSD training, divisional training, leadership training and national training (Recommendation 65). Investigations staff have also attended a number of specialist courses including Family Liaison Officers (FLO), Sexual Offences Liaison Officer (SOLO), the Advanced Investigator Programme and Officer Safety Training (OST) instructors.

To ensure that discrimination issues are considered as an integral part of their work, PIRC prepared internal guidance on dealing with allegations of discrimination when undertaking investigations or complaint handling reviews. Following consultation with

Police Scotland's Equality, Diversity and Inclusion group the guidance was published on PIRC website (Recommendation 44).

Overall, the distinct benefit of implementing these recommendations has been the substantial increase in the collaboration, consultation and partnership working between the key stakeholders. There are a number of forums which did not previously exist that facilitate joint training, consultation and collaboration. For example, PIRC has regular liaison meetings with COPFS Scottish Fatalities Investigations Unit, the Deaths in Custody Unit and also with Police Scotland's Professional Standards Department.

In addition, many procedures have been streamlined and there is increased awareness of all staff on many areas including equalities considerations. The ongoing joint training has assisted in embedding best practice.

26. Are there provisions which are not in the Bill which you think should be?

Yes.

Current statutory regime: Disparities in Powers Available to PIRC.

There are differences between the statutory regime applicable when the Commissioner is undertaking investigations under section 33A(c) or (d) of the Police, Public Order and Criminal Justice (Scotland) Act 2006, as amended ('the 2006 Act') and the regime applicable when undertaking investigations under section 33A (b) of that Act.

In all cases, PIRC has the powers provided in section 44(2) of the 2006 Act, however, it is only in relation to investigations under section 33A(c) or (d) that PIRC has the powers contained in Regulation 5 of the Police Investigations and Review Commissioner (Investigations Procedure, Serious Incidents and Specified Weapons) Regulations 2013 ("the 2013 Regulations"). Further, it is only in relation to investigations under section 33A(c) or (d) that the enforcement provisions contained in section 41F may be invoked.

Section 44(1) of the 2006 Act states:

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

Section 44(2) states:

"The Authority and the Chief Constable must (a) provide the Commissioner with all such other information and documents specified or described in a notification given by the Commissioner to the Authority or, as the case may be, the Chief Constable; and (b) produce to the Commissioner all such evidence and other things so specified or described, as appear to the Commissioner to be required by the Commissioner for the purposes of the carrying out of any of the Commissioner's functions."

Regulation 5 of the 2013 Regulations provides that a "relevant person" must, where required to do so by the Commissioner, for the purposes of an investigation under section 33A(c) or (d) of the 2006 Act:

(a) “produce, in a form acceptable to the Commissioner, any document, record or other information the Commissioner may require;
(b) permit the Commissioner or a member of the investigation staff to: (i) enter any premises which are used by the Authority or the Police Service; (ii) inspect those premises and anything on those premises which the Commissioner or, as the case may be, member of the investigation staff considers to be relevant to the investigation; and remove from those premises anything which the Commissioner or, as the case may be, member of the investigation staff considers to be relevant to the investigation; and (c) provide such other assistance as the Commissioner may reasonably require.”

Finally, Section 41F of the 2006 Act states:

“(1) The Court of Session may, on a petition by the Commissioner, inquire into whether a person –

(a) without lawful excuse, is obstructing or has obstructed the Commissioner in the carrying out of a complaint handling review or in the carrying out of an investigation in pursuance of paragraph (c) or (d) of section 33A; or

(b) is doing or has done any act or is failing or has failed to take any action, in relation to such a review or investigation which, if it were a proceeding in the Court of Session, would constitute contempt of court.

(2) After so inquiring (and, in particular, after hearing any witness who may be produced against or on behalf of the person and any statement which may be offered in defence), the Court of Session may deal with the person as if the person had committed a contempt of court in relation to the Court of Session.”

In her Report of November 2020, Lady Angiolini highlighted the lack of parity of powers available to PIRC in Crown directed investigations. It was her recommendation that this lack of parity be addressed and identical powers – such as those found within Regulation 5 – be created to apply in Crown directed investigations as for investigations carried out under Section 33A(c) and 33A(d). (Page 452, para 30.86).

PIRC concurs that this inconsistency should be rectified in the manner proposed in Lady Angiolini’s Report and submits that S41F should also apply to Crown directed investigations. PIRC does not accept that the application of S41F to Crown directed investigations – nor the application of Regulation 5 of the 2013 Regulations – would be problematic in terms of ECHR nor that it would erode the protection against self-incrimination. Such provisions would apply to witnesses only.

Further, it is incongruous that the Commissioner should have lesser powers in relation to investigations under s33A(b) than under s33A(c) &(d). It would be far more optimal to have an explicit lawful basis to obtain information.

27. Do you have any additional comments on the Bill?

Yes.

Proposition that PIRC should receive all complaints relating to senior officers

We are aware that there may be support for the proposition that that PIRC should deal with complaints at first instance regarding senior officers of Police Scotland.

PIRC does not agree with this proposition for the following reasons:

The first issue that requires to be considered is how this sits with PIRC having an oversight role? The 2006 Act provides that PIRC can examine the manner in which a relevant complaint has been dealt by a person serving with the police. PIRC has no jurisdiction in dealing with police complaints in the first instance. Thus, if the complainant is unhappy with the outcome of complaint which organisation will provide oversight of PIRC?

A second consideration is that PIRC has an oversight role for all policing bodies that operate in Scotland, not just Police Scotland. This includes the Scottish Police Authority (SPA), British Transport Police (BTP), British Transport Police Authority (BTPA), Ministry of Defence Police (MoD), Ministry of Defence Police Committee, Civil Nuclear Constabulary (CNC), Civil Nuclear Police Authority, National Crime Agency (NCA), His Majesty's Revenue and Customs (HMRC) and UK Border Force. Other than the SPA, no other organisation has expressed any interest in PIRC becoming involved in dealing with complaints in the first instance relating to their senior officers.

It would, therefore, be anomalous for PIRC to have a different role with Police Scotland.

While acknowledging that there is some discussion of PIRC receiving complaints/allegations about senior officers within Lady Angiolini's report, it is not one of the final recommendations.

Further, the discussion in the report is set in the context of the recommendation that PIRC takes on the preliminary assessment and more stages relating to conduct. The report speaks about grievances, conduct and criminality, however, does not consider – in any significant depth - relevant complaints that are not criminal or conduct matters and most importantly does not present a compelling argument why the status quo should be altered in relation to such complaints.

At paragraph 12.31 of the Report, Lady Angiolini sets out a process that relates to misconduct: It states:

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

It then sets out a proposed process which includes at the first point:

1) receipt of the complaint/allegation by the PIRC (where the SPA receives such a complaint or allegation it should be redirected immediately to the PIRC).

While the first step refers to complaints, it is of note that this is in the context of misconduct proceedings and not complaints / allegations that are not criminal or related to conduct.

At paragraph 12.49, the Report further states:

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

Submission from the Criminal Allegations Against the Police Division (CAAPD) of the Crown Office and Procurator Fiscal Service

CAAPD

The Criminal Allegations Against the Police Division (CAAPD) of the Crown Office and Procurator Fiscal Service (COPFS) carries out investigation into all allegations of criminality made against on-duty police officers.

CAAPD was set up on 7th January 2013, and is COPFS's specialist, national, division for the investigation of criminal allegations against police officers across the whole of Scotland.

This division is staffed by an experienced team of lawyers and investigators and is currently based in the PF's Office in Hamilton.

There are currently 20 members of staff in CAAPD.

Justin Farrell, Assistant Procurator Fiscal, leads CAAPD and is ably assisted by 4 experienced Principal Deputes.

There are 5 other legal members of staff – at Procurator Fiscal Depute grade – and five precognition officers.

A team of 4 administrative members of staff is managed by an admin manager.

CAAPD deals with a significant number of allegations of criminal conduct that are of wide ranging sensitivity and complexity.

CAAPD was created to provide a high level of consistency of practice and decision-making across Scotland.

On receipt of an allegation COPFS may direct PSD of Police Scotland, the Police Investigations and Review Commissioner (PIRC) or, exceptionally, another police force to undertake investigations into an allegation.

Whichever course is taken, the investigation remains under the direction and control of COPFS.

CAAPD has no remit with regards any non-criminal misconduct complaints made against police officers, or any direct interaction with the police misconduct process. Nor does it have any remit in relation to criminal allegations made against off duty police officers – those are reported in the normal way to the National Initial Case Processing (NICP).

General approach

The core principle is that the Lord Advocate is the head of the systems of prosecution and investigation of deaths in Scotland.

Accordingly, the responsibility for overseeing any allegation of criminality, and investigating the circumstances surrounding deaths, rests with him or her, assisted by COPFS as the independent prosecutor.

This responsibility extends to the investigation of allegations of criminality by police officers and is reflected in Police Service of Scotland Conduct regulations, which require that all allegations inferring criminality by police officers must be referred for independent investigation by COPFS.

Reports alleging criminal conduct by police officers acting in the course of their duties are made to and investigated by CAAPD.

CAAPD was created to provide a high level of consistency of practice and decision-making across Scotland.

The thorough and independent investigation of such allegations is essential in a democratic society and is a part of the work of the Crown to which the Law Officers attach particular importance.

The framework for a report to be submitted to COPFS differs from the position in criminal cases where the accused person is not an on-duty police officer. Where the accused person is not an on-duty police officer, a case will normally only be reported to COPFS where it is assessed by the police (or other reporting agency) that there is sufficient evidence to establish that a crime has been committed and that the accused person is the perpetrator. Where the criminal allegation is against an on-duty police officer, there is a statutory requirement that the matter be reported to COPFS where the Deputy Chief Constable considers that it can be reasonably inferred that a constable may have committed a criminal offence, irrespective of the question of sufficiency of evidence.

COPFS may direct the Police Investigations and Review Commissioner (PIRC) or the Professional Standards Department (PSD) of the Police Service of Scotland (Police Scotland) to undertake further investigations into the allegation.

Whichever course is taken, the investigation remains under the direction and control of COPFS, consistent with the fundamental principles articulated above, namely that the responsibility for overseeing and investigating any allegation of criminality rests with the Lord Advocate and COPFS as independent public prosecutor.

All allegations reported to the Division will be thoroughly and robustly investigated and the persons making the allegation will directly participate in this investigative process, either by being interviewed by a member of

CAAPD or by being given the opportunity to review and amend their statement in relation to the incident.

In every case where there appears to be a sufficiency of evidence, a report will be submitted by the Division to Crown Office for Crown Counsel's instructions. Crown Counsel may instruct further enquiry before reaching a final decision as to whether criminal proceedings should be instituted in any case.

COPFS policy is that criminal proceedings will only be instructed against an on-duty police officer on the personal instructions of a Law Officer, who will usually have available to them both CAAPD's analysis and a recommendation from Crown Counsel.

The decision is made in accordance with the criteria in the Scottish Prosecution Code – namely before a prosecution is instituted, there must be sufficient credible, reliable and admissible evidence, and where proceedings are in the public interest.

The corollary, of course, is that on every occasion where sufficient credible, reliable and admissible evidence is available, and where proceedings are in the public interest, then a prosecution will be commenced.

Role of the Police

Most complaints against the police are made, in the first instance, direct to Police Scotland.

Regulation 9 (1) of the Police Service of Scotland (Conduct) Regulations 2014 requires that where a report, allegation or complaint is made from which it "can reasonably be inferred that a constable may have committed a criminal offence" such report, allegation or complaint shall be referred by the Deputy Chief Constable to the appropriate prosecutor. The Police have been instructed that any such reference should be made to CAAPD, with initial notification of any such allegation taking place within 48hrs of reasonable inference of criminality having been established.

This reference should be made only where the complaint or allegation is that the officer may have committed a crime in the course of his duty.

Where a police officer is detected committing a crime or offence other than in the course of his duty, the report will be submitted directly to NICP, Local Court.

In the normal course, consideration of proceedings against off-duty police officers will be dealt with by NICP in the same way as any other member of the public, in accordance with the principles set out within the Scottish Prosecution Code.

However, effective liaison is in place between CAAPD/NICP that allows CAAPD/NICP to be sighted upon, and make any connections between, any ongoing on-duty and off-duty cases involving the same subject officer/accused.

This liaison affords an opportunity for further discussion between NICP and CAAPD colleagues with regards any particular subject officer/accused.

Upon reporting to CAAPD Police Scotland should advise if a criminal case has been, or is to be, reported against the complainer.

The Deputy Chief Constable routinely discharges the above obligations through operation of Police Scotland's Professional Standards Department (PSD).

Following upon notification to CAAPD, if CAAPD instructs investigation should remain with PSD, then all criminal complaints should be fully investigated, with an investigative report submitted to CAAPD, within 56 days of the complaint having been made.

Criminal complaints about the police are reported on a standard CAP report template, which differs from an SPR, and the style of which has been agreed between PSD and CAAPD.

The Deputy Chief Constable is instructed that complaints must be referred to CAAPD where the alleged conduct involves an act of a criminal nature.

They are also instructed that reference to CAAPD should not be made where the incident complained of is disciplinary, or non-criminal, in nature rather than criminal.

A complaint of misconduct by an officer should only ever be reported to CAAPD where the allegation amounts to one of wilful or reckless neglect/violation of their police duties such that it constitutes a criminal breach of their statutory duty.

If the Deputy Chief Constable/PSD is in any doubt a briefing paper should be referred to CAAPD. CAAPD, on receipt of the reference, may conclude that the complaint or allegation is not one from which it may reasonably be inferred that a constable has committed a criminal offence.

If CAAPD receives a reference from the Deputy Chief Constable/PSD which does not disclose an allegation of a criminal nature, CAAPD should inform the Deputy Chief Constable accordingly, advise him that the complaint may be investigated as a disciplinary matter and instruct him that only if, during the conduct investigation, further information becomes available that infers criminal conduct (distinct from the allegation already made) should the matter be re-referred to CAAPD.

Where there is insufficient information to determine whether it may be reasonably inferred that the conduct complained of amounts to a criminal

offence, CAAPD should direct the Deputy Chief Constable/PSD to make such enquiry as appears necessary to determine the position within a specified period.

Alternatively, CAAPD may refer investigation to the Police Investigations and Review Commissioner for investigation.

Direct reporting to CAAPD

It is recognised that on some occasions a complainer's relationship with the Police Service of Scotland will have deteriorated to the extent that there is a fundamental lack of trust or confidence that the complaint will be properly advanced. In these circumstances a criminal allegation against an on-duty police officer can be made directly to COPFS.

Only reports of criminal allegations against on duty police officers should be made directly to COPFS.

Further, only new criminal allegations that have not previously been reported to the Police Service of Scotland should be reported in this way.

Where a complaint amounting to a criminal allegation against an on-duty police officer is received by COPFS direct from the complainer, or his solicitor, or from a Member of Parliament, or some other person, the complaint should be immediately referred to CAAPD for consideration and appropriate action. This will normally involve the complaint being referred to the Deputy Chief Constable/PSD for investigation but, in some circumstances, CAAPD may refer the investigation to PIRC, or otherwise commence an investigation without reference to Police Scotland.

Role of PIRC

The Police, Public Order and Criminal Justice (Scotland) Act 2006 introduced new provisions which, inter alia, created the role of the Police Investigations and Review Commissioner (PIRC).

The legislation creates an investigative role for the Commissioner - where there is an indication that a person serving with the police may have committed an offence the appropriate prosecutor may direct PIRC to investigate. See section 33A(b)(i) of the 2006 Act.

CAAPD will refer the investigation of a criminal allegation against a police officer to PIRC for investigation where the circumstances suggest that an additional element of independence and/or impartiality is required.

On 4 October 2021, CAAPD issued a standing letter of instruction to the Deputy Chief Constable providing that whenever the terms of a complaint alleged a breach of Article 3 by a police officer then PIRC should carry out an independent investigation rather than directing Police Scotland to investigate it.

Consequently, all criminal allegations of assault are now routinely referred to PIRC for investigation and reporting to CAAPD.

PIRC report to CAAPD using a similar standard CAP report template to that used by PSD.

PIRCs target is to investigate all criminal allegations that have been referred to them, and submit a report to CAAPD, within 3 months of the referral.

Note: The Commissioner also has a statutory role whereby she can examine the manner in which a non-criminal complaint against a police officer has been dealt with by Police Scotland – the Complaint Handling Review (CHR) process.

Members of the public who are dissatisfied with the way in which their non-criminal complaint against a police constable has been dealt with by Police Scotland can ask PIRC to review the manner in which the police dealt with the complaint.

In the normal course, Police Scotland will continue to be responsible for investigating non-criminal complaints made by members of the public against police officers; but PIRC will be able to direct the police to reconsider the complaint and take action on any new information.

Investigation by CAAPD

Once a relevant police or PIRC report has been received CAAPD must further consider and investigate the complaint.

Where there appears to be a sufficiency of evidence CAAPD continues to prepare full precognition reports for submission to Crown Counsel for instructions.

Generally, the complainer and the alleged victim (if he/she is other than the complainer) will be invited to attend for precognition. Any other person who appears to be a material eyewitness may be invited to attend for precognition, or at least given the opportunity to attend.

The terms of the invitation will make it clear that the individual is being requested to attend for precognition, but that such attendance is voluntary and that the individual cannot be compelled to attend.

Where CAAPD is of the opinion that the complaint is of a minor nature, CAAPD may write to the complainer enclosing some information giving him/her basic information about the role of the Procurator Fiscal in the investigation of the complaint and a copy of the complainer's statement.

The complainer should be asked to check the accuracy and completeness of the statement and to sign the statement if he/she agrees that the statement is a full and accurate account of his/her version of events.

Otherwise, the complainer should be invited to make any amendment to the statement which he/she considers is appropriate.

The letter to the complainer should also ask him/her to list any witnesses to the incident of whose identity he/she is aware.

If the complainer fails to respond, the matter will require to be dealt with on the basis of the statement already submitted.

When a complainer attends for precognition it is preferable that he or she should be precognosced alone.

It is a matter for the discretion of the particular CAAPD case preparer whether, exceptionally, he/she may permit another person to be present.

If the complainer fails to attend for precognition CAAPD may have difficulty in assessing whether proceedings are merited but the complaint must still be considered on the basis of all the other available evidence.

Delay

The general aim of CAAPD should be to investigate the police complaint promptly and, where possible, to reach or obtain a decision before any trial of the complainer which arises from the same circumstances as the complaint.

Precognition of the complainer should be delayed only in exceptional circumstances.

Normally, the fact that the complainer is due to stand trial will not be a good reason for delay. A complainer who is still to stand trial must be advised that he/she is not obliged to answer any question relating to the subject matter of any outstanding charge against him/her. This rule also applies to any other witness who is in the same position. In any case where the complainer is to stand trial, the trial should, so far as possible, be given priority and an early diet of trial sought from the Court.

If the complainer, on his/her solicitor's advice, refuses to be precognosced before the complainer's own trial, it should be pointed out that delaying the investigation of the complaint until after the complainer's trial runs a risk of prejudicing the investigation.

If there has been delay in the investigation the causes of the delay should be carefully documented.

The current CAAPD published target is as follows; "Complete investigation of complaints of criminal conduct by police officers and advise complainer of the outcome within 6 months of the report to the Procurator Fiscal in at least 75% of cases".

In the reporting year 2023/2024 CAAPD achieved 95% compliance against the 6 month target.

During April 2024, CAAPD achieved 88% compliance against the 6 month target.

CAAPDs response to Dame Elish's recommendations

Dame Elish's Independent Review of Complaints Handling, Investigations and Misconduct Issues in Relation to Policing was published on 11 November 2020.

Consequently, the Cabinet Secretary for Justice and the Lord Advocate approved a governance structure and reporting framework designed to monitor progress being made in delivering the report's recommendations.

These arrangements were subsequently referenced within the formal Scottish Government and Crown Office response to Dame Elish's review that issued on 5 February 2021.

The governance structure incorporated a Practitioners Working Group (PWG), a Strategic Oversight Group (SOG) and a Ministerial Group (MG).

The Head of CAAPD represents COPFS on the PWG, the Deputy Crown Agent for Specialist Casework represents COPFS at the SOG and the Lord Advocate attends the MG.

Recommendations for COPFS

There were 4 recommendations on which COPFS led on implementation; one from Dame Elish's preliminary report (recommendation 1) and three from the final report (recommendations 2, 46 and 47).

These recommendations are;

Recommendation 1, Preliminary Report: Given the importance and sensitivity of such allegations it is recommended that all such allegations of excessive force should continue to be reported immediately by PSD to CAAPD for instruction and investigation by the independent Procurator Fiscal or by PIRC on the directions of the Procurator Fiscal of CAAPD.

Recommendation 2, Final Report: The Criminal Allegations Against Police Division (CAAPD) should repeat on a regular basis the review that they carried out of all the "assault" and "excessive force" categorised complaints that had been received by Police Scotland in the month of March 2020.

Recommendation 46, Final Report: The ability to report directly to the Criminal Allegations Against Police Division of COPFS a complaint of a crime by a police officer should be much better publicised and made more accessible to the public by COPFS, by Police Scotland and by the PIRC.

Recommendation 47, Final Report: Where the terms of a complaint made allege a breach of Article 3 by a police officer, and therefore that a crime may have been committed, the Crown Office and Procurator Fiscal Service should instruct the PIRC to carry out an independent investigation rather than directing Police Scotland to investigate it; breaches of Article 5 may, depending on the circumstances and seriousness of the case, likewise require early independent investigation.

All four of the COPFS recommendations have been implemented and have had ministerial sign-off at previous MG meetings.

In respect of recommendation 1, CAAPD continues to offer and advice and guidance service to PSD, in perpetuity, when they seek advice on whether a particular allegation should be initially categorised as an allegation of non-criminal excessive force or, alternatively, a criminal assault.

In respect of recommendation 2, a COPFS audit of all assault/excessive force categorised complaints received by PSD took place during August 2021. The audit considered all assault and excessive force allegations received by Police Scotland during August 2021 to assess (1) whether the PSD categorisation of the complaint as either assault or excessive force was the correct categorisation and (2) whether the proposal for the subsequent investigation of the complaint was the most appropriate investigative option. In 54 out of 55 complaints CAAPD considered that the initial PSD categorisation of the complaint had been correct and that in respect of all complaints CAAPD agreed with the PSD recommendation for how the complaint should be subsequently investigated (while in a small number of cases issuing additional specific instruction). In the one case where CAAPD issued an instruction for the complaint to be dealt with as assault, rather than excessive force, the evidential position (at the point of the complaint being intimated) was not clear and CAAPD's instruction was based on caution, but subject to review once additional details had been obtained from the complainer. The requirement for CAAPD to repeat the exercise was rendered obsolete by implementation of recommendation 47 (see below). PIRC, in accordance with their statutory review function, now carry out an audit of police referrals to ensure that everything that should be referred to them via the Art 3 process is, in fact, being referred to them.

In respect of recommendation 47, on 23 April 2021, the previous Lord Advocate confirmed acceptance of Dame Elish's recommendations 46 and 47 and consequently CAAPD issued a Standard Letter of Instruction stating that as of 4 October 2021 when a person makes an allegation of on duty criminal assault to Police Scotland against a police officer or member of staff, PSD will record the allegation and refer to the PIRC for assessment and investigation in consultation with CAAPD. Accordingly, all assaults by on duty police officers are now routinely referred by PSD to

the PIRC for investigation. This process continues to be monitored by CAAPD, PSD and the PIRC to ensure it is effective and efficient.

CAAPD is represented at a tripartite working group, along with PSD and PIRC, tasked with reviewing the guidance that was introduced following the referral of all allegations of assaults to PIRC. The group seeks to review the efficacy of the arrangements introduced by the respective organisations, to ensure compliance and delivery against recommendation 47, and to make improvements where necessary.

Recommendation 46 was signed-off as completed by the MG in March 2022.

The following actions have been taken to facilitate implementation of this recommendation:

- a. For the first time the COPFS external website includes a link to a specific CAAPD page that explicitly sets out that a member of the public may elect to report criminality on the part of an on-duty police officer directly to CAAPD; and the process that they should follow.
- b. From 25 October 2021 CAAPD introduced the use of a complaint capture form, to be completed by COPFS staff (mainly those in CAAPD and the Enquiry Point) and used to ensure that when the initial complaint of criminality by an on-duty police officer is made by a member of the public directly to COPFS that sufficient information is obtained to allow the complaint to be progressed by CAAPD without delay. It has also ensured a consistency in approach by COPFS when responding to initial complaints received directly by members of the public.
- c. Partner agencies (SPA, Police Scotland and PIRC) have also updated their own guidance to the public that highlights the option for direct reporting to CAAPD.

It is submitted that, taken together, this work has achieved the purpose behind recommendation 46 and the ability to report directly to CAAPD has become "much better publicised and made more accessible to the public".

CAAPD evidence on the legislative provisions within the Police (Ethics, Conduct and Scrutiny) (Scotland) Bill.

The Bill's provisions are grouped under 4 main headings:

- Ethics of the police: provisions placing a policing "Code of Ethics" onto a statutory footing, and introducing an explicit duty of candour on officers to be open and truthful and co-operate fully with all investigations into allegations against officers (subject to the right not to self-incriminate), and others.

- Police conduct: concerns measures regarding non-criminal disciplinary and misconduct procedures.
- Functions of the Police Investigations and Review Commissioner: proposes changes to the jurisdiction of, and additional powers for, the Police Investigations and Review Commissioner (PIRC).
- Governance of the Police Investigations and Review Commissioner: concerns changes to the governance of PIRC.

COPFS is generally supportive of the introduction of the provisions under the "Ethics of the police" heading. Anything that clarifies expected standards of professional behaviour, and that promotes and supports improved conduct and professionalism on the part of police officers, is desirable. In addition, the "duty of candour" provision should assist in removing some of the uncertainty on the part of officers as to the extent that they should engage in post incident investigative processes following their involvement in a serious incident.

The "Police conduct" heading principally concerns non-criminal police conduct and standards process. While COPFS has a general interest in being reassured that misconduct/standards processes are robust it has no direct remit with regards the police conduct process.

The "Functions of the Police Investigations and Review Commissioner" concerns provisions for increased/enhanced investigative and audit powers for PIRC and, again, COPFS is generally supportive of the recommendations. These proposals include facilitating PIRCs access to the Police Scotland "Centurion" database, allowing PIRC to "call-in" an investigation into a non-criminal complaint that it does not consider has been handled to an appropriate standard and the introduction of a new power to investigate a Police Scotland "practice or policy" that might be considered of general public concern.

However, COPFS does have a direct interest in sections 9, 10 and 14 of the Bill. COPFS strongly supports these provisions. PIRC do not currently have the requisite statutory powers to investigate retired/resigned officers or officers of the Police Service of Northern Ireland (PSNI) and English and Welsh forces if they are involved in incidents, or subject to complaints, when they are undertaking a policing function in Scotland. As such COPFS has to instruct parallel investigation where any criminal allegation/s under investigation involve serving officers acting along with ex-officers, or Scottish officers acting along with officers from England, Wales or Northern Ireland – with PIRC investigating the actions of the current/Scottish officers and Police Scotland investigating the actions of the ex-officers/non-Scottish officers. If these provisions are introduced, going forward, PIRC will be able to investigate retired/resigned officers and also officers from England, Wales and Northern Ireland operating in

CJ/S6/24/18/3

Scotland or deployed here on mutual aid deployments, etc. – so PIRC would be able to investigate all officers involved in an incident together, if so instructed.

COPFS maintains a neutral position with regards the provision under the “Governance of the Police Investigations and Review Commissioner”.

Justin Farrell
Head of CAAPD
Crown Office and Procurator Fiscal Service

9 May 2024