

# **Criminal Justice Committee**

## **Police Complaints**

### **Note by the clerk**

## **Executive Summary**

### **Introduction**

Police forces have a unique role in maintaining law and order, and typically have substantive powers to ensure public safety. As such, robust oversight of the police, including through establishing and maintaining effective complaints mechanisms, provides crucial checks and balances.

This paper provides an overview of reform to police complaints in Scotland, post-legislative scrutiny carried out in this regard and subsequent government consultation on potential further reforms to the system. It also considers experience and practice in a range of other jurisdictions internationally.

The Police and Fire Reform (Scotland) Act 2012 became law on 7 August 2012. The Act created a single police service and a single fire and rescue service, replacing the eight police forces and eight fire brigades that existed previously. It also created oversight bodies: the Scottish Police Authority and the Police Investigations and Review Commissioner.

### **Justice Committee's Post-legislative Scrutiny Report**

In 2018, the Justice Committee undertook post-legislative scrutiny of the Police and Fire Reform (Scotland) Act 2012. The Committee published its report in March 2019. A number of issues were identified by the Committee, including the ineffectiveness of the police complaints system, both for serving officers and members of the public; the complexity of the system; the time taken to investigate complaints; the lack of transparency of parts of the process; the categorisation of certain types of complaints; and matters concerning accountability and fairness.

### **Independent Review**

In June 2018, the then Cabinet Secretary for Justice, Michael Matheson, in conjunction with the then Lord Advocate, established a wide-ranging independent review of the processes for handling complaints against the police and investigating serious incidents and alleged misconduct. The review was led by the Rt. Hon. Dame Elish Angiolini DBE KC and commenced in September 2018.

Dame Elish published her preliminary report on 21 June 2019. It contained 30 recommendations, including a number that would require legislative changes. The recommendations relate to a wide range of areas of the complaints-handling process, including Police Scotland's role in the process; the role of the Scottish Police Authority; the role of the Police Investigations and Review Commissioner; the role of the Crown Office and Procurator Fiscal Service; and the relationships between these key players. Other issues highlighted included auditing arrangements, jurisdictional issues and matters around definitions, for example, regarding "a person serving with the police".

The final report was published on 11 November 2020. It contained 81 recommendations. Again, a number of these would require legislative changes. A number of the areas highlighted in the interim report were expanded upon in the final report. The final report also considered issues such as the need for a code of ethics; the mis-categorisation of complaints; policing culture; complaints in the context of inclusion, diversity and discrimination; whistle-blowing; and barred lists and advisory lists for former police officers.

### **Joint Scottish Government and Crown Office Response**

On 29 June 2021, the then Cabinet Secretary for Justice, Humza Yousaf, and the then Lord Advocate, James Wolffe KC, published a joint response to Dame Elish Angiolini's preliminary and final reports. The response stated that it was the intention of the Scottish Government and the Crown Office to accept the majority of Dame Elish's recommendations, noting that many of them align with the Justice Committee's 2018 recommendations.

The response also outlined plans for managing implementation, and provided an overview of the governance and assurance mechanisms to be put in place. Furthermore, it made proposals for a thematic reporting framework and detailed progress in specific areas under the themed headings.

### **Thematic Reports**

Between June 2021 and May 2023, five thematic reports were published. These reports provide updates on actions taken to address the non-legislative recommendations from Dame Elish's two reports. Of the 72 non-legislative recommendations made by Dame Elish across her two reports, as of May 2023, 58 recommendations had been marked as complete, 12 were in progress and two were being kept under review.

**Table 1: Progress of non-legislative recommendations**

Thematic Report	Date Published	Recommendations		
		Completed	In Progress	Under Review
1	June 2021	18 (25%)	53 (74%)	1 (1%)
2	December 2021	34 (47%)	37 (51%)	1 (1%)
3	June 2022	44 (61%)	27 (38%)	1 (1%)
4	December 2022	55 (76%)	16 (22%)	1 (1%)
5	May 2023	58 (81%)	12 (17%)	2 (3%)

\*Percentages may not total 100% due to rounding.

## **Public Consultation**

The Scottish Government held a public consultation on the legislative recommendations proposed by Dame Elish between 24 May and 16 August 2022. The consultation covered themes such as rights and ethics, governance, jurisdiction and powers, conduct and standards, and liability for unlawful conduct. It received 55 responses, 33 of which came from individuals and 22 from organisations. Overall, the responses to the consultation were broadly in favour of the majority of the recommendations.

The consultation does not explicitly refer to some of the recommendations made by the Justice Committee in its post-legislative scrutiny report. However, most can be linked to Dame Elish Angiolini's recommendations. The consultation includes all of the recommendations from Dame Elish Angiolini's preliminary and final reports, and these are divided into legislative and non-legislative proposals. Further detail is provided in Annexes A and B.

## **Experience in other jurisdictions**

Scotland is not unique in seeking to reform its system for police complaints. Jurisdictions around the world have evolved their approach to police oversight over time and in response to criticism or to specific events.

Broadly, there are three approaches to police oversight. The first is 'internal affairs', which was the dominant model internationally until the 1970s. Today Italy and Germany retain elements of this model, which tends to face criticism about a perceived lack of independence, although a potential advantage relates to police forces taking responsibility for addressing misconduct within their own ranks and upholding standards.

Since the 1970s, the trend has been towards a civilian review model, whereby complaints are handled and investigated by an independent body and by police,

often depending on the seriousness of the allegation. While this model provides greater independence, there are concerns that too many complaints continue to be investigated by police forces.

A third model is described as civilian control, in which no complaints are investigated by the police themselves, but are handled by a fully independent body. This model is extremely rare, with the Police Ombudsman for Northern Ireland considered the 'gold standard' internationally. While this model benefits from clear independence from the police, it is resource intensive.

Experience in other jurisdictions demonstrates the inherent difficulty of achieving and maintaining successful reform to police oversight. Suggestions for further reform in the literature include ensuring the investigative body has sufficient powers and resources; phasing out former police officers and recruiting and training more independent investigators.

## Introduction

1. This paper provides an overview of reform to police complaints in Scotland, post-legislative scrutiny carried out in this regard and subsequent government consultation on potential further reforms to the system. It also considers experience and practice in a number of other jurisdictions internationally.
2. The Police and Fire Reform (Scotland) Act 2012 (“the 2012 Act”) became law in August 2012. The Act created a single police service and a single fire and rescue service, replacing the eight police forces and eight fire brigades that existed previously. It also created oversight bodies: the Scottish Police Authority (SPA) and the Police Investigations and Review Commissioner (PIRC).
3. In 2018, the Justice Committee undertook post-legislative scrutiny of the Police and Fire Reform (Scotland) Act 2012. The Committee published its report on 25 March 2019.<sup>1</sup> A number of issues were identified by the Committee, including the ineffectiveness of the police complaints system, both for serving officers and members of the public.
4. In June 2018, the then Cabinet Secretary for Justice, Michael Matheson, in conjunction with the then Lord Advocate, established a wide-ranging independent review of the processes for handling complaints against the police and investigating serious incidents and alleged misconduct.
5. The review was led by the Rt. Hon. Dame Elish Angiolini DBE KC and commenced in September 2018. The purpose of the review was to:
  - **consider the current law and practice** in relation to complaints handling, investigations and misconduct issues, as set out in relevant primary and secondary legislation;
  - **assess and report on the effectiveness** of the current law and practice; and
  - **make recommendations** to the Cabinet Secretary for Justice and the Lord Advocate for improvements to ensure the system is fair, transparent, accountable and proportionate, in order to strengthen public confidence in policing in Scotland.<sup>2</sup>
6. Dame Elish Angiolini published a preliminary report on 21 June 2019.<sup>3</sup> The final report was published on 11 November 2020.<sup>4</sup>

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<sup>1</sup> Scottish Parliament Justice Committee (2019) *Report on post-legislative scrutiny of the Police and Fire Reform (Scotland) Act 2012 - The Police Service of Scotland*

<sup>2</sup> Scottish Government (2020) *Independent review of police complaints handling, investigations and misconduct issues: terms of reference* [online] Available at: <https://www.gov.scot/groups/independentpolicingreview/>

<sup>3</sup> The Rt. Hon. Dame Elish Angiolini DBE KC (2019) *Independent Review of Complaints Handling, Investigations and Misconduct Issues in Relation to Policing — Preliminary Report*

<sup>4</sup> The Rt. Hon. Dame Elish Angiolini DBE KC (2020) *Independent Review of Complaints Handling, Investigations and Misconduct Issues in Relation to Policing — Final Report*

7. On 29 June 2021, the then Cabinet Secretary for Justice, Humza Yousaf, and the then Lord Advocate, James Wolffe KC, published a joint response to Dame Elish’s preliminary and final reports. In this response, they also acknowledged the work of the Justice Committee in its post-legislative scrutiny report as mentioned above.<sup>5</sup>
8. Following the aforementioned joint response, the Scottish Government published five thematic reports that outlined the progress and key developments around the non-legislative recommendations from Dame Elish’s reviews. These were published on 24 June 2021, 16 December 2021, 23 June 2022, 13 December 2022 and 18 May 2023.<sup>6</sup>
9. The Scottish Government launched a public consultation on the suggested legislative recommendations that were proposed by Dame Elish. This consultation took place from 24 May 2022 until 16 August 2022. A summary<sup>7</sup> and a full analysis<sup>8</sup> of the consultation were published on 30 November 2022.
10. In its Programme for Government in September 2022, the Scottish Government announced that the Police Complaints and Misconduct Handling Bill would be introduced in 2023.

**Justice Committee Report on Post-legislative Scrutiny of the Police and Fire Reform (Scotland) Act 2012 – the Police Service of Scotland**

11. In 2018 the Justice Committee agreed to review the Police and Fire Reform (Scotland) Act 2012 in its entirety, scrutinising whether its policy objectives had been delivered; how it was being enacted; whether there were any unintended consequences; and to identify any improvements that could be made.
12. The Committee received evidence from a number of people who have experience of the complaints-handling process. The Committee report stated that, “It is clear that this is an area of policing about which people feel strongly and that there is a lack of confidence in how police complaints are being handled.”<sup>9</sup>
13. The report highlighted a range of key issues, and made a number of recommendations. These are illustrated in Table 2 overleaf, with further detail provided in the subsequent paragraphs.

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<sup>5</sup> Scottish Government (2021) *Joint Scottish Government & Crown Office Response to the Report on Complaints Handling, Investigations and Misconduct Issues in Relation to Policing in Scotland*

<sup>6</sup> Scottish Government [online] Available at <https://www.gov.scot/policies/police/complaints-investigations-and-misconduct/>

<sup>7</sup> Scottish Government (2022) *Police complaints, investigations and misconduct - legislation proposals: consultation analysis summary*

<sup>8</sup> Scottish Government (2022) *Police complaints, investigations and misconduct - legislation proposals: consultation analysis*

<sup>9</sup> Scottish Parliament Justice Committee (2019) *Report on post-legislative scrutiny of the Police and Fire Reform (Scotland) Act 2012 - The Police Service of Scotland, page 47*

**Table 2: Overview of the key issues identified by the Justice Committee’s post-legislative scrutiny of the Police and Fire Reform (Scotland) Act 2012**

Area	Overview	Committee recommendations
<b>Complexity and time taken to investigate</b>	<ul style="list-style-type: none"> <li>• <b>Complex mixture</b> of internal and external processes</li> <li>• Non-statutory deadline often <b>missed</b></li> </ul>	<ul style="list-style-type: none"> <li>• <b>Introduce a set time</b> for Police Scotland and the SPA to acknowledge receipt, inform officers and interview witnesses</li> <li>• Prioritise complaints against <b>chief officers</b></li> </ul>
<b>Transparency</b>	<ul style="list-style-type: none"> <li>• <b>Lack of clarity</b> about complaint categorisation</li> <li>• <b>Insufficient information</b> for complainants</li> <li>• Concerns about Police Scotland’s <b>discretion to categorise</b> complaints</li> </ul>	<ul style="list-style-type: none"> <li>• Address issues around <b>complaint categorisation</b></li> <li>• Seek response on a proposal of <b>mandatory referral to the PIRC for certain cases</b></li> <li>• Seek response to suggestion that the Commissioner should <b>provide reasons not to investigate</b> a serious incident</li> </ul>
<b>Accountability and fairness</b>	<ul style="list-style-type: none"> <li>• Concerns including <b>investigations ending due to retirement or resignation</b> of an officer</li> <li>• <b>Unclear lines of accountability</b> for the PIRC</li> </ul>	<ul style="list-style-type: none"> <li>• <b>Consider how to address these issues</b> in a proportionate manner</li> </ul>
<b>Confidentiality and impartiality</b>	<ul style="list-style-type: none"> <li>• Concerns of <b>inadequate confidentiality</b> for complainant and subject</li> </ul>	<ul style="list-style-type: none"> <li>• <b>Amend regulations</b></li> </ul>
<b>Oversight and audit</b>	<ul style="list-style-type: none"> <li>• Concerns about <b>effectiveness</b></li> </ul>	<ul style="list-style-type: none"> <li>• Police Scotland should <b>review its complaint-handling process</b></li> <li>• SPA should <b>review its oversight and audit process</b></li> </ul>

14. The Committee heard evidence in relation to the **complexity** of the complaints process. It was noted that “the police complaints handling processes are a complex mixture of internal and external processes, involving a number of organisations, which people find difficult to navigate.”<sup>10</sup>
15. The **time taken to investigate complaints** was noted by the Committee. It was pointed out that Police Scotland and the SPA have a non-statutory deadline of 56 days to investigate and conclude complaints and that this deadline is often not met for a variety of reasons.<sup>11</sup>
16. Based on the evidence it received, the Committee recommended the introduction of “a set time for Police Scotland and the Scottish Police Authority to acknowledge receipt of complaints, to inform officers who are the subject of complaints, and for witnesses to be interviewed following receipt of a complaint.

<sup>10</sup> Ibid, page 47.

<sup>11</sup> Ibid, page 49.

The Committee further considers that complaints against chief officers should be prioritised.”<sup>12</sup>

17. The **transparency** of parts of the process was another area that was highlighted during evidence sessions. The Committee heard that the regulations could be clearer about the categorisation of certain types of complaints, particularly around what constitutes misconduct and gross misconduct.<sup>13</sup>
18. Other evidence indicated that people felt that they were not provided with enough information to effectively pursue their complaints.<sup>14</sup> Furthermore, the Committee noted the concerns expressed about the level of discretion that Police Scotland has around the categorisation and investigation of complaints in the first instance. Particular reference was made to the categorisation of a “serious incident” and to referrals around baton use.<sup>15</sup>
19. The Committee recommended that the issue around the categorisation of “serious incidents” should be addressed; that Police Scotland and the Cabinet Secretary for Justice should comment on a proposal that referral to the PIRC when baton use relates to a serious incident should be mandatory; and that the Cabinet Secretary should respond to the suggestion that the Commissioner should provide reasons not to investigate a “serious incident”.<sup>16</sup>
20. A number of issues were raised about the **investigation of criminal complaints** and the process around referrals for independent investigation. A particular issue was raised about the discretion that Police Scotland had to decide whether to refer a complaint for independent investigation. A number of measures have now been put in place to address the issues raised, and those measures were welcomed by the Committee.<sup>17</sup>
21. The **accountability and fairness** of a number of aspects of the complaints-handling system and the investigations processes were highlighted as having had an impact on the confidence of the system. The ability of a police officer to retire or resign while a complaint investigation is ongoing, thereby bringing non-criminal investigations to a halt, was said to be unsatisfactory for the complainant and for those who are the subject of complaints. The Committee recognised the complexity of this issue and recommended that the Cabinet Secretary for Justice should consider how to address it in a proportionate manner and in a way that reflects its complexity.<sup>18</sup>
22. Some evidence received questioned the accountability of the PIRC, with it being suggested that the 2012 Act did not “appear to provide any accountability for the

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<sup>12</sup> Ibid, page 50.

<sup>13</sup> Ibid, page 50.

<sup>14</sup> Ibid, pages 50 and 51.

<sup>15</sup> Ibid, page 51.

<sup>16</sup> Ibid, page 52.

<sup>17</sup> Ibid, pages 52 and 53.

<sup>18</sup> Ibid, pages 54 and 55.

PIRC to discharge its investigative function.” The Committee was also told that written evidence suggested that “people are unsure about who the PIRC is accountable to.” The Committee requested that the Cabinet Secretary for Justice confirms who the PIRC is accountable to and recommended that consideration be given as to whether the lines of accountability are suitably transparent. <sup>19</sup>

23. Concerns were raised with the Committee about whether the internal complaints processes protected the **confidentiality** of complainants and those who are the subject of complaints. Issues were also raised about the **impartiality** of the process. The Committee recommended that the Police Service of Scotland (Senior Officers) (Conduct) Regulations 2013 be amended as, according to the SPA, “the conduct regulations limit the actions that it [the SPA] can take at the initial assessment stage, create a low threshold for complaints to be referred to the PIRC, and provide insufficient confidentiality for those who make complaints and for those about whom complaints are made.” <sup>20</sup>
24. The **oversight** and **audit** of aspects of the complaints-handling system were raised as an issue, with the PIRC and the SPA having differing views about their effectiveness. The Committee recommended that Police Scotland reviews its complaints-handling process and that the SPA reviews its oversight and audit processes. <sup>21</sup>
25. During the evidence sessions and through written evidence, the Committee received a number of suggestions for **amendments** to various items of **secondary legislation**:
  - **Police Service of Scotland (Senior Officers) (Conduct) Regulations 2013**: The SPA felt that clarity is needed around what is to be treated as a “misconduct allegation” and the extent of enquiries that it is permitted to conduct into an allegation before deciding whether to refer it to the PIRC. This also relates to the definition of a “relevant complaint” in the **Police, Public Order and Criminal Justice (Scotland) Act 2006**. The Scottish Chief Police Officers’ Staff Association stated that the 2013 regulations do not deal with conduct issues that occurred prior to 2013 of senior officers who were not of that rank at their inception. <sup>22</sup>
  - The PIRC referred to a lack of clarity in the **Police, Public Order and Criminal Justice (Scotland) Act 2006**, as amended by the 2012 Act, meaning that “the PIRC and Police Scotland can carry out simultaneous investigations.” <sup>23</sup>

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<sup>19</sup> Ibid, pages 54 and 55.

<sup>20</sup> Ibid, pages 55 and 56.

<sup>21</sup> Ibid, pages 56 and 57.

<sup>22</sup> Ibid, page 58.

<sup>23</sup> Ibid, page 58.

- Under regulation 5 of the **Police Investigations and Review Commissioner (Investigations Procedure, Serious Incidents and Specified Weapons) Regulations 2013**, police officers must provide the PIRC with information for a police-referred investigation but the Committee was told that this does not apply in more serious matters in which a police officer is a witness. It was requested that this “anomaly” be addressed.<sup>24</sup>
- The PIRC suggested that section 35 of the **Police, Public Order and Criminal Justice (Scotland) Act 2006** be amended to provide defined timescales for policing bodies to implement recommended actions and to enable the PIRC to include recommendations as well as actions. Furthermore, it felt that the legislation should also be amended to “provide the PIRC with the authority to instruct the relevant policing body to uphold a complaint.”<sup>25</sup>

26. This section of the Committee report concluded by stating, “It is clear from the evidence that the Committee has received that there are fundamental issues with the police complaint handling processes and that they are not functioning as the 2012 Act intended.” It added, “To strengthen public confidence in the complaint handling processes they must be fair, transparent, accountable and proportionate. They must also be easy to understand, confidential, impartial, subject to robust oversight, and enable complaints to be dealt with in a timely manner.”<sup>26</sup>

### **Independent Review of Complaints Handling, Investigations and Misconduct Issues in Relation to Policing - Preliminary Report**

27. Dame Elish Angiolini published her preliminary report in June 2019. Dame Elish highlighted that the terms of reference incorporated principles of **fairness, accountability, transparency, proportionality, effectiveness and efficiency**, and the protection of **human rights** as being important factors to underpin and guide any complaints system.<sup>27</sup>
28. In compiling the preliminary report, evidence was taken from a number of sources, including members of the public, serving and retired police officers, experts in relevant fields, police staff associations, unions and a range of interested organisations.<sup>28</sup>
29. The complex nature of the system for members of the public to make complaints about the police was highlighted in the report as being an issue. It states that

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<sup>24</sup> Ibid, page 59.

<sup>25</sup> Ibid, page 59.

<sup>26</sup> Ibid, page 59.

<sup>27</sup> The Rt. Hon. Dame Elish Angiolini DBE KC (2019) *Independent Review of Complaints Handling, Investigations and Misconduct Issues in Relation to Policing — Preliminary Report*, pages 10-11 [

<sup>28</sup> Ibid, page 9.

there “is a need to simplify and streamline systems to make it as easy as possible for members of the public to navigate this opaque landscape and as easy as possible for them to access and understand information on how to make a complaint.”<sup>29</sup>

30. Dame Elish referred to the Justice Committee’s post-legislative scrutiny report and highlighted its recommendation that “Police Scotland review its complaint handling processes to ensure that it is able to provide data on how it categorises and investigates complaints, and that the SPA review its oversight and audit processes to ensure that they can effectively determine whether Police Scotland’s complaints handling processes are being implemented correctly.” Dame Elish supports this recommendation.<sup>30</sup>
31. The oral evidence heard by the Committee regarding the suggested mis-categorisation of complaints by Police Scotland was also referred to by Dame Elish, stating that the suggestions were “a matter of serious concern”.<sup>31</sup>
32. The preliminary report considered a number of areas regarding Police Scotland’s role in the complaints process. These included independent investigations; post-incident conferral; the role of a constable to assist in the investigation of a death or serious incident; officer support and staff welfare; capturing best evidence and reducing complaints; and support and liaison for members of the public. A total of 14 recommendations were made in relation to Police Scotland,<sup>32</sup> relating to:
  - the **capability of line managers** and providing adequate training;
  - the potential to **employ more non-police officer support staff** in the PSD;
  - the **appropriate scrutiny of complaints**, particularly with regard to grievances, to avoid inappropriate elevation;
  - having **meaningful internal and external audits** for front-line resolution of complaints;
  - **making officers aware** that they are the subject of a complaint, if appropriate, as early as possible;
  - **granting the PIRC access to Police Scotland’s computer system** for the purposes of the contemporaneous auditing of complaints;
  - the **streamlining of systems** to help members of the public access and understand information about making a complaint;

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<sup>29</sup> Ibid, page 23.

<sup>30</sup> Ibid, page 26.

<sup>31</sup> Ibid, page 26.

<sup>32</sup> A full list of these, the responses and the actions taken are included at Annex A and Annex

- encouraging the **appropriate use of mediation** and grievance procedures;
- **training in mediation** and customer handling;
- the acceleration of the plans to **expand the use of body-worn video** technology;
- **reflecting on the culture of the service** and addressing any long-standing issues;
- considering amending legislation to include a **provision to deal with vexatious complainers**;
- **putting beyond doubt the assumption of co-operation** in primary legislation; and
- where necessary and proportionate, granting the PIRC the **power to compel police officers to attend** an interview within a reasonable timescale.

33. The **role of the Scottish Police Authority** in the complaints process was also considered. This included the SPA's governance and decision-making regarding complaints; preliminary assessments of alleged misconduct; and misconduct proceedings. The recommendations<sup>33</sup> made in relation to the SPA relate to:

- the **prioritisation of complaints against senior officers**;
- the **consolidation and broadening of training** for complaints and conduct officers;
- the **clarification and expansion of the options available** to the SPA when a senior officer is under investigation in order to provide alternatives to suspension; and
- government considering **amending the conduct regulations regarding senior officers** to consider whether an allegation is made anonymously, is specific in time and location or whether it appears to be vexatious or malicious.

34. Another key area highlighted in the report was the **role of the Police Investigations and Review Commissioner**. This included the functions of the PIRC; accountability; issues around access to Police Scotland's criminal history system; confidentiality and transparency; the complaint handling review team and relationships within the PIRC organisation; PIRC training; and PIRC culture.<sup>34</sup> The recommendations made in relation to the PIRC<sup>35</sup> relate to:

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<sup>33</sup> A full list of these, the responses and the actions taken are included at Annex A and Annex B

<sup>34</sup> Ibid, pages 67 to 84.

<sup>35</sup> A full list of these, the responses and the actions taken are included at Annex A and Annex B

- considering **creating some measure of regional presence** to enhance the capacity to respond immediately to the most serious incidents;
- gaining the support of a **new statutory board of members** to scrutinise the work of the organisation, review the performance of the Commissioner, and offer advice and expertise;
- giving the Commissioner a **statutory power to make recommendations** in addition to the existing powers to direct reconsideration of complaints. The corollary to that would be a statutory duty on the Chief Constable to comply with recommendations unless there are overriding reasons for not doing so, and an obligation on the PSD to report progress to the PIRC;
- building into the PIRC structure **legal support and advice capacity**;
- replacing former police officers upon retirement with **non-police officers** and recruiting non-police officers to the most senior posts; and
- instigating a **management review** to be conducted by an independent expert to ensure that the PIRC has the appropriate leadership, skills and culture to carry out its functions and to examine how interactions with other stakeholders can be improved.

35. Dame Elish also considers the **role of the Crown Office and Procurator Fiscal Service (COPFS)**. She emphasised, though, that this section of the report should be read in the context of the review’s terms of reference, which state, “Whilst the Review will encompass the investigation of criminal allegations against the police, it will not address the separate role of the Lord Advocate in investigating criminal complaints against the police”.<sup>36</sup>

36. The report outlines the role of the Lord Advocate and refers to the specialist division within COPFS: the Criminal Allegations Against Police Division (CAAP-D). It states that, “One of the emerging themes from the evidence to the Review is that delays at various stages of the principal organisations’ processes are inimical to the effectiveness and efficiency of the arrangements.”<sup>37</sup>

37. Dame Elish suggests that there should be a collective effort on the part of all the principal organisations to reduce delays in the system and that, in order to address such delays, the COPFS may wish to consider whether there is a case for increasing the resources available to CAAP-D. She acknowledges that, since the review commenced, additional resources were indeed allocated to CAAP-D.<sup>38</sup>

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<sup>36</sup> The Rt. Hon. Dame Elish Angiolini DBE KC (2019) *Independent Review of Complaints Handling, Investigations and Misconduct Issues in Relation to Policing — Preliminary Report* page 87.

<sup>37</sup> *Ibid*, page 89.

<sup>38</sup> *Ibid*, page 89.

38. The report mentions a potential issue with the **reporting of off-duty criminality to the COPFS by Police Scotland**. Dame Elish states that there is “merit in adjusting the reporting arrangements so that cases involving allegations of criminality against off-duty police officers are reported simultaneously to both the local Procurator Fiscal and to CAAP-D. Such an arrangement would ensure that CAAP-D ... can have the opportunity to discuss with the local Procurator Fiscal how the allegation will be investigated.”<sup>39</sup>
39. Dame Elish goes on to say that the COPFS may wish to consider whether the Lord Advocate’s guidelines on the investigation of complaints against the police should be updated to take into account the new police structures and the PIRC.<sup>40</sup>
40. The report is critical about the **interactions, relationships and culture between the four principal organisations: Police Scotland, the SPA, the PIRC and the COPFS**. It is stated that, “certain aspects of those relationships are sub-optimal, are characterised by an absence of constructive engagement and coloured by a tone of cynicism.”<sup>41</sup> It goes on to say that, “Better liaison at every level of interaction is needed to increase understanding and to reduce the unnecessary tension evident over the first few years of new structures.”<sup>42</sup>
41. Dame Elish acknowledges and welcomes the establishment of a mechanism for senior representatives of each of the organisations to get together in an attempt to address some of the problems that have arisen. She states that the existing memorandums of understanding between the organisations need to be updated and expanded. In addition, she sees “huge potential benefit” in the creation of a new four-way memorandum of understanding “based on a common purpose and shared objectives”. She then lists seven headings that she believes should be included in such a document:
- increasing public confidence and satisfaction with service;
  - ensuring consistent practice;
  - dealing effectively and expeditiously with complaints to reduce delays;
  - increasing public awareness and understanding;
  - improving communication with the public around progress;
  - fostering proactive co-operation between organisations; and
  - sharing information.<sup>43</sup>

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<sup>39</sup> Ibid, page 90.

<sup>40</sup> Ibid, page 90.

<sup>41</sup> Ibid, page 91.

<sup>42</sup> Ibid, page 91.

<sup>43</sup> Ibid, pages 91 to 93.

42. The report highlights serious issues with the current set of **guidance** in operation within and across the main agencies. It is described as, “piecemeal, elderly and incomplete and in some significant respects is inconsistent in approach.” Dame Elish recommends “the immediate establishment of a senior cross-agency joint Working Group involving the SPA, Police Scotland and the PIRC to develop appropriate and up-to-date guidance.”<sup>44</sup>
43. The **auditing** arrangements of the various organisations involved in complaints handling is referred to in the report. More co-ordination between the bodies is recommended: all the audit arrangements, including regular dip-sampling, designed to identify poor practice, good practice and emerging trends should be prioritised and co-ordinated to support the common objective of improving standards and service to the public.<sup>45</sup>
44. **Jurisdictional issues**, particularly with regard to **former officers**, are mentioned in the report. Dame Elish refers to the fact that, currently, “an officer who is alleged to have been responsible for a wrong and expects to be subject to a finding of misconduct or gross misconduct, can simply resign and bring all those proceedings to a halt.” She goes on to refer to the case for adopting “Barred and Advisory Lists”, similar to those that exist in England and Wales.<sup>46</sup>
45. An issue was also raised about the definition of “**a person serving with the police**”. The phrase is said to have caused ambiguity over its meaning: “The moot point is whether this should be interpreted as being a person serving at the time of the current investigation, or a person serving at the time of the act or omission (but since retired). There has also been uncertainty over whether ‘person serving with the police’ means a police officer when he/she is off duty, or a police officer only if he/she is on duty.”<sup>47</sup> Differences in the procedures for dealing with officers of different rank was also mentioned as contributing to jurisdictional issues.<sup>48</sup>
46. Dame Elish states that jurisdictional issues will be examined in greater depth in the final report. However, two recommendations on the matter were made in this interim report:
- the Scottish Government should **introduce Barred and Advisory lists** and should engage with the UK Government to ensure compatibility and learn from their experience; and
  - the Scottish Government should **amend the relevant provisions at the earliest opportunity to put beyond doubt the definition of a “person serving with the police”**.<sup>49</sup>

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<sup>44</sup> Ibid, page 94.

<sup>45</sup> Ibid, page 100.

<sup>46</sup> Ibid, page 107.

<sup>47</sup> Ibid, pages 107 and 108.

<sup>48</sup> Ibid, page 109.

<sup>49</sup> Ibid, page 111.

47. Definitions were again highlighted as an issue with regard to the terms “**relevant complaint**” and “**member of the public**”. Evidence suggested that the policy intention of the Police, Public Order and Criminal Justice (Scotland) Act 2006 should be made clear as regards whether police officers should be able to make relevant complaints. Dame Elish recommended that the Scottish Government should consider the case for amending the legislation to put beyond doubt the definition of a member of the public who may make a relevant complaint.”<sup>50</sup>
48. Dame Elish’s interim report made 30 recommendations (a full list of these and the responses to/actions taken are included at Annex A and Annex B).

### **Independent Review of Complaints Handling, Investigations and Misconduct Issues in Relation to Policing - Final Report**

49. Dame Elish Angiolini published her final report on 11 November 2020.<sup>51</sup> The report states that it “presents a further set of wide-ranging recommendations and observations. It seeks to ensure that the future accessibility and effectiveness, culture, powers, obligations, structures, legislation, regulations, guidance and practice are all fit for a diverse and forward-looking community in Scotland which strives to secure the human rights of all.”<sup>52</sup>
50. As with the preliminary report, evidence for this report was taken from a number of sources, including members of the public, focus groups representing ethnically diverse communities, police officers from the LGBTI community, and Black, Asian and minority ethnic officers and those representing women officers. Senior journalists also took part in a small focus group. In addition, large groups of police officers from junior and senior ranks as well as the Scottish Police Federation gave evidence. Dame Elish also met with senior police representatives from the Republic of Ireland, Northern Ireland and England, and the heads of the independent bodies established to investigate complaints against the police in those countries.<sup>53</sup>
51. The first recommendation in this report relates to a **code of ethics**. It was pointed out that Police Scotland’s code of ethics does not have any statutory basis. In line with the Scottish Parliament Justice Committee’s recommendation from its post-legislative scrutiny of the 2012 Act, Dame Elish believes that the code should have a basis in statute. It was highlighted that England, Wales and Northern Ireland each has in place a statutory code of ethics for policing. The recommendation is that “Police Scotland’s Code of Ethics should be given a basis in statute. The Scottish Police Authority and the Chief Constable should

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<sup>50</sup> Ibid, pages 111 and 112.

<sup>51</sup> The Rt. Hon. Dame Elish Angiolini DBE KC (2020) *Independent Review of Complaints Handling, Investigations and Misconduct Issues in Relation to Policing – Final Report*

<sup>52</sup> Ibid, page 10.

<sup>53</sup> Ibid, page 11.

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.”<sup>54</sup>

52. As noted in the preliminary report, Dame Elish had expressed “serious concern” regarding evidence given to the Justice Committee that suggested that there were issues with the **mis-categorisation of complaints**, including allegations of assault by police officers being wrongly categorised as excessive force. Dame Elish points out that allegations of excessive force or assault engage Article 3 of the European Convention on Human Rights.<sup>55</sup>
53. The report referred to a review that had been carried out of all the “excessive force” categorised cases of complaints made in a defined time frame. The results of the review were shared with Dame Elish, who believes that such a review should be repeated regularly.<sup>56</sup> The following recommendation was made: “The Criminal Allegations Against Police Division (CAAP-D) of COPFS 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.”<sup>57</sup>
54. As with the preliminary report, the final report considered a number of areas regarding **Police Scotland’s role in the complaints process**. These included triage; early intervention; grievance procedures; supervisory ratios and promotion; post-incident conferral; malicious, vexatious or frivolous complaints; and anonymous complaints.<sup>58</sup> The recommendations<sup>59</sup> relate to:
- the **actions to be taken by police officers who are involved in a death in custody or serious incident**, whether as principal officers or witnesses to the incident;
  - the **identification of five-year trends** in the quarterly Police Scotland performance report to the SPA Complaints and Conduct Committee;
  - Police Scotland and the SPA considering **expanding the collection of diversity data** and the publication of information in order to enhance their understanding and public understanding of attitudes and concerns in different communities;
  - the **provision of comprehensive induction training** and regular refresher development opportunities for all officers and support staff in the Professional Standards Department;

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<sup>54</sup> Ibid, page 58.

<sup>55</sup> Ibid, page 64.

<sup>56</sup> Ibid, page 66.

<sup>57</sup> Ibid, page 67.

<sup>58</sup> Ibid, pages 81 to 122.

<sup>59</sup> A full list of these, the responses and the actions taken are included at Annex A and Annex B

- the carrying out of the **next follow-up audit of the complaint-handling process or audit of front-line resolution by the PIRC**, as an independent third party;
- the amendment of the relevant provisions of the Police, Public Order and Criminal Justice (Scotland) Act 2006 to **put beyond doubt the definition of a “person serving with the police”**;
- the carrying out of **all front-line resolution by the Professional Standards Department**;
- the amendment of the 2012 Act to include an **explicit duty of candour** on the police to co-operate fully with all investigations into allegations against its officers;
- the creation of **sufficient capacity for management**, coaching and mentoring duties through the consideration of the workload of the sergeant rank at the front line and the supervisory ratios of sergeants to constables;
- consulting on a **statutory duty of co-operation for constables to assist** during investigations, inquiries and formal proceedings; and
- the consideration by the Scottish Government of granting the PIRC a **legislative power that would allow it to access Police Scotland’s computer system** to enable contemporaneous audit.<sup>60</sup>

55. The theme of **Policing Culture** was given its own chapter in the final report. The areas considered were culture, conduct and complaints, and leadership and management culture.<sup>61</sup>

56. Dame Elish points out that Scotland’s “distinctive policing culture derives from the historical context within which Scottish policing has operated”. She goes on to state, “The police service has always been structured around a command and control hierarchy, strict discipline, adherence to lawful instructions from a senior rank and rules that are often set out in statute. As a result, the culture is formal, deferential and respectful of rank.”<sup>62</sup>

57. One recommendation was made on this topic: Police Scotland’s Executive team should consider in depth and review the criteria and competencies that it uses to assess police officers’ readiness for promotion.<sup>63</sup>

58. **Complaints in the context of inclusion, diversity and discrimination** was an area that was considered in great detail in the final report. This included third-party reporting; public confidence; recruitment and retention of officers and staff;

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<sup>60</sup> The Rt. Hon. Dame Elish Angiolini DBE KC (2020) *Independent Review of Complaints Handling, Investigations and Misconduct Issues in Relation to Policing — Final Report*, pages 123 and 124.

<sup>61</sup> *Ibid*, pages 125 to 129.

<sup>62</sup> *Ibid* pages 125 and 126.

<sup>63</sup> *Ibid*, page 129.

training; part-time and flexible working; and Supporting Ethnic Minority Police employees for Equality in Race (SEMPER) proposal for a fairer, more inclusive Police Service.<sup>64</sup> The recommendations<sup>65</sup> relate to:

- Police Scotland conducting **research with staff to enhance understanding of the experience of minority groups** in the service;
- implementing, where possible, **the SEMPER Scotland proposal regarding the diversity of panel members** for disciplinary hearings;
- **enhancing support** for anyone in Police Scotland who is the victim of internal or external discrimination;
- **initiating a fundamental review of equality matters** by an independent organisation; and
- **developing Police Scotland’s diversity data collection and analysis** to inform a proper understanding of issues related to discrimination.<sup>66</sup>

59. **Whistle-blowing by police officers and support staff** was considered by Dame Elish. This covered aspects such as the evidence given to the Scottish Parliament Justice Committee on the subject; Police Scotland’s whistle-blowing guidance and arrangements; background information on Protect (Whistleblowing Advice) Ltd; and evidence from the PIRC.<sup>67</sup> Dame Elish recommended<sup>68</sup> that:

- **The Police Investigations and Review Commissioner should be added to the list of prescribed persons** in The Public Interest Disclosure (Prescribed Persons) Order 2014 so that people working in Police Scotland and in the Scottish Police Authority are able to raise their concerns with an independent third-party police oversight organisation; and
- Whistle-blowing can be an indicator of what is happening within an organisation and therefore Police Scotland should **review and audit its whistle-blowing arrangements and data** on a regular basis.<sup>69</sup>

60. The final report expands on the preliminary report’s findings and recommendations on the topic of **former police officers and barred and advisory lists**.<sup>70</sup> Three further recommendations were made:

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<sup>64</sup> Ibid, pages 130 to 157.

<sup>65</sup> A full list of recommendations, the responses and the actions taken are included at Annex A and Annex B

<sup>66</sup> Ibid, page 157.

<sup>67</sup> The Rt. Hon. Dame Elish Angiolini DBE KC (2020) *Independent Review of Complaints Handling, Investigations and Misconduct Issues in Relation to Policing — Final Report*, pages 158 to 166.

<sup>68</sup> A full list of recommendations, the responses and the actions taken are included at Annex A and Annex B

<sup>69</sup> The Rt. Hon. Dame Elish Angiolini DBE KC (2020) *Independent Review of Complaints Handling, Investigations and Misconduct Issues in Relation to Policing — Final Report*, page 167.

<sup>70</sup> Ibid, pages 168 to 174.

- the Scottish Government should develop **proposals for primary legislation that would allow 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;
- in gross misconduct cases, for all ranks, the PIRC should **determine if it is reasonable and proportionate to pursue disciplinary proceedings in relation to former police officers after the twelve-month period**, considering the seriousness of the alleged misconduct, the impact of the allegation on public confidence, and the public interest; and
- the Scottish Government should **engage with the UK Government with a view to adopting Police Barred and Advisory Lists**, to learn from experience south of the border and to ensure compatibility and reciprocal arrangements across jurisdictions.<sup>71</sup>

61. Again, in relation to the **Scottish Police Authority's role in the complaints process**, the final report expands on the recommendations that were outlined in the preliminary report. The areas considered were SPA governance and decision-making in relation to complaints; preliminary assessment of alleged misconduct; misconduct proceedings, police appeals tribunals and independent legally qualified chairs for gross misconduct hearings; and the SPA Complaints and Conduct Committee.<sup>72</sup> The eight recommendations made relate to:

- **transferring the statutory preliminary assessment function from the SPA to the PIRC** and the carrying out of the preliminary assessment by the Commissioner or a Deputy Commissioner;
- **collaboration between the PIRC and the SPA** to agree and embed a proportionate and effective approach to preliminary assessment;
- **appointing an independent legally qualified chairperson**, an independent lay member and a policing member for gross misconduct hearings for all ranks;
- **having one route of appeal** — a Police Appeals Tribunal — against a determination of a gross misconduct hearing or the disciplinary action to be taken;
- **holding Police Scotland to account** by the SPA Complaints and Conduct Committee when there are delays in investigations into complaints and misconduct;
- **publishing SPA Complaints and Conduct Committee minutes recording more of its substantive discussions**, and considering

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<sup>71</sup> Ibid, page 175.

<sup>72</sup> Ibid, pages 176 to 196.

whether some content of private sessions could be included in the minutes;

- including the **SPA Complaints and Conduct Committee’s scrutiny function** in the SPA annual report; and
- considering the potential role of the SPA Complaints and Conduct Committee or the Policing Performance Committee in relation to the **discussion of ethical issues in policing in Scotland**.<sup>73</sup>

62. The **role of the Police Investigations and Review Commissioner** was a key area considered by the Justice Committee, in the preliminary report and, again, in the final report. Issues considered include the investigations of allegations of breaches of rights under the European Convention on Human Rights (ECHR); structure and staffing; and PIRC training, culture and performance.<sup>74</sup> The recommendations<sup>75</sup> relate to:

- amending legislation to **redesignate the PIRC as a Commission**;
- **appointing the Commissioner** and who that person should be accountable to;
- **highlighting more clearly on the PIRC website** how members of the public can escalate a complaint;
- **granting a statutory power for the PIRC to “call in”** an investigation of a complaint by Police Scotland in certain circumstances;
- **granting an additional power for the PIRC to investigate a current practice or policy** of Police Scotland if deemed to be in the public interest to do so;
- the **PIRC taking responsibility for the key stages of senior officer misconduct** proceedings;
- **granting a new statutory power to enable the PIRC to present a case at a senior officer gross misconduct hearing** where the case would be determined by a three-person panel comprising an independent legally qualified chair, a layperson and an expert in senior policing;
- **granting a power to the PIRC to recommend the suspension of a senior officer in certain circumstances** in the case of a misconduct investigation;

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<sup>73</sup> Ibid, 197 and 198.

<sup>74</sup> Ibid, pages 205 to 250.

<sup>75</sup> A full list of recommendations, the responses and the actions taken are included at Annex A and Annex B

- conducting an **annual audit of triage** within the PSD of public complaints against the police to ensure the appropriate processes were followed;
- **keeping under review the case for all complaints being received by an independent** police complaints body;
- the PIRC **ensuring that discrimination issues are considered** as an integral part of its work; and
- the **publication by the PIRC of its performance** against set targets for complaint-handling reviews and investigations.<sup>76</sup>

63. As in her preliminary report, Dame Elish, in this final report, refers to the **role of the Crown Office and Procurator Fiscal Service** and the **role of the Lord Advocate**. Again, though, she emphasises that the terms of reference state that the review will not address the separate role of the Lord Advocate in investigating criminal complaints against the police. The final report considers reporting of off-duty criminality to the COPFS by Police Scotland; and direct reporting of criminality to COPFS.<sup>77</sup> The following two recommendations were made:

- 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 made more accessible** to the public by COPFS, by Police Scotland and by the PIRC; and
- where a complaint alleges a **breach of Article 3**, 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.<sup>78</sup>

64. The final report also considers a number of other aspects that are linked to the complaints-handling process. These include issues around transparency, confidentiality and the role of the media; interactions between the four principal organisations, relationships and culture; matters concerning accessibility and communication; evidence from other jurisdictions; guidance on complaints and conduct; audit; training, continuing professional development and learning culture, custody and complaints arising from deaths in custody or following police contact; officer and support staff welfare; time limits; and cross-border jurisdictional issues.

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<sup>76</sup> The Rt. Hon. Dame Elish Angiolini DBE KC (2020) *Independent Review of Complaints Handling, Investigations and Misconduct Issues in Relation to Policing – Final Report* pages 251 to 253.

<sup>77</sup> *Ibid*, pages 268 to 274.

<sup>78</sup> *Ibid*, page 275.

65. Dame Elish's final report makes a total of 81 recommendations. It concludes by listing the legislation that would need to be amended to give effect to these recommendations:

- the Police and Fire Reform (Scotland) Act 2012;
- the Police, Public Order and Criminal Justice (Scotland) Act 2006;
- the Police Service of Scotland (Conduct) Regulations 2014;
- the Police Service of Scotland (Senior Officers) (Conduct) Regulations 2013;
- the Police Investigations and Review Commissioner (Investigations Procedure, Serious Incidents and Specified Weapons) Regulations 2013;
- the Police Service of Scotland Regulations 2013;
- the Police Service of Scotland (Special Constables) Regulations 2013;
- the Police Appeals Tribunal (Scotland) Rules 2013;
- the Public Interest Disclosure (Prescribed Persons) Order 2014 (reserved legislation); and
- the Police Barred List and Police Advisory List Regulations 2017 (reserved legislation).<sup>79</sup>

### **Joint Scottish Government & Crown Office Response to the Report on Complaints Handling, Investigations and Misconduct Issues in Relation to Policing in Scotland**

66. On 29 June 2021, the then Cabinet Secretary for Justice, Humza Yousaf, and the then Lord Advocate, James Wolffe KC, published a joint response to Dame Elish Angiolini's preliminary and final reports. In this response, they also acknowledged the Justice Committee's work in its post-legislative scrutiny report on the Police and Fire Reform (Scotland) Act 2012.<sup>80</sup>

67. The response states that it is the intention of the Scottish Government and the Crown Office to accept the majority of Dame Elish's recommendations, many of which, it points out, align with the recommendations of the Justice Committee's review.<sup>81</sup>

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<sup>79</sup> Ibid, page 433.

<sup>80</sup> Scottish Government (2021) *Joint Scottish Government & Crown Office Response to the Report on Complaints Handling, Investigations and Misconduct Issues in Relation to Policing in Scotland* [online] Available at: <https://www.gov.scot/publications/joint-scottish-government-crown-office-response-final-report-complaints-handling-investigations-misconduct-issues-relation-policing-scotland/documents/>

<sup>81</sup> Ibid, page 1.

68. It then proceeds to outline the plans for managing implementation, and provides an overview of the governance and assurance mechanisms to be put in place. Further, it makes proposals for a thematic reporting framework and details progress in specific areas under the themed headings.
69. A number of groups were established as part of the governance structures for oversight and assurance. These include a ministerial group for police complaints and investigations, a strategic oversight group for police complaints and investigations, and a practitioner working group for police complaints and investigations. A reporting framework was established with the aim of sharing information on progress in “a way that is meaningful and accessible to a range of audiences.”<sup>82</sup>
70. The response outlines a number of themes to be used in the reporting framework. They are listed under the following headings:
- rights and ethics;
  - jurisdiction and powers;
  - governance and accountability;
  - transparency and accessibility;
  - equality, diversity and inclusion;
  - conduct and standards;
  - training and HR;
  - efficiency and effectiveness; and
  - audit and review.<sup>83</sup>

## **Reporting Framework — Thematic Reports**

71. As of May 2023, five thematic reports were published. These outline the progress and key developments around the non-legislative recommendations from Dame Elish’s reviews and the legislative recommendations that there is an intention to consult on. The first report was published in June 2021, the second in December 2021, the third in June 2022, the fourth in December 2022 and the fifth was published in May 2023. Table 3 (overleaf) details the progress of the non-legislative recommendations.<sup>84</sup>

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<sup>82</sup> Ibid, page 5.

<sup>83</sup> Ibid, page 5.

<sup>84</sup> Scottish Government [online] Available at <https://www.gov.scot/policies/police/complaints-investigations-and-misconduct/>

**Table 3: Progress of non-legislative recommendations**

Thematic Report	Date Published	Recommendations		
		Completed	In Progress	Under Review
1	June 2021	18 (25%)	53 (74%)	1 (1%)
2	December 2021	34 (47%)	37 (51%)	1 (1%)
3	June 2022	44 (61%)	27 (38%)	1 (1%)
4	December 2022	55 (76%)	16 (22%)	1 (1%)
5	May 2023	58 (81%)	12 (17%)	2 (3%)

\*Percentages may not amount to 100 due to rounding.

72. Each thematic report lists the recommendations from Dame Elish’s reports under the themes as outlined above. They also note the organisation with responsibility for addressing each recommendation. Finally, they provide a progress update for each recommendation.
73. Of the 72 non-legislative recommendations made by Dame Elish 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. The first one being kept under review relates to a suggestion regarding an option for all complaints being received by an independent police-complaints body. The outcome of this will be dependent on the potential improvements of the other recommendations in the reports. The second one being kept under review relates to a suggestion that the Scottish Government consider which of the findings and recommendations made in Dame Elish’s Independent Review of Deaths and Serious Incidents in Police Custody in England and Wales are also directly relevant in the Scottish context.

## **Public Consultation**

74. A public consultation on the suggested legislative changes that were proposed by Dame Elish was announced by the Scottish Government and took place from 24 May 2022 until 16 August 2022.
75. The consultation does not explicitly refer to some of the recommendations made by the Justice Committee in its post-legislative scrutiny report. Nonetheless, most can be linked to Dame Elish Angiolini’s recommendations. The Scottish Government’s consultation includes all of the recommendations in Dame Elish Angiolini’s preliminary and final reports, and these are divided into legislative and non-legislative proposals in the consultation. Further detail is provided in Annexes A and B.

76. The consultation covered a number of themes and a number of specific matters under each theme. Examples of these are outlined below. The list is not exhaustive. (Details of the responses are included in Annex B).

- **Section 1: Rights and Ethics**
  - Code of ethics;
  - Duty of candour;
  - Duty of co-operation; and
  - PIRC power to compel officers to interview.
  
- **Section 2: Governance, Jurisdiction and Powers**
  - Changes to PIRC structure;
  - PIRC to be accountable to the Scottish Parliament for non-criminal matters;
  - PIRC powers to investigate Police Scotland practices or policies; and
  - PIRC power to make recommendations and corresponding duty on the Chief Constable to comply.
  
- **Section 3: Conduct and Standards**
  - Gross misconduct proceedings to be held in public;
  - Protection of vulnerable witnesses in gross misconduct proceedings;
  - Outcome of gross misconduct proceedings to be made public; and
  - Matters to be considered by a gross misconduct hearing.
  
- **Section 4: Liability for Unlawful Conduct**
  - Liability for unlawful conduct.<sup>85</sup>

77. The consultation received 55 responses, 33 of which came from individuals and 22 from individuals on behalf of organisations. Overall, the responses to the consultation were broadly in favour of the recommendations.

78. Respondents generally expressed support for recommendations that would promote greater transparency and impartiality in policing. This included support for members of the public to be included in any oversight, investigation or review

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<sup>85</sup> Scottish Government (2022) *Police complaints, investigations and misconduct - legislation proposals: consultation analysis summary* [online] Available at: <https://www.gov.scot/publications/police-complaints-investigations-misconduct-summary-analysis-consultation-legislation/>

bodies, while excluding those with a policing background, in order to improve impartiality and public confidence in the processes. There was also broad consensus for clarifying police responsibilities and standards, such as with a statutory code of ethics and duties of candour and co-operation.<sup>86</sup>

79. The level of agreement among respondents was more nuanced for questions relating to practical steps to implement the recommendations. For example, there was relatively less consensus on which organisation should review and audit police complaints, processes and practices.<sup>87</sup>
80. Respondents generally agreed with the recommendations regarding rights and ethics, with broad support for a statutory requirement for Police Scotland to have a code of ethics, which could be amended if necessary.<sup>88</sup>
81. There was general agreement with the recommendations regarding changes to the PIRC structure. Most respondents agreed that the PIRC should be redesignated as a Commission, with some respondents suggesting that this would improve the impartiality and status of the PIRC.
82. There was also agreement that two Deputy Commissioners should be appointed, with some respondents suggesting that they should be required to have legal knowledge. In the interest of maintaining impartiality, several respondents suggested that former police officers and staff should be excluded from being appointed as Deputy Commissioners. Most respondents agreed that a statutory board should be created, although views among organisations were mixed.<sup>89</sup>
83. There was general agreement with the recommendations regarding conduct and standards. A majority of respondents agreed that gross misconduct hearings should be held in public and should be applicable for all ranks of officers to promote transparency and public confidence. However, this view tended to be shared among individuals, while there was less consensus among organisations.
84. Just over half of respondents suggested that the Chair of the gross misconduct hearing should have discretion in restricting attendance as they see appropriate, such as to protect vulnerable victims and to maintain a fair and unobstructed hearings process. In addition, there was broad consensus that evidence provided by vulnerable witnesses should be heard in private to ensure their protection.<sup>90</sup>
85. Finally, there was agreement with the recommendation on liability for unlawful conduct. There was consensus among respondents that liability for unlawful

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<sup>86</sup> Scottish Government (2022) *Police complaints, investigations and misconduct - legislation proposals: consultation analysis* [online] Available at: <https://www.gov.scot/publications/police-complaints-investigations-misconduct-analysis-consultation-legislation/>

<sup>87</sup> Ibid.

<sup>88</sup> Ibid.

<sup>89</sup> Ibid.

<sup>90</sup> Ibid.

conduct should be extended to cover the rank of Chief Constable. Respondents argued this would ensure that victims are protected and that the Chief Constable would be treated as equally as any other officer.

## **Approaches to police complaints elsewhere**

86. Police forces have a unique role in maintaining law and order, and they have substantive powers to ensure public safety. As such, robust oversight of the police provides necessary checks and balances, including through an ombudsman-type body handling citizens' complaints. The International Ombudsman Institute defines the ombudsman institution as a body offering:<sup>91</sup>

*...independent and objective consideration of complaints, aimed at correcting injustices caused to an individual as a result of maladministration.*

87. Across jurisdictions, the majority of people with a grievance against the police do not tend to formalise it as a complaint. Commonly, where formal complaints are made, they are not upheld, suggesting that most police officers can expect no action in relation to allegations against them.

## **Approaches**

88. In response to recurring instances of misconduct and failing internal control mechanisms, many jurisdictions have established police oversight bodies. The literature identifies three broad approaches or models for handling police complaints, although there is likely to be some overlap between the models. These are identified in Table 4 overleaf.

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<sup>91</sup> International Ombudsman Institute (2021) *International Ombudsman Institute By-Laws* Dublin: International Ombudsman Institute

**Table 4: Main models for handling police complaints internationally<sup>92</sup>**

Model	Overview	Advantages	Disadvantages
<b>Internal affairs</b>	<ul style="list-style-type: none"> <li>• Police have almost exclusive responsibility for handling complaints</li> <li>• Dominant model in the common law world until the 1970s</li> </ul>	<ul style="list-style-type: none"> <li>• It may be beneficial for police to take responsibility for upholding standards</li> <li>• Police can employ their specialist skills and resources</li> </ul>	<ul style="list-style-type: none"> <li>• Issues can include partiality; a lack of thoroughness; and even hostility to complainants</li> </ul>
<b>Civilian review</b>	<ul style="list-style-type: none"> <li>• Ranges from police investigating complaints with monitoring by an external body to fully independent bodies</li> <li>• Dominant model internationally</li> </ul>	<ul style="list-style-type: none"> <li>• Compromise between the internal affairs and civilian control model</li> </ul>	<ul style="list-style-type: none"> <li>• Concerns that it does not always deliver robust oversight</li> <li>• Perception that often too many complaints are left to police investigation</li> </ul>
<b>Civilian control</b>	<ul style="list-style-type: none"> <li>• Governing principle that police should not investigate complaints against their own</li> <li>• Rare internationally</li> </ul>	<ul style="list-style-type: none"> <li>• Avoids conflicts of interest and partiality</li> </ul>	<ul style="list-style-type: none"> <li>• Resource challenges</li> <li>• Lacks police investigative skills</li> <li>• May erode police responsibility to manage their own members and uphold standards</li> </ul>

89. It is evident that each model has its own strengths and weaknesses. Within the three models, individual oversight bodies vary widely in terms of their mandate, investigative powers and resources. Internationally, however, the trend has been to move away from internal models of investigation to approaches featuring civilian oversight, which is widely recognised as effective.<sup>93</sup>

### **Effectiveness and challenges**

90. Experience elsewhere shows that civilian bodies that oversee police conduct have generally received a positive reaction, even though their impact has often been limited and their investigation standards and independence have frequently been questioned.<sup>94</sup>

91. Indeed, frustration in relation to the legislative powers of civilian bodies in various jurisdictions, as well as in respect of their outputs, has resulted in them often

<sup>92</sup> Independent Broad-based Anti-corruption Commission Committee (2018) *Inquiry into the external oversight of police corruption and misconduct in Victoria* Parliament of Victoria

<sup>93</sup> Porter, L.E., Prenzler, T (2012) "Police oversight in the United Kingdom: The balance of independence and collaboration" *International Journal of Law, Crime and Justice* Vol. 40, pp. 152-171

<sup>94</sup> Moss, B. (2022) "Police oversight in Ireland: Who complains, who gains?" *Criminology and Criminal Justice* pp.1-20

being rebranded or abolished, or led to concerns for their future.<sup>95</sup> The literature frequently emphasises the importance of public confidence in the police oversight system, but notes that this is hard to achieve and maintain. Key issues include:

- lack of independent personnel;
- reliance on police investigation and resources;
- lack of rigour in investigations;
- police obstructionism; and
- resource constraints.

92. A key weakness affecting many police complaints models is a lack of independence. In part, this is attributed to a reliance on the recruitment of former police officers, often from the same force that they are investigating.
93. While former police officers bring valuable experience to the role, they may tend to view complaints from a police officer's perspective. Even when this is not the case, such investigators are likely to be viewed as biased in the police's favour. In addition, reliance on former police officers is not in line with optimal human rights practice.<sup>96</sup>
94. A further area of weakness common to many of the models is the investigation of many complaints by the same police force as the officers who are the subject of the complaint. Linked to this, a reliance on police resources to conduct investigations presents a further challenge.
95. The evidence points to insufficient rigour in many misconduct investigations, and some authors note that independent investigation does not necessarily imply robust investigation. This may include differential treatment of police officers in relation to the public; former police officer investigators being unlikely to challenge police narratives; police obstructionism; and closing investigations too quickly.

## **Complainants**

96. In Northern Ireland, England and Wales, most complainants to police oversight bodies are male, aged between 25 and 49, white, not in employment, and with lower levels of education. There is also an over-representation of people from an ethnic minority background. Meanwhile, research in North America finds that

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<sup>95</sup> Moss, B. (2022) "Police oversight in Ireland: Who complains, who gains?" *Criminology and Criminal Justice* pp.1-20

<sup>96</sup> Walsh, D.P.J. (2016) "Police Complaints Procedures in the United Kingdom and Ireland: Why are the reforms not working?" *European Police Science and Research Bulletin* pp. 48-57

unfavourable policing tends to mostly affect minority groupings and those in disadvantaged areas, as this is reflected in the nature of complaints.<sup>97</sup>

97. Most complainants are not punitive or vindictive, but want to be treated with fairness, communicate their concerns and improve police behaviour in the future.<sup>98</sup> A very small proportion of complaints are thought to be vexatious: such complaints are estimated to make up less than 1% of police complaints in Northern Ireland and Ireland.<sup>99</sup>
98. The rate of successful complaints tends to be low.<sup>100</sup> Citizen satisfaction in relation to police oversight is correlated with the oversight body's independence, as well as with timeliness, communication and perceived fairness.<sup>101</sup>

## Reforms

99. The literature shows that approaches to dealing with police complaints tend to evolve over time, particularly in response to concerns and criticism about their operation. Suggestions for further reform include:<sup>102</sup>
- **providing sufficient powers and resources** to conduct investigations as independently from the police as possible;
  - recruiting and training **more independent investigators**;
  - **phasing out former police officers**; and
  - **formal policy providing for coercive powers** when police cooperation is not forthcoming.
100. However, experience internationally highlights significant challenges in achieving and maintaining successful police reform. Context is important and must be considered when reviewing reforms in other jurisdictions.<sup>103</sup> The following paragraphs provide examples of approaches to police oversight in other jurisdictions.

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<sup>97</sup> Moss, B. (2022) "Police oversight in Ireland: Who complains, who gains?" *Criminology and Criminal Justice* pp.1-20

<sup>98</sup> Guittet, E., Vavoula, N., Tsoukala, A., Baylis, M. (2022) *Democratic Oversight of the Police* Brussels: European Parliament

<sup>99</sup> Moss, B. (2022) "Police oversight in Ireland: Who complains, who gains?" *Criminology and Criminal Justice* pp.1-20

<sup>100</sup> Walsh, D.P.J. (2016) "Police Complaints Procedures in the United Kingdom and Ireland: Why are the reforms not working?" *European Police Science and Research Bulletin* pp. 48-57

<sup>101</sup> Guittet, E., Vavoula, N., Tsoukala, A., Baylis, M. (2022) *Democratic Oversight of the Police* Brussels: European Parliament

<sup>102</sup> Walsh, D.P.J. (2016) "Police Complaints Procedures in the United Kingdom and Ireland: Why are the reforms not working?" *European Police Science and Research Bulletin* pp. 48-57

<sup>103</sup> McCulloch, J., Maguire, M. (2022) "Reforming police oversight in Victoria: lessons from Northern Ireland" *Current Issues in Criminal Justice* Vol. 34, No. 1, pp 38-57

## Australia: public sector commission approach

101. In many Australian states, jurisdiction to investigate police complaints was held by ombudsman offices in their first decade following establishment from the 1970s. This was later taken away and given to a specialist police complaints authority, such as the New South Wales Law Enforcement Conduct Commission, or to a more widely based anti-corruption commission, such as the Queensland Crime and Corruption Commission.<sup>104</sup>
102. At the federal level, the Commonwealth Ombudsman oversees Commonwealth and State/Territory law enforcement and integrity agencies' use of certain covert, coercive and intrusive powers.<sup>105</sup> The Ombudsman oversees the integrity of the Northern Territory Ombudsman, the Queensland Crime and Misconduct Commission, Tasmania's Ombudsman's Office and the Victorian Ombudsman.<sup>106</sup>

### Victoria

103. Victoria has a mixed civilian oversight system, whereby the police and an independent body share the handling and investigation of complaints. The Independent Broad-based Anti-corruption Commission (IBAC) investigates corruption across the public sector, as well as police complaints. This is in line with a trend in Australia towards replacing a separate police ombudsman model with a public sector commission.<sup>107</sup>
104. The IBAC is informed of most complaints against the police and monitors and reviews complaints and police investigations. It can also initiate and carry out its own investigations and has robust investigation powers, including the power to require people to give evidence and produce documents. The Commission can take over a police investigation and audit the police; and can recommend wider improvements and request a response.<sup>108</sup>
105. However, unlike other Australian jurisdictions, IBAC officers do not have the powers of police officers, and the organisation must refer cases back to the police where it has determined that criminal conduct has occurred. Where disciplinary action is required, it refers the case to another entity for action. IBAC has a relatively low complaint substantiation rate of 2%, and it does not conduct

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<sup>104</sup> McMillan, J. (2018) "The ombudsman in Australia: flourishing, expanding, diversifying, innovating" in Hertogh, M. and Kirkham, R. (2018) *Research Handbook on the Ombudsman* Cheltenham: Edward Elgar Publishing

<sup>105</sup> Commonwealth Ombudsman (2023) *Law enforcement and integrity oversight* [online] Available at: <https://www.ombudsman.gov.au/industry-and-agency-oversight/law-enforcement-integrity-oversight>

<sup>106</sup> Filstad, C., Gottschalk, P. (2011) "Performance evaluation of police oversight agencies" *Policing and society: an international journal of research and policy* Vol. 21, No. 1, pp. 96-109

<sup>107</sup> McCulloch, J., Maguire, M. (2022) "Reforming police oversight in Victoria: lessons from Northern Ireland" *Current Issues in Criminal Justice* Vol. 34, No. 1, pp 38-57

<sup>108</sup> Independent Broad-based Anti-corruption Commission Committee (2018) *Inquiry into the external oversight of police corruption and misconduct in Victoria* Parliament of Victoria

surveys with complainants to assess their levels of satisfaction with the service.<sup>109</sup>

106. The Commission only investigates around 2% of the allegations it receives, referring most to the police, including complaints of serious misconduct. Resourcing has been noted as an important ongoing issue in this regard.<sup>110</sup>
107. A number of scandals in Victoria have led to calls to reform the police oversight system. A 2018 Parliament of Victoria inquiry into the external oversight of police corruption and misconduct found significant opposition to the principle of police investigating other police officers. Many were also concerned about the implications of embedding a police oversight body within an anti-corruption body.<sup>111</sup>
108. The inquiry also heard concerns in relation to the use of unnecessarily complex and confusing definitions of misconduct, alongside gaps in coverage. It concluded that clear definitions of police misconduct are essential, particularly within the civilian review model where clear lines of demarcation between the responsibilities of police and oversight bodies respectively are needed. Its report recommended that there should be three categories of police wrongdoing:
  - **Customer service:** generally dealt with by police;
  - **Misconduct:** to be dealt with by IBAC or the police; and
  - **Serious misconduct:** to be dealt with by IBAC.

### **Whistle-blowing**

109. The IBAC may decide that a complaint is a public interest disclosure, providing the complainant with additional legal protections. Anyone can complain to the commission about police misconduct and public-sector corruption.<sup>112</sup>

### **England and Wales: Recent reforms**

110. Policing in England can be described as ‘policing by consent.’ This relates to Robert Peel’s principles of policing, a philosophy based on public cooperation with the police deriving from police ‘behaviour which secures and maintains for them the approval, respect and affection of the public’.<sup>113</sup>

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<sup>109</sup> McCulloch, J., Maguire, M. (2022) “Reforming police oversight in Victoria: lessons from Northern Ireland” *Current Issues in Criminal Justice* Vol. 34, No. 1, pp 38-57

<sup>110</sup> McCulloch, J., Maguire, M. (2022) “Reforming police oversight in Victoria: lessons from Northern Ireland” *Current Issues in Criminal Justice* Vol. 34, No. 1, pp 38-57

<sup>111</sup> Independent Broad-based Anti-corruption Commission Committee (2018) *Inquiry into the external oversight of police corruption and misconduct in Victoria* Parliament of Victoria

<sup>112</sup> IBAC (2023) What is a public interest disclosure [online] Available at: <https://www.ibac.vic.gov.au/what-public-interest-disclosure#panel3>

<sup>113</sup> Home Office (2012) *Definition of policing by consent* [online] Available at: <https://www.gov.uk/government/publications/policing-by-consent/definition-of-policing-by-consent>

111. As a result, well-functioning conduct and complaints systems are needed to maintain the trust on which the Peel principles created this balance between the police and the public.
112. A multi-member Independent Police Complaints Commission was established in England and Wales in 2002. However, many concerns were raised about its capacity to deliver confidence in police oversight. This included a 2013 report by the UK Parliament's Home Affairs Committee that concluded that the Commission was not yet capable of delivering the necessary objective scrutiny to inspire confidence that police powers would not be abused.<sup>114</sup>

### **Independent Office for Police Conduct (IOPC)**

113. In 2018, the Independent Office for Police Conduct (IOPC) replaced the Commission, following the Policing and Crime Act 2017. The Commission had requested these structural changes to take account of its expanded operations. Now, investigators work within regional teams under Regional Directors and senior leaders. The IOPC has a statutory duty to secure and maintain public confidence in the police-complaints system in England and Wales and to ensure that it is efficient and effective.
114. In England and Wales, the 43 police forces deal with the vast majority of complaints against police officers and staff. Police forces must refer the most serious cases to the IOPC (cases involving allegations of corruption; conduct aggravated by discrimination; death; and serious injury), regardless of whether a complaint has been made.<sup>115</sup> There have been concerns about the transparency of the process, with a lack of clear definitions for different types of misconduct.
115. The Policing and Crime Act 2017 provided for a number of other changes to police complaints, including additional powers for the IOPC that mostly took effect in 2020. The IOPC can launch investigations without a police referral and can present cases at misconduct hearings.
116. Police officers also have a new duty to fully cooperate with investigations, and complaints investigations should be completed within 12 months. Where investigations are not completed within this time, the IOPC or police force carrying out the inquiry must provide a written explanation to the local policing body and set out a plan for completing it.
117. However, there are concerns in relation to delays to investigations and a perceived lack of consequences in this regard. In 2020/2021, the IOPC completed 91% of investigations within 12 months, with 63% completed within nine months. The Home Affairs Committee noted that there are risks in setting time targets for evaluation, including an incentive to delay by those under investigation, but recommended that Government should continue a drive

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<sup>114</sup> Walsh, D.P.J. (2016) "Police Complaints Procedures in the United Kingdom and Ireland: Why are the reforms not working?" *European Police Science and Research Bulletin* pp. 48-57

<sup>115</sup> IOPC (2020) *Who we are* [online] Available at: <https://www.policeconduct.gov.uk/who-we-are>

towards timely investigation and consider whether stronger guidance was required.<sup>116</sup>

118. Once the IOPC has investigated a complaint, it produces an investigation report and a case decision-maker concludes whether the police officer or staff member has:<sup>117</sup>
- no case to answer;
  - a case to answer for misconduct or gross misconduct, and what form of disciplinary proceedings should be brought, if any; or
  - demonstrated unsatisfactory performance, and whether performance proceedings should be brought.
119. While police can make representations which the IOPC will consider, the IOPC makes the final decision as to whether a misconduct hearing should take place. There is a range of possible outcomes following a misconduct hearing, including misconduct not found; a reflective review process where no misconduct is found to learn from the case; no further action; warnings; reduction in rank; and dismissal.

### **Whistle-blowing**

120. The IOPC is a prescribed person under the Employment Rights Act 1996 for matters relating to the conduct of a person serving with the police or another law enforcement body under the IOPC's jurisdiction. The Police Reform Act 2002 sets out its powers to act on whistle-blowing reports and the IOPC operates a Report Line for police officers and staff to report concerns of wrongdoing that a criminal offence has been committed, or where there is evidence of conduct that would justify disciplinary proceedings.<sup>118</sup>
121. Whistle-blowing matters are handled differently to complaints made by members of the public. In particular, a person serving with the police would only have the rights of a complainant if they were off duty at the time of the alleged conduct, and if the subject of the complaint is a person who was under the direction and control of a different chief officer.

### **Super complaints**

122. A super-complaints process was established in November 2018 allowing designated public and charitable organisations to ask the IOPC, the College of

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<sup>116</sup> IOPC (2020) *Becoming the IOPC* [online] Available at: <https://www.policeconduct.gov.uk/becoming-iopc>

<sup>117</sup> IOPC (2020) IOPC independent investigations: Information for police officers, staff and their representatives [online] Available at: [https://www.policeconduct.gov.uk/sites/default/files/Documents/info-for-police/independent-investigations-information-for-police-officers-staff-and-their-representatives\\_IOPC\\_2020.pdf](https://www.policeconduct.gov.uk/sites/default/files/Documents/info-for-police/independent-investigations-information-for-police-officers-staff-and-their-representatives_IOPC_2020.pdf)

<sup>118</sup> IOPC (2020) Information for police officers and staff [online] Available at: <https://www.policeconduct.gov.uk/complaints-and-appeals/information-police-officers-and-staff>

Policing or Her Majesty's Inspectorate of Constabulary and Fire and Rescue Services to investigate alleged systemic issues affecting policing in England and Wales.<sup>119</sup>

123. There are 16 designated bodies, none of which represents complainants with disabilities. The system is to be reviewed as part of post-legislative scrutiny of the Policing and Crime Act 2017 and consideration will be given to expanding the list of designated bodies.

### **Home Affairs Committee Inquiry**

124. Following continuing disquiet in relation to police complaints, the Home Affairs Committee carried out an 18-month inquiry and published a report on police conduct and complaints in 2022. It welcomed the IOPC's decision to conduct thematic reviews on areas including domestic abuse and race discrimination, suggesting that this could improve policing practice and public confidence in how police deal with such matters. It also welcomed the super-complaints process. Its other key findings included that:<sup>120</sup>

- the IOPC has made **'significant strides' towards a more open, transparent and responsive** system;
- however, there remains a **perception that some forces and officers view complaints as challenges to their authority** or matters to be deflected; and
- there are **concerns about the strength of the IOPC's investigations**, its investigators' qualifications and the transparency of its operations.

125. The Committee criticised the length of inquiries, complex and overly technical communication and 'opaque processes' that have a detrimental impact on complainants and officers. It noted public perception that complaints against the police are unlikely to succeed and would result in only minimal sanctions if officers were found to have committed misconduct.

### **Germany and Italy: Internal Affairs Model**

126. While the trend internationally is towards civilian oversight models of police oversight, two exceptions to this within the European Union are Germany and Italy, which have retained a primarily internal affairs approach.<sup>121</sup>
127. In Italy, the Judicial Police, composed of members of regular police forces, investigates allegations of misconduct by police forces, although regional ombudsmen can deal with cases against local police officers.

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<sup>119</sup> Home Affairs Committee (2022) *Police Conduct and Complaints* London: House of Commons

<sup>120</sup> Home Affairs Committee (2022) *Police Conduct and Complaints* London: House of Commons

<sup>121</sup> Guittet, E., Vavoula, N., Tsoukala, A., Baylis, M. (2022) *Democratic Oversight of the Police* Brussels: European Parliament

128. In Germany, the Länders (states) rule the police forces. An ombudsman approach was piloted in 1998 following serious malpractice, although the project was abolished in 2001. Regional Committees on Petitions are competent to deal with allegations against the police; but these do not amount to independent, external oversight. Civil liberties groups are vocal in their campaigning for civilian oversight in Germany.

## **Ireland: Reforms underway**

129. The police service in Ireland, the Garda Síochána, has experienced a number of crises in policing since its creation in 1922, in line with many other jurisdictions. The oversight structures implemented to address police misconduct have faced challenges over the years.
130. Ireland's three-member police oversight body, the Garda Síochána Ombudsman Commission, was established in 2007. At its inception, it advertised staff posts internationally, attracting staff from across the globe. The Commission is independent of the police and has police-like investigative powers covering both individual complaints and systemic policy issues.<sup>122</sup> The Commission can be described as a civilian review model.<sup>123</sup>
131. The Commission investigates independently and makes recommendations in relation to sanctions and punishments. However, Garda management decides whether there has been a breach of discipline regulations, and the sanctions applied are entirely the remit the Garda Commissioner. The Commission does not bring criminal cases in its own right, but makes recommendations to the Director of Public Prosecutions as appropriate.<sup>124</sup>
132. A large proportion of complaints are dealt with by the Garda Síochána: almost half (49%) of complaints admitted for investigation in 2021 were dealt with in this way.<sup>125</sup> Complaints can be made directly to the Ombudsman Commission or at a local police station, depending on the nature of the complaint. Minor complaints resolved locally do not come to the Ombudsman Commission.
133. Commission members are appointed by the President following government nomination and with parliament's approval. However, there are concerns about

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<sup>122</sup> Moss, B. (2022) "Police oversight in Ireland: Who complains, who gains?" *Criminology and Criminal Justice* pp.1-20

<sup>123</sup> Byrne, J., Priestley, W. (2017) *Police Oversight Mechanisms in the Council of Europe Member States* Council of Europe

<sup>124</sup> Byrne, J., Priestley, W. (2017) *Police Oversight Mechanisms in the Council of Europe Member States* Council of Europe

<sup>125</sup> Garda Síochána Ombudsman Commission (2021) *2021 Annual Report – GSOC in Transition* Dublin: Garda Síochána Ombudsman Commission

the transparency of this process in reality, with perceptions that it does not comply with the best human rights practice.<sup>126</sup>

134. Questions have also been raised in relation to the transparency of the police-complaints process itself, with gaps in published data and no differentiation between 'less serious' or 'serious' sanctions, making it difficult to accurately assess the overall nature of police conduct.
135. Other issues highlighted include lower-than-expected outputs, a low rate of successful complaints and many government-ordered parallel investigations into police conduct, which can be taken as a measure of failed oversight.<sup>127</sup> The median time taken to complete criminal investigations substantially increased between 2020 and 2021, with the increase in part attributed to the volume and complexity of cases and resourcing issues.<sup>128</sup>

### **Policing, Security and Community Safety Bill**

136. In 2018, the Commission on the Future of Policing published a report and roadmap for strengthening Ireland's policing framework, calling for clear and effective oversight structures. It said that the complaints system should be overhauled, with a new independent body established, perhaps named the Independent Office of the Police Ombudsman. This body should investigate all complaints that go beyond performance management issues and involve alleged breaches of human rights or accepted policing standards, and its work should be timely and transparent.<sup>129</sup>
137. Government endorsed and accepted the report's recommendations and introduced the Policing, Security and Community Safety Bill in January 2023. Among other matters, it aims to make a number of changes to the police complaints process to enhance its functions and independence, including:
  - **changing the name** of the Commission to Oifig an Ombudsman Póilíneachta (the Office of the Police Ombudsman: to clarify its independence from the Garda Síochána);
  - **replacing the three-member structure** with a Police Ombudsman and Deputy Police Ombudsman (who cannot have been a member of Garda personnel);
  - **becoming a vote-holding body** to reinforce its independence;
  - **expanding its remit** in terms of Garda personnel and the range of allegations within its jurisdiction to investigate; and

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<sup>126</sup> Walsh, D.P.J. (2016) "Police Complaints Procedures in the United Kingdom and Ireland: Why are the reforms not working?" *European Police Science and Research Bulletin* pp. 48-57

<sup>127</sup> Moss, B. (2022) "Police oversight in Ireland: Who complains, who gains?" *Criminology and Criminal Justice* pp.1-20

<sup>128</sup> Garda Síochána Ombudsman Commission (2021) *2021 Annual Report – GSOC in Transition* Dublin: Garda Síochána Ombudsman Commission

<sup>129</sup> Commission on the Future of Policing in Ireland (2018) *The Future of Policing in Ireland*

- **streamlining the system** for handling the investigation of allegations with a view to supporting more timely, transparent and effective resolution of complaints.
138. In a submission to the Oireachtas,<sup>130</sup> the Garda Ombudsman expressed concern that the draft bill has not '*fully embraced the principle of institutional independence*' that should underpin an Ombudsman institution. It said that while the bill enhanced independence, it still imposed an element of ministerial and Garda involvement in the operation of the Police Ombudsman.
139. Its other concerns included that the bill does not require the Garda Síochána to 'fully and promptly' cooperate with the Police Ombudsman, and concerns that provisions for the searching of Garda premises undermine the principle of independent civilian oversight of policing.
140. The Ombudsman notes that the bill sets out timeliness and efficiency as a primary objective of the new Ombudsman, without placing similar duties on others on whose timely cooperation the Commission depends. It points to current difficulties in obtaining information from the Garda Síochána as a key impediment to the timeliness of its investigations and highlights the range of others it relies on in conducting investigations.

### **Whistle-blowing**

141. The Protected Disclosures (Amendment) Act 2022 provided for the establishment of a new Office of the Protected Disclosures Commissioner, which forms part of the function of the Office of the Ombudsman. Employees may report a concern to their employer; a prescribed person; an external person or to the Office of the Protected Disclosures Commissioner. The Garda Síochána Ombudsman Commission has a role in receiving protected disclosures from workers in the Garda Síochána.

### **The Netherlands: Public administration ombudsman**

142. The Ombudsman system in the Netherlands was derived from the Nordic Ombudsman system. The Dutch Constitution establishes the Ombudsman's responsibilities, which include defending citizens' interests and monitoring the quality of public services.<sup>131</sup>
143. While many jurisdictions have a bespoke ombudsman for police complaints, the National Ombudsman of the Netherlands assesses complaints about all

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<sup>130</sup> Garda Ombudsman (2023) *GSOC Observations on the Policing, Security and Community Safety Bill 2023* Garda Ombudsman

<sup>131</sup> Van der Vlugt, Y. (2018) "The National Ombudsman of the Netherlands and proper police conduct" in Hertogh, M. and Kirkham, R. (2018) *Research Handbook on the Ombudsman* Cheltenham: Edward Elgar Publishing

elements of the public administration, including the police force. The Ombudsman is independent and is appointed by the Dutch House of Representatives. The Ombudsman may deal with a complaint by:

- **encouraging the relevant authority to resolve the complaint** by contacting the complainant;
- **acting as an independent mediator** between the complainant and the public administration; or
- **conducting an investigation** that results in a report containing non-enforceable decisions and recommendations (both parties are legally obliged to provide any information requested).<sup>132</sup>

144. While the Ombudsman's recommendations are not legally binding, authorities have to inform the ombudsman how they will implement the recommendation. If they do not plan to implement the recommendation, they must provide a rationale. The Ombudsman may decide to bring such cases to the attention of parliament, although this step is not formalised. Alternative options include correspondence to the relevant minister, media commentary and presentations at conferences and seminars to influence public opinion.<sup>133</sup>

145. An article reviewing the impact of the ombudsman on the Dutch police force found that various cultural elements can have an impact on its effectiveness, including organisational features such as the extent of police discretionary powers; the size and structure of the police force; and police culture.

146. The Dutch police force was previously highly fragmented, comprising 25 police forces before being reformed into a single force with regional units, including one regional unit concerned with the policy framework for complaint handling within the police. Regional units are responsible for handling the complaints.<sup>134</sup>

147. Complaint handling has been improved by the responsible unit's emphasis on professional complaint handling and through sharing of good practice across the regional units.

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<sup>132</sup> Byrne, J., Priestley, W. (2017) *Police Oversight Mechanisms in the Council of Europe Member States* Council of Europe

<sup>133</sup> De Langen, M (2017) *Investigative powers of the ombudsman: A brief description of the legal context of own initiative investigations by the National Ombudsman of the Netherlands*

<sup>134</sup> Van der Vlugt, Y. (2018) "The National Ombudsman of the Netherlands and proper police conduct" in Hertogh, M. and Kirkham, R. (2018) *Research Handbook on the Ombudsman* Cheltenham: Edward Elgar Publishing

## Northern Ireland: Civilian control model

148. The legitimacy of criminal justice institutions was contested in Northern Ireland during many decades of conflict, and significant reform to policing and policing accountability came to be viewed as an essential element of the peace process.
149. The Hayes Review of police oversight in 1997 identified widespread dissatisfaction with complaint handling and serious concerns about independence, with complaints against the police investigated by other police officers at the time.<sup>135</sup> The Patten report in 1999 also emphasised the need for more substantive oversight of police in a society characterised by a history of violent conflict and biased policing.<sup>136</sup>
150. Subsequently, the Police (Northern Ireland) Act 1998 provided for the Office of the Police Ombudsman, established in 2000, ushering in a new era in police complaints in Northern Ireland with independent, civilian policing oversight. The Ombudsman was the first fully funded and completely independent police complaints organisation in the world.<sup>137</sup> The Ombudsman's establishment occurred as part of a package of reforms to the criminal justice system, designed to improve community confidence in policing and justice.
151. The Ombudsman's approach may be described as the civilian control model identified in Table 4 above. However, it retains elements of the civilian review approach, such as not investigating all complaints and making use of informal resolution approaches. Nonetheless, it does not send cases to the Police Service of Northern Ireland (PSNI) for investigation, and it is likely to be unique internationally in this respect.<sup>138</sup> Key features of the Ombudsman include:<sup>139</sup>
- **appointed by the Prime Minister** following an open competition;
  - **cannot be a former police officer**; and
  - **independence is guaranteed** in statute.
152. Considered to be one of the most advanced systems in the world, Northern Ireland's police oversight model is often referred to as the 'gold standard' in

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<sup>135</sup> Independent Broad-based Anti-corruption Commission Committee (2018) *Inquiry into the external oversight of police corruption and misconduct in Victoria* Parliament of Victoria

<sup>136</sup> Porter, L.E., Prenzler, T (2012) "Police oversight in the United Kingdom: The balance of independence and collaboration" *International Journal of Law, Crime and Justice* Vol. 40, pp. 152-171

<sup>137</sup> Police Ombudsman for Northern Ireland *History of the Office* [online] Available at: <https://www.policeombudsman.org/About-Us/History-of-the-Office>

<sup>138</sup> Angiolini, E. (2020) *Independent Review of Complaints Handling, Investigations and Misconduct Issues in Relation to Policing: Final Report* Edinburgh: Scottish Government

<sup>139</sup> Walsh, D.P.J. (2016) "Police Complaints Procedures in the United Kingdom and Ireland: Why are the reforms not working?" *European Police Science and Research Bulletin* pp. 48-57

police accountability. A governing principle of this model is that police should not investigate complaints against police, due to the inherent conflict of interest.<sup>140</sup>

153. The Ombudsman has strong legislative powers to investigate crimes, with those employed provided with the powers and privileges of a constable, including the ability to seize police possessions and arrest police officers. However, unlike some other jurisdictions, its powers do not include the ability to compel police officers to attend an investigative interview. Further, the Ombudsman can make disciplinary recommendations to the police, but the police do not have to accept the recommendations.

### **Effectiveness**

154. The Police Ombudsman for Northern Ireland has faced challenges, including the resignation in 2011 of its chief executive, Al Hutchinson, following a damaging report by Criminal Justice Inspection Northern Ireland. The report found that the Ombudsman's legislative framework was solid and provided for the operational independence of the body.<sup>141</sup>
155. However, it identified serious concerns about the handling of sensitive, complex and high-profile historical cases, including influencing of reports by the police, families and their legal representatives. It said that these issues had reduced its operational independence and generated mistrust among investigators.
156. The subsequent Ombudsman focused on restoring operational independence, and a 2014 report by the Inspectorate found that this independence had indeed been fully restored.<sup>142</sup>
157. The resourcing, powers and legislative base of the Ombudsman may contribute to its complaint substantiation rate of 22%, which is higher than in many other jurisdictions.<sup>143</sup> However, a much lower proportion of complaints result in disciplinary sanctions, estimated at 5% in one study.<sup>144</sup>
158. In addition, awareness and community confidence of the Ombudsman is strong. It conducts an annual survey of satisfaction with the office, and a wider NI Life and Times survey has included questions on the Ombudsman. In 2021/2022:<sup>145</sup>

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<sup>140</sup> McCulloch, J., Maguire, M. (2022) "Reforming police oversight in Victoria: lessons from Northern Ireland" *Current Issues in Criminal Justice* Vol. 34, No. 1, pp 38-57

<sup>141</sup> Criminal Justice Inspection Northern Ireland (2011) *An inspection into the independence of the Office of the Police Ombudsman for Northern Ireland* Belfast: Criminal Justice Inspection Northern Ireland

<sup>142</sup> Criminal Justice Inspection Northern Ireland (2014) *The Office of the Police Ombudsman for Northern Ireland: a process verification assessment* Belfast: Criminal Justice Inspection Northern Ireland

<sup>143</sup> McCulloch, J., Maguire, M. (2022) "Reforming police oversight in Victoria: lessons from Northern Ireland" *Current Issues in Criminal Justice* Vol. 34, No. 1, pp 38-57

<sup>144</sup> Walsh, D.P.J. (2016) "Police Complaints Procedures in the United Kingdom and Ireland: Why are the reforms not working?" *European Police Science and Research Bulletin* pp. 48-57

<sup>145</sup> Police Ombudsman for Northern Ireland *Publications* [online] Available at: <https://www.policeombudsman.org/About-Us/Publications>

- **Most (90%) of respondents had heard of the Ombudsman’s office** and were aware that it is independent;
- **Three-quarters (75%) felt they would be fairly treated** if they made a complaint; and
- Three-quarters (75%) also **thought the Office would help to ensure that the police do a good job.**

159. The work of the Police Ombudsman for Northern Ireland does not seem to have undermined operational policing, and in fact, there is evidence that it has significantly improved policing. Nonetheless, the experience of Northern Ireland demonstrates that effective and sustained reform to police oversight is difficult to achieve and hard to sustain.<sup>146</sup>

### **Dame Elish Angiolini’s view**

160. As noted previously, Dame Elish Angiolini commented on the Northern Ireland model, stating that she was not convinced about such a fundamental change in functions and structures for Scotland. She commented that investigation of all complaints to an enlarged investigative body may be a disproportionate and bureaucratic arrangement, and that police ownership of more minor complaints was important to ensure a learning culture.<sup>147</sup>

161. Dame Elish also noted that the matter of whether all complaints are directed to a single independent organisation or to different organisations is a matter of political judgment, taking into consideration the history, culture and standing of policing within the jurisdiction:

*I have carefully considered the Northern Irish model for oversight of complaints... I believe that it stands alone as an example of exceptionally strong oversight of complaints and independence designed for the particular and exceptional circumstances that exist in Northern Ireland.*

*This Review recommends a set of improvements to the system and a suite of new powers for the PIRC that would strengthen independent investigation and oversight in Scotland. If those are implemented, and if, after a reasonable passage of time, those changes have not secured appropriate improvement, then Scottish Ministers should consider afresh whether they want to move to a PONI model where all complaints go to an independent body in the first instance. My current view is that such a radical change is not necessary or proportionate at present.*

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<sup>146</sup> McCulloch, J., Maguire, M. (2022) “Reforming police oversight in Victoria: lessons from Northern Ireland” *Current Issues in Criminal Justice* Vol. 34, No. 1, pp 38-57

<sup>147</sup> Angiolini, E. (2020) *Independent Review of Complaints Handling, Investigations and Misconduct Issues in Relation to Policing: Final Report* Edinburgh: Scottish Government

## Whistle-blowing

162. The PSNI has a whistle-blowing policy in place to enable employees to report any suspected illegal or wrongful conduct without facing any detriment. All concerns raised must be notified to the Anti-Corruption Unit and, in turn, Senior Management and the Audit and Risk committee.<sup>148</sup>

## Norway: powers to investigate and prosecute

163. The Norwegian Bureau for the Investigation of Police Affairs was established in 2005, following concerns that the previous system for handling allegations was not independent of the police. The Bureau differs from comparable European bodies in that it has powers to both investigate and prosecute cases. It handles allegations of criminal conduct, but does not consider concerns around rude or bad behaviour. The Bureau has faced criticism because most of its investigators have been former police officers.<sup>149</sup>
164. The Bureau may be described as a civilian review model. It is independent from the police force and attached administratively to the Ministry of Justice. The Bureau has three geographically based investigative divisions; however, recently these were integrated into a single joint investigation division, retaining the local offices but with management in Oslo.<sup>150</sup>
165. The Bureau has powers to establish cases on its own initiative, and it is both an investigative and prosecuting unit. In 2021, a total of 5% of complaints dealt with resulted in an optional fine, indictment or waiver of prosecution. The Bureau aims to process cases within an average time not exceeding 150 days.<sup>151</sup>
166. A committee investigating police oversight mechanisms in 2009 highlighted the importance of systems and procedures for experiential learning. In 2020, the Police Directorate appointed a committee to establish what could be learned from the case of Eirik Jensen, a former police officer sentenced to 21 years' imprisonment for gross corruption and aiding and abetting import of 13.8 tonnes of narcotic drugs.
167. Jensen had been investigated by the Norwegian Bureau for the Investigation of Police Affairs on two occasions prior to 2013, however, both reports were dismissed. The inadequate follow-up of reports of concern indicated a failure of

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<sup>148</sup> PSNI (2018) Reporting Wrongdoing within the Police Service of Northern Ireland (Whistleblowing) [online] Available at: <https://www.psni.police.uk/sites/default/files/2022-09/Whistleblowing%203%20May%202018.pdf>

<sup>149</sup> Filstad, C., Gottschalk, P. (2011) "Performance evaluation of police oversight agencies" *Policing and society: an international journal of research and policy* Vol. 21, No. 1, pp. 96-109

<sup>150</sup> Norwegian Bureau for the Investigation of Police Affairs (2021) *Annual Report 2021* Hamar: Norwegian Bureau for the Investigation of Police Affairs

<sup>151</sup> Norwegian Bureau for the Investigation of Police Affairs (2021) *Annual Report 2021* Hamar: Norwegian Bureau for the Investigation of Police Affairs

internal control and the committee recommended that continuous efforts must be made to ensure adequate internal controls and follow-up of oversight reports.

## Annex A — Non-legislative Recommendations

The tables below are divided into the nine themes that were outlined in the reporting framework in the joint response by the Cabinet Secretary for Justice and Lord Advocate. The themes are rights and ethics; jurisdiction and powers; governance and accountability; transparency and accessibility; equality, diversity and inclusion; conduct and standards; training and HR; efficiency and effectiveness; and audit and review.

Each table outlines the recommendations proposed by Dame Elish in her preliminary and final reports. Recommendation numbers prefixed with “PR” are from the preliminary report, whereas those with just a number are from the final report.

Each recommendation has information that is drawn from the thematic progress reports. The reports were published in June 2021,<sup>152</sup> December 2021,<sup>153</sup> June 2022,<sup>154</sup> December 2022<sup>155</sup> and May 2023<sup>156</sup>. The information gathered from these reports outline the progress and action taken to address the recommendations. As of May 2023, 58 of the recommendations have been marked as complete, 12 are in progress and two are listed as being kept under review. Under each theme, the tables have been divided into these three stages of development. Where the recommendation has been marked as complete, the month and year of the thematic report which outlined its completion is documented.

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<sup>152</sup> Scottish Government (2021) *Complaints, investigations and misconduct in policing - implementation of recommendations: thematic progress report - June 2021*

<sup>153</sup> Scottish Government (2021) *Complaints, investigations and misconduct in policing - implementation of recommendations: thematic progress report - December 2021*

<sup>154</sup> Scottish Government (2022) *Complaints, investigations and misconduct in policing - implementation of recommendations: thematic progress report - June 2022*

<sup>155</sup> Scottish Government (2022) *Complaints, investigations and misconduct in policing - implementation of recommendations: thematic progress report - December 2022*

<sup>156</sup> Scottish Government (2023) *Complaints, investigations and misconduct in policing - implementation of recommendations: thematic progress report - May 2023*

**Theme 1: Rights and Ethics**

Completed

No.	Recommendation	Status	Thematic Report/s
3	<p>Other than for pressing operational reasons, <b>police officers involved in a death in custody or serious incident</b>, whether as principal officers or witnesses to the incident <b>should not confer or speak to each other following that incident</b> and prior to producing their initial accounts and statements on any matter concerning their individual recollections of the incident, even about seemingly minor details.</p> <p>As with civilian witnesses, all statements should be the honestly held recollection of the individual officer.</p>	<p>Complete - December 2021</p>	<p><b><u>Joint Government and Lord Advocate Response (February 2021)</u></b> In both her Preliminary and Final Reports, Dame Elish makes observations for post incident procedures, in particular to limit conferral between officers and preserve the integrity of evidence (Final Report recommendation 3), recognising the need to ensure the provision of <b>adequate welfare support for officers</b>. Consideration of these important findings is a matter for COPFS, PIRC and Police Scotland, in consultation with staff associations and with the SPA's Complaints and Conduct Committee providing oversight of Police Scotland's approach.</p> <p>Police Scotland has undertaken significant work <b>to develop and roll out a revised Post Incident Procedure, extending the process a broader range of incidents. A cadre of Post Incident Managers</b> has been trained in consultation with PIRC &amp; COPFS and Staff Associations to provide a 24/7 on call support. The procedures have been deployed successfully, ensuring the integrity of the independent investigation and supporting those involved in the incident. <b>Feedback from partners</b> indicates that, in recent cases, the <b>revised measures have provided sufficient mitigation against inappropriate conferral.</b></p> <p><b><u>December 2021 Thematic Report</u></b> <b>Post Incident Procedures Professional Reference Group (PRG)</b> continues to provide Police Scotland Senior Executive <b>appropriate strategic oversight</b> and direction to ensure effective <b>PIP management and deployment</b>. Post Incident Procedures (PIP) <b>guidance and toolkit revised</b>. Force-wide and additional communications issued to Contact, Command &amp; Control Division (C3) in respect of PIP. PIP Professional Reference Group and Police Scotland internal Practitioner Working Group established and Terms of Reference agreed.</p>

No.	Recommendation	Status	Thematic Report/s
21	<b>Whistleblowing</b> can be an indicator of what is happening within an organisation and therefore Police Scotland should <b>review and audit its whistleblowing arrangements</b> and data on a regular basis.	Complete - December 2021	<b>Whistleblowing Guidance has been revised</b> and significant <b>training and awareness sessions provided</b> on various platforms. Self-assessment process established to effectively manage and audit processes, with benchmark undertaken in June 2021 to identify areas of improvement and presented to the SPA Audit, Risk and Assurance Committee (ARAC).  <b>Guidance will be reviewed annually</b> , with enhanced engagement in terms of Whistleblowing awareness to be included in established supervisory and leadership training and the feedback process established to ensure improvement opportunities captured. <b>Bi-annual reports will be submitted to SPA.</b> Although this recommendation is aimed primarily at Police Scotland, the SPA has also made arrangements for annual reporting on its whistleblowing policy to the Audit Risk and Assurance Committee, with the first report submitted in July 2021.
47	Where the terms of a <b>complaint made allege a breach of Article 3 by a police officer</b> , and therefore that a crime may have been committed, the <b>Crown Office and Procurator Fiscal Service should instruct the PIRC to carry out an independent investigation rather than directing Police Scotland to investigate it</b> ; breaches of Article 5 may, depending on the circumstances and seriousness of the case, likewise require early independent investigation.	Complete - December 2021	To facilitate the implementation of this <b>recommendation COPFS instructed that from 4 October 2021, the PIRC should carry out investigation into all allegations of assault</b> (and all associated criminal allegations) that have been notified to the PIRC by Police Scotland. This standing instruction was issued in terms of Section 33A(b)(i) of the Police Public Order and Criminal Justice (Scotland) Act 2006. A model for the referral of such cases has been agreed by COPFS, PIRC and PSD.
69	The Scottish Government should consider adding to the <b>Letter of Rights a contextual reference to the individual's general rights</b> ; and	Complete - May 2023	<b>December 2022</b> The <b>revised versions of the Letter of Rights for Scotland</b> are still on track for submission to the Minister for Community Safety for approval in late 2022. Following approval, and the publication and translation process, the letters – <b>Children and</b>

No.	Recommendation	Status	Thematic Report/s
	a reference to the individual's right to complain (either while in custody or thereafter) about their treatment.		<p><b>Young People and an easy read version</b> - will be published on the Scottish Government website and available for download and rollout by Police Scotland.</p> <p>Plans are also being developed for a monitoring and review exercise approximately a year after the roll out of both Letters of Rights to assess their effectiveness and success.</p> <p><b>May 2023</b> Scottish Government, in consultation with partners, also developed <b>new Easy Read and Children and Young People's versions of the Letter of Rights</b> to clarify general rights and the right to complain for detainees in custody.</p> <p><b>Letter of rights published on 17 April 2023</b> – “Letter of rights - your rights when you are in a police station: guide for children and young people”.<sup>157</sup></p>
70	<b>Independent Custody Visitors</b> should, as a matter of course, check with custody officers and with detainees that a <b>third party has been notified of their detention</b> .	Complete - June 2021	Independent Custody Visitors are <b>trained to ask detainees if a third party has been notified</b> and to confirm this with custody officers and staff. This is also set out in the <b>checklist</b> provided for Visitor use during visits.
73	<b>Investigations involving death or serious injury</b> in police custody are likely to be amongst the most serious and complex cases the PIRC has to investigate. Delay can add to the distress of families and have an adverse impact on those police officers involved in the circumstances of the death.	Complete - June 2021	PIRC has a <b>KPI to conclude 80% of such investigations within 3 months</b> . PIRC is fully aware of those investigations, which may affect policing in Scotland and such investigations are <b>prioritised</b> .

<sup>157</sup>Scottish Government (2023) *Letter of rights - your rights when you are in a police station: guide for children and young people* [online] Available at: <https://www.gov.scot/publications/rights-police-station-guide-children-young-people/>

No.	Recommendation	Status	Thematic Report/s
	Such cases should be dealt with in the same timescale and with the same urgency as a homicide investigation.		
77	Any <b>restricted duties or transfers imposed for the duration of an investigation</b> should take into account, where appropriate, the individual's <b>family circumstances</b> , and subject officers or staff should be offered the <b>opportunity to access appropriate support services</b> provided by Police Scotland.	Complete - June 2022	Following completion of additional internal consultation, the <b>Investigative Wellbeing and Safeguarding Process and Guidance was approved by the Strategic Leadership Board</b> and published in November 2021.
PR1	Given the importance and sensitivity of such allegations it is recommended that all such allegations of <b>excessive force should continue to be reported immediately by PSD to CAAP-D</b> for instruction and investigation by the independent Procurator Fiscal or by PIRC on the directions of the Procurator Fiscal of CAAP-D.	Complete - June 2021	<p>An <b>initiative</b> was introduced by CAAP-D towards the end of 2018 to <b>ensure that allegations were not being miscategorised</b> by Police Scotland and that the Crown was properly sighted, in order to provide direction on appropriate investigation. That <b>initiative continues to operate.</b></p> <p>When police categorisation of a complaint is as one involving “excessive force”, and either an inference of criminality arises or there is a perception of criminality on the part of the complainer, that complaint is <b>now routinely drawn to CAAP-D’s attention by way of an advice and direction briefing paper</b>, allowing CAAP-D an <b>opportunity to review that categorisation</b> and provide whatever further instruction is considered necessary. It is CAAP-D’s intention to continue with this initiative.</p> <p>National processes in place with improved reporting and increased involvement from stakeholders and CAAP-D. CAAP-D completed an <b>audit</b> of such cases in 2020, confirming <b>allegations were suitably assessed and categorised</b> and national police processes in respect of reporting excessive force/assaults were adequately</p>

No.	Recommendation	Status	Thematic Report/s
			robust. <b>Regular auditing and scrutiny will continue</b> to maintain this consistent approach and all relevant information shared appropriately.

## In Progress

No.	Recommendation	Status	Thematic Report/s
32	<p>The Scottish Police Authority and Police Scotland should consider together what <b>role the SPA Complaints and Conduct Committee</b>, or the Policing Performance Committee, might have in relation to the discussion of <b>ethical issues in policing in Scotland</b>.</p>	In Progress	<p>A <b>Memorandum of Understanding</b> has been established <b>between the SPA Chair and Chief Constable</b> setting out a framework which <b>will underpin development of ethics and human rights focused decision making for new strategies, policies and practices in Scottish Policing</b>.</p> <p>Police Scotland's Data Ethics Framework and a SPA-sponsored approach to wider ethics-based business case assessment are key elements of overall programme of work being taken forward by SG's Independent Advisory Group on New and Emerging Technologies in Policing which is due to report to Ministers in 2022/23. This also links to Recommendation 1 and Preliminary Recommendation 11.</p> <p>This approach is being <b>further enhanced</b> through work of <b>the Scottish Government's Independent Advisory Group on Emerging Technology (ETIAG)</b>. The report and recommendations from the ETIAG are now expected to be delivered in the latter part of 2022 and will be considered as part of the SPA's wider approach to oversight of ethical considerations.</p>
76	<p>For cases where the <b>Fatal Accident Inquiry</b> may last several weeks, the Scottish Government should consider the feasibility of a scheme <b>to pay reasonable travel and subsistence expenses and compensation for loss of earnings of the next of kin</b>.</p>	In Progress	<p><b>December 2022</b>            Scottish Government is <b>giving further consideration</b> to anticipated <b>budgetary needs</b> to support the administration and delivery of this recommendation.</p> <p><b>May 2023</b>            There are two recommendations that <b>stretch beyond policing</b>, such as those relating to NHS mental health provision (Recommendation 72) and <b>civil law (Recommendation 76)</b>. These recommendations will, therefore, <b>continue to be progressed by Scottish Government but will no longer feature in thematic progress reports</b>.</p>

## Theme 2: Jurisdiction and Powers

### Keep Under Review

No.	Recommendation	Status	Thematic Report/s
43	<b>The case for all complaints being received by an independent police complaints body such as the PIRC should be kept under review by Scottish Ministers</b> and if, after a reasonable passage of time, the changes recommended in this report have not secured appropriate improvement, then they <b>should consider afresh whether they want to move to a PONI (Police Ombudsman for Northern Ireland) model where all complaints.</b>	Keep Under Review	Engagement with operational partners is required to determine when a periodic review by Scottish Ministers would be appropriate. <b>Decisions are unlikely to be taken until after legislative changes have been progressed.</b>

### Theme 3: Governance and Accountability

Completed

No.	Recommendation	Status	Thematic Report/s
4	The <b>quarterly Police Scotland performance report</b> to the SPA Complaints and Conduct Committee should <b>identify five-year trends</b> .	Complete - June 2022	The Quarter 1, 2 & 3 Report for 2021 submitted to the SPA Complaints and Conduct Committee included <b>5-year trend analysis</b> which will be developed incrementally as the relevant data is available. The 3 published reports confirm an <b>established process</b> which is <b>set to continue to be reported in this format</b> . This process ensures finalisation of this recommendation.
33	<b>Local scrutiny committees</b> should consider, in consultation with Police Scotland's local divisional commanders and the COSLA Police Scrutiny Convenors Forum, <b>what further complaints information or discussion would assist their scrutiny of the police</b> .	Complete - December 2021	The Professional Standards Department monthly <b>Divisional Commanders' Report has been redesigned</b> to be more reflective of the SPA Complaint & Conduct Committee quarterly report. All Local Commanders have provided confirmation that the redesigned report <b>meets the needs of their local scrutiny committee</b> sat divisional level.
45	PIRC should <b>publish</b> their performance against <b>set targets for complaint handling</b> reviews and investigations in the Commissioner's annual report.	Complete - June 2021	PIRC <b>reports against performance in its Annual Report and Accounts</b> which evidences performance against strategic objectives. The Commissioner has <b>agreed a series of key performance indicators (KPIs)</b> which form the basis of the PIRC's performance management framework. Performance against these KPIs is <b>reviewed monthly by the Heads of Department Group</b> and <b>quarterly by the Audit and Accountability Committee (AAC)</b> .

No.	Recommendation	Status	Thematic Report/s
			<b>Reports</b> PIRC Annual Report and Accounts 2020-21. <sup>158</sup> PIRC Annual Report and Accounts 2021-22. <sup>159</sup>
59	In order to ensure public confidence in the police, the <b>SPA should confirm each year in its annual report whether or not in its view</b> , based on an informed assessment by the Complaints and Conduct Committee and evidence from the relevant audits, <b>the Chief Constable has suitable complaint handling arrangements in place.</b>	Complete - December 2022	<b>SPA included a statement in 2021/22 Annual Report and Accounts<sup>160</sup> in respect of the suitability of Chief Constable's complaints handling arrangements</b> , based on assessment by the Complaints and Conduct Committee during the preceding 12 months, and consultation with the PIRC.
78	The Chief Constable should <b>publish annually</b> Police Scotland's performance in <b>dealing with complaints against the time-scales set out in the statutory guidance.</b>	Complete - December 2022	<b>Timescales are now published in reports</b> to the SPA and will continue going forward. This will ensure that performance in this area <b>is scrutinised on a quarterly basis via the SPA Complaints and Conduct Committee.</b>
PR23	The <b>PIRC</b> should consider the case for building into its <b>structure legal support</b> and advice capacity.	Complete - June 2021	This recommendation has been <b>superseded by recommendation 34</b> and <b>PIRC will be recruiting legal support in the near future.</b>

<sup>158</sup>PIRC (2021) *Annual Report & Accounts 2020/21* [online] Available at: <https://pirc.scot/media/5352/pirc-annual-report-2021.pdf>

<sup>159</sup> PIRC (2022) *Annual Report & Accounts 2021/22* [online] Available at: <https://pirc.scot/media/5482/pirc-annual-report-2021-2022.pdf>

<sup>160</sup>Scottish Police Authority (2022) *Annual Report and Accounts 2021-22* [online] Available at: [https://www.spa.police.uk/spa-media/titbtgnz/spa-annual-report-21-22\\_final.pdf](https://www.spa.police.uk/spa-media/titbtgnz/spa-annual-report-21-22_final.pdf)

## In Progress

No.	Recommendation	Status	Thematic Report/s
29	<p>The <b>SPA Complaints and Conduct Committee</b> should hold Police Scotland to account for <b>delays in investigations</b> into complaints and misconduct. Where there is evidence of <b>excessive delays in PIRC investigations</b> having an effect on policing in Scotland the Committee should <b>raise the matter with the Commissioner</b>.</p>	In Progress	<p><b>June 2021</b> SPA (Members and Officials) and PIRC in discussions to improve effectiveness and engaging with Police Scotland on content of future reports. <b>PIRC also has KPI to complete 80% of investigations within 3 months and complaint handling reviews within 4 months of receipt.</b> Priority is given to those investigations, including any alleging misconduct, which may affect policing in Scotland.</p> <p><b>December 2021</b> Engagement is ongoing with Police Scotland on proposed content of future reports, following initial consultation with SPA Complaints &amp; Conduct Committee Members, SPA officials and PIRC. The <b>Commissioner has also agreed a key performance indicator (KPI)</b> in relation to this recommendation which is <b>reviewed monthly and reported publicly.</b> By ensuring the KPI is met, PIRC is able to provide assurances that <b>delays are only in the most complex and protracted cases</b> and where necessary highlighted to the SPA.</p> <p><b>December 2022</b> Recognising the need for consistency of <b>in-year reporting, broader changes will commence from reporting on Q1 2022/23 performance.</b> Significant changes and improvements have already been made and engagement remains ongoing with Police Scotland on incorporation of enhanced assurance content within Committee reports. This links to recommendation 79.</p>
79	<p>The <b>Scottish Police Authority Complaints and Conduct Committee</b> should <b>scrutinise Police Scotland's performance in dealing with complaints</b> and hold the service to account where the targets are not being achieved.</p>	In Progress	<p>Recognising the need for consistency of in-year reporting, <b>broader changes will commence from reporting on Q1 2022/23 performance.</b> Significant changes and improvements have already been made and engagement remains ongoing with Police Scotland on incorporation of enhanced assurance content within Committee reports. This links to recommendation 29.</p>

## Theme 4: Transparency and Accessibility

### Completed

No.	Recommendation	Status	Thematic Report/s
30	To increase public confidence in the system the <b>SPA Complaints and Conduct Committee</b> should consider <b>using its minutes as a means of sharing with the public more of their substantive discussions</b> and how Police Scotland is being held to account in this area; and consider whether some content of the minutes of the private sessions, where some strategic and policy matters are discussed, could be included in the published minutes.	Complete - December 2021	<b>Proposal for publication of public version of private SPA Committee minute approved</b> at August 2021 Complaints and Conduct Committee. This process will commence from the May meeting.
31	The <b>SPA Complaints and Conduct Committee's scrutiny function should be reported on in the SPA annual report</b> , drawing out particular trends, highlighting improvements or concerns and using complaints data as	Complete - December 2021	Complaints and Conduct Committee <b>annual report for 2020/21<sup>161</sup> approved</b> for publication at August 2021 meeting. Summary extract included in this year's SPA Annual Report and Accounts which published in October 2021.  <b>Update</b> Complaints and Conduct Committee annual report 2021/22. <sup>162</sup>

<sup>161</sup>Scottish Police Authority (2021) *Complaints and Conduct Committee 2020-21 Annual Report* [online] Available at: <https://www.spa.police.uk/spa-media/mq1jgwsq/spa-complaints-conduct-committee-2020-21-annual-report-final-dp-update.pdf>

<sup>162</sup>Scottish Police Authority (2021) *Complaints and Conduct Committee 2021-22 Annual Report* [online] Available at: <https://www.spa.police.uk/spa-media/nw1lkwea/spa-complaints-annual-report-2021-22-final.pdf>

No.	Recommendation	Status	Thematic Report/s
	an indicator of communities' satisfaction or dissatisfaction with policing services.		
36	The <b>ultimate ability of a member of the public to take a complaint against the PIRC or the Commissioner to the Scottish Public Services Ombudsman</b> when they are dissatisfied with how that complaint has been handled by the PIRC in the first instance <b>should be highlighted more prominently on the PIRC website.</b>	Complete - June 2021	Work has been completed to update the <b>PIRC website to highlight more prominently the role of SPSO</b> in handling complaints about PIRC and to signpost that if individuals are <b>dissatisfied they can ask the SPSO to review how PIRC has handled their complaint.</b>
46	The ability to <b>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</b> and made more accessible to the public by COPFS, by Police Scotland and by the PIRC.	Complete - June 2022	<p>Since 16 December 2021 COPFS has <b>published additional easily accessible, and suitably prominent, guidance on their external website</b> explaining the option of making a complaint against an off-duty police officer directly to COPFS. A <b>new process</b> has also been introduced for <b>engagement with members</b> of the public who <b>wish to report their criminal allegations against the police direct to COPFS</b> and the signposting of the option for reporting directly to COPFS is now included in the websites, and other publications, published by other partner investigating organisations (Police Scotland, PIRC, SPA).</p> <p>All of this information will be migrated across to the new website as soon as it becomes live. This includes the completion of a <b>new "information capture" form</b> which has been designed so that complainer might provide, and COPFS (Criminal Allegations Against the Police Department) can obtain, sufficient relevant background and detail with regards the substance of a complaint.</p>
48	Police Scotland <b>should publicise the right to complain</b> as well as how to complain by <b>displaying posters</b> in police stations and other public	Complete - June 2022	Recommendation 48 is aimed at improving and publicising the right to complain, or comment, by displaying posters in police stations and other public buildings. <b>The QR code</b> to access the complaints section of Police Scotland's website has now been <b>widely publicised</b> and forms part of the publication to

No.	Recommendation	Status	Thematic Report/s
	buildings on how to make a complaint about, pay a compliment to, or submit a comment on Police Scotland.		be displayed in public buildings with a view to increasing accessibility. The poster has been <b>delivered for distribution across Local Policing Divisions</b> , including <b>third party reporting centres</b> within the community.
49	The <b>Know your Rights</b> section of the Police Scotland website for young people should be <b>amended</b> to make clear <b>their right to make a complaint</b> .	Complete - June 2022	<b>Consultation with Scottish Youth Parliament</b> has continued and a <b>new Youth Hub section has been added to Police Scotland's website</b> making clear young people's right to complain. And, as noted at recommendation 48, a <b>QR Code was established</b> in October, providing the public with <b>enhanced accessibility</b> to the Police Scotland Complaint Section on the website.
PR6	Police Scotland should adjust its practice in respect of "Early intervention". <b>Officers should be made aware that they are the subject of a complaint against them at the earliest practicable point</b> , provided that such early disclosure would not prejudice any investigation of a complaint.	Complete - June 2021	Consistent approach to <b>notification introduced</b> and consistency of recording for officer notification for <b>both Front Line Resolution and Complaint Handling Reviews</b> . As Business as Usual, this will be <b>subject to ongoing review/improvement</b> .
PR8	Police Scotland should <b>simplify and streamline</b> systems to make it as straightforward as possible for members of the public to navigate this rather opaque landscape and as <b>easy as possible for them to access and understand information on how to make a complaint</b> . In particular the online <b>complaints form</b> on the Police Scotland <b>website should be made more prominent</b> .	Complete - June 2021	<b>National streamlined process</b> implemented and <b>revised 'How do I make a complaint'</b> form for the public <b>published on Police Scotland external website</b> . Completed forms are processed by the <b>National Complaints and Resolution Unit (NCARU) for follow up with complainers</b> . Officers will still encounter members of the public who wish to make a complaint about the police and every effort should be made to resolve issues highlighted at the earliest opportunity - <b>A Guide for Complaints About the Police leaflet will also be provided</b> .

## Theme 5: Equality, Diversity and Inclusion

Completed

No.	Recommendation	Status	Thematic Report
15	Police Scotland should make use of <b>staff surveys</b> to enhance their understanding of the <b>experience of all minority groups</b> in the service and senior officers should make more use of <b>face-to-face meetings</b> and focus groups with members of these groups to <b>gain a more acute understanding of the impacts of discrimination, prejudice and unconscious bias.</b>	Complete - June 2022	<p><b><u>June 2021</u></b>  <b>Members from SEMPER Scotland</b> (Supporting Ethnic Minority Police Employees for Equality in Race) took part in a ‘<b>Talk Truth to Power</b>’ series of events with <b>Deputy Chief Constable Fiona Taylor</b>. An <b>action plan has been developed</b> based on these discussions, setting out how Police Scotland could take specific action to deliver its inclusion agenda and create an environment which attracts, develops and retains a diverse and representative workforce.</p> <p><b><u>June 2022</u></b>  The results of Police Scotland’s <b>Your Voice Matters staff survey</b> have now been reviewed to <b>identify learning</b> in relation to experiences and <b>impacts of discrimination, prejudice and unconscious bias on all minority groups in the workforce</b> in line with the aim of Recommendation 15. Organisational learning from the survey will be subject to independent scrutiny as part of <b>SPA’s audit in 2022/23</b> and the self-assessment process <b>will record examples of progress and promote the organisation’s commitment to sustaining improvement.</b></p> <p>High level priorities from the survey analysis have also been aligned with the strategic intention of Equality Diversity and Inclusion and Human Rights (EDI &amp; HR) Strategic Oversight Board and ongoing work will be scrutinised and supported by the Independent Review Group (IRG). The aim is to bring improvements to service provision and policing culture to the benefit of officers and staff, enhance employee relations and promote Police Scotland as a preferred employer. <b>A Memorandum of Understanding (MOU) is also</b></p>

No.	Recommendation	Status	Thematic Report
			<p><b>in place with Diversity Staff Associations</b> and action plans developed to drive this change forward.</p>
16	<p>Police Scotland should implement, where it is in their gift, the SEMPER Scotland proposal that the composition of <b>panel members for disciplinary hearings should be more diverse.</b></p>	<p>Complete - December 2022</p>	<p><b><u>June 2022</u></b> Review of processes in respect of panel availability and selection is underway to ensure diverse panels can be put in place as far as reasonably possible. <b>A programme of training, incorporating unconscious bias</b>, has also been implemented with a view to having all chief superintendents, superintendents and chief inspectors to be trained in chairing and assessing panels. A <b>diversity monitoring form</b> is being produced to <b>record decision making in respect of panel members</b>. SPA will also ensure, as far as possible, the <b>diversity of Police Appeals Tribunals.</b></p> <p><b><u>December 2022</u></b> Police Scotland has instigated a review of processes in respect of panel availability and selection and a programme of training including unconscious bias has been implemented with all chief superintendents, superintendents and chief inspectors trained in chairing and assessing panels. A <b>diversity monitoring form will record decision making in respect of panel members</b> and unconscious bias training now also forms part of Chair and Assessor training for conduct meetings and hearings.</p>

No.	Recommendation	Status	Thematic Report
17	<b>Appropriate support</b> for anyone in Police Scotland who is the <b>subject of internal or external discrimination should be enhanced.</b>	Complete - December 2022	<p><b><u>June 2022</u></b>  <b>Discrimination training is being actively progressed</b> in conjunction with IOPC so that there is appropriate support for those staff who have subject to discrimination. Engagement is also continuing with EDI groups.</p> <p><b><u>December 2022</u></b>  The Policing Together Initiative provides a focal point and platform for equality and inclusion imperatives along with the <b>establishment of the Wellbeing Hub, the Equality, Diversity, Inclusion &amp; Human Rights (EDI &amp; HR) Independent Review Group and Sex, Equality and Tackling Misogyny Working Group.</b> In addition, <b>Investigative Wellbeing guidance has been published.</b></p>
44	The PIRC should ensure that <b>discrimination issues are considered as an integral part of their work.</b> A systematic approach should be adopted across the organisation and in all cases investigators should consider if discriminatory attitudes have played a part.	Complete - December 2021	PIRC has <b>prepared an internal guidance document</b> in relation to dealing with allegations of discrimination when undertaking investigations or complaint handling reviews. PIRC has <b>met with Independent Office for Police Conduct diversity team who advised that the PIRC guidance is still current and applicable.</b> Constructive feedback was also received from Police Scotland's Equality, Diversity and Inclusion Group prior to publication. The document will be utilised by all staff and published on PIRC's website.
50	Police Scotland should have <b>discussions with a number of the third-party reporting centres for hate crime,</b> including those representing minority groups, and secure their agreement to <b>offer third-party support for those who wish to make a complaint against the police.</b>	Complete - June 2022	<p><b><u>December 2021</u></b>  Work is being progressed by Police Scotland's Partnerships, Preventions &amp; Community Wellbeing Division. The action links to wider improvements for third party reporting as per recommendation 6 of HMICS Hate Crime Inspection. This also links into the <b>work is ongoing through EDI (Equality, Diversity and Inclusion) &amp; HR (Human Rights) SOB and the EDI Service Delivery Sub Group</b> in relation to Hate Crime.</p> <p><b><u>June 2022</u></b>  This also links to Recommendation 48 which seeks improvements to information on how to complain, with the <b>introduction of a QR code and informative literature</b> in leaflets, online and posters in buildings where the public have access, have enhanced accessibility to those who wish to</p>

No.	Recommendation	Status	Thematic Report
			compliment, comment or complain which has been extended to third party reporting centres. Police Scotland and the Scottish Government, along with relevant partners, are seeking to <b>examine third party reporting provisions</b> during their <b>development of a national hate crime strategy</b> and associated campaign.
66	All Police Scotland officers and staff should receive <b>training on unconscious bias, equality legislation and diversity</b> ; this should be updated throughout their career, with the opportunity for refresher courses at regular intervals.	Complete - December 2022	<p><b><u>December 2021</u></b>  <b>Unconscious Bias</b> continues to <b>feature throughout Police Scotland Training</b>. Insert for Operational Safety Training on Unconscious Bias in the tactical environment is currently out for consultation with staff associations. PIRC also continues to undertake work to identify any further appropriate training in this regard. <b>The Senior Management Team have taken part in Unconscious Bias training</b> with PSD and have rolled out an online module to staff.</p> <p><b><u>December 2022</u></b>  <b>Unconscious Bias training is now part of the organisation's online training module</b>. Following feedback from staff associations, unconscious bias training has also been <b>included within Operational Safety Training</b>. In addition, unconscious bias training now also forms part of <b>Chair and Assessor training for conduct meetings and hearings</b> which links with Recommendation 16.</p>

No.	Recommendation	Status	Thematic Report
PR12	Police Scotland is a young but now established national organisation with a stable leadership team. This is a good opportunity to <b>reflect on the culture of the new service, address any long-standing issues and consider how everyone in the organisation can help to change that culture for the better.</b>	Complete - June 2021	<b>PSD Training group</b> reporting to Complaints Handling Working Group <b>captures/disseminates Organisational learning</b> communicating across Police Scotland. Restructure of probationer's course with singular PSD input (Ethics and Values, Professional Standards and Corruption). Introduction of <b>Ethics Advisory Panels (EAPs)</b> providing an opportunity for individuals to raise issues which assists decision making and which will have a wide arching impact. Organisational priorities continue to focus on people and develop a culture and supporting working environment which allows people to develop as outlined in <b>Police Scotland's Annual Police Plan 2021-22.</b>

## Theme 6: Conduct and Standards

### Completed

No.	Recommendation	Status	Thematic Report/s
26	PIRC should work collaboratively with the SPA to agree and embed a proportionate and effective <b>approach to preliminary assessment (for Regulation 8 of the senior officer conduct regulations)</b> until such time as new regulations come into effect.	Complete - December 2021	<b>Draft revisions made to SPA Guidance (including the preliminary assessment process) following liaison with PIRC, Police Scotland and SCPOSA</b> , prior to further consultation with key stakeholders. A meeting also took place between the Commissioner and SPA Chief Executive, with revised Guidance then presented and approved at August 2021 Complaints & Conduct Committee. This links to recommendation PR18.
PR16	<b>Complaints against senior officers should be prioritised</b> and dealt with, by both the <b>PIRC and the SPA</b> , as speedily as is reasonable, because of the destabilising impact a prolonged investigation can have.	Complete - December 2021	<b>Revised SPA Complaints Handling Procedures developed</b> and subject to PIRC/SCPOSA consultation prior to publication of Dame Elish Angiolini's Final Report. A final review was undertaken to <b>ensure alignment with PIRC Statutory</b> Guidance and revised Senior Officer Conduct Guidance, before being approved for publication at SPA Complaints & Conduct Committee in August 2021.
PR18	The range of options available to the SPA when a <b>senior police officer is under investigation</b> under the conduct regulations should be <b>clarified and expanded</b> , to <b>provide alternatives to suspension</b> .	Complete - December 2021	SPA considered this as part of the <b>revisions made to the SPA Guidance on Senior Officer Conduct Regulations following liaison with PIRC, Police Scotland and SCPOSA</b> , prior to further consultation with key stakeholders. Revised Guidance was presented and <b>approved</b> at August 2021 Complaints & Conduct Committee. This links to recommendation 26.
PR26	There should be the <b>immediate establishment of a senior cross-agency joint Working Group</b> involving the SPA, Police Scotland and the PIRC to develop appropriate and up-to-date guidance.	Complete - June 2021	This has been addressed by the <b>establishment of Strategic Oversight Group</b> .

## Theme 7: Training and HR

### Completed

No.	Recommendation	Status	Thematic Report/s
6	All officers and support staff in Police Scotland's Professional Standards Department (PSD) <b>should receive comprehensive induction training</b> on taking up post and <b>regular refresher development</b> opportunities thereafter.	Complete - December 2021	A comprehensive <b>5-day induction training package</b> was carried out and <b>one-day course</b> has been developed to <b>provide training for new staff members</b> . A <b>refresher training programme</b> has also been established, with Continued Professional Development events taking place on a regular basis. Professional Standards Department (PSD) <b>Training Working Group and Training cadre has also been established</b> , comprising PSD staff, providing development and enhancing training programmes. All training is supported with significant ongoing input from both PIRC & CAAPD.
14	Police Scotland's Executive team should consider in depth and <b>review the criteria and competencies that it uses to assess police officers' readiness for promotion</b> .	Complete - June 2022	<b>New promotion process based on the Competency and Values Framework (CVF)</b> introduced across all ranks and now embedded process. The Competency and Values Framework (CVF) promotion process will underpin the following areas: general recruitment, the Leadership and Development programme, which is proposed to replace the existing Police Diploma, the My Career appraisal system which will formally launch in April 2022 and Leadership Interventions. In addition, a <b>monthly Programme Management Board is in place</b> , with the full programme targeted for completion by April 2023. Progress will be reported to Police Scotland Corporate Management and People Board and the SPA People Committee on a regular basis.
62	Police Scotland should <b>appoint a PSD training officer</b> to maintain the momentum in training and development arising from its internal <b>Risk, Assurance and Inspection (RAI) team</b>	Complete - December 2021	<b>Training officer appointed in National Support, Partnerships and Prevention Unit (NSPPU)</b> with responsibility for coordination of all <b>training across PSD business areas</b> . Joint training now takes place on a regular basis.

No.	Recommendation	Status	Thematic Report/s
	<b>audit, and to liaise with the SPSO, the PIRC and the SPA on joint training, best practice and other relevant development opportunities.</b>		
63	PIRC complaint handling review officers and trainee investigators <b>should work-shadow police officers at peak times to see at first hand the atmosphere and environment in which police officers are obliged to make decisions that can have serious implications.</b>	Complete - December 2022	PIRC has now integrated <b>shadowing as part of its induction and on-boarding process</b> ensuring that new recruits are briefed about the process that enables shadowing opportunities. <b>However, until Police Scotland has capacity and, importantly, the threat of COVID has subsided to allow third parties into custody facilities,</b> it will not be possible to put this into practice. Nevertheless, there is a commitment from all parties to deliver this opportunity when it is safe and practical to do so.
64	PIRC should deploy the in-house expertise that the organisation has to deliver internal <b>training for investigators in the law of evidence.</b>	Complete - December 2021	PIRC provides in-house <b>training through shadowing and mentoring.</b> Trainees also attend Police Scotland's Jackton training facility and a University course as part of their trainee continuous <b>professional development programme.</b> A further assessment of training needs to identify any gaps is ongoing and the results will be assessed and actions discharged through the Heads of Department Group. As a result of the implementation of Recommendation 47 on 4 October 2021, in-house legal expertise has produced <b>Aide Memoir and Style template guidance</b> on evidential standards and requirements relating to assaults, which will be circulated to all investigators. Further iterations will follow seeking to provide support in respect of a wider range of offences.
65	PIRC and Police Scotland should <b>work together to develop training and development opportunities</b> that take the <b>theoretical learning from thematic analysis</b> of complaints and embed it in practical learning for individual officers.	Complete - December 2021	<b>June 2021</b> Investigation and Review staff from PIRC already provide training inputs to courses at the Scottish Police College and publishes Learning Point providing learning that has been identified through investigations and complaint handling reviews. PIRC and PSD training cadre have <b>established training material</b> and regularly deliver jointly on Police Scotland's internal PSD training, Divisional Training, Leadership training and National training.  <b>December 2021</b>

No.	Recommendation	Status	Thematic Report/s
			<p>In addition to joint training already delivered by PIRC and Police Scotland, <b>further training has been delivered at the Scottish Police College, SPA and Police Scotland Professional Standards department.</b> The delivery of the '<b>Learning Point</b>' publication also provides a medium for capturing and sharing learning that has been identified through PIRC investigations and complaint handling reviews. This has been embedded in 'business as usual' processes and will provide a foundation for <b>theoretical learning to be embedded in practical Policing operations.</b></p>
67	<p>Police Scotland officers should <b>receive regular training inputs on how to deal effectively with individuals who display mental ill-health symptoms</b> or related behaviours.</p>	<p>Complete - June 2022</p>	<p><b><u>December 2021</u></b> National mental health aide memoire under consultation. Training currently online and officer <b>safety training to be reviewed.</b> Input has been designed and is presently being finalised with Mental Health leads for Operational Command Training (newly promoted sergeants) on Leading Mental Health Incident, including best practice on leading incidents, detention, warrants, risk assessment and accessing treatment. PIRC staff have also completed <b>mandatory training in relation to engaging with those who have experienced trauma</b> and have received training inputs from Mental Health First Aiders. The Senior Management Team have taken part in <b>Unconscious Bias training</b> with Professional Standards department and rolled out an online module to staff. Further appropriate training is being identified. Operationally, PIRC also record the vulnerabilities of complainers to inform their work.</p> <p><b><u>June 2022</u></b> Building on progress already made, training now delivered to all <b>new uniformed sergeants on Leading Mental Health Incidents</b> and includes best practice on leading such incidents.</p>

No.	Recommendation	Status	Thematic Report/s
PR2	Police Scotland should <b>review the service-wide capability of its line managers to line manage effectively</b> , including the adequacy of training and mechanisms of support for line managers.	Complete - June 2021	Management and co-ordination of internal complaints (including grievance) and employment tribunal complaint submissions to ensure <b>consistency of approach</b> regarding consideration of all associated people matters, remaining cognisant of officer and staff wellbeing. National processes established within PSD to <b>identify training requirements in for complaints, investigations and conduct, including Induction training, CPD events and resources</b> . Training Working Group covering all PSD business areas includes representation from Learning, Training and Development and Local Policing.
PR3	Police Scotland should consider the scope for <b>employing more non-police officer support staff in PSD</b> with appropriate seniority, skills and level of knowledge of complaints handling. This is an option that Police Scotland may wish to ask HMICS to review.	Complete - December 2022	<p>Preliminary Report Recommendation 3 asks that Police Scotland considers employing more non-police officer support staff in Professional Standards Department (PSD). <b>A review of the PSD workforce</b> was carried out in May 2022 and <b>found to be reflective of an efficient and effective department</b>. However, the PSD strategic workforce plan 2020-23 recognises that the <b>future model of PSD will require to take cognisance of this recommendation</b>.</p> <p><b>A new complaint handling model has now been implemented</b> within PSD with more officers at constable and sergeant rank appointed and has dedicated, experienced staff to progress all complaints. Police Scotland has also <b>established an Operational Priorities, Capacities and Resilience group (OPCR)</b> and <b>Resource Prioritisation Group (RPG)</b>. This will ensure that the <b>allocation of resources</b> is managed appropriately and that no area is disproportionately impacted due to the significant change in resources and experience over the last few months, and anticipated in the coming 12 months.</p>
PR4	Police Scotland should <b>scrutinise complaints thoroughly on receipt</b> so as to ensure that grievance matters that would in any other walk of life be treated in an HR context <b>are not</b>	Complete - June 2021	<b>Triage process</b> for complex Grievances, Criminal Complaints and Conduct managed by <b>PSD Gateway Unit</b> . GWU scrutinises and assesses for potential criminal matters, conduct related matters or grievance related matters. <b>Case Allocation Review Panel established</b> to provide oversight for Grievance, Non-Criminal Complaints and Employment Tribunals.

No.	Recommendation	Status	Thematic Report/s
	<b>artificially elevated and dealt with as conduct matters.</b>		
PR9	To <b>encourage appropriate use of mediation and grievance procedures</b> Police Scotland should <b>raise awareness</b> and understanding amongst all members of the service of their <b>own internal systems</b> and which matters belong where in order to <b>ensure a proportionate response.</b>	Complete - June 2021	The promotion of mediation at any stage of the grievance process is contained within <b>Police Scotland Grievance policy</b> , published on the <b>P&amp;D Policy Hub on the Intranet</b> . Ongoing communications work regarding whistleblowing and where concern does not meet WB criteria, signposted to Integrity Matters online form to raise concern. The promotion of Wellbeing continues to feature in <b>Operational Priorities</b> .
PR10	Police Scotland should consider the importance of providing all officers involved in frontline resolution with <b>training in mediation and customer handling.</b>	Complete - June 2021	Police Scotland PSD has established an <b>overarching training group</b> to provide oversight of national approaches <b>and delivery of mediation and customer handling training</b> . Training identified for customer handling and mediation in conjunction with Contact, Command and Control Trainer. PSD Training Working group will continue to provide oversight of training in support of Organisational Priorities as outlined in the Annual Police Plan 2021-22.
PR17	<b>Further training for complaints and conduct officers</b> in SPA should be consolidated and broadened in order to ensure the <b>right skillset</b> and up-to-date knowledge of <b>complaint handling best practice in other sectors.</b>	Complete - December 2022	SPA has implemented a <b>comprehensive programme of training and development</b> has been implemented for the complaints handling team. To further enhance the skills within the team, a <b>secondment arrangement has been agreed with PSD</b> to support continuous improvement and shared learning.
PR24	Following the <b>retirement of former police officers PIRC policy should be to replace them with non-police officers.</b> The PIRC should also adopt a similar policy to the IOPC's in England and Wales <b>by recruiting non-police</b>	Complete - December 2022	<b>June 2021</b> In considering the implementation for this recommendation, PIRC views it as <b>essential to have operational and managerial members of staff who have investigative experience and expertise</b> whether from policing or other investigative agencies for the credibility of its investigative capacity of PIRC. <b>To effectively hold the police to account requires</b> investigators with a range of <b>specialist and operational investigative skills.</b>

No.	Recommendation	Status	Thematic Report/s
	<b>officers</b> when recruiting to the most <b>senior posts</b> .		<p><b><u>December 2022</u></b>  PIRC has actively ensured that recruitment practices are focused heavily on assessing the skills the business requires at the point of a vacancy being created. Work has now been embedded to <b>develop the PIRC Skills Matrix</b>, which generates the production of specific skills profiles for each role in the organisation. As a result, the percentage of <b>staff who were former police officers is currently 44% of all PIRC staff</b>.</p>

### In Progress

No.	Recommendation	Status	Thematic Report/s
11	Police Scotland should consider the <b>workload of the sergeant rank</b> at the front line and the <b>supervisory ratio</b> of sergeants to constables in order to give <b>create sufficient capacity for management, coaching and mentoring duties</b> .	In Progress	<p>The <b>rank ratio review is complete</b>. Work stemming from that is now subject to a separate action plan with agreed ownership and <b>progress monitored via a Short Life Working Group</b> chaired by ACC Local Policing East.</p> <p>In addition to the rank ratios work, there are two further actions that will support the full implementation of this recommendation once complete. The first is to <b>undertake a training needs analysis</b> of core line manager skills for both newly and recently promoted Sergeants and consider a refresh of such for officers already in the rank. The second is that the <b>Local Policing Service Delivery Review Team are to undertake a more detailed review of workload, role profile and skills of the frontline Sergeant</b>. An update is to be provided to the Senior Leadership Board in February where it is expected that recommendation 11 will be complete and can be discharged at that point. In the meantime this recommendation remains ongoing.</p>

### Theme 8: Efficiency and Effectiveness

Completed

No.	Recommendation	Status	Thematic Report/s
9	It is inappropriate to involve local officers in the frontline complaints process and therefore <b>all frontline resolution should be carried out by Professional Standards Department.</b>	Complete - December 2021	<p><b><u>June 2021</u></b> The revised Police Scotland Complaint Handling Model commenced on Monday 3 May 2021 and will <b>see all complaints managed within the Professional Standards Department</b> and handled by trained officers and staff. To support this new model <b>25 posts</b> from both Local and National Policing divisions <b>have been re-aligned.</b></p> <p><b><u>December 2021</u></b> <b>Revised Frontline resolution (FLR)</b> process commenced on 3rd May 2021, in order to broaden the opportunities where FLR can be used. FLR has been revised in conjunction with the new complaint handling process, including the <b>creation of the National Complaint and Resolution Unit (NCARU)</b> which facilitates the requirement for <b>all FLR to be dealt with by Professional Standards department.</b></p>
68	The Strategic Oversight Group or the National Complaint Handling Development Group should take an early opportunity to <b>engage with the SPSO</b> to agree where their contribution and advice would be most useful.	Complete – May 2023	<p><b><u>December 2021</u></b> <b>Operational partners continue to engage</b> with the Scottish Public Services Ombudsman (SPSO) as part of overall work to take forward a number of recommendations. Furthermore, the Scottish Government plans to <b>engage with SPSO on recommendations likely to require legislation as part of the additional discussions with wider stakeholders</b> planned ahead of full public consultation in 2022.</p> <p><b><u>December 2022</u></b> <b>SPSO will be invited to attend a forthcoming National Complaint Handling Group (NCHDG) meeting,</b> where their expertise and opinion will be welcomed.</p>

No.	Recommendation	Status	Thematic Report/s
			<p><b>May 2023</b>  Recommendation marked as complete <b>with the SPSO engaging with the National Complaint Handling Group.</b></p>
80	<p>A <b>non-statutory time limit</b> for the submission of complaints by the public should be made explicit in the <b>PIRC's statutory guidance</b> and publicised on the relevant <b>websites</b>. Complaints <b>made more than twelve months</b> after the event or incident should <b>only be considered where the circumstances are grave or exceptional.</b></p>	<p>Complete  - December 2021</p>	<p>New <b>statutory guidance updated</b> to allow Police Scotland discretion to <b>discount complaints that are more than 12 months after the event</b> if specific criteria is met. <b>Guidance circulated to all stakeholders and published on the PIRC website.</b> PIRC statutory guidance and being incorporated and referenced into the revision of the Police Scotland Complaint Handling Standard Operating Procedure.</p>
PR11	<p>Police Scotland should accelerate its plans to <b>expand the use of body-worn video technology.</b></p>	<p>Complete  - June 2022</p>	<p>National consultation took place in 2021, with early indications that the <b>public largely support national roll out of body-worn video (BWV).</b> The timescale for delivery of a fully considered and measured BWV solution that fits strategically is initially estimated to be in the region of <b>24 months before implementation could commence</b>, and a more detailed delivery plan will be developed as part of the Business Case process. Funding to enable delivery of a national BWV solution will be sought from the Scottish Government in line with standard business case processes and associated governance approvals.</p>
PR20	<p>The PIRC should consider the case for <b>creating some measure of regional presence</b> to enhance its capacity to respond immediately to the most serious incidents wherever they occur.</p>	<p>Complete  - June 2021</p>	<p>Analysis of <b>current volume of investigations outwith the west central belt of Scotland</b> would <b>not justify a regional office elsewhere in Scotland.</b> However, <b>home working has brought flexibility</b> to the way PIRC responds to incidents and recent recruitment campaigns have <b>welcomed applications from throughout Scotland.</b></p>

No.	Recommendation	Status	Thematic Report/s
PR25	There should be a <b>management review</b> by an <b>independent expert</b> to ensure that the <b>PIRC has appropriate leadership, skills and culture to carry out its functions in the future</b> , and to examine interactions with other stakeholders and how they can be improved.	Complete - June 2021	The <b>Commissioner has made a number of significant changes within the PIRC organisation</b> . This recommendation has now overtaken by the Final Report recommendation regarding the PIRC's role.

## In Progress

No.	Recommendation	Status	Thematic Report/s
72	NHS accident and emergency facilities should be <b>designed to be able to deal safely with mental health care and acute crises</b> .	In Progress	<p><b><u>December 2022</u></b>            Work with partners continues through the <b>Redesign of Urgent Care Programme and Unscheduled Care Collaborative</b>, to ensure that people with urgent mental health care needs get the right help, in the right place, at the right time.</p> <p>The Scottish Government has provided significant investment to <b>recruit an additional 800 whole time equivalent (WTE) mental health posts</b>, including A&amp;Es, GP practices, police station custody suite and prisons –ensuring local provision and support is at the heart of our plans. At the end of this commitment an additional 958.9 WTE mental health posts have been recruited to under Action 15 of the Mental Health Strategy, including 179.2 WTE posts within the A&amp;E setting and 35.6 WTE posts in Police Custody suites.</p> <p><b><u>May 2023</u></b>            There are two recommendations that <b>stretch beyond policing</b>, such as those relating to <b>NHS mental health provision (Recommendation 72)</b> and civil law (Recommendation 76). These recommendations will, therefore, <b>continue to be progressed by Scottish Government but will no longer feature in thematic progress reports</b>.</p>

## Theme 9: Audit and Review

Completed

No.	Recommendation	Status	Thematic Report/s
2	The Criminal Allegations Against Police Division ( <b>CAAP-D</b> ) of COPFS should <b>repeat on a regular basis the review that they carried out of all the 'assault' and 'excessive force' categorised complaints</b> that had been received by Police Scotland in the month of March 2020.	Complete - June 2021	<p><b><u>June 2021</u></b> COPFS intends to carry out the next exercise to review complaints of assault and excessive force, as proposed in recommendation 2 during August 2021 and have commenced discussions with Police Scotland. <b>COPFS' intention is to repeat the exercise on an annual basis</b> although this will be kept under review in light of successful implementation of other recommendations within Dame Elish's report, particularly those supporting and enhanced audit role for PIRC.</p> <p><b><u>December 2021</u></b> The annual audit exercise by the Criminal Allegations Against Police Division (CAAP-D) of COPFS and Police Scotland took place in August 2021 and saw all excessive force categorisations by the Professional Standards Division (PSD) of Police Scotland reviewed by CAAP-D. <b>PSD were found to have categorised correctly all of the excessive force cases reviewed</b> during the course of the exercise. The agreement of this exercise completed Recommendation 2 at the time of the previous thematic report.</p>
42	The <b>PIRC should conduct an annual audit of triage within PSD</b> of public complaints against the police to ensure that matters that can be resolved by FLR, or misconduct, or potential criminality are being <b>properly identified and routed accordingly</b> , and to provide assurance that Article 3 and Article 5 cases are being <b>correctly</b>	Complete - December 2022	<p>The June Thematic Progress Report confirmed that a <b>joint working arrangement agreed between PIRC and SPA</b> and that the inaugural audit of triage of public complaints against police within the Professional Standards Department (PSD) in Police Scotland had completed.</p> <p>The purpose is to ensure that matters that can be resolved by Front Line Resolution (FLR), or misconduct, or potential criminality are being properly identified and routed accordingly, and to provide assurance that Article 3 and Article 5 cases are being correctly identified and reported forthwith to COPFS.</p>

No.	Recommendation	Status	Thematic Report/s
	<b>identified and reported forthwith to COPFS.</b>		Earlier this year <b>PIRC and SPA staff commenced the inaugural audit</b> which is now being analysed and the report writing phase is ongoing. The <b>report will be presented to the Chief Constable for factual accuracy checking</b> and then tendered for publication thereafter.
61	Both Police Scotland and the PIRC should consider drawing on the expertise of Audit Scotland and the Scottish Public Services Ombudsman in <b>re-designing the audit arrangements</b> in respect of police complaints.	Complete - December 2022	The first <b>joint audit by SPA and PIRC</b> has taken place and report of findings are now awaited. SPA and PIRC have committed to <b>running a programme of audit</b> and this will take place on a <b>quarterly basis</b> . PSD has <b>advertised for a Data Assurance Co-ordinator</b> post and the successful candidate will co-ordinate future audits from a Police Scotland perspective.  <b>2023 Update</b> On 26 April 2023 the PIRC published the “Audit Report of Police Scotland on the triage of Complaints about the Police”. <sup>163</sup>
PR5	<b>Frontline resolution</b> of complaints should be <b>subject to close and regular monitoring through regular, meaningful internal and external audits</b> , and monitoring of decision-making.	Complete - June 2021	<b>National Frontline Resolution process implemented.</b> PSD Audit methodology and management as yearly Business as Usual activity-in line with Police Scotland Excellence Framework - 1st level Assurance.
PR27	<b>All the audit arrangements</b> , including regular dip-sampling, designed to identify poor practice, good practice and emerging trends <b>should be prioritised</b> and co-ordinated to support the common objective of <b>improving standards and service to the public.</b>	Complete – May 2023	<b>December 2022</b> This links to work undertaken for recommendation 42 and 61. Although the audit timetable has yet to be confirmed, the intention is to undertake an audit of Front-Line Resolution (FLR) of complaints and, thereafter, the six-stage complaint handling process. <b>Once the timetable has been agreed with the PIRC Commissioner, discussions will take place with Police Scotland and SPA on planning and co-ordination of the audit process.</b>

<sup>163</sup>PIRC (2023) *Audit Report of Police Scotland on the triage of Complaints about the Police* [online] Available at: <https://pirc.scot/media/5529/pirc-audit-report-of-police-scotland-on-the-triage-of-complaints-about-the-police-april-2023.pdf>

No.	Recommendation	Status	Thematic Report/s
			<u>May 2023</u> Recommendation marked as complete.

## In Progress

No.	Recommendation	Status	Thematic Report/s
7	The next follow-up <b>audit of the six-stage complaint handling process</b> or audit of frontline resolution <b>should be carried out by the PIRC</b> as an independent third party.	In Progress	PIRC is <b>waiting for Police Scotland’s centralised model of Complaint Handling to be embed further before they audit</b> the six-stage complaint handling process or front-line resolution (FLR). PIRC will take learning from the ongoing annual audit of triage regarding Recommendation 42 and apply that to the methodology and practices to be utilised in this audit early next year.
71	As soon as it is reasonable and feasible to do so, HMICS, along with the appropriate health inspection or audit body, should <b>conduct a Review of the efficiency and effectiveness of the whole-system approach to mental health.</b>	In Progress	It was previously reported that completion of the HMICS Inspection of Healthcare in Custody would assist with the scoping exercise for this recommendation. The <b>inspection for Mental Health is in the scoping stage</b> , with the conclusion of the Healthcare in Custody inspection scheduled for completion in December 2022. The report of HMICS Assurance Review of Police Scotland Contact Assessment Model – published in August 2022 - will also assist in the scoping exercise for this recommendation.  <b><u>2023 Update</u></b> On 5 January 2023 HMICS published “Policing Mental Health in Scotland – A Thematic Review Terms of Reference”. <sup>164</sup>

<sup>164</sup>HM Inspectorate of Constabulary in Scotland (2023) *Policing Mental Health in Scotland – A Thematic Review* [online] Available at: <https://www.hmics.scot/sites/default/files/publications/HMICS20230104TOR.pdf>

## Keep Under Review

No.	Recommendation	Status	Thematic Report
75	<p>Many of the issues identified in the 2017 report of my Independent <b>Review of Deaths and Serious Incidents in Police Custody in England and Wales</b> are also directly relevant in the Scottish context. The Scottish Government should <b>consider which of the findings and recommendations made in that report could and should be mirrored by public bodies in Scotland.</b></p>	<p>Keep Under Review</p>	<p><b><u>December 2022</u></b>            Review of the 2017 Deaths and Serious Incidents in Police Custody in England and Wales has been completed. <b>Relevant findings were included within the public consultation.</b> Any relevant non-legislative elements of the 2017 Review will be progressed separately.</p> <p><b><u>May 2023</u></b>  <b>Recommendation changed from in progress to keep under review.</b></p>

## **Annex B — Legislative Recommendations**

The tables below are divided into the four sections outlined in the consultation paper<sup>165</sup> for the proposed Police Complaints, Investigations and Misconduct Bill: The four sections are rights and ethics; governance, jurisdiction and powers; conduct and standards; and liability for unlawful conduct.

Each table outlines recommendations from Dame Elish’s preliminary and final reports that require legislative change. The preliminary report recommendation numbers are prefixed with “PR”, whereas those with just a number are from the final report. Some recommendations are not official recommendations from Dame Elish’s reports but are either suggestions made in her reports or issues the Scottish Government wished to consultate on. Each recommendation has the consultation question number/s they are related to and analysis gathered from consultation responses. This analysis was provided by Alma Economics on behalf of the Scottish Government.

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<sup>165</sup> Scottish Government (2022) *Police complaints, investigations and misconduct - legislation proposals: consultation analysis*

## Section 1: Rights and Ethics

No.	Recommendation	Consultation	Consultation Analysis
1	<p>Police Scotland's <b>Code of Ethics should be given a basis in statute</b>. The Scottish Police Authority and the Chief Constable should have a <b>duty jointly to prepare, consult widely on, and publish the Code of Ethics, and have a power to revise the Code when necessary</b>.</p>	1.1A to 1.1H	<p>Out of 44 respondents, 36 agreed that there <b>should be a statutory requirement</b> for Police Scotland to have a Code of Ethics. Furthermore, most respondents (35 out of 42) agreed that it <b>should be possible to amend and/or update</b> such a code when required. Of the respondents that provided further information, some reasoned that this would ensure that an ethical standard of behaviour is upheld, emphasising the importance of these values within Police Scotland, and that it would also remove ambiguity regarding the standard of conduct expected.</p> <p>Respondents were <b>primarily split between suggesting that a different organisation should be responsible for preparing the Code of Ethics and that the Chief Constable and the Scottish Police Authority (SPA) should be jointly responsible</b>. The <b>former suggestion was favoured</b> by responses from <b>individuals</b> (out of the 20 that chose this option, 19 were individuals and 1 was an organisation), while the <b>latter suggestion was favoured by organisations</b> (out of the 16 that chose this option, 8 were individuals and 8 were organisations). Of the respondents that stated that a different party should be responsible, the most common suggestion was that this should be an independent party. Some respondents specified that while policing bodies can be consulted, they should not be involved in drafting the Code of Ethics.</p> <p>The majority of respondents agreed that the <b>body responsible for preparing a Code of Ethics should also be responsible for publishing it</b>.</p>

No.	Recommendation	Consultation	Consultation Analysis
8	The Scottish Government should <b>amend the relevant provisions of the Police, Public Order and Criminal Justice (Scotland) Act 2006</b> at the earliest opportunity to put beyond doubt the <b>definition of a “person serving with the police”</b> .	1.6A to 1.6C	<p>37 out of 43 respondents agreed that the term <b>“person serving with the police” should be more clearly defined</b>. There was consensus among respondents that the definition should clarify whether the <b>PIRC has powers to investigate officers who have since retired or resigned</b> from the service and those who were off duty at the time of an incident.</p> <p>Where additional comments were provided, most responses reiterated their agreement with the recommendation and specified that the definition should be extended to include these categories of officers. Some respondents reasoned that these officers are still representing the police and should be expected to adhere to ethical standards of conduct in their personal lives.</p>
10	The Scottish Government should propose amendment of the Police and Fire Reform (Scotland) Act 2012 to the following effect: There should be an <b>explicit duty of candour on the police to co-operate fully with all investigations</b> into allegations against its officers.	1.2A to 1.2D	<p>The <b>majority</b> of respondents <b>agreed that there should be an explicit statutory duty of candour</b> on the police to co-operate fully with all investigations into allegations against its officers (out of 42 respondents, 29 agreed strongly while 7 agreed). There was also agreement among most respondents that this duty should be placed on both Police Scotland as an organisation as well as on individual officers. Furthermore, most respondents <b>disagreed that the duty should relate only to incidents involving on-duty officers</b>.</p> <p>Overall, respondents were <b>roughly split</b> between agreeing and disagreeing with the suggestion that the <b>statutory duty of candour should apply only when an officer's status as a witness has been confirmed</b> (out of 43 respondents, 21 agreed while 19 disagreed). Responses from <b>individuals were more likely to disagree</b> (15 disagreed while 12 agreed) while responses from <b>organisations were more likely to agree</b> (9 agreed while 4 disagreed).</p>
12	The Scottish Government should consult on a <b>statutory duty of co-operation</b> to be included in both sets, or any future combined set, of conduct	1.2E to 1.2I	<p>Out of 42 respondents, 33 <b>agreed that police officers should have a statutory duty of co-operation</b> to assist during investigations, inquiries and formal proceedings. The majority of respondents also agreed that such a duty <b>should apply to former police officers</b> as well as current and former police staff. <b>Responses from organisations</b> were more likely to be <b>split</b> between agreeing and disagreeing <b>that the duty should apply to former police officers and staff</b>. It was also suggested that police officers should be</p>

No.	Recommendation	Consultation	Consultation Analysis
	<p>regulations as follows:            “Constables have a duty to assist during investigations, inquiries and formal proceedings, participating openly, promptly and professionally in line with the expectations of a police officer when identified as a witness.</p>		<p>required to participate 'openly' and 'promptly' by most respondents. Where further comments were provided, a few respondents suggested that officers should be required to participate honestly, while some emphasised that it would be necessary to confirm their status as a witness first.</p> <p>Furthermore, <b>26 out of 42</b> respondents <b>disagreed</b> that a statutory duty of co-operation should <b>only relate to incidents involving on-duty police officers</b>. Responses on behalf of organisations were slightly more likely to disagree (10 respondents disagreed, while 3 agreed) compared to responses provided by individuals (16 respondents disagreed, while 9 agreed).</p>
20	<p>The Police Investigations and Review Commissioner should be <b>added to the list of prescribed persons in The Public Interest Disclosure (Prescribed Persons) Order 2014</b> in order that people working in Police Scotland and in the Scottish Police Authority are able to raise their concerns with an independent third-party police oversight organisation.</p>	1.3A to 1.3D	<p>In summary, 39 out of 43 respondents agreed that people working in Police Scotland and the Scottish Police Authority <b>should be able to raise their concerns with an independent third-party</b> police oversight organisation. Similarly, most respondents agreed that concerns which have been raised about wrongdoing within policing in Scotland should be audited by an independent organisation (35 out of 41 respondents agreed and 6 disagreed or were unsure).</p> <p>Respondents were almost <b>evenly split</b> on whether the oversight organisation should be the <b>PIRC or an independent third-party</b>, with responses provided by organisations being more likely to favour the former. For instance, in relation to whistleblowing concerns specifically from within Police Scotland, 20 respondents stated that the oversight organisation should be the PIRC, while 19 stated that it should be a different independent body. Among responses provided by organisations, 9 agreed with the former and 2 agreed with the latter.</p> <p>Where further comments were provided, many respondents suggested that the PIRC is not sufficiently impartial and some expressed concern that the PIRC employs people with a police background.</p> <p>Some respondents emphasised that, regardless of who the oversight organisation is, it needs to be able to <b>provide whistle-blowers with legal protection</b>, while some argued it should also have the power to follow up on concerns brought to them.</p>

No.	Recommendation	Consultation	Consultation Analysis
			<p>Some respondents emphasised the importance of the independent third-party oversight organisation having the necessary legal power to act on whistleblowing concerns and provide whistle-blowers with protection when bringing concerns to them.</p>
74	<p>In Article 2 cases, in order to facilitate their effective participation in the whole process, there should be <b>access for the immediate family of the deceased to free, non-means tested legal advice, assistance and representation</b> from the earliest point following the death and throughout the Fatal Accident Inquiry.</p>	1.4A to 1.4D	<p><b><u>December 2022 Thematic Report</u></b>  The Scottish Government made a manifesto commitment to engage with the legal profession and victim support organisations on legal aid reform. <b>Legal aid reform will be considered during this Parliament, including the availability of legal aid for relatives involved in Fatal Accident Inquiries.</b></p> <p><b><u>Consultation Analysis</u></b>  Most respondents agreed that legal aid should be <b>available to all families</b> of people who die in police custody or following police contact regardless of their ability to pay (31 out of 40 respondents). Of the respondents that agreed, some argued that this would ensure there is not a financial barrier for people seeking legal representation. Some also argued that means testing of legal aid is unfair, intrusive and unnecessarily places additional stress on families who are grieving.</p> <p>Of the respondents that disagreed with the recommendation, <b>some expressed concern that public money could be used to investigate vexatious complaints.</b></p> <p>Most respondents also agreed that there <b>should be an opportunity for family and common interest groups to receive legal aid funding on a group basis</b> in Article 2 cases (29 agreed while 6 disagreed out of 39 respondents). Of the respondents that provided further information, some emphasised that the entitlement to financial aid should also be extended to police officers, while others expressed support for the funding to be received on a group basis as it may be more cost-effective.</p>

No.	Recommendation	Consultation	Consultation Analysis
PR14	<p>Subject to the fundamental right to silence or privilege against self-incrimination of a suspect under Article 6 of Convention Rights, <b>police officers should give every assistance after a serious incident.</b> That assumption of <b>co-operation should be put beyond doubt in the primary legislation,</b> including in the <b>wording of the constable's declaration.</b></p>	1.2L to 1.2N	<p>The majority of respondents agreed that the Scottish Government <b>should consider possible amendments to the constable's declaration</b> (31 out of 43 respondents) and the Standards of Professional Behaviour (32 out of 43 respondents) to reflect an obligation to assist with investigations where appropriate.</p> <p>There was <b>general consensus among responses from individuals</b>, with 22 respondents agreeing 3 disagreeing with the <b>amendment to the constable's declaration</b>, and 23 respondents agreeing and 4 disagreeing amendments to the Standards of Professional Behaviour. There was relatively <b>less consensus among organisations</b>, with 9 respondents agreeing 4 disagreeing with the amendment to the constable's declaration, and 9 respondents agreeing and 3 disagreeing amendments to the Standards of Professional Behaviour.</p> <p>Of the respondents that provided further comments, the most prominent view expressed was that these duties are necessary to <b>provide clarity in terms of the standard of behaviour</b> that is expected within Police Scotland and that they may also help to ensure that these standards are upheld.</p> <p>It was also mentioned that <b>police officers should have the same rights as members of the public.</b> Some respondents argued the importance of protecting the human rights of police officers, while others emphasised that police officers who are suspects in criminal investigations should have the same rights as other suspects.</p>
PR15	<p>Where a serious incident is being investigated by the PIRC, the investigators should also have a power, where it is necessary and proportionate, to <b>compel police officers to attend within a reasonable timescale for interview.</b></p>	1.2J to 1.2K	<p>Most respondents agreed that <b>the PIRC should have the statutory power to compel officers to attend for interview within</b> a reasonable timescale (36 out of 43 respondents). Furthermore, they agreed that the reasonable timescale should be set in legislation.</p>

No.	Recommendation	Consultation	Consultation Analysis
PR29	The Scottish Government should amend the relevant provisions at the earliest opportunity to <b>put beyond doubt the definition of a "person serving with the police"</b> .	1.6A to 1.6C	Linked to final report recommendation 8
PR30	The Scottish Government should consider the case for <b>amending the legislation to put beyond doubt the definition of a member</b> of the public who may make a relevant complaint.	1.6D to 1.6F	Out of 42 respondents, 31 <b>agreed that the term "a member of the public" should be defined</b> to make it clear <b>who is able to make a complaint</b> and that the definition should make clear that it <b>includes a serving police officer who is off duty at the time of an incident</b> . Where additional comments were provided, most suggested that the definition should include off-duty police officers and reasoned they should have the same rights as other individuals to make complaints. Some respondents suggested that the treatment of such police officers depends on the complaint circumstances such as how the complaint is made.
Not listed as a Rec. Suggestion on page 437 (Final Report)	The Review received evidence that [...] subsection [The Police, Public Order and Criminal Justice (Scotland) Act 2006, section 33A(b)(ii) (Investigation of deaths)] is <b>ambiguous</b> in that it is <b>not clear whether the provision encompasses the death of a serving police officer'</b> (Misc. recommendation, p. 437).	1.5A to 1.5B	Most respondents (22 out of 35) agreed that the existing law regarding the <b>PIRC's powers to investigate an incident involving the death of a serving police officer should be clarified</b> . Responses from <b>organisations were nearly equally split</b> between agreeing and disagreeing with this recommendation (out of 8 responses from organisations, 5 agreed while 3 disagreed). Of the respondents that elaborated further, some suggested that the definition should be clarified to include deaths of serving police officers and emphasised that everyone should be treated equally.

## Section 2: Governance, Jurisdiction and Powers

No.	Recommendation	Consultation	Consultation Analysis
13	<p>The Scottish Government should consider the case for giving the PIRC a specific <b>legislative power</b> that would enable staff to <b>access the Centurion database from its own offices</b> so that contemporaneous audit is possible.</p> <p>Providing a basis in law for accessing any information relevant to the PIRC's statutory functions should ensure compatibility with GDPR and any other relevant data protection legislation.</p>	2.2A to 2.2D	<p><b><u>December 2022 Thematic Report</u></b></p> <p>As this is likely to require legislation to address data protection matters, it was been included within the public consultation and is likely to form part of the new Bill. In the interim, PIRC and Police Scotland continue to explore Centurion's capabilities and possible non-legislative options prior to any potential legislative changes being made.</p> <p><b><u>Consultation Analysis</u></b></p> <p>32 out of 37 respondents agreed that <b>the PIRC should be able to access Police Scotland's complaints and conduct database remotely</b>. Of the respondents that provided further comment, many reasoned that the PIRC needs access to complete information and that this would improve the accuracy and efficiency of its investigations. Some respondents stated that, while access should be granted, it is <b>important that data protection concerns are addressed</b>.</p> <p>Of the respondents that expressed <b>views on potential safeguards</b> and limits in relation to the PIRC accessing Police Scotland's complaints and conduct database, most suggested that such safeguards <b>and limits need to be put in place before access can be granted</b>. Respondents argued that there should be restrictions on who is granted such access and that they need to be appropriately vetted. Furthermore, respondents provided suggestions regarding what information the PIRC should have access to, including that they should only be able to view information that is relevant to an ongoing investigation.</p> <p>Some respondents suggested that necessary safeguards and limits would have to be put in place if the PIRC is granted remote access to the Police Scotland complaints and conduct database. These include restrictions on who has access (e.g., properly vetting staff beforehand) as well as what is being accessed (e.g., only information relevant to their ongoing investigations).</p>

No.	Recommendation	Consultation	Consultation Analysis
34	<p>The 2006 Act should be amended to <b>re-designate PIRC as a Commission</b> comprising <b>one Police Investigations and Review Commissioner and two Deputy Commissioners, to create a statutory Board</b> and to provide for the necessary appointment arrangements.</p> <p>Given the sensitivity of the office of the Commissioner, the role should be strengthened by <b>the appointment of two Deputies with relevant legal expertise</b> or other relevant experience who are <b>not former senior police officers</b>.</p>	2.2A to 2.2D	<p>29 out of 39 respondents agreed that <b>the PIRC should be re-designated as a Commission</b>. If it is re-designated as a Commission, most respondents agreed that <b>two Deputy Commissioners should be appointed</b>. Of the respondents that provided further explanation, many claimed that this would improve the PIRC, firstly by spreading the responsibility of one individual across multiple individuals, and secondly by increasing the impartiality and status of the organisation.</p> <p>Furthermore, of the respondents that provided further comment, most emphasised their view that the <b>Deputy Commissioners should be required to have legal knowledge</b>. It was also suggested that <b>certain types of people should be precluded</b> from being appointed Deputy Commissioner, such as <b>former police officers (of any rank) and other former Police Scotland staff</b>. A minority of respondents disagreed and suggested that these restrictions are not needed.</p> <p>There was <b>less consensus</b> about who should be <b>responsible for appointing</b> the Deputy Commissioners. However, some suggestions included: the Scottish Government, the Scottish Parliament and the PIRC.</p> <p>Most respondents <b>agreed that a statutory Board should be created</b>, with 25 respondents agreeing with this recommendation while 7 disagreed. Responses provided by organisations were almost equally split between agreeing and disagreeing with this recommendation. Of the respondents that provided further information, some argued the recommendation would increase the PIRC's integrity, accountability and status as well as instil public confidence in the organisation.</p>

No.	Recommendation	Consultation	Consultation Analysis
35	<p>The <b>Police Investigations and Review Commissioner should be appointed by Her Majesty the Queen on the nomination of the Scottish Parliament and should be made accountable to the Scottish Parliament through the Scottish Parliamentary Corporate Body and the committees of the Parliament</b>, but not for criminal matters, for which the Commissioner is accountable to the Lord Advocate, and not for operational matters or decisions in which she acts independently.</p> <p>This in accordance with the 2009 opinion of the Council of Europe's Commissioner for Human Rights that each Police Ombudsman or Police Complaints Commissioner should be appointed by and answerable to a legislative assembly or a committee of elected representatives that does not have express responsibilities for the delivery of policing services.</p>	2.1I to 2.1N	<p>21 out of 39 respondents suggested that the appointment of the Police Investigations and Review Commissioner (PIRC) <b>should be made by nomination of the Scottish Parliament</b>. The <b>remaining respondents were equally split</b> between suggesting that it <b>should remain a Scottish Ministerial appointment and stating that they 'Don't know'</b>. Where additional comments were provided, those that were in favour of the responsibility lying with the Scottish Parliament reasoned that this would ensure that the PIRC is impartial and that the appointment process is fair and balanced.</p> <p>There was an <b>equal split between respondents that agreed and disagreed</b> with the recommendation that the <b>PIRC should be appointed by Her Majesty (HM) the Queen</b>. Responses from <b>organisations were more likely to agree</b> with this recommendation, while <b>individuals were more likely to disagree</b>. Many of the respondents that were in favour of the recommendation reasoned either that this would ensure that the PIRC is impartial or that it is a necessary formality. Of the respondents that were not in favour, many explained that HM would not have sufficient knowledge on the matter and that it would be an outdated formality.</p> <p>Out of 39 respondents, 30 suggested that the <b>accountability arrangements for the PIRC should transfer to the Scottish Parliament</b>. Among these respondents, 23 were responses from individuals and 7 were from organisations. Furthermore, 3 respondent organisations and 1 individual suggested that the arrangements should remain with the Scottish Ministers. Where additional comments were provided, ensuring impartiality and accountability of the PIRC were the most common reasons provided.</p>

No.	Recommendation	Consultation	Consultation Analysis
37	<p>The <b>PIRC should be given a statutory power to call in an investigation of a complaint if there is sufficient evidence that Police Scotland has not dealt with a complaint properly</b>, where the complainer provides compelling evidence of a failure on the part of Police Scotland and where the Commissioner assesses that it would be in the public interest to carry out an independent re-investigation.</p>	2.2E to 2.2G	<p>30 out of 32 respondents agreed that the <b>PIRC should be given a statutory power to call in an investigation of a complaint</b>. Furthermore, nearly the same number of respondents suggested that the PIRC should be able to investigate a complaint against Police Scotland in each of the <b>following circumstances</b>:</p> <ol style="list-style-type: none"> <li>1. If the complainer provides compelling evidence of a <b>failure on the part of Police Scotland</b> (chosen by 31 respondents).</li> <li>2. If there is <b>sufficient evidence</b> that Police Scotland <b>has not dealt with a complaint properly</b> (chosen by 31 respondents).</li> <li>3. If the Commissioner assesses that it would be in the <b>public interest</b> to carry out an independent re-investigation (chosen by 30 respondents).</li> </ol> <p>Where further comments were provided, the majority of respondents reiterated their agreement with the recommendation. Some respondents argued that the PIRC should be able to investigate any complaints against Police Scotland without restriction.</p>
38	<p>The PIRC should have an additional power, similar to the PONI's, to <b>investigate a current practice or policy of Police Scotland</b> if she believes that it would be in the <b>public interest to do so</b>; this power should be used to focus on broad themes or trends, or practices which might be of particular public concern.</p>	2.2H to 2.2K	<p>Out of 38 respondents, 27 agreed that the <b>PIRC should be able to investigate current practices and policies of Police Scotland</b> if the Commissioner believes it would be in the public interest. Overall, the <b>most favoured response</b> option selected by respondents was to <b>disagree that this additional power should be limited in any way</b> (out of 38 respondents, 19 disagreed and 13 agreed). However, <b>responses from organisations</b> were more likely to <b>agree that these powers should be limited</b> (out of 12 responses, 7 agreed while 3 disagreed).</p> <p>Where respondents provided further comments, some respondents suggested that this power should be subject to certain caveats, including that it should not lead to an abundance of unnecessary investigations and that there needs to be regular communication between the bodies.</p>

No.	Recommendation	Consultation	Consultation Analysis
81	<p>The Scottish Government should agree with the UK Government and the Northern Ireland Executive how best to <b>amend the primary legislation to give the PIRC the power</b>, in clearly defined circumstances, <b>to investigate the actions of officers from PSNI and English and Welsh police forces or services</b>, and the other three reserved police forces, <b>when they are undertaking a policing function in Scotland</b>; and explore with the other administrations <b>how reciprocal powers</b> could be put in place for the IOPC and the PONI in respect of the actions of Police Scotland officers when they are operating in England, Wales or Northern Ireland.</p>	2.3A	<p><b><u>December 2022 Thematic Report</u></b>  This recommendation is included as part of the public consultation and the responses will help to shape the preparation of a draft Bill. In advance of legislation, <b>a cross-border MoU</b> has been signed by operational partners setting out key principles and arrangements for the investigation of <b>incidents involving police officers operating outwith their home country</b> on mutual aid or cross-border operations.</p> <p><b><u>Consultation</u></b>  Among the respondents that provided views in relation to cross-jurisdictional issues, <b>most agreed with</b> the recommendation <b>to address the existing gap in cross-jurisdictional investigations</b>. Respondents suggested that <b>the PIRC should be able to investigate all officers involved in incidents that occur in Scotland</b> and emphasised the importance of cross-jurisdictional support and communication between nations.</p> <p>Of the respondents that disagreed with the recommendation, some suggested instead that the PIRC should not have this power and that it should be the responsibility of the jurisdiction that the officer is from.</p>
PR7	<p>PIRC should be given appropriate access to <b>the Police Scotland Centurion system for the purposes of contemporaneous audit of complaints</b> and to help facilitate early PIRC awareness of criminal allegations.</p>	2.2A to 2.2D	Linked to final report recommendation 13.

No.	Recommendation	Consultation	Consultation Analysis
PR21	<p>The PIRC should have the support of a <b>new statutory Board</b> of members appointed through the Scottish public appointments process whose role would be to <b>scrutinise the work of the organisation, review the performance of the Commissioner</b> and offer supportive advice and expertise.</p>	2.1A to 2.1H	Linked to final report recommendation 34.
PR22	<p>The Commissioner, or potentially a Deputy Commissioner, should be vested with a <b>statutory power to make recommendations</b> in addition to the existing powers to direct reconsideration of complaints.</p> <p>The corollary to that is that <b>there should be a statutory duty</b>, subject to a public interest test, <b>on the Chief Constable to comply with recommendations unless there are sound overriding operational or practical reasons for not complying</b> with a PIRC recommendation and an obligation on <b>PSD to report progress</b> back to the PIRC. Those statutory arrangements should be supported by</p>	2.2L to 2.2P	<p>19 out of 38 respondents agreed that recommendations from the <b>PIRC should be put on a statutory footing</b> similar to current reconsideration directions <b>following both a review and an audit</b>. The remaining respondents were almost equally split between agreeing that it should follow a review, disagreeing that it should be put on a statutory footing and being unsure. Most respondents agreed that Police Scotland or other policing bodies should be required to act on recommendations following a complaint handling review or audit. For example, of the 38 respondents, 17 respondents suggested that this should be without restriction, while 15 respondents believed that Police Scotland or other policing bodies should be required to act on the recommendations unless there is an overriding practical or operational reason not to do so.</p> <p>Most respondents agreed that Police Scotland <b>should have to respond to such recommendations following a review of police complaints handling</b> (out of 38 respondents, 34 agreed while 3 disagreed). Similarly, the vast majority agreed that Police Scotland should have to respond to such recommendations following an audit of police complaints handling (out of 38 respondents, 33 agreed while 4 disagreed). Some respondents expressed concern that this is not currently the case and that there should be a requirement on Police Scotland to comply with the recommendations within a specified time. Furthermore, <b>some suggested that the recommendations</b> should be made publicly available.</p>

No.	Recommendation	Consultation	Consultation Analysis
	agreement between the PIRC and Police Scotland on how the PIRC will be kept advised of progress.		

### Section 3: Conduct and Standards

No.	Recommendation	Consultation	Consultation Analysis
22	The Scottish Government should develop proposals for <b>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.</b>	3.2A to 3.2G & 3.2L	<p>26 out of 36 respondents agreed that <b>it should be possible to begin and continue gross misconduct proceedings against former officers of any rank</b>. Some respondents suggested that this <b>should only occur in specific circumstances, such as (i) when in the public interest, (ii) if allegations related to on-duty misconduct, (iii) where there is strong evidence and (iv) where the matter is serious enough for the officer to be dismissed</b>. Most respondents agreed that the relevant authority should take into consideration the wishes of a complainer.</p> <p>There was <b>less consensus regarding who should be responsible for making this decision</b>. 14 respondents suggested the PIRC, 9 proposed the SPA and 7 advocated for a different body than those included in the options. Respondents who suggested a different body specified that this should be an independent, legally qualified party. The most cited characteristic for such a decision maker to possess was impartiality, transparency, having the necessary authority and adherence to ethical principles.</p> <p>Respondents most frequently disagreed that specific arrangements of the gross misconduct hearings (i.e., if hearings were held in public and were chaired by a legally independent chair) would change their views provided on the recommendation (26 respondents selected this option). The second most</p>

No.	Recommendation	Consultation	Consultation Analysis
			<p>frequently selected option was that their views would change if the hearings were chaired by a legally independent chair, as chosen by 6 respondents.</p> <p>Some respondents suggested that the <b>body that decides whether gross misconduct hearings should be held</b> after an officer leaves the service <b>should be impartial</b>, transparent and adhere to ethical principles. Some respondents specified that it should be an <b>independent legally qualified party</b> that should make these decisions.</p>
23	<p>In gross misconduct cases, for all ranks, the Police Investigations and Review Commissioner should determine if it is <b>reasonable and proportionate to pursue disciplinary proceedings</b> in relation to former police officers <b>after the twelve-month period, considering the seriousness of the alleged misconduct</b>, the impact of the allegation on public confidence in the police, and the public interest.</p>	3.2H to 3.2J & 3.2L	<p>Most respondents (27 out of 36 respondents) agreed that <b>it should be possible for gross misconduct proceedings to be taken forward where allegations came to the attention of the relevant authority more than 12 months</b> after the person ceased to be an officer and the following conditions are met:</p> <ol style="list-style-type: none"> <li><b>1. The case is serious and exceptional.</b></li> <li><b>2. The case is likely to damage public confidence in policing.</b></li> <li><b>3. The PIRC has determined disciplinary proceedings reasonable and proportionate.</b></li> </ol> <p>Furthermore, 26 out of 36 respondents agreed that this should be <b>possible for proceedings involving all ranks of police officer</b>. Of the respondents that provided further information, many emphasised that officers should be held accountable for their actions regardless of timescale. Respondents also highlighted the importance of maintaining public trust and securing justice for complainers irrespective of timeframe.</p> <p>A <b>minority of respondents</b> were <b>not in favour</b> of the recommendation and highlighted the <b>absence of such powers for employees in other areas of society</b>. Some expressed concern that this could infringe on the private lives of former officers and is not proportional with respect to practices in non-policing organisations.</p>

No.	Recommendation	Consultation	Consultation Analysis
24	The Scottish Government should engage with the UK Government with a view to <b>adopting Police Barred and Advisory Lists</b> , to learn from experience south of the border and to ensure compatibility and reciprocal arrangements across jurisdictions.	3.2K to 3.2L	<p>The most favoured option by respondents was that the Scottish Government should work with the UK Government to <b>adopt the Barred and Advisory Lists model</b>. 28 respondents agreed (including 21 responses from individuals and 7 from organisations). The second most frequently stated option was 'Don't know' (out of 8 respondents, 5 were individuals and 3 were organisations) while the third was the suggestion that they should work together to adopt other measures (out of 4 respondents, 3 were individuals and 1 was an organisation).</p> <p><b>Some respondents suggested that that there should be a zero-tolerance policy for misdemeanours while others emphasised that it should be considered that people can change.</b> Other comments included that the Scottish Intelligence Database can be used as a record and dissemination tool.</p>
25	The <b>statutory preliminary assessment function should be transferred from the SPA to the PIRC</b> in order to enhance independent scrutiny of allegations, remove any perception of familiarity, avoid any duplication of functions or associated delay, and give greater clarity around the process. The preliminary assessment should be carried out by the Commissioner or a Deputy Commissioner.	3.5A to 3.5B	<p>Most respondents <b>agreed with the recommendation that the preliminary assessment of misconduct allegations made against senior police officers should be made by the PIRC</b> (19 agreed strongly and 5 agreed, while 6 disagreed strongly). Additionally, most respondents agreed that the preliminary assessment should be decided on by the Commissioner or their Deputy.</p>
27	<b>Gross misconduct hearings for all ranks should have 1) an independent legally qualified chair appointed by the Lord President, 2) an independent lay member</b>	3.1S to 3.1DD	<p><b><u>Overview of recurring themes for all ranks of officer</u></b></p> <p>Respondents were asked detailed questions regarding the composition of gross misconduct panels for hearings involving senior officers, Chief Superintendents, non-senior officers below the rank of Chief Superintendent as well as the role of the Lord President in appointing panel members. Overall, respondents suggested that the <b>Chair of these hearings should be an independent legally qualified</b></p>

No.	Recommendation	Consultation	Consultation Analysis
	<p><b>appointed by the Lord President and 3) a policing member.</b> This means in senior officer cases the role of Chair should transfer from the SPA to the independent legally qualified person. The policing member in senior officer cases should be appointed by the Lord President; in all other cases the policing member should be appointed by the Chief Constable.</p>		<p><b>person</b> while the <b>hearing panel should also include an independent legally qualified person and an independent lay person.</b> One prominent view expressed by respondents was the <b>importance of transparency and impartiality of the process.</b> Respondents suggested that this would be achieved through minimal involvement from policing bodies, while the Lord President should appoint hearing panel Chairs. A further prominent view was that <b>panel members</b> should have a <b>good understanding of legal processes and the nature of policing.</b> The following sections outline a more detailed account of the responses related to the composition of the gross misconduct hearings for each rank of officer as well as the role of the Lord President.</p> <p><b><u>Senior Officers (3.1S to 3.1U)</u></b>  Most respondents (27 out of 36) agreed that the appointed <b>Chair of gross misconduct hearings should be an independent legally qualified person.</b> In addition to the appointed Chair, the most frequent category of person selected to be included in the <b>hearing panel was a senior expert in policing</b> other than the HM Chief Inspector (chosen by 21 respondents). This was also the option most favoured among respondent organisations. The second most frequent suggestion was that the panel should include an independent lay person (chosen by 19 respondents), which was closely followed by the suggestion that an independent legally qualified person should be included (chosen by 17 respondents). These options were most frequently favoured by responses from individuals. Where respondents provided further information, many stated that the hearing panel should have a good understanding of the context and legal ramifications of gross misconduct cases.</p> <p>Some respondents also highlighted the need for the hearing panels to consist of a range of different members, including legally qualified persons, policing experts and HR professionals. However, other respondents suggested that there should be minimal involvement from the police. These respondents explained that this is necessary to ensure that the procedure is unbiased and that it would also increase public confidence.</p> <p><b><u>Chief Superintendents (3.1V to 3.1X)</u></b></p>

No.	Recommendation	Consultation	Consultation Analysis
			<p>Most respondents (23 out of 32) agreed that the appointed <b>Chair of gross misconduct hearings should be an independent legally qualified person</b>. In addition to the appointed Chair, the most frequent category of person selected to be included in the <b>hearing panel was an independent legally qualified person</b> (chosen by 18 respondents). This was also the option most favoured by responses from individuals. The second most frequent suggestion was that the panel should include an <b>independent lay person</b> (chosen by 17 respondents), while the third most frequent suggestion was that a senior expert in policing should be included (chosen by 12 respondents). Responses from organisations were equally split between these two suggestions. Where respondents provided further information, the most prominent view expressed was the importance of ensuring impartiality in hearings, with some respondents suggesting that retired or in-service police officers, or anyone else affiliated with policing, should not participate in the hearings to maintain a fair procedure. However, some respondents also argued that appointed persons to hearings should understand the legal context and the nature of policing.</p> <p><b><u>Non-senior officers below the rank of Chief Superintendent (3.1Y to 3.1AA)</u></b>  Most respondents (24 out of 31) agreed that the appointed <b>Chair of gross misconduct hearings should be an independent legally qualified person</b>. In addition to the appointed Chair, the most frequent category of person selected to be included in the hearing panel was an <b>independent lay person</b> (chosen by 22 respondents). This option was the most frequently selected by both respondent individuals and organisations. The second most frequent suggestion, chosen by 16 respondents, was that an independent legally qualified person should be included. The third most frequent suggestion, chosen by 10 respondents, was that the panel should include a serving officer of the rank of superintendent or above that is at least two ranks higher than the subject officer. Where respondents provided further information, the importance of impartiality and transparency in the gross misconduct hearings was frequently mentioned. There was a view among some respondents that police members (retired or in service) or any other individuals affiliated with the police should not participate in hearings to ensure impartiality and a fairer procedure.</p>

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			<p><b><u>Role of the Lord President (3.1BB to 3.1DD)</u></b>  Overall, most respondents agreed that the <b>Lord President should appoint the Chair of a gross misconduct hearing which is considering allegations against officers</b>. The most frequently selected option was that the Lord President should appoint the Chair in cases involving senior officers (chosen by 21 respondents), followed by cases involving Chief Superintendents (chosen by 18 respondents) and non-senior officers below the rank of Chief Superintendent (chosen by 15 respondents). A similar pattern among respondents was found regarding the Lord President's authority to appoint the rest of the panel members. Where further comments were provided, respondents that were in favour of the Lord President's involvement reasoned that this would ensure the impartiality and independence of the process. However, respondents that were not in favour of the Lord President's involvement stated that this would be excessive and could lead to delays.</p>
28	<p>There should be <b>one route of appeal against a determination of a gross misconduct hearing or the disciplinary action</b> to be taken and that should be to a <b>Police Appeals Tribunal</b>, as at present. This recommendation is subject to the Police Appeals Tribunals being transferred into the Scottish Courts and Tribunals Service.</p>	3.3A to 3.3C	<p>Given the transfer of the Police Appeals Tribunal to the Scottish Tribunals, most respondents (25 out of 31) agreed that <b>senior officer misconduct regulations should be revised to ensure that there is only one route of appeal</b> (i.e., the Police Appeals Tribunal for senior officer misconduct hearings where there has been a finding of gross misconduct). <b>Respondents were more balanced</b> in terms of <b>who should be the responsible body</b> for managing appeals against determinations of misconduct, whether it be the Police Appeals Tribunal or an independent legally chaired panel. The majority of responses from organisations (7 out of 8) favoured the former. Where further comments were provided, the most prominent theme was the importance of impartiality in any body managing the appeals process. This was seen as important for maintaining transparency, accountability and public confidence. Several respondents advocated for the independent legally chaired panel to manage the gross misconduct appeals process on the basis that it would ensure the impartiality of the process.</p> <p>Many respondents also favoured a simple and consistent approach to the processes for misconduct appeals and some highlighted the importance of consistent treatment of officers across all ranks for the purposes of equality and fairness.</p>

No.	Recommendation	Consultation	Consultation Analysis
			<p>Some respondents suggested that an impartial body should be responsible for managing the appeals process. Some respondents suggested that there should be a simple and consistent approach to appeals' processes and that all officers should be treated equally, regardless of rank.</p>
39	<p>The PIRC should take on <b>responsibility for the key stages of the senior officer misconduct proceedings (both misconduct and gross misconduct)</b> i.e. the functions of receipt of complaints/allegations, preliminary assessment, referral to COPFS of criminal allegations and, where appropriate, referral to an independent legally chaired panel.</p>	3.5C	<p>Most respondents <b>agreed that the PIRC should take on responsibility for key aspects of misconduct and gross misconduct proceedings for senior officers</b>. Specifically, the <b>most frequently selected</b> option (chosen by 24 respondents) was that the PIRC should take on <b>responsibility for the receipt of complaints and allegations as well as referral to an independent legally chaired panel, where appropriate</b>. The second most common suggestion (chosen by 19 respondents) was that the PIRC should be responsible for referral to an independent legally chaired panel if there is a disciplinary hearing after referral to the Crown Office and Procurator Fiscal Service (COPFS). Furthermore, most of the remaining respondents were almost evenly split between respondents suggesting that the PIRC should take on the responsibility for preliminary assessments (chosen by 15 respondents) and for referral to COPFS for criminal allegations (chosen by 16 respondents).</p>
40	<p>The PIRC should be given a <b>new statutory function</b> and power to <b>present a case at a senior officer gross misconduct hearing where the case would be determined by a three-person panel</b> comprising an independent legally qualified</p>	3.5I to 3.5K	<p>Out of 32 respondents, 26 agreed that the <b>PIRC should be able to present a case at a senior officer's gross misconduct hearing</b>. A clear majority of respondents (30 out of 34 respondents) agreed that <b>an independent legally chaired panel should have the capacity to hold a preliminary hearing</b> to identify any evidence that is not in dispute and can be agreed, as well as any other matters that can be resolved ahead of the formal hearing. Respondents were given the opportunity to provide further comments regarding senior officer misconduct cases. The most prominent theme was the view that the PIRC should be granted more power and authority over gross misconduct investigations. Respondents argued that such investigations need to be overseen by the PIRC</p>

No.	Recommendation	Consultation	Consultation Analysis
	chair, a lay person and an expert in senior policing.		<p>because they are an independent organisation and this would ensure transparency of the process. Some respondents emphasised that the PIRC should not employ people with a police background if they want to be impartial.</p> <p>The third most prominent theme was the view that misconduct allegations should be led by an independent party, with some respondents suggesting that that the PIRC is not sufficiently impartial for this task.</p> <p>Some respondents suggested that the PIRC should be granted more power and authority over gross misconduct cases and that they should not employ people with a background in policing as this puts their impartiality at risk. Some respondents also suggested that all police officers should be treated equally, regardless of rank.</p>
41	The PIRC should have the power to <b>recommend suspension of a senior officer if she or he believes that not suspending the officer may prejudice an effective misconduct investigation</b> . The PIRC should <b>provide supporting reasons</b> when they make such a recommendation to the SPA that a senior officer should be suspended.	3.5L to 3.5O	<p>A majority of respondents (29 out of 34) <b>agreed</b> with the recommendation that <b>the PIRC have the ability to recommend the suspension of a senior officer</b>. Out of those who responded, there was some <b>consensus that suspension should only be recommended in circumstances when not suspending an officer may prejudice an effective misconduct investigation</b> (17 agreed or strongly agreed, while 11 disagreed or strongly disagreed). Respondents agreeing with the recommendation stated that suspension may help to ensure the integrity and neutrality of the effective misconduct investigation as well as help to protect involved individuals.</p> <p>For those respondents that disagreed, some stated that suspensions should not solely be determined by the effective misconduct investigation. Some respondents cited other factors that should be considered, such as the vulnerability of potential victims, the severity of the allegation and public confidence.</p> <p>Furthermore, 29 out of 32 respondents agreed that if the PIRC is able to recommend the suspension of a senior officer, the PIRC should be required to provide supporting reasons when they make such a recommendation to the SPA.</p>

No.	Recommendation	Consultation	Consultation Analysis
51	<p>Provision equivalent to that in England and Wales for <b>accelerated misconduct hearings should be included in Scottish conduct regulations for all ranks of constable to deal with circumstances where the evidence is incontrovertible</b> and where that evidence means that without further evidence it is possible to prove gross misconduct, <b>or where the subject officer admits to their behaviour being gross misconduct.</b></p>	3.4A to 3.4J	<p>Out of 34 respondents, 22 <b>agreed that accelerated gross misconduct hearings should be able to take place when the evidence is incontrovertible and can prove gross misconduct without additional evidence being needed.</b> Furthermore, a clear majority of respondents (27 out of 34) agreed that <b>it should be possible for such hearings to take place when the subject officer admits to their behaviour being gross misconduct.</b></p> <p>There was <b>less clear consensus regarding which body should be responsible</b> for deciding whether evidence is considered incontrovertible for cases involving non-senior and senior officers. In non-senior officer cases, the most frequent suggestion (chosen by 13 respondents) was that a <b>different body</b> (not included in the options provided) should be responsible. Of the respondents that specified further, <b>an independent legally qualified body or the PIRC were most frequently mentioned. The remaining respondents were primarily split</b> between suggesting that this responsibility should lie with the <b>Deputy Chief Constable (chosen by 5 respondents), Police Scotland's Professional Standards Department (chosen by 5 respondents), or 'Don't know' (chosen by 6 respondents).</b></p> <p>In cases involving senior officers, the most frequent suggestion (chosen by 13 respondents) was that a different body (not included in the options provided) should be responsible. Of the respondents that specified further, most suggested that this should be an independent legally qualified body. The second most frequently selected option was the PIRC (chosen by 7 respondents), closely followed by 'Don't know' (chosen by 6 respondents).</p> <p>Respondents provided a wide range of suggestions for <b>types of evidence that may be incontrovertible.</b> Many respondents advocated for either <b>a criminal conviction in court or an admission of guilt.</b> A large share of responses also stated that clear evidence should be considered incontrovertible, such as: <b>CCTV and other video evidence, witness statements, written evidence (e.g., emails, text messages, social media) and audio recordings.</b> To a lesser extent, some respondents also flagged physical evidence (e.g., DNA and fingerprints), polygraph and evidence from body language experts as worthy of</p>

No.	Recommendation	Consultation	Consultation Analysis
			<p>consideration. A few respondents also highlighted that determining whether evidence is incontrovertible is not always straightforward.</p> <p>In terms of <b>who should be responsible for deciding if expedited proceedings</b> are appropriate in cases involving non-senior officers, the <b>most frequent suggestion was that a different body</b> (not included in the options provided) should be responsible, with <b>many respondents clarifying that it should be the PIRC and/or an independent legally qualified party</b>. This was also true for cases involving senior officers. For senior officers, responses from organisations were almost equally split between suggesting that it should be the Chief Constable, the PIRC, the SPA, specifying a different party and 'Don't know'.</p> <p>A clear majority of respondents (26 out of 33) agreed that an <b>investigation into allegations should take place where evidence is deemed incontrovertible but the officer in question does not admit to their behaviour being gross misconduct</b>. 27 out of 34 respondents also agreed that the Scottish Ministers should consider applying indicative timescales to such an investigation. Where an officer is convicted of a criminal offence which would constitute gross misconduct, a slight majority of respondents agreed that the Charing Panel or Charing Constable should be able to move to dismiss that officer immediately without separate misconduct proceedings.</p> <p>Some respondents suggested that a criminal conviction in court, admissions of guilt and clear evidence can be considered as incontrovertible evidence. Specific suggestions of such evidence included CCTV, witness statements, written evidence and audio recordings.</p>

No.	Recommendation	Consultation	Consultation Analysis
52	<p>Police <b>officer gross misconduct hearings should be held in public.</b> The <b>Chair should have discretion to restrict attendance</b> as appropriate but the aim should be to ensure that as much of a hearing is held in public as possible.</p>	3.1A to 3.1E	<p>24 out of 41 <b>respondents agreed that police officer gross misconduct hearings should be held in public.</b> Responses from <b>individuals were more likely to agree with this recommendation</b> (18 agreed while 10 disagreed) and respondent <b>organisations were almost evenly split</b> between agreeing and disagreeing (6 agreed while 5 disagreed). Most respondents (29 out of 38) also agreed that if gross misconduct hearings are to be held in public, it should be applicable for officers of all ranks and not just for senior officers. Furthermore, <b>23 out of 40 respondents agreed</b> that if gross misconduct hearings are held in public, <b>the Chair of the hearing should have discretion in restricting attendance as they see appropriate.</b> A <b>clear majority of responses from organisations agreed that this should be the case</b> (8 organisations agreed and 1 disagreed) while the opinion among responses from <b>individuals was more split</b> (16 individuals agreed and 12 disagreed). Where respondents provided further comments, most were in favour of the recommendation to hold gross misconduct hearings in public due to the need for more transparent procedures within the police.</p> <p>However, <b>some respondents argued</b> that gross <b>misconduct hearings are not criminal court cases and should not be treated as such.</b> The respondents expressing this opinion highlighted that <b>the gross misconduct hearings are an internal procedure and should therefore not be held in public,</b> particularly when hearings of other professions are not held in public. Furthermore, some respondents reasoned that the sensitive nature of gross misconduct hearings means that holding them in public can adversely impact those involved, including vulnerable witnesses.</p> <p>Of the respondents that elaborated on the circumstances under which attendance of the hearings should be restricted, most <b>suggested restrictions for the protection of vulnerable individuals that may be involved in the hearings, including children, victims of abuse and individuals with mental health conditions.</b> Police officers that might be the complainants or even the subjects of the hearings were also mentioned as potentially vulnerable individuals.</p>

No.	Recommendation	Consultation	Consultation Analysis
			<p><b>Other arguments in favour of restricted attendance</b> of hearings included ensuring the proceedings of the <b>hearings (and the operations of the police in general) are unobstructed</b>. According to the respondents, disruptions or overcrowded venues could lead to hearing proceedings being obstructed, whereas hearings including many sensitive or classified details could lead to operational risks and could compromise the safety of officers if attendance is not restricted.</p> <p><b>Some respondents suggested</b> that hearings including many sensitive or classified details could lead to <b>operational risks and could compromise the safety of officers</b> if attendance is not restricted. Issues of exceeded venue capacity and other disruptions were also mentioned as circumstances that could obstruct the hearing proceedings, justifying restricted attendance.</p>
53	<p>In addition to the existing protections for witnesses, the <b>Chair of the gross misconduct hearing should consider whether the evidence of any vulnerable witnesses should be heard in private</b> and they should also be under an obligation to consider any other <b>reasonable adjustments that they believe to be necessary to ensure the protection of such vulnerable witnesses</b>. This may include the officer who is the subject of the proceedings.</p>	3.1F to 3.1H	<p>Most respondents agreed with the recommendation that <b>evidence provided by vulnerable witnesses should be heard in private to ensure their protection</b> (out of 39 respondents, 24 agreed strongly while 5 agreed). The majority of responses also <b>agreed</b> that the <b>Chair of gross misconduct hearings should be obliged to consider any other reasonable adjustments they deem necessary to ensure the protection of vulnerable individuals</b>. When respondents were asked to specify what such reasonable adjustments could include, most responses suggested <b>alternative options</b> for how the hearings take place. These options included allowing <b>pre-recorded statements and remote or live video</b>.</p> <p>Ensuring that individuals are able to follow and understand the misconduct proceedings that concern them was considered part of the protection for vulnerable witnesses. Some respondents highlighted the need for reasonable adjustments in order to facilitate this understanding.</p> <p>Some respondents suggested the allowance of reasonable adjustments that could facilitate attendants' participation and understanding of proceedings. Such adjustments were related to either physical or mental disabilities and to the needs of neurodiverse individuals.</p>

No.	Recommendation	Consultation	Consultation Analysis
54	<p>The 2012 Act should be amended to confer on <b>Scottish Ministers a power to issue statutory guidance in respect of conduct and a duty to consult on any such guidance, and confer a duty on policing bodies to have regard to any such guidance.</b> Scottish Ministers should use that power at the earliest opportunity to issue guidance in respect of a new Reflective Practice Review Process. That guidance should build on the spirit of existing Scottish guidance and consider any valuable elements of English and Welsh best practice.</p>	3.7A to 3.7F	<p>The vast majority of respondents agreed that <b>the Scottish Ministers should be able to issue statutory guidance in respect of conduct</b> (out of 32 respondents, 27 agreed). They also agreed that they <b>should be required to consult on such guidance</b>, that a <b>duty to regard it should be placed on policing bodies and that it should be used to bring forward guidance in respect of a new Reflective Practice Review Process.</b> Furthermore, out of 30 respondents, 25 agreed that the Scottish Ministers should consider issuing <b>statutory guidance to make it clear where matters relate to conduct and where they do not.</b></p>

No.	Recommendation	Consultation	Consultation Analysis
55	Subject to safeguards needed to protect the rights of each individual officer, the regulations should make provision for the <b>possibility of joint misconduct proceedings to deal with any number of officers, including senior officers.</b>	3.7H to 3.7M	<p>21 out of 32 respondents <b>agreed that it should be possible for joint misconduct proceedings to be held to deal with any number or rank of officers.</b> Where further comments were provided, <b>one prominent theme was the view that the circumstances surrounding the conduct should be taken into consideration when deciding whether to hold joint misconduct proceedings.</b> An equally prominent theme was the view that <b>practical considerations need to be considered,</b> such as how efficient the process should be. Respondents provided several suggestions regarding the safeguards that should be put in place to protect the rights of individual officers in joint misconduct proceedings. This included the view that <b>each officer should be entitled to legal advice and representation,</b> and many specified that this should be received separately.</p> <p>There was <b>no clear consensus among respondents regarding who should make the decision as to whether joint proceedings are appropriate.</b> Most respondents stated that their opinions on gross misconduct hearings would not change if hearings for senior officers were to be chaired by a legally qualified chair or if hearings were to be held in public for senior officers only.</p> <p><b>Some respondents</b> suggested that <b>circumstances surrounding the complaint</b> (e.g., similarity of complaints) and practical consideration (e.g., efficiency of the process) <b>should be taken into account when making the decision to hold a joint misconduct hearing.</b> Furthermore, each individual officer in a joint misconduct proceeding should be entitled to individual legal advice and representation.</p>

No.	Recommendation	Consultation	Consultation Analysis
56	The <b>regulations governing probation</b> (the Police Service of Scotland Regulations 2013) <b>should be amended so that a fair and speedy consideration of any allegation of misconduct can be dealt with during the probation period.</b>	3.7N to 3.7Q	<p>Out of 33 respondents, <b>19 agreed strongly and 2 agreed</b> with the suggestion <b>that any allegation of misconduct should be dealt with more speedily during an officer's probation period.</b> Respondents were <b>broadly split</b> between suggesting that misconduct allegations during an <b>officer's probation period should be dealt with through the same conduct regulations which all other officers are subject to</b> (chosen by 15 respondents) and <b>through the regulations which govern probation</b> (chosen by 12 respondents). Responses from individuals were more likely to favour the former option, while those provided by organisations preferred the latter.</p> <p>The most frequent opinion expressed by respondents <b>was disagreement that their previous suggestions would be different if timescales relating to the investigation stages of misconduct allegations were set out in legislation</b> (out of 32 respondents, 17 disagreed while 9 selected 'Don't know'). Where further comments were provided, most respondents expressed the view that the same expectations that are placed on regular officers should be placed on probationary officers and their conduct should be assessed during their probationary period. A few respondents suggested that timescales relating to the investigation stages of misconduct allegations should not be set out in legislation.</p> <p>Some respondents suggested that regular and probationary officers should have the same expectations placed on them.</p>
57	A statutory suspension condition in England and Wales that <b>temporary redeployment to alternative duties or an alternative location should have been considered as an alternative to suspension should be replicated in Scottish regulations in relation to all ranks of</b>	3.7R to 3.7T	<p>Of <b>conditions which must be met before an officer is suspended</b>, the most frequent condition selected by respondents was that <b>temporary redeployment to alternative duties has been considered</b> (chosen by 20 respondents), while the second most frequent condition selected was that a <b>temporary alternative location</b> to operate from has been considered (chosen by 14 respondents). Some respondents suggested that other conditions should be considered, such as <b>conducting a risk assessment</b> and considering the <b>circumstances surrounding the incident.</b></p> <p>Out of 33 respondents, 30 suggested that, if a condition must be met before it is recommended that an officer is suspended, then this should relate to all ranks of</p>

No.	Recommendation	Consultation	Consultation Analysis
	<p><b>constable.</b> Provision should also be made for regular review of the suspension of an officer.</p>		<p>police officer. Furthermore, most respondents (21 out of 33) suggested that suspended officers should have their suspensions reviewed every 4 weeks.</p>
58	<p>The <b>outcome of gross misconduct proceedings should be made public.</b> The Chair's report, subject to any necessary redactions, should <b>be published by the Scottish Police Authority on its website for a period of no less than 28 days.</b></p>	3.1I to 3.1J & 3.1N to 3.1P	<p>The <b>vast majority</b> of respondents <b>agreed that the outcomes of gross misconduct proceedings should be made public</b> (out of 39 respondents, 28 agreed strongly while 5 agreed). A few respondents emphasised that this would <b>ensure transparency</b> while others provided suggestions to protect the anonymity of the parties.</p> <p>Over two-thirds of respondents also agreed that, if the outcomes are made public, the <b>Chair's report should be published</b> by the Scottish Police Authority on its website, subject to any necessary redactions. Most respondents stated the <b>Personal Identifiable Information (PII) of hearing participants should be redacted, including that of complainants, witnesses and whistle-blowers.</b> Out of 35 respondents, 16 suggested that the outcomes of proceedings should be <b>available online for at least 28 days.</b> Among the 13 respondents that suggested a different period of time, many stated that it should remain published for several years or indefinitely.</p>
PR13	<p>The Scottish Government should consider the case for <b>amending the legislation</b> to include a provision to <b>deal with vexatious complainers.</b></p>	3.6A to 3.6B	<p>Given the work that is already underway to align processes and policies on vexatious complainers across policing bodies, <b>24 out of 34 respondents agreed that the Scottish Government should also consider amending legislation to deal with vexatious complainers.</b> Where respondents provided further information, the most prominent view was that <b>an independent body should be given the responsibility to determine whether a complaint is vexatious.</b></p> <p>The <b>next most prominent theme</b> was the view that <b>suitable processes need to be implemented to decide whether a complaint is vexatious.</b> Respondents highlighted the need for a proportionate approach, with some respondents expressing concern that an <b>overly stringent approach could deter people from putting forward genuine complaints.</b> Furthermore, some respondents expressed concern that the relevant terminology should be changed because</p>

No.	Recommendation	Consultation	Consultation Analysis
			<p>they felt it is currently unclear or has harmful and negative connotations.</p> <p>Some respondents suggested that determining whether a complaint is vexatious should be done by an independent body and there should be appropriate processes in place for the body to make such decisions and review them.</p>
PR19	<p>Any process for preliminary assessment of senior officer misconduct should require the relevant authority both to <b>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.</b></p> <p>Scottish Government should consider amending the conduct regulations to reflect this process.</p>	3.5D to 3.5H	<p>Out of 33 respondents, 17 suggested that the relevant body carrying out an investigation into an allegation against a <b>police officer should not take into consideration whether an allegation is made anonymously for any rank of police officer.</b> The <b>second most frequent suggestion was that this should be taken into consideration for non-senior officers</b> (chosen by 7 respondents).</p> <p>Furthermore, <b>13 out of 33 respondents suggested that the relevant body should not take into consideration</b> whether an allegation is sufficiently specific in time and location for any rank of officer. The second and third most frequent suggestion was that this should be take into consideration for non-senior officers (chosen by 8 respondents) and senior officers (chosen by 6 respondents). 12 out of 33 respondents also suggested that the body should not take into consideration whether an allegation is malicious for any rank of police officers, followed closely by the suggestion that it should be considered in cases involving non-senior officers (chosen by 10 respondents).</p> <p>There was less consensus among responses made on behalf of <b>organisations, who were evenly split between suggesting that it should be taken into consideration for all ranks, only for non-senior officers,</b> only for senior officers, not for any rank of officer as well as being unsure. <b>Most respondents were consistent in suggesting that complaints should go through an initial investigation where facts and evidence are established to determine whether a complaint is labelled as vexatious or malicious.</b></p> <p><b>Some respondents expressed a concern that genuine complaints could be mislabelled as vexatious or malicious because they are inconvenient.</b> There were suggestions this labelling should be handled by an independent body and</p>

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			<p>there should be specific guidance or criteria to determine whether a complaint is vexatious or malicious.</p> <p>Some respondents suggested that complaints should go through an initial investigation and specific guidance and criteria should be used to determine whether a complaint is vexatious or malicious.</p>
PR28	The Scottish Government should <b>introduce Barred and Advisory lists</b> and should engage with the UK Government to ensure compatibility and learn from their experience.	3.2K to 3.2L	Linked to final report recommendation 27
Not a listed Rec. Suggestion on page 453 (Final Report)	The revision of the Police Service of Scotland (Special Constables) Regulations 2013 in respect of <b>special constable misconduct to align</b> them with The Police Service of Scotland (Conduct) Regulations 2014. The intention would be to ensure <b>consistency in assessment and investigation of misconduct by special constables and regular police officers.</b>	3.8A to 3.8B	<p>31 out of 36 respondents agreed with the recommendation that <b>conduct regulations for special constables should be revised to bring them in line with those for regular police officers.</b> Respondents who were in favour of the recommendation argued that, if special constables have the same rights as regular constables, they should also have the same expectations placed on them.</p> <p>Some respondents suggested that regular and special constables should have the same expectations placed on them.</p>
Linked to Rec 75. Suggestion made on	<b>Matters to be considered by a gross misconduct</b> hearing is not a recommendation from the Dame Elish Review.	3.1K to 3.1M & 3.1Q to 3.1R	Most respondents <b>were in favour of an illustrative and publicly available list of matters likely to be considered by a gross misconduct hearing</b> (of 36 respondents, 22 agreed strongly and 7 agreed). In terms who should be <b>responsible for the publication</b> of such a list, <b>the PIRC was most frequently</b>

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page 175, in the 2017 report into Deaths and Serious Incidents in Police Custody in England and Wales.	However, in her 2017 review into Deaths and Serious Incidents in Police Custody in England and Wales, which is referred to in the final report, Dame Elish recommended that in the <b>interests of transparency and public confidence</b> 'it would be useful to have greater specification about the criteria used by investigators to reach their decisions'		<p><b>stated</b> by respondents. 24 out of 38 respondents agreed that a finding of gross misconduct should always result in dismissal unless there are exceptional circumstances to justify an alternative sanction.</p> <p>The majority of respondents supported the consideration of recommendations provided by Dame Elish regarding areas where amendments to the conduct regulations should be considered or where regulations could be clarified. <b>These include amending the definition of 'misconduct' and 'misconduct allegation', updating the regulations to allow subject officers to make written representations</b> at any point during investigations and defining the stages of misconduct pre-hearings in the regulations. 30 out of 37 respondents agreed with the recommendation to consider amending these regulations. Of the few respondents that provided additional comment, some expressed the need for reliable, clear and transparent procedures while also protecting the officers and allowing them to fulfil their duties unobstructed.</p>
Not a listed Rec.	A review of disciplinary and grievance procedures <b>is not a recommendation in the Dame Elish Review.</b> However, an additional proposal is being considered to <b>review the regulations relating to police conduct</b> in Scotland to ensure that processes are closely aligned with the Advisory, Conciliation and Arbitration Service (ACAS) statutory code of practice.	3.7G	Out of 32 respondents, <b>17 agreed strongly and 5 agreed that regulations governing police conduct in Scotland should be reviewed</b> so that it can be considered whether the regulations should be brought in line with ACAS' latest code of practice on disciplinary and grievance procedures.

#### Section 4: Liability for unlawful conduct

No.	Recommendation	Consultation	Consultation Analysis
Not a listed Rec	<p>Clarifying the liability for unlawful conduct is <b>not a recommendation in the Dame Elish Review</b>. However the Scottish Government proposes a change to Section 24 of the Police and Fire Reform (Scotland) Act 2012 to <b>make the SPA liable for any unlawful conduct by a Chief Constable</b>. This would mean that a Chief Constable has the same protections as all other constables. It would also protect the victims of unlawful conduct when action is taken against the Chief Constable.</p>	4.1A to 4.1B	<p>The vast majority of respondents, 30 out of 34, <b>agreed that liability for unlawful conduct should be extended to cover the rank of Chief Constable</b>. Respondents provided several arguments, including that this would ensure victims are protected and that all ranks of police officer are treated equally. Some respondents disagreed that the liability should be extended, arguing that those holding the rank of Chief Constable should never need this protection.</p> <p>Some respondents suggested that all officers should be treated equally, regardless of rank.</p>