

SPA Complaints & Conduct Committee

2023/24 – Quarter 1

1 April – 30 June 2023



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Introduction

This is the first 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 1st 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.



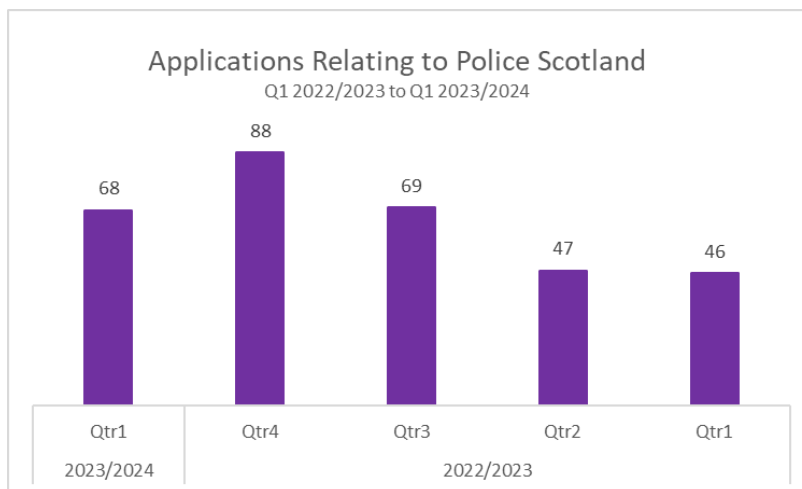
We cannot review:

- 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: Centurion System

In Q1 2023/24 PIRC has received 68 applications for a Complaint Handling Review (CHR), a decrease of 20 applications (-23%) on the previous quarter (Q4) but an increase of 22 applications (48%) on the preceding year's Q1 applications.

The new counting rules brought into effect at the start of this quarter 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

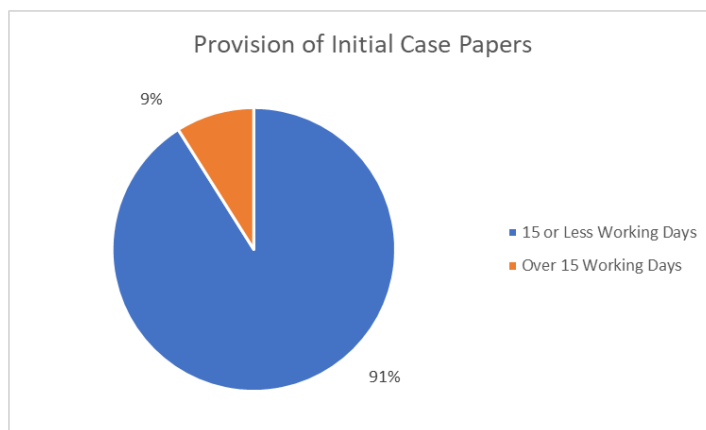
- 90% of CHR applications to undergo SRO assessment and decision to be taken within 5 working days of receipt of the relevant police case papers.
 - Q1 2023/24 - 100%
- 80% of CHRs including discretionary decisions (minus major cases) to be completed within 90 working days, following receipt of the relevant police case papers.
 - Q1 2023/24 – No data.
- PIRC carried over a total of 30 CHR applications from the previous counting arrangements, of which only 7 remained ongoing at the end of Q1.



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

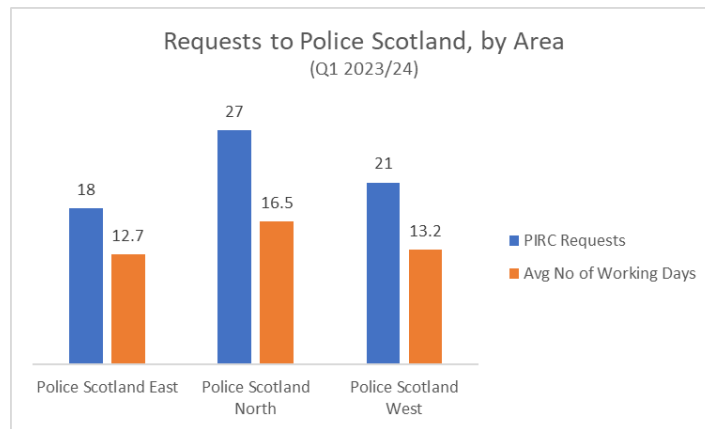
Of the 67 cases where papers were requested¹, Police Scotland complied with this timescale in 91% of cases and background papers were provided on average within 7.5 working days.²

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 made 65 requests to Police Scotland as part of an ongoing review. On average, these requests were completed within 14 working days of receipt of the request.

¹ 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.

² 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:

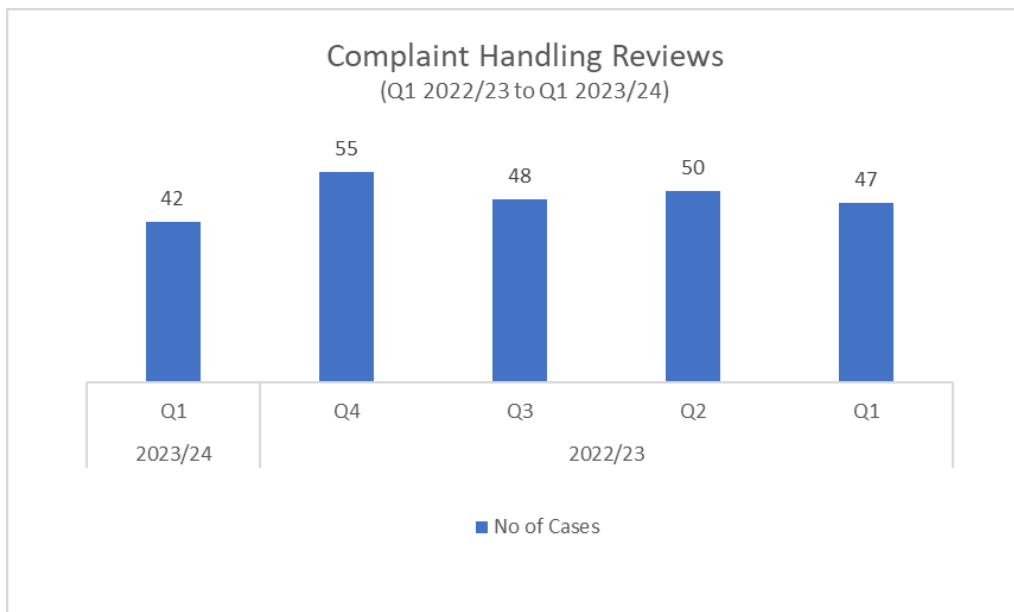
Average time of Initial receipt of papers + Average time awaiting information during review

- Total Avg Waiting Time = 7.5 + 14 working days
= 21.5 working days.

This average represents a reduction of 2.5 working days, relative to the time taken in the preceding quarter (24 working days in Q4, 2022/23).



Complaint Handling Review Reports Cases completed – National



4. Source: Centurion System

The number of reports issued by PIRC in Q1 2023/24 is 42, all which relate to complaints handled by Police Scotland. The number of Heads of Complaint (HoCs) being considered by the Reviews team is broadly in line with previous quarter totals in 2022/23 (n=216)³. The average number of HoCs per CHR is 5.1.

³ This does not include 7 Heads of Complaint which PIRC has referred back to Police Scotland. This gives Police Scotland an opportunity to record, investigate, and provide a response to the complaint

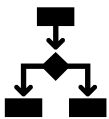
Cases closed - Decisions

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.

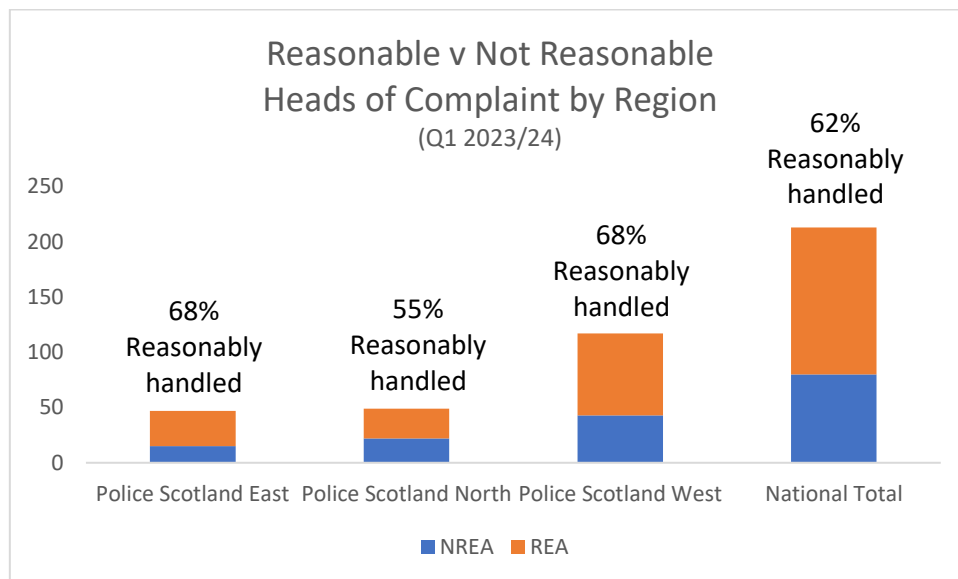
The PIRC recognise that complaints that we do not review on proportionality grounds represents an opportunity for PSD to identify good complaint handling practice. To assist in this regard, the PIRC now send PSD a detailed letter explaining why discretion was exercised, so that the good practice can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



Outcome

Reasonable v Not Reasonable



5. Source: Centurion System

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 gave 3 Reconsideration Directions to Police Scotland in Q1 2023/24. Two relate to a single case in the west area and one relates to a case in the north area.

- **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 32 decision letters were issued by PIRC to Police Scotland in Q1 2023/24, the majority of which (62.5%) were issued on the grounds of proportionality.

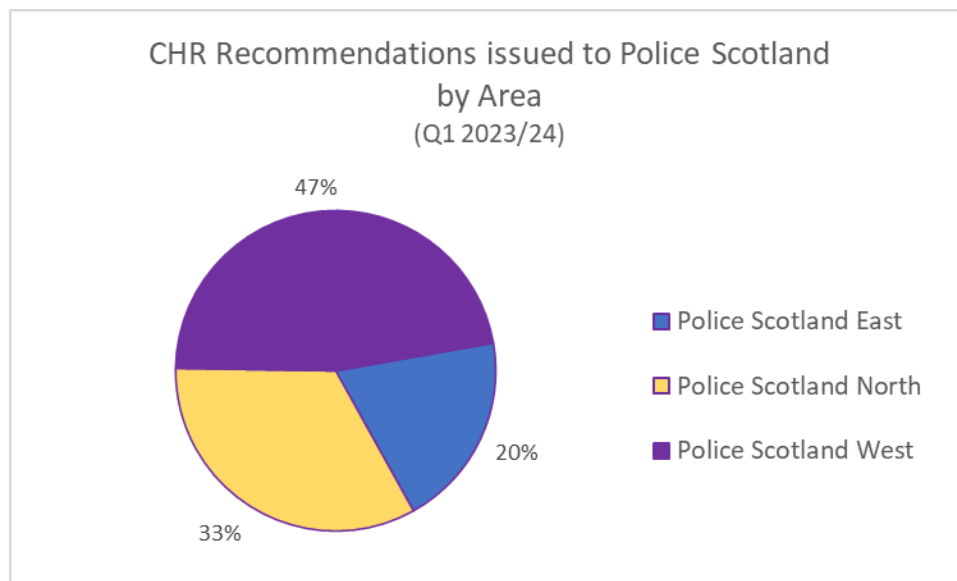


Recommendations Made

Over the quarter the PIRC has made 66 recommendations relating to 36 CHRs to Police Scotland. These are broken down by type and area below:

CHR Recommendation Type	%
Conduct further enquiry	29%
Reassess and fresh response	24%
Record as CAP	24%
Provide further response	14%
Other	5%
Conduct further enquiry	3%
Provide further response	
Record complaint and respond	2%
Total	100%

6. Source: Centurion System



7. Source: Centurion System

Of the 66 recommendations made in Q1 2023/24, nine (14%) have been implemented within the quarter. 57 remain outstanding⁴ and none have been rejected by Police Scotland.

⁴ It should be noted that Police Scotland have 2 months from issue in which to implement CHS recommendations.



Learning Points Identified⁵

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. Twenty-one learning points have been identified in Q1 2023/24, fourteen of which have been implemented and cascaded, and seven remain outstanding. No learning points identified in CHRs have been rejected.

PIRC Learning

We were unable to view a documented risk assessment in relation to the consideration of restriction of duties or suspension. The current version of Police Scotland's Suspension of Duty Standard Operating Procedure (Suspension SOP) does not make it clear when such risk assessment should be carried out. Furthermore, whilst it is clear that assessments that result in restriction of duties or suspension are routinely recorded, it does not appear that any record is maintained in relation to cases where restriction of duties are not deemed to be necessary and the Suspension SOP does not provide sufficient clarity or guidance in this regard. We consider that there is merit in revising the current procedure and strengthening the guidance to ensure that there is a clear audit trail of all risk assessments and decisions made in relation to potential restriction of officer's duties.

Police Response

This organisational learning point was issued to Police Scotland on 9 June 2023. PIRC await confirmation that the learning point has been implemented to a satisfactory standard.

PIRC Learning

Police Scotland should ensure that adequate measures are in place to cross refer complaint submissions which relate to individual complainers. This will minimise the risk of complaints being dealt with more than once with potentially contradictory outcomes, thus avoiding duplication of effort and increasing public confidence in the complaint handling process.

Police Response

The organisational learning point was issued to Police Scotland on 28 June 2023. On 12 July 2023, Police Scotland provided confirmation that the learning point had been cascaded to complaint handlers. PIRC await further confirmation of the measures introduced in response to the learning point before we consider it implemented to a satisfactory standard.

⁵ Data taken from PIRC Outcomes Monitor 09/08/2023.

PIRC Learning

Due to the recurring nature of police staff responses advising they had no recollection of the interactions with members of the public at the police stations, Police Scotland should consider whether the current procedures in place to record attendance at police stations by members of the public are sufficient and fit for purpose and consider any opportunities for improvement, to ensure that a clear audit trail of this type of interaction exists in the future.

Police Response

This organisational learning was issued to Police Scotland on 24 May 2023. Police Scotland's initial attempt to implement this learning point was formally rejected by PIRC on 9 August 2023. PIRC await further confirmation that the learning has been implemented to a satisfactory standard.



Stakeholder Engagement

During Q1 2023/24, the Review Team continued to engage with the Professional Standards Department of Police Scotland.

PIRC Reviews Team held monthly meetings with PSD (National) regarding CHR matters, including progress in implementing the recommendations/reconsideration directions/learning points that are currently outstanding.

We have engaged with our colleagues from the SPA and PSD in discussions to reconvene the **National Complaint Handling Development Group (NCHDG)**. The Terms of Reference for the group have been agreed; however, a date for the inaugural meeting of newly revised group has yet to be determined. The PIRC will use this forum to oversee the implementation of the recommendations arising from the PIRC/SPA Audit of PSD's National Complaint Assessment & Resolution Unit (NCARU), the findings of which were published in April 2023.

In June 2023, the PIRC Review Team attended to deliver a training input on the use of the **Non-Investigation provision by PSD Investigations**. This training was delivered at Dalarnock to officers working across PSD West, North, and East. The training was well received, with discussions ongoing to deliver the training remotely to staff unable to attend the previous training session in September 2023.

The PIRC Review Team and Investigation Team are currently liaising with PSD to develop and deliver a comprehensive complaint handling input to the **PSD Induction Course**, scheduled for w/c 2 October 2023. This training will be aimed at those officers who have recently started working within PSD.



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 incident⁶ 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

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)*

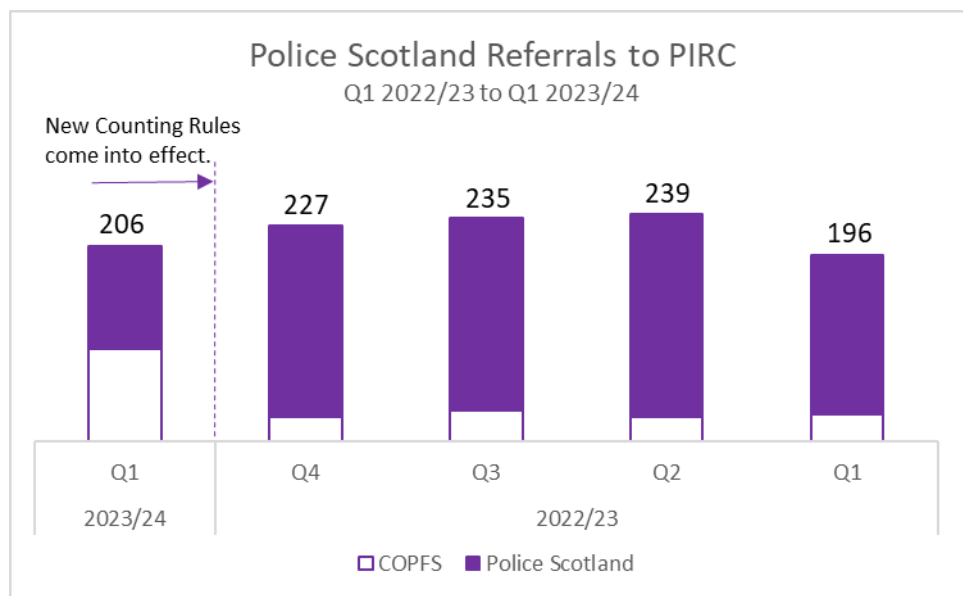
⁶ A “serious incident involving the police” which the Commissioner may investigate in pursuance of paragraph (c) of section 33A is a circumstance in or in consequence of which a person has died or has sustained serious injury where (i) the person, at or before the time of death or serious injury, had 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

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.

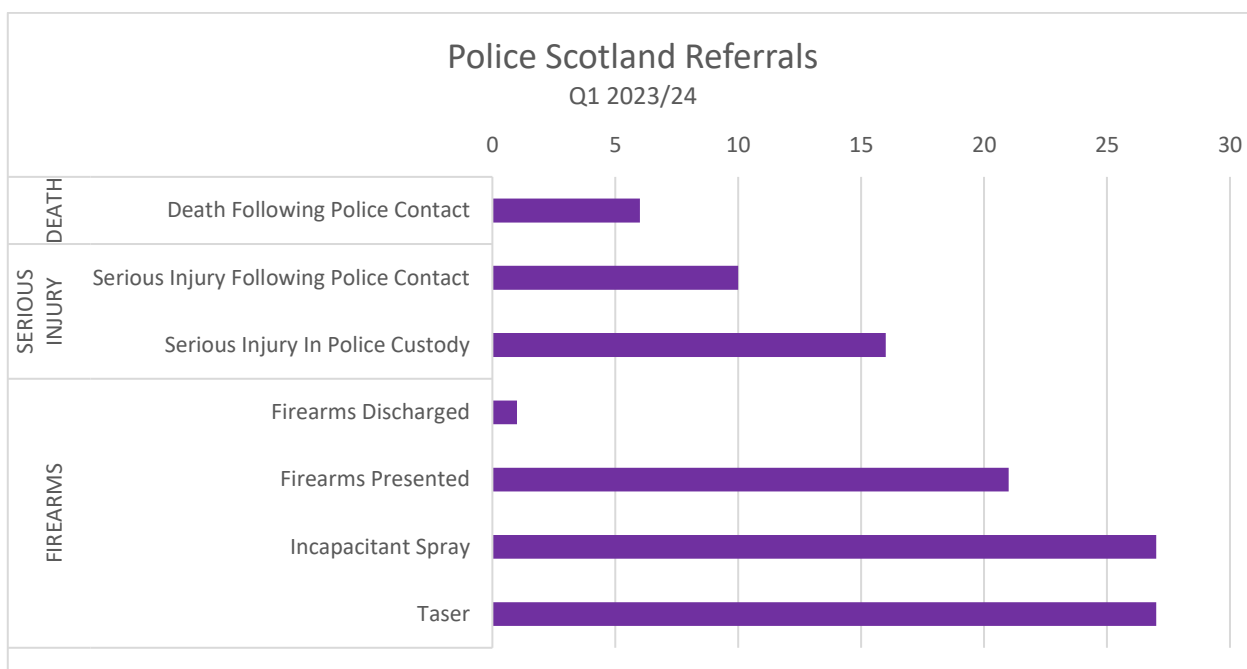


8. Source: Referral Logs (2023/23 & 2023/24)

A significantly lower number (-60) of referrals from Police Scotland recorded by PIRC in Q1 in relation to the same period in 2022/23 is offset by a concurrent increase (+70) in referrals from COPFS in the same period. Taking referrals from all sources into account, there has been a comparative 5% increase between the quarters.

The Standing Instruction from Crown referred to above has transferred the source of appropriate referrals to the PIRC being categorised as 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 Tasers and Incapacitant Spray have been the most common type of referral in Q1 (27 referrals for both). Referrals where firearms have been presented account for 21; referrals involving serious injury account for 26, 16 of which took place in Police Custody. The only firearms discharge in Q1 took place at Armed Policing Training Centre at Glenrothes Range.

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

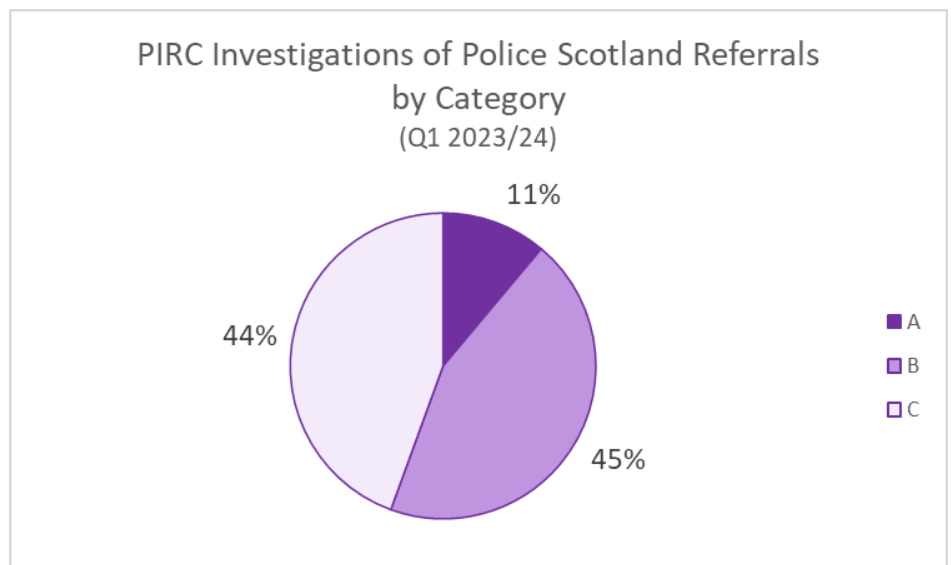
Investigations into deaths in police custody or following police contact; or a major investigation with complex lines of enquiry where the securing of evidence requires significant resource allocation over a protracted period or an investigation which generates high levels of public/political interest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

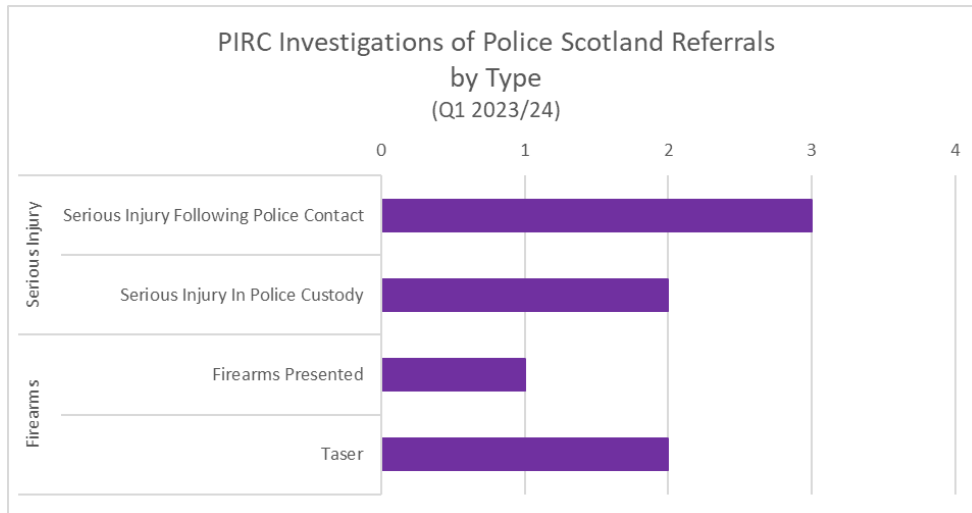
Category C

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.
 - Q1 2023/24 - 97%
- 80% of Category A investigations (minus major cases) completed and reports submitted within 90 working days, following receipt of background case papers.
 - Q1 2023/24 – No data.⁷
- 80% of Category B & C investigations (minus major cases) completed and reports submitted within 120 working days, following receipt of background case papers.
 - Q1 2023/24 – No data.⁸

^{7 & 8} As this is the first quarter for 2023/24, neither the 90 nor 120 working day limits have been reached yet.



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 eleven recommendations in Q1 2023/24. Eight were thematic in nature and 3 were specific to the investigation.

PIRC has received responses in relation to six of the thematic recommendations. The following have been included:

<i>PIRC Recommendation</i>
That the National CASE reporting system be revised and a mechanism established to auto generate a communication to a reporting officer and their first line manager to highlight reports that are overdue.
<i>Police Response</i>
National Case reporting system has been delivered to all of the North and East Command areas. Delivery in the West Command area is scheduled for completion by the end of 2023.

<i>PIRC Recommendation</i>
As first responders to many incidents where persons are known or suspected of abusing controlled drugs, it considers raising awareness by police officers and staff carrying out a search of persons to ensure, that their search is systematic and thorough, reducing the possibility of items being missed.
<i>Police Response</i>
On the 16 June 2023, the learning from this report was circulated via a Powerpoint briefing to all CJSD police officers and custody staff. On the 7 April 2023, a "Health Guidance on Seizures" briefing was circulated to all CJSD police officers and custody staff. In addition to these briefings, the findings and learning from this investigation have been shared with officer safety training instructors to highlight and increase awareness during annual officer safety recertification training.

<i>PIRC Recommendation</i>
[Police Scotland] considers raising awareness by police officers and custody staff of the signs and symptoms of seizures to ensure this is not misinterpreted as active or passive resistance to arrest or restraint.
<i>Police Response</i>
As noted above.

<i>PIRC Recommendation</i>
[Police Scotland] reminds Police and custody staff of the fundamental requirement to respect the basic human dignity of persons in custody. Where clothing is removed from passive individuals and they are not able to preserve their own dignity, those placing them in that state have a duty in protecting their modesty with alternative clothing or a blanket.
<i>Police Response</i>
As noted above.

<i>PIRC Recommendation</i>
Remind all staff that the care and welfare of persons in custody is paramount and where any officer has concerns regarding the wellbeing of a person in custody, regardless of any earlier observation or assessment, every effort should be made to ensure early and appropriate medical assessment and intervention is provided where it becomes apparent or suspected that the person may be unwell. This should not be delayed for any other purpose, including conducting a strip search.
<i>Police Response</i>
As noted above.

<i>PIRC Recommendation</i>
A Police Scotland Custody Procedural Review of this incident identified that the arresting officers did not have a firm hold of their prisoner. All officers should be reminded of the requirement to ensure the safety of individuals in their custody, charge and care.
<i>Police Response</i>
The incident [from which the recommendation has arisen] will be anonymised and used as a case study/example in future OST courses to ensure that we learn as an organisation.



Stakeholder Engagement

PIRC Investigations Continuous Professional Development Event is provisionally planned for 15 September 2023⁹. This event will encompass bespoke 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.

These presentations will include case studies, organisational learning points, challenges and should provide updates on current procedures and capabilities, as well as enabling and encouraging more effective partnership working, in the event of a Death or Serious Injury incident occurring where PIRC are the Independent Investigative Authority (IIA).

Investigator's Development Programme (IDP) is currently being undertaken by eight PIRC investigatory staff who are not from a policing background. The aim is to enhance and update their investigatory skill sets, increase knowledge and credibility, whilst bringing them to a training level comparable to those whom they investigate in the course of their duties. **Investigatory Specialisms training** such as Family Liaison, Sexual Offences Liaison and Crime Scene Management, comparable to those whom PIRC investigate.

Plans for mandatory annual training are in progress and should be introduced in 2024 allowing staff to remain current in terms of legislation and learning.

A Police Scotland PSD/PIRC Liaison Event is being planned currently for a date to be confirmed in October 2023. This will be the second event where practitioners from across the organisations can meet to discuss process improvements and learning, to enhance the Operational effectiveness of the organisations.

END OF REPORT

⁹ Subject to venue availability