

# SPA Complaints & Conduct Committee

**2023/24 – Quarter 2**

**1 July – 30 September 2023**



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## Introduction

This is the second 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 has introduced new recording standards and counting rules. These 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.

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



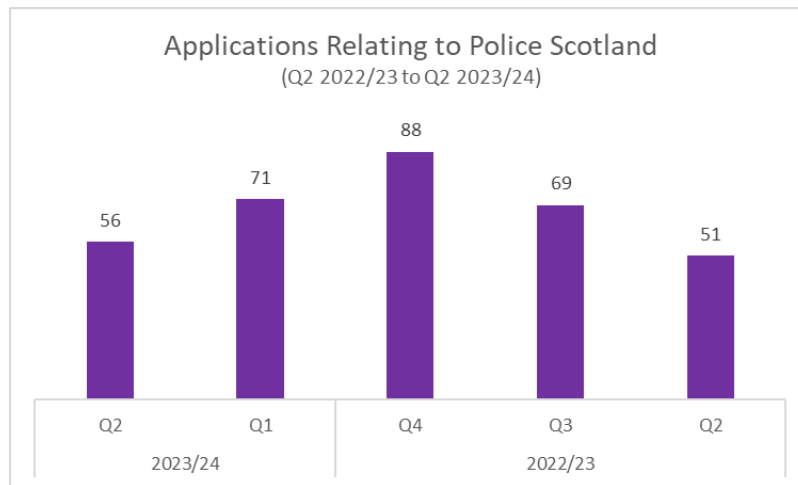
**We cannot review:**

- 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 Q2 2023/24 PIRC has received 56 applications for a Complaint Handling Review (CHR), a decrease of 15 applications (-21%) on the previous quarter (Q1) but an increase of five (10%) on the preceding year's Q2 applications.

This year-on-year increase has continued from Q1 when there were an additional 22 applications. This means that PIRC has received a total of 27 additional applications thus far, in relation to those received in 2022/23.

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 logged correctly and processed efficiently.

### Key Performance Indicators

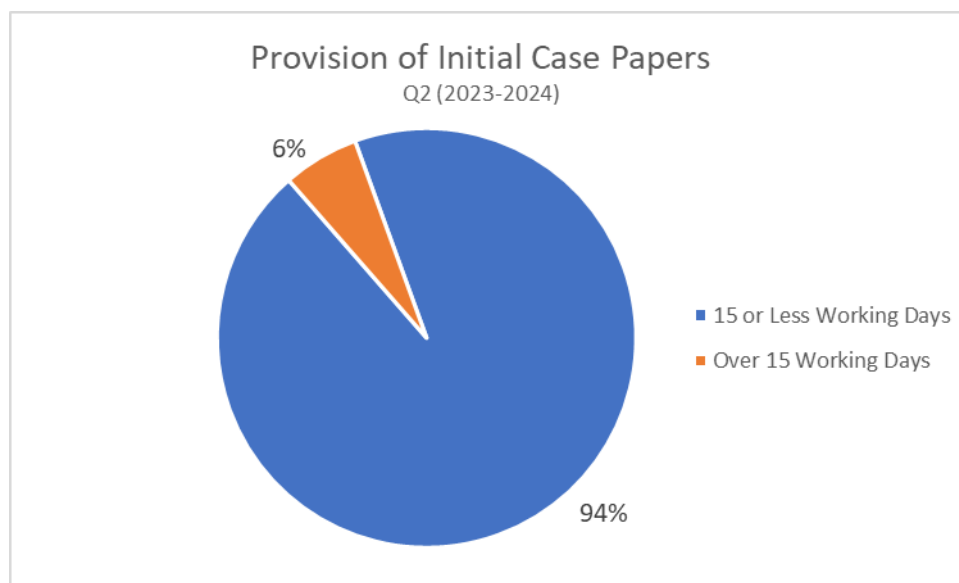
- 90% of CHR applications to undergo SRO assessment and decision to be taken within 5 working days of receipt of the relevant police case papers.
  - Q2 2023/24 - 98% (YTD – 99%)
- 80% of CHRs including discretionary decisions (minus major cases) to be completed within 90 working days, following receipt of the relevant police case papers.
  - Q2 2023/24 – 92% (YTD – 96%)
- PIRC carried over a total of 30 CHR applications from the previous counting arrangements, of which only 1 remained ongoing at the end of Q2.



## 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 will standardise the process for the provision of case papers across both Reviews and Investigations functions within PIRC.



2. Source: Centurion System

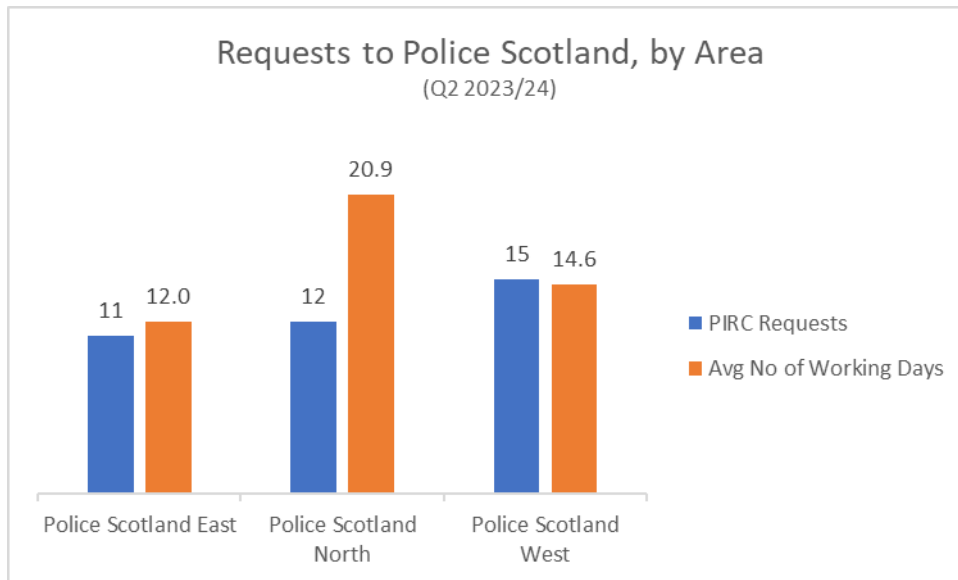
Of the 51 cases where papers were requested<sup>1</sup>, Police Scotland complied with this timescale in 94% of cases and background papers were provided on average within 7.2 working days.<sup>2</sup>

### 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 was not included in the papers initially provided to the PIRC. A further information request is made and Police Scotland now aim to provide the further information requested within 15 working days. During the period, PIRC also made a further 38 requests to Police Scotland as part of an ongoing review. On average, requests were completed within 15.8 working days of receipt of the request.

<sup>1</sup> Figures may include some requests from other policing bodies but Police Scotland still accounts for the vast majority of information requests made by the PIRC.

<sup>2</sup> Sourced from PIRC Quarterly Submission to Scottish Government Audit and Accounts Committee.



*3 Source: Centurion System*

The total average waiting time per review for information is calculated as follows:

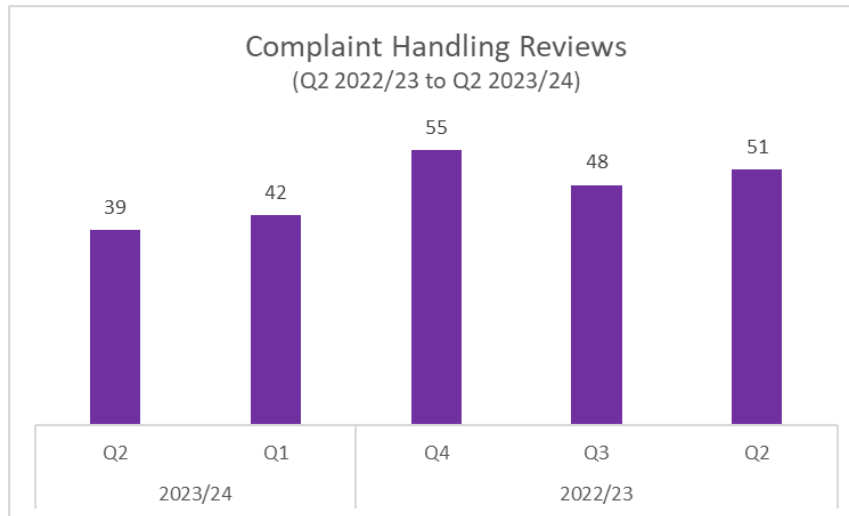
Average time of Initial receipt of papers + Average time awaiting information during review

- Total Avg Waiting Time = 7.2 + 15.8 working days  
= 23 working days.

This average represents an increase of 1.5 working days, relative to the time taken in the preceding quarter (21.5 working days in Q1, 2023/24).



## Complaint Handling Review Reports Cases completed – National



4. Source: Centurion System

The number of reports issued by PIRC in Q2 2023/24 is 39, all of which relate to complaints handled by Police Scotland.<sup>3</sup>

### 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.

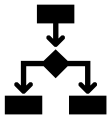
**The PIRC will only exercise discretion on proportionality grounds for minor and non-serious complaints.**

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.

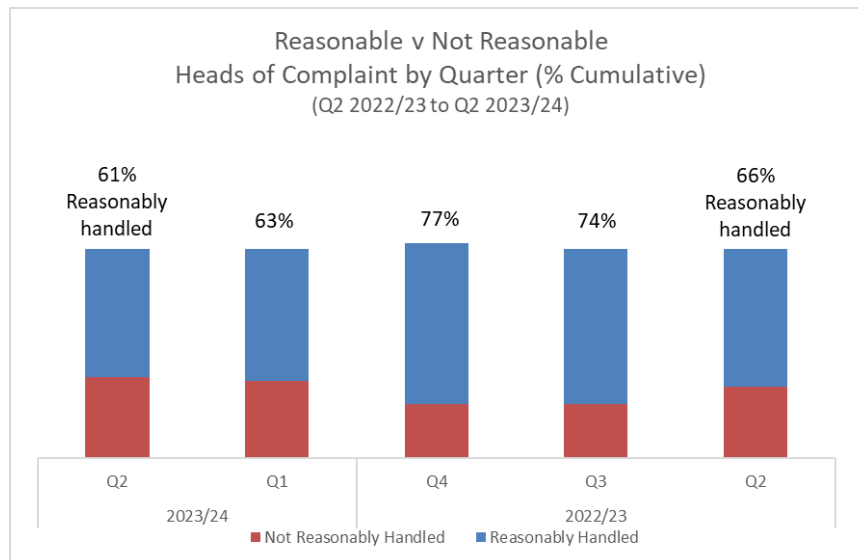
<sup>3</sup> This includes one report that had been issued to COPFS for review but had not yet been released to Police Scotland and another for which PIRC received two separate applications, both of which were closed off by the same CHR.





## 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. PIRC issued three Reconsideration Directions to Police Scotland in Q2 2023/24. All relate to cases in the north area, two of which relate to a single case and one relating to a separate, individual case.
- **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 62 decision letters were issued by PIRC to Police Scotland up to the end of Q2 2023/24, just over half of which (52%) were issued on the grounds of proportionality. This means that the PIRC deemed complaints to be minor in nature, and based on the information provided to us, the police appeared to have already taken reasonable steps to respond and address the complaint.

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 increase the overall figure of complaints handled to a reasonable standard by up to 5%.

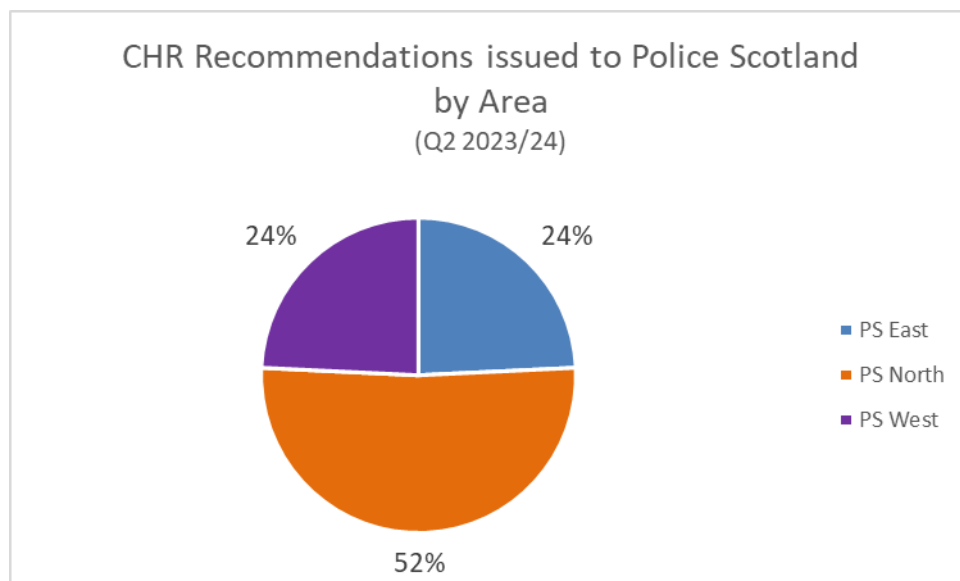


## Recommendations Made

Over the quarter the PIRC has made 66 recommendations relating to 25 CHRs to Police Scotland. These are broken down by type and area below:

CHR Recommendation Type	%
Conduct further enquiry	42%
Reassess and fresh response	28%
Provide further response	14%
Record as CAP	13%
Revisit policy/procedure	1%
Other	1%
<b>Total</b>	<b>100%</b>

6. Source: Centurion System



7. Source: Centurion System

A cumulative total of 132 recommendations have been made by the PIRC Reviews Team to Police Scotland by the end of Q2 in 2023/24. Thirty-three (25%) have been implemented by this time. The implementation rate for the same period in 2022/23 was lower (18%). The number of recommendations implemented was also fewer at that time (n=20).



## Learning Points Identified<sup>4</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. The Learning Points are designed to improve police service delivery, strengthen policies or procedures and improve individual training or performance.

### ***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, with work underway to implement the learning identified.

### ***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 update, 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. PIRC has been advised that the Investigation of Death Guidance is currently being reviewed in line with our observations. An update is expected in due course.

<sup>4</sup> Data taken from PIRC Outcomes Monitor 26/10/2023.

***PIRC Learning***

The complaints in this case arose after the applicant's firearms certificate was revoked and his firearms seized after he was charged with a criminal offence. We identified that Police Scotland's template firearms revocation letter is difficult to digest because it quotes large sections of legislation which are not relevant to every scenario in which a firearms certificate may be revoked. In this case, it was not entirely clear which sections of the legislation applied to the complainers particular circumstance. We are of the view that Police Scotland should consider whether the template letter could be re-structured in a manner that would allow it to be easily tailored to suit individual circumstances. This would ensure that recipients of such letters are better able to understand the reason for revocation.

***Police Response***

The learning point has been accepted by Police Scotland. Police Scotland have provided confirmation that all officers involved in writing firearms revocation letters have been contacted and provided with advice on tailoring letters to each specific scenario and not to refer to legislative text that are not relevant to the certificate holders being revoked or refused. The National Firearms Explosives Licensing Department at Police Scotland have recorded this on file as a policy decision.



## Stakeholder Engagement

During Q2 2023/24, the Review Team continued to engage with the Professional Standards Department of Police Scotland.

### **PSD Induction Training**

Between 2nd and 5th October, PSD ran an induction training course for those recently appointed to work within PSD. On 3rd/4th October, the Review Team delivered a training session on the 6-stage complaint handling process, focussing on the do's and don'ts of complaint handling, providing some practical examples of good complaint handling practice.

On 4th October, the Investigations Team also delivered a training session on criminal complaints and related 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 early 2024, in Dundee.

### **National Complaint Handling Development Group (NCHDG)**

The inaugural meeting of the newly reformed NCHDG took place on 12 September 2023. The meeting, chaired by Superintendent Kate Stephen, consisted of representatives from PSD involved in complaint handling, PIRC, and the SPA.

The terms of reference for the group has been agreed, establishing it will focus primarily on practical complaint-handling trends/themes. The group will also be 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 has advised Police Scotland of the intention to audit the 6-stage process. A draft copy of the ToR has been shared with PSD for consideration, with PSD having identified a SPOC to assist with the audit. The field work stage of the audit is expected to commence in November 2023, with the PIRC working to a deadline of March 2024 for publishing its findings.

The PIRC are currently liaising with PSD to obtain the data that they require for the audit. An update will be provided in due course.



## 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>5</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>6</sup>

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<sup>5</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>6</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.

The Police Investigations and Review Commissioner (PIRC) has a standing instruction from COPFS in terms of Section 33A (b) of the Police, Public Order and Criminal Justice (Scotland) Act 2006 (as amended) to investigate all allegations of assault and associated offences made against police officers or police staff. These are:

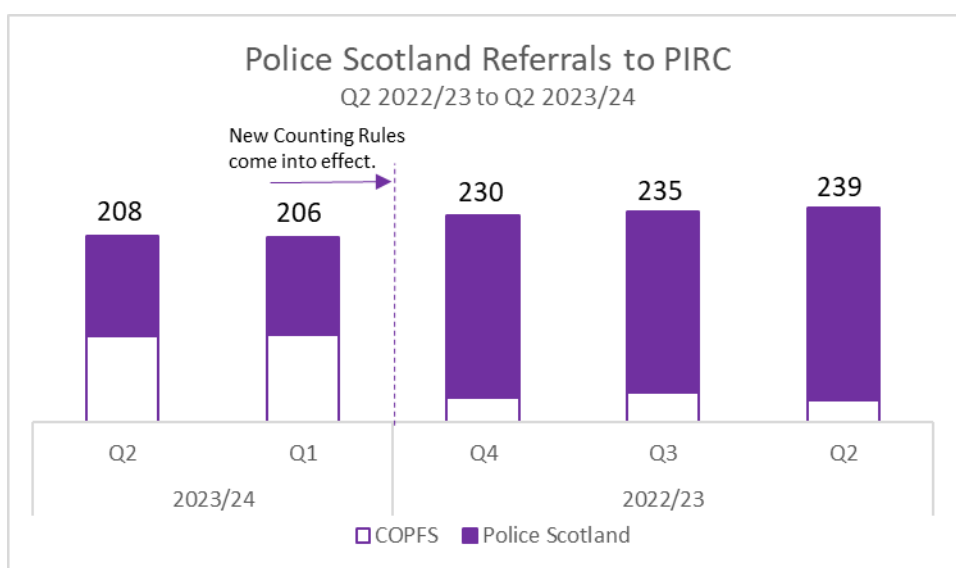
- Standing Instruction from Crown referrals
  - Article 3 (Allegations of Assault & Other Criminal Allegations)
  - Article 5 (Allegation of unlawful arrest & Other Criminal Allegations)

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.

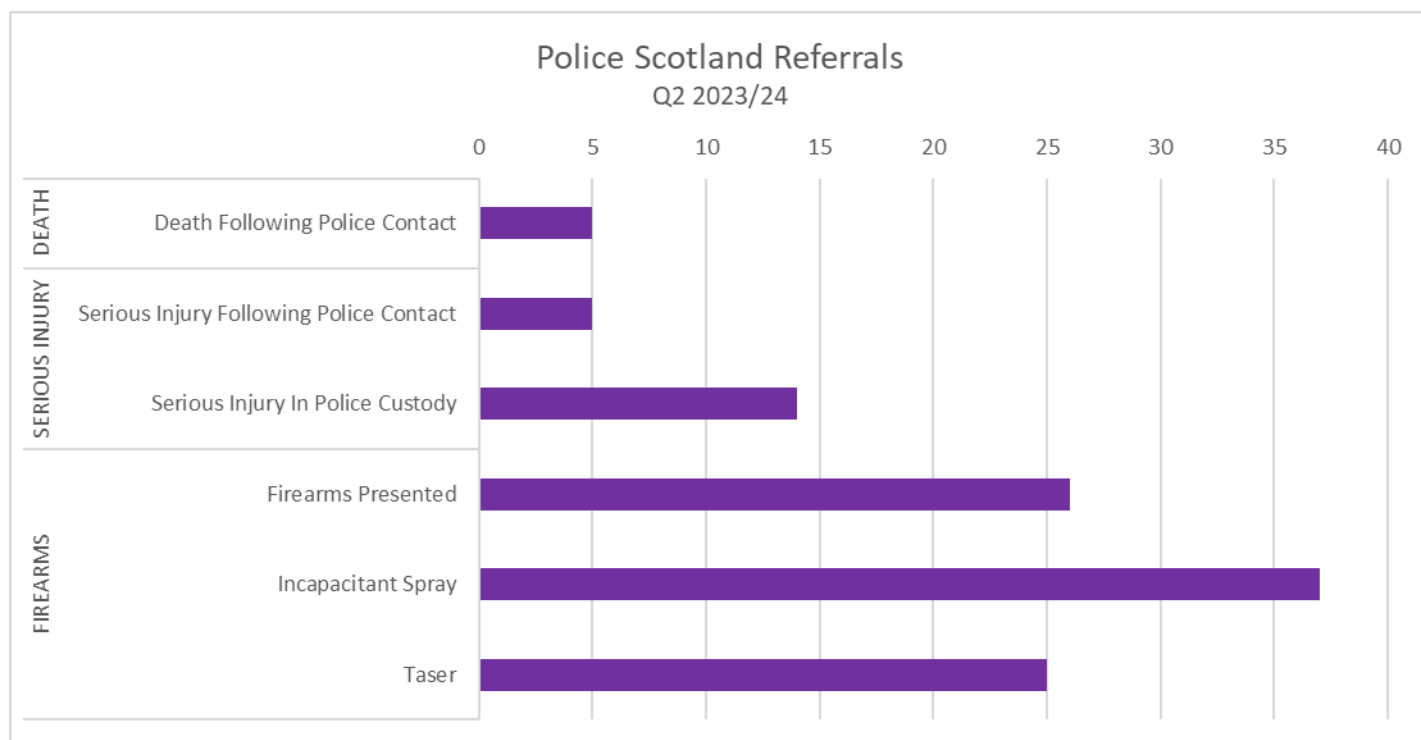


8. Source: Referral Logs (2023/23 & 2023/24)

Since the change to PIRC counting rules has brought about an anticipated decrease in referrals from Police Scotland - 102 fewer than Q2 2022/23. There has been corresponding increase in referrals from COPFS - 71 more than in the preceding year. This means an overall net decrease of 31 (13%) between the quarters.

The Standing Instruction from Crown referred to above 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)

Use of Incapacitant Spray has been the most common type of referral from Police Scotland in Q2 (37 referrals). Referrals where firearms have been presented account for 26 and Tasers account for 25 referrals. Cases involving serious injury account for 19, the majority of which (n=14) took place in Police Custody.

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.





## 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

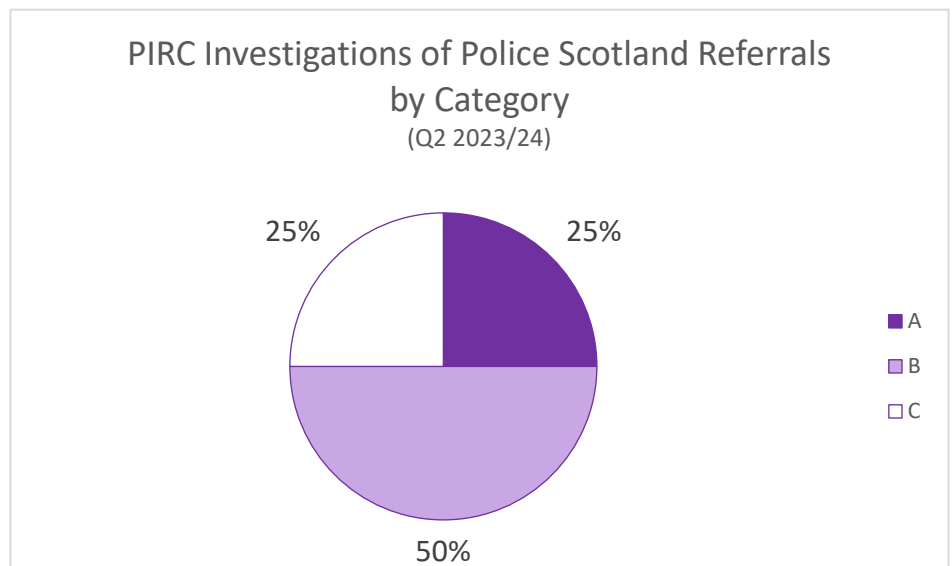
Investigations into deaths in police custody or following police contact; or a major investigation with complex lines of enquiry where the securing of evidence requires significant resource allocation over a protracted period or an investigation which generates high levels of public/political interest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

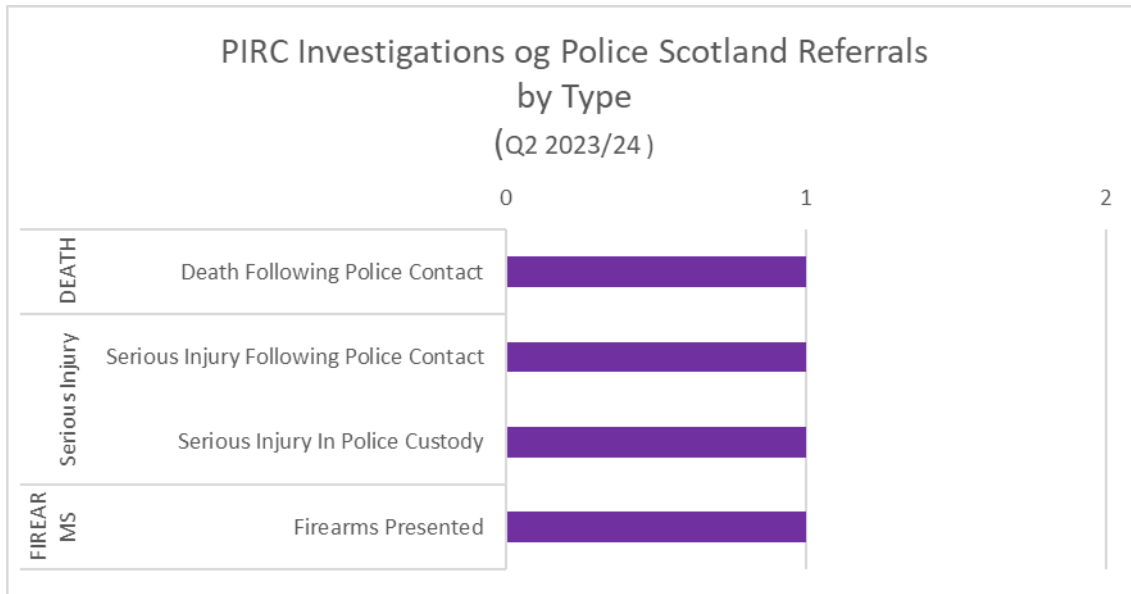
### Category C

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. Source: CLUE System

## Investigations by Type



10. Source: CLUE System

## Key Performance Indicators

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

- 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.
  - Q2 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.
  - Q2 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.
  - Q2 2023/24 – 100%<sup>7</sup>

<sup>7</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 a total of two recommendations in Q2 2023/24. Both were 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. Response expected by 21/11/2023

<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. Response expected by 27/12/2023



## Stakeholder Engagement

**PIRC Investigations Continuous Professional Development Event** was held at Police Scotland's premises at Jackton Training Centre, East Kilbride on 15 September 2023. This event was a success and included presentations from external speakers including Police Scotland's Armed Policing, Roads Policing and Collision Investigation and Criminal Justice Services Division as well as the Scottish Fatalities Investigations Unit and Criminal Allegations Against Police Division of the Crown Office.

Presentations were well received, covering organisational learning and providing a clear understanding as to the respective organisations' current procedures, capabilities and roles. It is envisaged that this event will support ongoing effective partnership working.

**PSD Induction Training** was supported by Senior Investigators from PIRC, as noted in the Reviews section of this report (page 14).

**PIRC staff Continuous Professional Development (CPD).** As part of the ongoing CPD process PIRC staff development continues to be supported by training opportunities provided by Police Scotland. In addition to ongoing established specialist training. In addition, PIRC will also receive support with training provided for the following:

**Operational Safety Training.** Three Investigators will undertake an initial Operation Safety Training (OST) in November 2023. The aspiration is for these officers to develop an expertise in this field and subsequently undertake Advanced First Aid, OST Instructor and Statement of Opinion training.

**END OF REPORT**