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LETTER SENT BY E-MAIL ONLY

Audrey Nicol MSP
Convenor
Criminal Justice Committee
Room T2.60
The Scottish Parliament
EDINBURGH
EH99 1SP

29 August 2024

CE/044/2023

Dear Ms Nicol

POLICE (ETHICS, CONDUCT AND SCRUTINY) BILL CRIMINAL JUSTICE COMMITTEE: STAGE 1 REPORT

I refer to the Committee's Stage 1 report on the above Bill. This correspondence sets out the Scottish Police Authority's views on the Committee's recommendations and comments as directed to the Authority.

1. Authority oversight of misconduct allegations and complaints

The Criminal Justice Committee made the following recommendation at paragraph 242 of its report:

"The Committee recommends that the SPA keeps under review the PSD's role in carrying out the initial assessment and investigation of allegations of misconduct and complaints about non-senior officers. To inform this review, the SPA's Complaints and Conduct Committee should seek the views of those who have made complaints and those who have been the subject of a complaint. This recommendation reflects the evidence we heard from those with personal experiences of the police complaints system. The new approach where a centralised professional standards

department considers all complaints is a welcome development. However, it is essential for public confidence that this new approach is subject to robust and transparent oversight and governance, to ensure that those who make complaints do not have the same experiences as the people who spoke to us.”

The Committee raised a similar point in paragraph 43 of its report, in which it questioned the robustness of existing oversight mechanisms. The Committee referred to evidence it had heard of “unacceptable behaviours and practices” within Police Scotland and questioned why these had not been identified and addressed by the Authority in its oversight role.

The Authority’s Complaints and Conduct Committee is responsible for overseeing Police Scotland’s handling of “relevant” complaints (i.e. complaints made by the public) and misconduct allegations. Both types of allegations are regulated by legislation.

Relevant complaints about officers below senior rank are dealt with initially by Police Scotland and may be subject to “complaint handling reviews” by the PIRC. The Authority does not have any role in handling individual relevant complaints about officers of non-senior rank. The Authority’s only function in relation to such complaints is set out in section 60(3) of the Police and Fire Reform (Scotland) Act 2012. Section 60(3) requires the Authority to keep itself informed of the way relevant complaints are dealt with by the Chief Constable, with a view to satisfying itself that the arrangements for handling such complaints are suitable.

Misconduct allegations against officers below senior rank are handled, investigated, and determined by Police Scotland, with appeals to the Police Appeals Tribunal in certain circumstances. Again, the Authority has no statutory role in individual misconduct cases of that kind.

The Complaints and Conduct Committee is always willing to consider additional sources of information to inform its oversight activities. The Committee has, for example, asked Police Scotland to report on the surveys it carries out with members of the public who make relevant complaints. The Committee has also asked Police Scotland to explore opportunities to obtain and report on feedback from officers who are the subject of complaint.

The Authority fully accepts the Criminal Justice Committee’s recommendation to keep under review PSD’s role in relation to relevant complaints and misconduct allegations. However, obtaining the views of complainers and subject officers can only be done in a way that does not prejudice legislative processes and the specific roles performed by other bodies. Notwithstanding this, there may be scope for obtaining such views after all formal processes have been concluded, and the Complaints and

Conduct Committee will actively consider whether to do so as part of its existing oversight.

2. Investigations post resignation/retirement

The Criminal Justice Committee made the following recommendation at paragraph 336:

“The Committee would have concern if any investigations into gross misconduct took longer than necessary. As such, the Committee recommends that any investigations into an officer who has left the force should be completed as timeously as possible. We also recommend that the SPA monitors this process over the initial years to ensure that this is the case and shares its findings with the Committee.”

The Authority accepts this recommendation. The Complaints and Conduct Committee will monitor the length of gross misconduct investigations into former police officers in the initial years of the new legislation and will share its findings with the Committee.

3. Barred and advisory lists

The Criminal Justice Committee made the following recommendation at paragraph 361:

“We recommend that Scotland follows the practice in England and Wales where the barred and advisory lists is published, but only relevant organisations are able to access the advisory lists.”

We understand this recommendation to be directed more to the Scottish Government, as it is the Scottish Ministers who will pass the regulations which govern the barred and advisory lists.

For the reasons given in its written and oral evidence, the Authority remains of the view that statutory responsibility for establishing and maintaining the barred and advisory lists should lie with Police Scotland. The Authority will of course comply with the relevant legislation, whichever body is to perform this function.

4. Compliance with PIRC recommendations

The Criminal Justice Committee made the following comments at paragraph 472:

“The Committee is of the view that the Bill should be amended to include provisions requiring the SPA and Police Scotland to be under a duty to

comply with PIRC's recommendations, subject to a public interest test, unless there are operational reasons not to. However, there may be cost implications associated with this recommendation and we ask Scottish Ministers to keep these under review."

The Authority supports these comments, which are consistent both with Lady Angiolini's recommendations and the Authority's written and oral evidence before the Committee. However, the Authority is content to defer to the PIRC's view on whether a duty to comply with its recommendations is required.

5. Publication of responses to recommendations

The Criminal Justice Committee made the following recommendation at paragraph 473:

"We recommend that the Bill is amended to include a presumption that the PIRC publishes the responses by Police Scotland and the SPA to its recommendations for them in complaint handling review reports, unless there are exceptional circumstances."

The Authority supports this recommendation, subject to data protection considerations. As the PIRC's complaint handling reviews are generally published in anonymised form, the Authority would expect the same approach to be taken to the publication of responses to recommendations.

6. "Prescribed persons" for whistleblowing

The Criminal Justice Committee commented as follows at paragraph 513 of its report:

"The Committee is of the view that both the PIRC and the SPA should be added as prescribed persons in UK legislation. This will provide a relevant independent third party for employees of Police Scotland and the SPA to report whistleblowing concerns to."

For the reasons given in its written and oral evidence, the Authority supports the PIRC's inclusion as a prescribed person in the Public Interest Disclosure (Prescribed Persons) Order 2014.

The proposal to include the PIRC as a prescribed person is based on recommendation 20 in Lady Angiolini's final report. Lady Angiolini did not recommend that the Authority also be included as a prescribed person. Indeed, part of her rationale for including the PIRC as a prescribed person was so that staff were able to raise their concerns with an independent third party. This is important because, contrary to the Committee's

comments in paragraph 513, all staff are in fact employed by the Authority.

The Committee's rationale for the Authority's inclusion as a prescribed person appears to be based at least in part on HMICS's evidence. According to the Committee's report, HMICS said that including the Authority as a prescribed person "would bring the legislation into line with policing bodies in England and Wales."

In England and Wales, the Independent Office for Police Conduct (IOPC) is a prescribed person for "matters relating to the conduct of a person serving with the police ... or of any other person in relation to whose conduct the IOPC exercises functions in or under any legislation."

Police and Crime Commissioners (whose functions are broadly like those of the Authority) are not prescribed persons under the 2014 Order. Police and Crime Panels, which are separate and distinct from PCCs, are prescribed persons, but with a much narrower remit than the IOPC.

The Authority therefore does not support the view that its inclusion as a prescribed person would bring Scotland into line with arrangements in England and Wales.

It is also worth noting the arrangements in the Republic of Ireland. Like England and Wales, the Policing Authority in Ireland is not a prescribed person under equivalent whistleblowing legislation. The prescribed person for policing in Ireland is the Garda Ombudsman, the independent complaints oversight body.

I am of course happy to comment further if the Committee wishes any further information.

Yours sincerely

A handwritten signature in black ink that reads "Lynn Brown". The signature is written in a cursive, slightly slanted style.

LYNN BROWN OBE
Chief Executive