

POLICE (ETHICS, CONDUCT AND SCRUTINY) BILL

SCOTTISH POLICE AUTHORITY EVIDENCE TO THE CRIMINAL JUSTICE COMMITTEE (PAPER APART)

Introduction

The Scottish Police Authority welcomes this opportunity to provide written evidence on the Police (Ethics, Conduct and Scrutiny) Bill. This paper apart should be read alongside the Authority's responses to the pro-forma call for views on the Bill.

The Authority supported Lady Angiolini's legislative recommendations and proposals in its [response](#) to the Scottish Government's consultation. The Authority is also supportive of the Bill, insofar as it seeks to implement those recommendations and proposals.

This paper focuses on four specific issues:

- (1) Lady Angiolini's proposals in respect of complaints about senior police officers, which are not reflected in the Bill;
- (2) the Authority's functions in respect of the Barred and Advisory lists (section 7 of the Bill);
- (3) Lady Angiolini's recommendation that the PIRC be included as a "prescribed person" under UK whistleblowing legislation; and
- (4) the use of the term "relevant complaint" in the Bill, and in the Police Public Order and Criminal Justice (Scotland) Act 2006.

Before addressing these issues in detail, it may be helpful to summarise the Authority's current responsibilities for complaints and conduct.

The Authority's responsibilities

As well as overseeing Police Scotland's complaints and conduct functions, the Authority has the following responsibilities of its own.

- Receiving, investigating, and responding to "relevant" complaints about the Authority, its staff, and senior officers of Police Scotland i.e. those of Assistant Chief Constable rank and above. ("Relevant" complaints are, broadly, non-criminal complaints by members of the public. They are subject to different legislative provisions and procedures from "misconduct allegations").
- Functions under the Police Service of Scotland (Senior Officers) (Conduct) Regulations 2013, including:

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- the preliminary assessment of “misconduct allegations” against senior officers;
- where appropriate, referring allegations to the PIRC for investigation;
- determining, in light of any investigation, whether a senior officer has a case to answer for misconduct or gross misconduct;
- arranging misconduct hearings and establishing panels to conduct proceedings; and
- determining appeals by officers against the decisions of misconduct panels.

In her final report, Lady Angiolini recommended that the PIRC take on responsibility for the key stages of senior officer misconduct proceedings, including several of those listed above.¹ Section 8(2) of the Bill would allow that recommendation to be implemented through revised Regulations.

(1) Complaints about senior police officers

Lady Angiolini proposed that responsibility for receiving and handling complaints about senior officers transfer from the Authority to the PIRC.

The relevant passages in Lady Angiolini’s final report are quoted below.

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

12.51 Having considered all the responses, I believe that introducing independent consideration and determination of a complaint against a senior officer ... would serve to increase public confidence in the process ...

14.59 PIRC should be the recipient of all complaints about senior officers. If the complaint is criminal in nature the PIRC should refer it to the ... the Criminal Allegations against the Police Division of COPFS. If the complaint is non-criminal the PIRC should make the preliminary assessment, should carry out any investigation and, where appropriate, present the case to the independent legally

¹ Recommendation 39

chaired panel that hears the misconduct case ... If the complaint is a grievance rather than an allegation of misconduct the PIRC should refer it to the SPA to deal with ...

19.56 The Review received strong evidence from other organisations and sectors of a real benefit to the public knowing that there was a single point where they should take all complaints about an organisation or its people. That simplicity would help public awareness and make it easier for them to enter what can be a very complex police complaints system ... I take the view that complaints about the most senior officers should not go to the Scottish Police Authority or Police Scotland but to the PIRC ...

30.18 In the PIRC chapter I propose that the PIRC, rather than the SPA, should be the recipient of all complaints about senior officers of the rank of Assistant Chief Constable and above. The [Police Public Order and Criminal Justice (Scotland) Act 2006] would require to be amended to make clear that the appropriate authority for senior officer complaints [i.e. the body responsible for handling such complaints] is the PIRC and that the SPA is only the appropriate authority for the SPA and its staff."

Lady Angiolini therefore proposed that the PIRC should be the recipient of all types of complaint about senior officers; and should also handle relevant complaints about senior officers.

These proposals are not reflected in the Bill.

As observed by Lady Angiolini, independent determination of complaints about the most senior officers would likely enhance public confidence. It would avoid any perception of familiarity between Authority members/staff and senior officers arising from working relationships developed through exercise of the Authority's other functions. Indeed, it was precisely this perception which persuaded Lady Angiolini to recommend removal of the Authority's conduct functions for senior officers.

Implementing Lady Angiolini's proposals would also make the arrangements for handling complaints and misconduct allegations about senior officers easier for the public to understand. In her preliminary report, Lady Angiolini identified 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."² Similar concerns about the complexity of current arrangements were raised by

² Preliminary report, page 23

the Justice Committee in its review of the Police and Fire Reform (Scotland) Act 2012. In particular, the Committee referred to evidence that arrangements were a “complex mixture of internal and external processes, involving a number of organisations which people find difficult to navigate.”³

If Lady Angiolini’s proposals are not reflected in the Bill, the PIRC will have responsibility for handling “misconduct allegations” against senior officers; and the Authority will have responsibility for handling relevant complaints about senior officers. Such an arrangement is likely to be confusing to the public, particularly as in practice there is often no real distinction between a misconduct allegation and a relevant complaint. It would also risk uncertainty in the processes themselves, as each body decides which is responsible for dealing with the allegation. Dividing these functions between two bodies would, in short, complicate, rather than simplify, the complaints and conduct processes.

Lady Angiolini’s proposals would simplify arrangements by giving responsibility to a single body – the PIRC – to receive and assess all complaints about senior officers.⁴ Such an arrangement is likely to be easier for the public to navigate than one in which different categories of complaint are dealt with by different bodies.

Across the rest of the UK and in the Republic of Ireland, all police complaints bodies perform at least some routine role in receiving and/or investigating public complaints about senior police officers.

In England and Wales, serious complaints by members of the public about the conduct of chief officers (i.e. chief constables, and the Commissioner and Deputy Commissioner of the Metropolitan Police) must be referred to the Independent Office for Police Conduct (IOPC) without delay.⁵ Serious complaints about chief officers must always be investigated, and in practice such investigations are usually undertaken by the IOPC itself.⁶

In Northern Ireland, all complaints about the police (including those about senior officers) are referred to the Police Ombudsman.⁷ Complaints by

³ Justice Committee, [Report](#) on Post-legislative Scrutiny of the Police and Fire Reform (Scotland) Act 2012 (2019), para 311

⁴ Subject to a complainer’s ability to make criminal allegations about senior officers directly to the Criminal Allegations against the Police Division of COPFS.

⁵ Para 4(1)(b), Schedule 3, Police Reform Act 2002; para 4(1)(c) and (2), Police (Complaints and Misconduct) Regulations 2020

⁶ Para 5(1A), Schedule 3, Police Reform Act 2002; regulation 5(1), Police (Complaints and Misconduct) Regulations 2020

⁷ Police (Northern Ireland) Act 1998, section 52(1)

members of the public which are classed as serious are investigated by the Ombudsman.⁸

In the Republic of Ireland, new arrangements for handling complaints by members of the public are set out in the Policing, Security and Community Safety Bill (the Policing Bill), currently before the Irish Parliament. Complaints by the public (including those about senior officers) will in terms of the Policing Bill be made to the Police Ombudsman or the national police force.⁹ Where complaints are made to the national force, these must be referred to the Ombudsman without delay.¹⁰ The Ombudsman will thereafter determine whether the complaint is admissible and, if so, whether it warrants informal resolution or investigation.¹¹

As presently drafted, the Bill does not provide for any routine involvement by the PIRC in the initial handling of relevant complaints about senior officers. Section 12 would allow the PIRC to “call-in” such a complaint; however, that power is likely to be used only in exceptional circumstances rather than as a matter of routine.¹²

The Authority therefore supports Lady Angiolini’s proposals and believes that they should be reflected in the Bill. If, ultimately, the proposals are not implemented, the Authority would wish to see the arrangements between the two bodies for handling senior officer complaints, including the threshold for referring potential conduct complaints to the PIRC, to be set out in legislation.

(2) “Prescribed person” status for the PIRC

Lady Angiolini recommended that the PIRC be included as a “prescribed person” under the Public Interest Disclosure (Prescribed Persons) Order 2014 (the Order). The Order is UK legislation.

Lady Angiolini’s findings

In her final report, Lady Angiolini referred to evidence given to the Justice Committee on this issue in 2018. UNISON, for example, expressed concern about the “limited pathways to pursue complaints and concerns about the operation of the service for police staff.”¹³ The Scottish Human Rights Commission highlighted the importance of

⁸ Police (Northern Ireland) Act 1998, section 54(2)

⁹ Section 196(1), Policing, Security and Community Safety Bill

¹⁰ Section 196(3)

¹¹ Sections 198(1) and 199(1)

¹² Lady Angiolini envisaged that the power would be used only in “a small number of particularly egregious cases”: final report, para 14.80

¹³ Final report, para 10.7

whistleblowers being able to take their allegations directly to an external party.¹⁴

Lady Angiolini also referred to the arrangements in England and Wales, where the IOPC is a prescribed person for conduct-related whistleblowing allegations.

Lady Angiolini concluded:

“Having weighed up the evidence, I believe that the absence of a prescribed independent third-party person to whom whistleblowers in policing can report wrongdoing is a significant gap that should be filled. Ideally concerns should be raised internally in the first instance so that the organisation can act quickly on those concerns but there may be many valid reasons why an individual would want to be able to report wrong-doing to an external body ...

In my view the PIRC is the organisation that is best placed to fulfil that crucial role because of its existing expertise, its understanding of policing and its ability, potentially, to make connections with other investigations.”¹⁵

The Authority’s view

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

The PIRC’s inclusion as a prescribed person will allow police officers, police staff and Authority staff to make conduct-related whistleblowing allegations directly to an independent third party, while maintaining the protections afforded to whistleblowers under employment legislation. It will also bring Scotland into line with arrangements in England and Wales (where the IOPC is a prescribed person) and the Republic of Ireland (where the Garda Síochána Ombudsman Commission is a prescribed person under the equivalent Irish legislation).

(3) The Barred and Advisory lists

Section 7 of the Bill establishes the Scottish police barred and advisory lists. The barred list will contain the names of persons who have been dismissed following disciplinary proceedings, including those dismissed as a result of proceedings taken after their departure from the police service.

¹⁴ Final report, para 10.8

¹⁵ Final report, paras 10.31 -10.32

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The advisory list will include persons who left the service before gross misconduct proceedings were initiated or completed.

Section 7(1) provides that both lists are to be established and maintained by the Authority.

The Authority supported the introduction of the barred and advisory lists in its submissions to Lady Angiolini's review, and in its response to the pre-Bill consultation.

In the Authority's view, however, the most appropriate body to administer the lists is Police Scotland. The Authority therefore seeks an amendment to section 7 conferring the function of establishing and maintaining the lists on the chief constable. Police Scotland agrees that it is the appropriate body to perform these functions.

In England and Wales, the College of Policing administers the Barred and Advisory lists. However, that is because of the distinct role the College performs in relation to standards; and the fact that there are numerous police forces there.

In Scotland, there does not appear to be any reason why the function cannot be conferred directly on the chief constable. It would fit readily into Police Scotland's existing responsibilities and infrastructure for related functions such as vetting. In addition, most if not all of the data to be included in the lists would be generated through misconduct proceedings handled by Police Scotland rather than the Authority.

Section 7(2) does allow Ministers to make regulations allowing the Authority's functions in relation to the lists to be delegated. However, if the intention is to allow the Authority to delegate the functions to the chief constable, this perhaps underlines the question as to why the function cannot be conferred on the chief constable directly.

(4) "Relevant" complaints

The Authority supports the provisions in the Bill concerning relevant complaints (sections 10-12). In the Authority's view, however, consideration should be given to whether "relevant complaint" is an appropriate term for describing complaints by members of the public.

In the Authority's experience, the term sometimes causes confusion among the public and the media who have interpreted it as meaning that some complaints are "relevant", while others are "irrelevant". This can be unhelpful when communicating with members of the public in relation to their complaints.

In the Authority's view, the term used to describe complaints by members of the public should be plain and unambiguous (e.g. "public complaint").

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**Scottish Police Authority
6 December 2023**

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