

# SPA Complaints & Conduct Committee

**2023/24 – Quarter 3**

**1 October – 31 December 2023**



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## Introduction

This is the third submission of the Police Investigation and Review Commissioner to the SPA Complaints and Conduct Committee for 2023/24.

Following an extensive Performance Data Review and consultation, the PIRC introduced new recording standards and counting rules which came into effect on 1<sup>st</sup> April 2023.

This report provides details in relation to the interaction between Police Scotland and the PIRC to increase public confidence in policing by ensuring learning recommendations are identified, issued and lead to positive change in police practice.

## Our Role

The role of the Police Investigations & Review Commissioner (PIRC) was established in 2013 at the same time as the single Police Service of Scotland.

The Commissioner, who is appointed by Scottish Ministers, is independent of the police. Her role is to independently investigate incidents involving the police and independently review the way the police handle complaints from the public.

The PIRC ensures that the SPA and the Chief Constable maintain a suitable system for handling complaints and issues statutory guidance where appropriate.



### We can investigate:

- Incidents involving the police, referred by COPFS. These may include deaths in custody and allegations of criminality made about police officers or members of Police staff.
- Serious incidents involving the police, at the request of the Chief Constable or SPA. Reasons for requests for investigations from the Chief Constable may include the serious injury of a person in police custody, the death or serious injury of a person following contact with the police or the use of firearms by police officers.
- Allegations of misconduct by senior police officers of the rank of Assistant Chief Constable (ACC) and above, if requested by the SPA.
- Other matters relating to the SPA or the Police Service where the Commissioner considers it in the public interest.
- At the conclusion of an investigation, the Commissioner can recommend learning and improvements to the way the police operate and deliver services to the public in Scotland.



### We can review:

- How the police in Scotland handle complaints made to them by the public. The purpose of the Complaint Handling Review (CHR) process is to determine whether or not the complaint was handled to a reasonable standard by the police.

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- At the conclusion of a CHR, the Commissioner can make recommendations, identify learning points, or direct the policing body to reconsider their response.



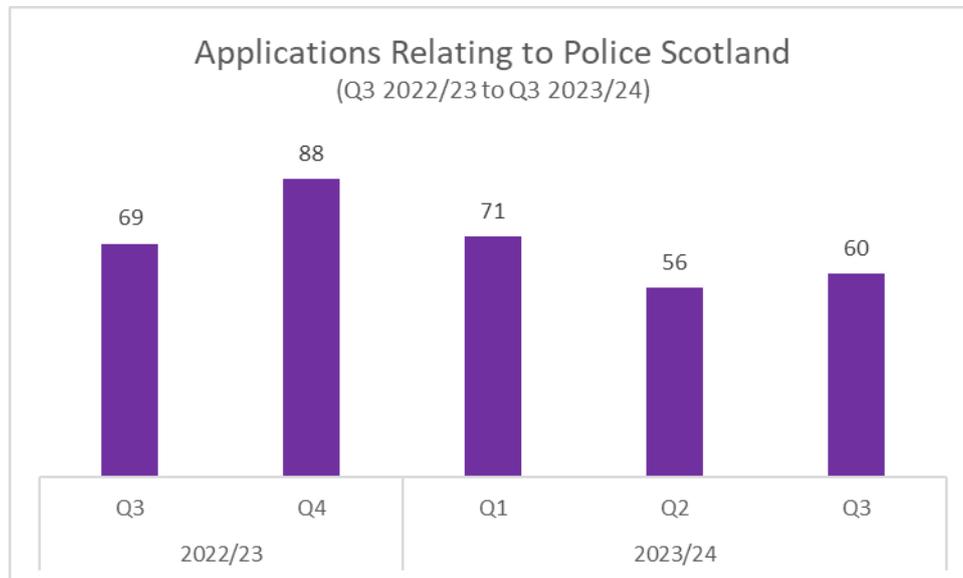
### We cannot review:

- Complaints which have not been considered and adjudicated upon by the policing body.
- Complaints of criminality.
- Complaints made by individuals currently serving, or who formerly served, with the police about the terms and conditions of their service.



## Complaint Handling Reviews

### Applications



1. Source: PIRC Reviews Quarterly Performance Report

In Q3 2023/24 PIRC has received 60 applications for a Complaint Handling Review (CHR), an increase of four applications (7%) on the previous quarter (Q2) but a decrease of nine (18%) on the preceding year's Q3 applications.

Compared to the previous year, PIRC has received an additional 19 applications by the close of Q3 in 2023/24.

The new counting rules brought into effect at the start of quarter 1 aim to increase public confidence in police through scrutiny of their actions and ensuring any lessons are learned to improve the standard of service provided by the Police in Scotland. Standardisation of the counting rules is an important step to ensure CHR applications are appropriately recorded, categorised and processed efficiently.

### Key Performance Indicators

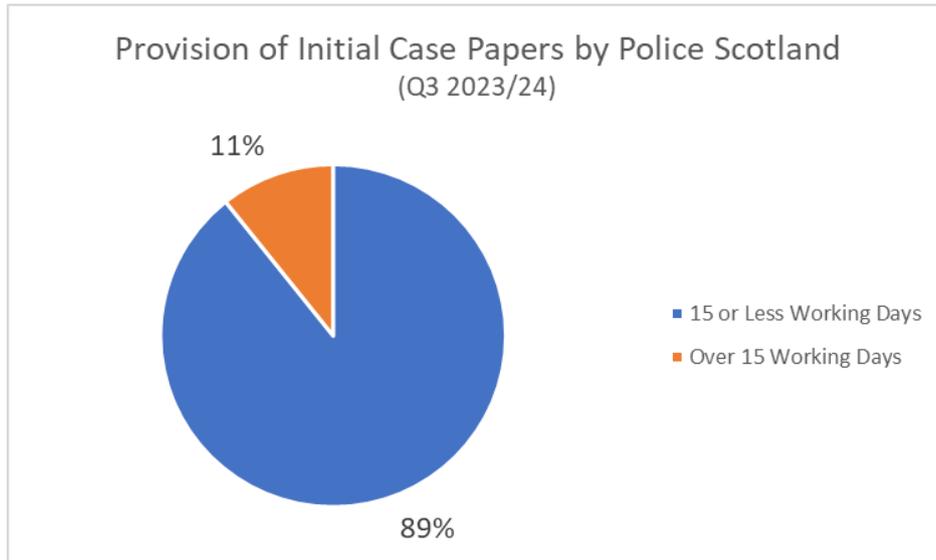
- 90% of CHR applications to undergo SRO assessment and decision to be taken within 5 working days of receipt of the relevant police case papers.
  - Q2 2023/24 - 100% (YTD – 99%)
- 80% of CHRs including discretionary decisions (minus major cases) to be completed within 90 working days, following receipt of the relevant police case papers.
  - Q2 2023/24 – 96% (YTD – 95%)
- PIRC carried over a total of 30 CHR applications from the previous counting arrangements. None remain ongoing at the end of Q3.



## Timescales

### Provision of Initial Case Papers

As part of the PIRC's Performance Data Review, it has been agreed that Police Scotland will now aim to provide all complaint case papers to the PIRC within 15 working days of request. This was previously 14 calendar days. This approach standardises the process for the provision of case papers across the Reviews and Investigations functions within PIRC.



2. Source: Centurion System

Of the 56 cases where papers were requested of Police Scotland, requests complied within this timescale in 89% of cases. Background papers were provided, on average, within 8.5 working days.

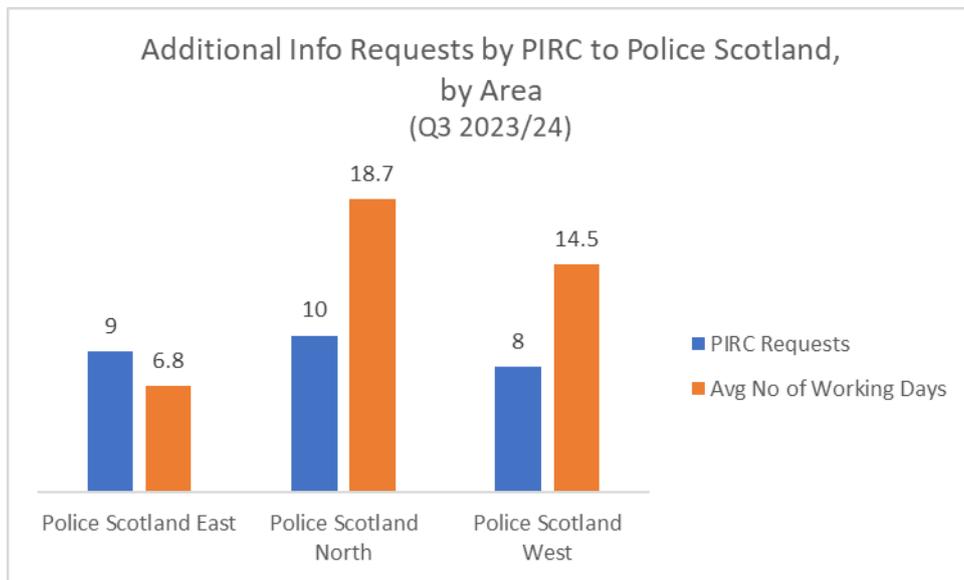
Information Requests During Review

On receipt of background papers, the Reviews team will undertake a detailed assessment of the police complaint file and identify any information or documentation that was relied upon or referred to in the police complaint response but not included in the papers initially provided to the PIRC.

In these circumstances, a further information request is made, with Police Scotland now aiming to provide the further information requested within 15 working days.

During the period, PIRC also made a further 27 requests to Police Scotland as part of an ongoing review. On average, requests were fulfilled within 13.5 working days of receipt of the request.

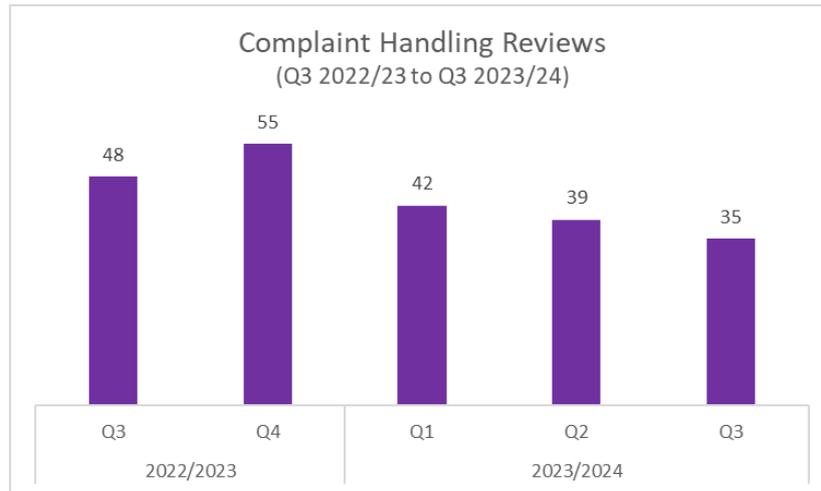
This is in line with the timescales agreed with Police Scotland.



3 Source: Centurion System



Complaint Handling Review Reports Cases completed – National



4. Source: Centurion System

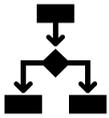
Thirty-five Complaint Handling Review reports were issued by PIRC in Q3 2023/24 is, all of which relate to complaints handled by Police Scotland.

Cases closed - Decisions

The change to the business counting rules means that the PIRC now report and record the number of applications that were the subject of a discretionary decision. This includes applications where, following an assessment, the PIRC is satisfied that Police Scotland has taken reasonable steps to address a complaint. Consequently, the PIRC will not proceed with a review on the grounds of proportionality.

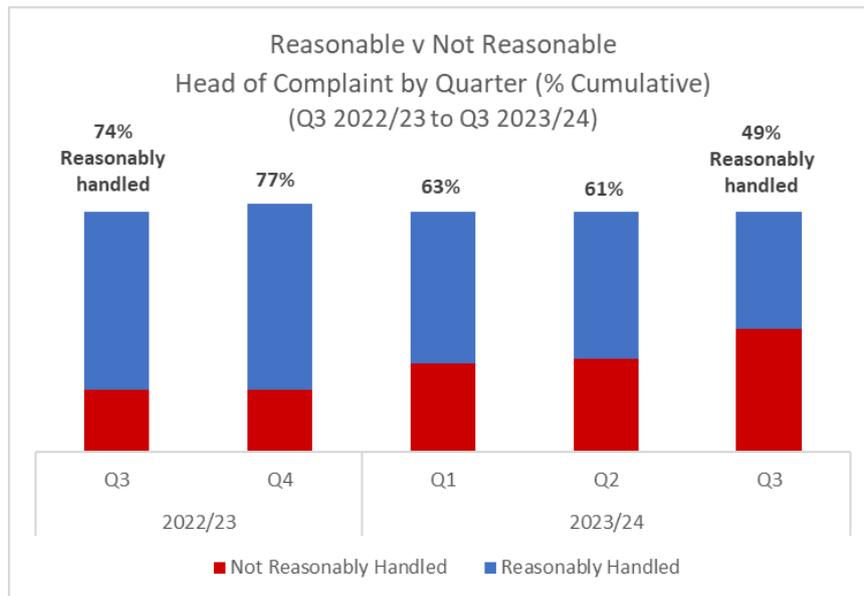
The PIRC recognise that complaints that we do not review on proportionality grounds represents an opportunity for PSD to identify good complaint handling practice. To assist in this regard, the PIRC now send PSD a detailed letter explaining why discretion was exercised, so that the good practice can be shared with those involved in complaint handling.

It is important to highlight that applications and heads of complaint that did not progress on proportionality grounds would otherwise be complaints that were likely to be reasonably handled had they been taken to review.



## Outcome

### Reasonable v Not Reasonable



5. Source: PIRC Reviews Quarterly Performance Report

## CHR Disposal Outcomes

- **Recommendations** - these are made in the CHR reports where we identify deficiencies or shortcomings in the police complaint handling. Our recommendations may, for example, ask the policing body to undertake further enquiries, to re-assess the available information, to issue an apology, to re-visit a specific policy/procedure or issue the complainer with further response.
- **Learning Points** - PIRC is committed to promoting a culture of learning and improvement. During our reviews, we seek to identify and capture organisational and individual learning opportunities.
- **Reconsideration Directions** - reconsideration directions are used in cases where significant complaint handling failings have been identified during a review. It requires someone previously unconnected with the complaint enquiry to reconsider the complaint. No Reconsideration Directions were issued to Police Scotland in Q3 2023/24.
- **Discretionary Decisions** – Not every CHR application is progressed to a Complaint Handling Review. The Commissioner may carry out a CHR where it is deemed fair, reasonable, proportionate and in the public interest to do so. In cases where applications are not taken forward, the Commissioner will issue a discretionary decision letter, having considered the application and found that it does not merit a Complaint Handling Review.

A total of 87 decision letters were issued by PIRC to Police Scotland up to the end of Q3 2023/24, of which 66% were issued on the grounds of proportionality.

This means that the PIRC has deemed Police Scotland to have carried out a proportionate enquiry into these complaints. Accordingly, as the police appeared to have already taken reasonable steps to respond and address the complaint, the PIRC has determined there would be no added value to be gained from reviewing the handling of the complaints.

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It can be reasonably assessed that - had these applications proceeded to a complaint handling review - a finding of 'reasonably handled' would follow. This would thereafter have increased the overall figure of complaints handled to a reasonable standard by up to 5%.

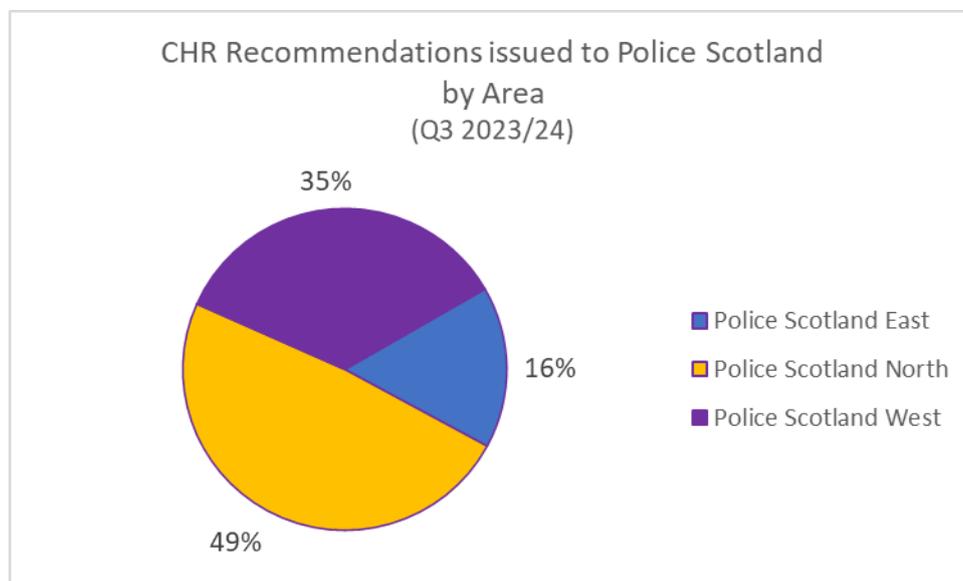


## Recommendations Made

Over the quarter the PIRC has made 80 recommendations relating to 30 CHRs to Police Scotland. These are broken down by type and area below:

CHR Recommendation Type	%
Conduct further enquiry	58%
Reassess and fresh response	16%
Record complaint and respond	14%
Provide further response	8%
Record as CAP	3%
Apologise	1%
Reassess and fresh response Conduct further enquiry	1%
<b>Total</b>	<b>100%</b>

6. Source: Centurion System



7. Source: Centurion System

A cumulative total of 211 recommendations have been made by the PIRC Reviews Team to Police Scotland by the end of Q3 in 2023/24. Sixty-five (31%) have been implemented by this time, although only 26 of these (40%) were implemented within the suggested 56 day timescale.



## Learning Points Identified<sup>1</sup>

The PIRC identifies opportunities for organisational or individual learning and improvement as part of the Complaint Handling Review process. These learning opportunities are highlighted to the police as Learning Points within the CHR reports. In Q3 all our Learning Points were designed to enhance PSD compliance with our Statutory Guidance and Police Scotland’s Complaints About Police Standard Operating Procedures.

The Learning Points are also opportunities for PIRC to highlight examples of good complaint handling practices.

### ***PIRC Learning***

The complainer in this case was a serving police officer. The complainer had been reporting matters that he did not wish to be known by colleagues. Despite having requested officers from another station take his report, officers that he knew were allocated the case. In our view, this could lead to a perception of bias from either the officer reporting the alleged crime, the person who is the subject to a police investigation, or both parties.

PIRC advised Police Scotland to consider whether formal documented guidance is required relating to the process for dealing with crime reports involving serving officers, particularly those reports of a sensitive nature. Guidance similar to that contained within the Complaints SOP, which states that the investigating officer must be suitably independent, would help to mitigate against allegations of bias during a criminal investigation where a serving police officer is the alleged victim.

### ***Police Response***

The learning point has been accepted by Police Scotland. Police Scotland has advised that the Crime Investigation SOP is under wider review – a process that involves various departments.

Whilst these changes are not directly related to the PIRC learning point above, the Crime Investigation SOP will be amended to reflect the learning and published once all changes have been made. Police Scotland will continue to keep PIRC updated on progress.

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<sup>1</sup> Data taken from PIRC Recommendation Monitor 08/02/2024.

***PIRC Learning***

The complaints in this case arose after the complainer's husband died suddenly whilst working in Scotland. PIRC identified that Police Scotland should consider whether the Investigation of Death Guidance requires to be updated, to include a clearly defined process for officers seeking to notify next of kin living in England, Wales, or Northern Ireland of the death of a person.

This would provide clarity on the role and responsibilities of Police Scotland in such circumstances and ensure that next of kin living elsewhere in the UK can be notified of a death as soon as reasonably possible.

***Police Response***

The learning point has been accepted by Police Scotland. The reviewing officer has confirmed that a form of words is being compiled and this will be added to Section 26/27 of the Investigation of Death Guidance, as advised by PSD Support & Service Delivery who will be sighted on the final wording. PIRC will be updated accordingly.

***PIRC Learning***

The complaints in this case arose after the applicant contacted the police to report allegations of domestic abuse and stalking. The applicant was dissatisfied with the police investigation and their interactions with individual officers. Police Scotland upheld three of the six complaints submitted by the complainer and following a review, we concluded that all complaints were dealt with to a reasonable standard. Furthermore, we determined that officers from the Professional Standards Department carried out a very thorough and proportionate complaint enquiry, identified additional complaints through meaningful engagement with the complainer throughout the enquiry and identified individual and organisational learning to address relevant shortcomings. We considered that the officers involved in this complaint enquiry demonstrated good complaint handling practice and good understanding and working knowledge of PIRC's Statutory Guidance. A Learning Point was issued by the PIRC highlighting this case as an example of good complaint handling.

***Police Response***

The learning point has been accepted by Police Scotland. Police Scotland have provided confirmation that all officers involved in this case have been advised of PIRC's observations. The learning was also included in PSD's monthly Learning Point Report to be circulated to all complaint handlers within the PSD.



## Stakeholder Engagement

During Q3 2023/24, the Review Team continued to engage with the Professional Standards Department of Police Scotland.

### PSD/PIRC Liaison Event

In January 2024, the PIRC hosted a liaison event with Police Scotland Professional Standards Department. This was designed to promote staff build strong working relationships, improve communication, increase clarity and mutual understanding around existing policies and procedures and provide an opportunity to identify areas for improvement.

The event was attended by over 70 delegates, including representatives from Reviews and Investigations teams from the PIRC, PSD Criminal and Non-Criminal teams, including NCARU and the SPA Complaints and Conduct team.

During the event, our Reviews team organised workshops, designed to improve application of Non-Investigation provisions, to increase consistency in categorisation of complaints and to improve capture and identification of learning and improvement opportunities.

Feedback and the content of discussions will be analysed to inform future collaborative engagement and initiatives.

### PSD Induction Training

In October 2023, PSD ran a new comprehensive induction training course for those recently appointed to work within PSD. Over the course of four days, both Reviews and Investigations teams delivered training inputs and presentations, covering complaint handling best practice, CHR process, statutory referrals, and PIRC investigations.

The training received positive feedback from those in attendance, with PIRC Reviews and Investigations having been invited to present a future Induction Training Session scheduled to take place in March 2024. It is anticipated that this course will run every six months to ensure that all new PSD recruits receive standardised training.

### National Complaint Handling Development Group (NCHDG)

The second meeting of the newly reformed NCHDG took place in December 2023. The meeting, chaired by Superintendent Kate Stephen, consisted of representatives from PSD involved in complaint handling, PIRC, and the SPA.

This group is focused primarily on practical complaint-handling trends/themes. The group is also used as the forum to discuss any recommendations arising from the PIRC/SPA NCARU Audit.

### PIRC Audit – 6-Stage Process

In line with recommendation 7 of the DEA report, the PIRC is currently undertaking an audit of Police Scotland's 6-stage complaints process. A copy of the Terms of Reference has been shared with the SPA. The field work stage of the audit commenced in November 2023 and is now complete. The PIRC audit team also conducted interviews with PSD staff in January 2024. The PIRC is working to a deadline of April 2024 to conclude the report.

## **EPAC/EACN) 22<sup>nd</sup> Annual Conference**

In November 2023, PIRC attended at the 22<sup>nd</sup> Annual Conference of European Partners Against Corruption (EPAC) and European contact-point network against corruption (EACN) in Dublin.

This event was attended by delegates across Europe and attracted a very large number of representatives from policing bodies and police oversight organisations.

The main themes of the conference included whistleblowing, police corruption, gender-based violence and challenges associated with digital evidence. PIRC is committed to engagement with international network of police oversight organisations, in order to share good practice and learn from our colleagues in other jurisdictions.



## Investigations

In terms of Section 33A(c) of the Police, Public Order and Criminal Justice (Scotland) Act 2006 (as amended) and Regulation 3 of the Police Investigations and Review Commissioner (Investigations Procedure, Serious Incidents and Specified Weapons) Regulations 2013 (the 2013 Regulations), **the Chief Constable must request the Commissioner to investigate any serious incident<sup>2</sup> involving the police which is a circumstance involving, (a) a constable; or (b) a member of the police staff.**

On receipt of a referral from Police Scotland, PIRC undertake an assessment of the referral and decide whether to investigate or not. Assessments may include examining CCTV, Body Worn Video, other video, witness statements, command & control logs, telephone calls, Airwave radio transmissions, briefing papers or other material.

## Referrals

Following a Performance Data Review in October 2022, the PIRC, as part of this review, revised referral incident types that the PIRC deal with, to streamline and standardise referral types.

Referrals from Police Scotland are categorised in the following terms:

- Death Following Police Contact
- Serious Injury Following Police Contact
- Serious Injury in Police Custody
- Firearms Discharged
- Firearms Presented
- Taser
- Incapacitant Spray<sup>3</sup>

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<sup>2</sup> A “serious incident involving the police” which the Commissioner may investigate in pursuance of paragraph (c) of section 33A is a circumstance in or in consequence of which a person has died or has sustained serious injury where (i) the person, at or before the time of death or serious injury, had contact (directly or indirectly) with a person serving with the police acting in the execution of that person’s duties; and (ii) there is an indication that the contact may have caused (directly or indirectly) or contributed to the death or serious injury; (b) any other circumstance in or in consequence of which (i) a person has otherwise sustained a serious injury at a time when the person was being detained or kept in custody by a person serving with the police; or (ii) a person serving with the police has used a firearm or any other weapon of such description as the Scottish Ministers may by regulations specify

<sup>3</sup> The overall referral figures quoted by PIRC are not comparable to those reported by PSOS. This is due to the inclusion of referrals involving incapacitant spray (which are not managed by PSD, therefore not cited) as well as the PSOS inclusion of Crown Directed matters, which are excluded in PIRC figures.

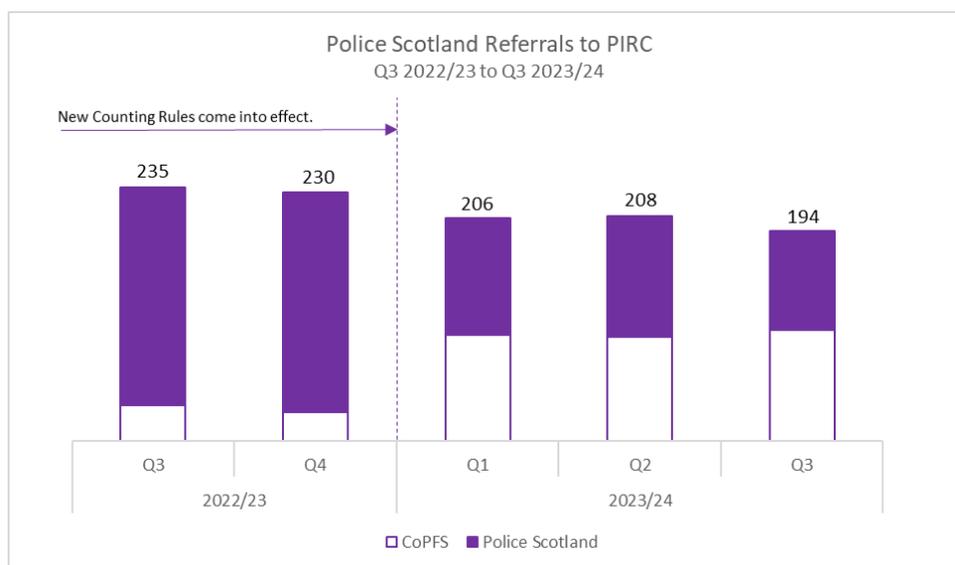
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In addition, under Section 33A(b) of the 2006 Act, COPFS may instruct PIRC to investigate:

- Death in Custody
- Death Following Police Contact
- Other Criminal Matters

**COPFS investigation statistics are not included in this report, as they related to live ongoing criminal investigations at the direction of COPFS.**

(Note: Since 4 October 2021, COPFS has a standing instruction resulting from the Dame Elish Angiolini Independent Review of Complaints Handling, Investigations and Misconduct issues (Recommendation 47), which instructs that all on duty allegations of assault made against police officers and police staff are referred onwards from Police Scotland to PIRC for assessment and where appropriate investigation.

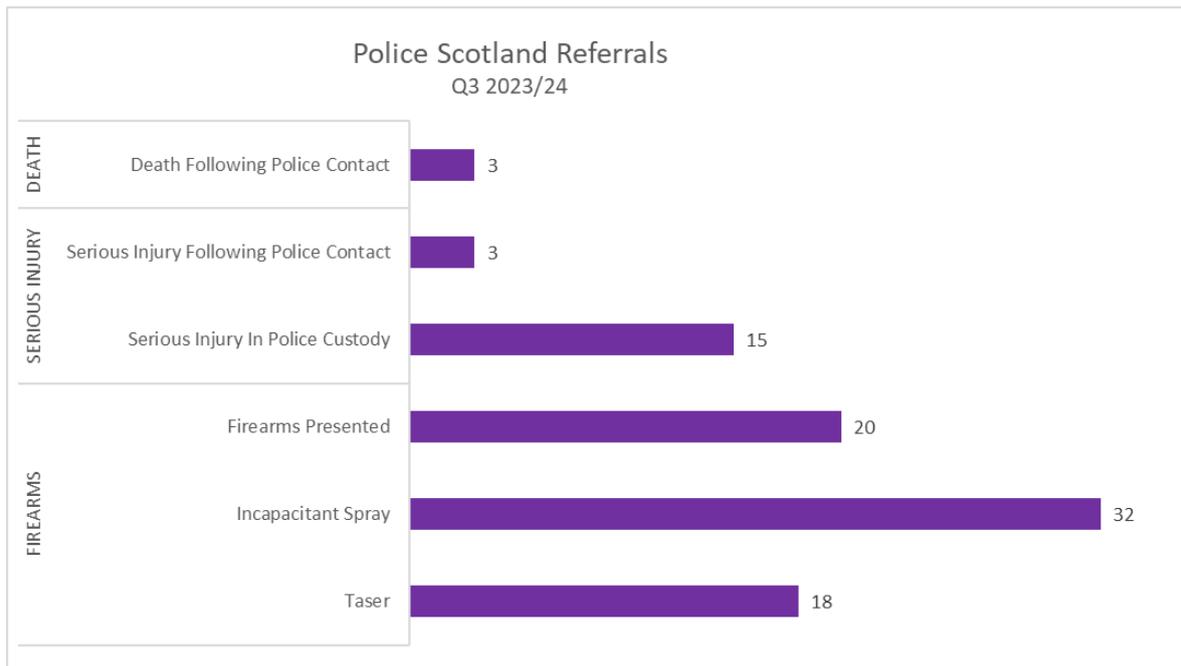


8. Source: Referral Logs (2023/23 & 2023/24)

The change to PIRC counting rules has brought about an anticipated decrease in referrals from Police Scotland - 111 fewer than in Q3 2022/23. There has been corresponding increase in referrals from COPFS - 70 more than in the Q3 of preceding year. This means an overall net decrease of 41 (17%) between the quarters.

The Standing Instruction from Crown has transferred the source of appropriate referrals to the PIRC being categorised from COPFS rather than Police Scotland. The new counting rules reflect this change and account for the fall in referrals from Police Scotland and the increase in COPFS referrals.

Referrals by Type



. Source: PIRC Referral Log (2023/24)<sup>4</sup>

Use of Incapacitant Spray continues to be the most common referral type from Police Scotland in Q3 (32 referrals). Presentation of firearms account for 21 and Tasers 17 referrals. Cases involving serious injury account for 18.

A Senior Investigator (SI) will review the content of assessments and/or terms of reference for a Crown directed referral. Where a decision is taken that the incident is proceeding to investigation, an SI will categorise the case (in consultation with the Head of Investigations) and allocate the investigation to a lead investigator.

<sup>4</sup> Discrepancies between figures submitted by PIRC and Police Scotland can arise from different categorisation requirements for each organisation's workload management.

For example, if an Authorised Firearms Officer discharges a taser in the course of their duties – one of a suite of options available to AFOs – Police Scotland will refer this as an Armed Policing incident. If the officer involved was a Specially Trained Officer, the referral would be counted as a 'STO – Taser' referral by Police Scotland.

For its part, the PIRC's interest in the same incident would be primarily concerned with the fact that a taser was discharged at all - but it would not make the distinction between the type of officer involved. PIRC would therefore always record this type of incident as a 'Taser' event.

If, however, firearms were also presented by AFOs at the same incident, PIRC would have an obligation to examine each element of the incident (i.e. both taser discharge and firearms) so would raise a second referral for 'Firearms Presented'.



## Investigation Categories

To ensure adequate resourcing and prioritisation, all PIRC investigations are categorised using criteria detailed in the PIRC Operations Directorate Business Counting Rules.

Prioritisation is given to death and other high profile investigations. Each investigation is categorised either A+, A, B or C depending on the complexity or seriousness of the investigation.

### Major Cases – Category A+

In exceptional circumstances, the Head of Investigations or the Head of Reviews and Policy (or their nominated representative) can request the Director of Operations or, in their absence, the Commissioner, to designate an investigation with major case status. This only applies to a very small number of complex or protracted investigations, including those where the timescales are being directed by another authority such as COPFS. In such cases it will be clear from the outset that the case is going to take a prolonged period to reach a conclusion, and there is no reasonable prospect of KPI timescales for the completion of the case being met.

An extended timescale will be provided for major cases with the Commissioner and Director of Operations given regular situational updates. The PIRC will also maintain contact with affected family members or next of kin and ensure that timeous progress updates are provided on the status of the investigation.

### Category A

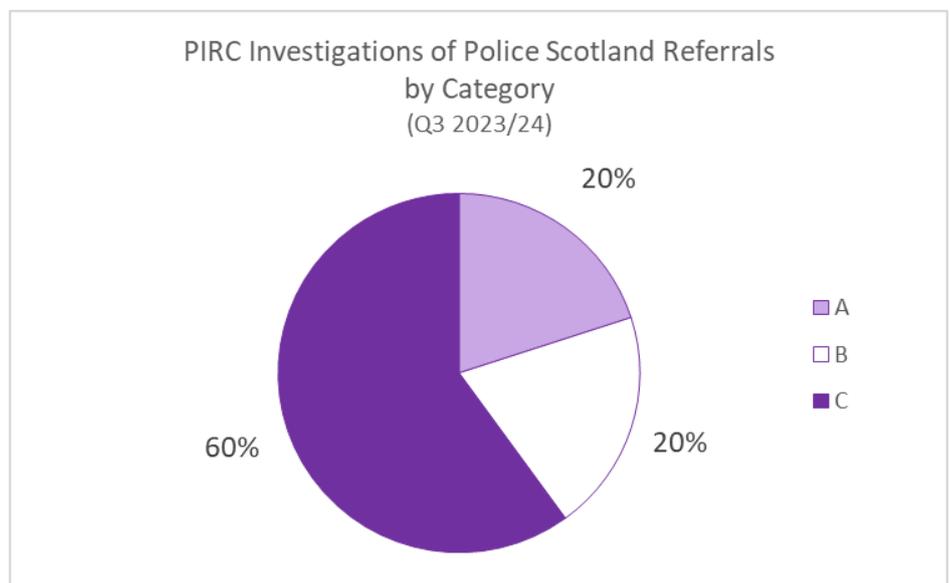
Investigations into deaths in police custody or following police contact; or a major investigation with complex lines of enquiry where the securing of evidence requires significant resource allocation over a protracted period or an investigation which generates high levels of public/political interest placing additional demands on the organisation in relation to completion times.

### Category B

An investigation where the lines of enquiry are apparent from the outset but where the securing of evidence can only be achieved through prolonged investigation.

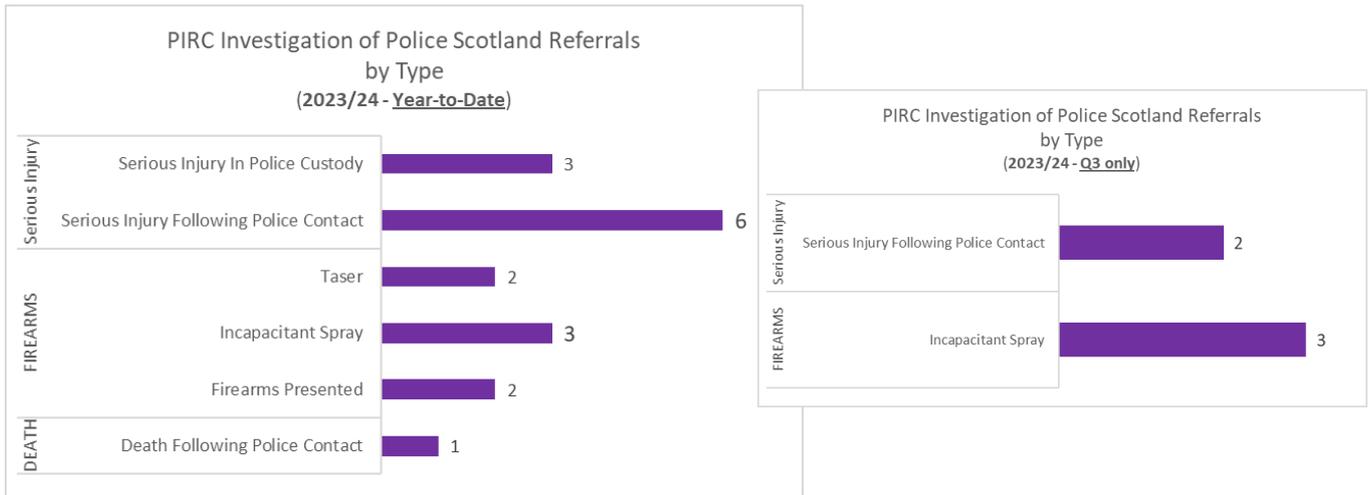
### Category C

A routine investigation where the lines of enquiry are apparent from the outset and the gathering of all relevant evidence can be achieved without placing great demands on the investigations team.



9. PIRC Referral Log (2023/24)

## Investigations by Type



10 & 11 PIRC Referral Log (2023/24)

PIRC has initiated five investigations from Police Scotland referrals during Q3, bringing the total number of investigations initiated in 2023/24 to 17.

Of the three investigations relating to the use of incapacitant spray, two concerned incidents that occurred in 'A' Division and one in 'E' Division.

Investigations relating to serious injury following police contact concerned one incident in 'G' Division and one in 'U' Division.

## Key Performance Indicators

The following key performance indicators, (KPI's) report on the PIRC's performance on managing all investigations:

- 90% of all cases referred to the PIRC will be assessed and a decision provided of whether an investigation will proceed within 5 working days following receipt of background case papers police.
  - Q3 2023/24 - 99%
- 80% of Category A investigations (minus major cases) completed and reports submitted within 90 working days, following receipt of background case papers.
  - Q3 2023/24 – 100%
- 80% of Category B & C investigations (minus major cases) completed and reports submitted within 120 working days, following receipt of background case papers.
  - Q3 2023/24 – 92%<sup>5</sup>

<sup>5</sup> Figures drawn from PIRC Investigations Quarterly Workload Report.



## Recommendations Made

PIRC reports to Police Scotland may include findings and recommendations and are intended to assist organisational learning and development or to address any systemic issues discovered. **Police Scotland do not have a legal requirement to implement any recommendations**, however, in the main these are implemented.

PIRC issued one recommendation in Q3 2023/24. This was thematic in nature:

<b><i>PIRC Recommendation</i></b>
Police Scotland should review their policy and guidance to officers in respect of post incident Taser discharge aftercare and the potential conflict with human rights to require those subjected to a discharge to receive medical assessment.
<b><i>Police Response</i></b>
No response received as yet. <b>Response expected by 21/11/2023</b>

<b><i>PIRC Recommendation</i></b>
Police Scotland and CNC should review their current Collaboration Agreement to address the identified lacuna and strengthen the obligation that CNC officers must comply with PIRC investigations when CNC officers are deployed under the command of Police Scotland to potentially life-threatening incidents, even where no criminal offence is suspected and no death has occurred.
<b><i>Police Response</i></b>
No response received as yet. <b>Response expected by 27/12/2023</b>

<b><i>PIRC Recommendation</i></b>
Police Scotland should review procedures and risk assessments for contacting suspects of non-recent sexual offences to ensure all officers are fully aware of policy and procedures. This must include a clear protocol for dealing with suspects who reside in a force area out with that of Police Scotland.
<b><i>Police Response</i></b>
No response received as yet. <b>Response expected by 05/01/2024</b>

<b><i>PIRC Recommendation</i></b>
Police Scotland should review the North East Division Body Worn Video Guidance Document in relation to officers wearing BWV and consider making it mandatory to wear when available and to activate the camera when responding to incidents.
<b><i>Police Response</i></b>
No response received as yet. <b>Response expected by 08/03/2024</b>



## Stakeholder Engagement

### **Post Incident Manager Continuous Professional Development (CPD) and Re-certification.**

Courses were held at Police Scotland's premises at Jackton Training Centre, East Kilbride in November 2023 and January 2024. These events involved external speakers including PIRC, who provided a presentation around the role of the PIRC in Post Incident Procedures (PIP).

This aligns with wider engagement between PIRC and Police Scotland around Post Incident Procedures. PIRC staff are supporting a series of ongoing presentations to Local Policing Divisions management teams around the function and respective roles / responsibilities and the wider impact on PIRC investigations.

PIRC is scheduled to provide a further presentation at the National CPD day for PIP at the Scottish Police College in March 2024.

### **SPC Training.**

PIRC staff continue to support Police Scotland training across a variety of training courses at the SPC, including PSD Induction Training, as discussed in the Reviews section of this report.

### **PIRC Staff Continuous Professional Development.**

As part of the ongoing CPD process PIRC staff development continues to benefit from training opportunities provided by Police Scotland. In addition to ongoing established specialist training, PIRC will also receive support for Disclosure Training. Investigators will undertake Disclosure Training in March 2024, further enhancing existing subject knowledge.

**END OF REPORT**