

JUSTICE SUB-COMMITTEE ON POLICING

**INDEPENDENT REVIEW OF COMPLAINTS HANDLING, INVESTIGATIONS
AND MISCONDUCT ISSUES IN RELATION TO POLICING**

WRITTEN SUBMISSION FROM THE SCOTTISH POLICE AUTHORITY

Introduction

The Scottish Police Authority (SPA) submits this written evidence in advance of the Sub-Committee's session with the Cabinet Secretary for Justice on 15 February 2021.

The Authority has engaged actively and constructively throughout Dame Elish's review process and will continue to do so in respect of future measures to implement the Review's recommendations. The Authority has welcomed the report. The Authority has made a number of improvements since the Interim report was published including: policies, procedures and guidance; staff training and development plus the complaints section of our website has been updated and simplified. We are also working with partners on the Strategic Oversight Group (SOG) and the National Complaints Handling Development Group (NCHDG) to coordinate our approach to the implementation of recommendations where appropriate.

Dame Elish Angiolini's final report incorporates, and substantially expands upon, her preliminary report issued in June 2019. At almost 500 pages, the final report consists of a comprehensive review of the current arrangements, detailed findings, and a total of 81 recommendations (although a number of these reflect recommendations in the preliminary report).

Many of the recommendations in the final report are highly significant to the law and practice in relation to complaints and conduct, and the legislative functions currently performed by the Authority and other bodies. Implementation of a large number (over one third) of the recommendations will require legislative change.

Authority considerations of Independent Review

Since its publication, the final report has been considered by the Authority's Complaints and Conduct Committee, and also by members collectively at two sessions, one of which was attended by Dame Elish herself. It was most recently considered at a full Authority meeting in January. Discussions have also taken place between the Authority and Police Scotland in relation to how best to implement the recommendations. The SOG which includes senior representatives of the Authority, Police Scotland, the PIRC and the COPFS has also met to discuss the findings and has agreed, in principle, to coordinate implementation of the recommendations across the four bodies.

On 21 December 2020, representatives of all four bodies, along with HMICS, met with the Cabinet Secretary for Justice to discuss implementation of the

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recommendations. There was broad agreement at the meeting that the SOG would play a role in coordinating implementation of the recommendations.

Further discussions between the Scottish Government and representatives of the Authority, Police Scotland, PIRC and HMICS took place on 19 January 2021. The main purpose of the meeting was to discuss the governance and reporting arrangements for implementation of the recommendations across the relevant bodies. Attendees agreed the grouping of recommendations under specific themes, and discussions are ongoing about the division of recommendations into appropriate tranches for the purposes of implementation. The precise governance arrangements for implementation of the recommendations will be finalised shortly.

At the Authority's meeting on 22 January 2021, members considered a paper summarising the outstanding actions¹ from Dame Elish's preliminary report; as well as initial proposals for implementing those recommendations in the final report which are directly applicable to the Authority, and which do not require legislative change. This evidence reflects some of the content of that paper.

A further meeting of the SOG will take place in February 2021 at which implementation of the recommendations will be discussed further.

Implementation of SPA recommendations

General comments

In respect of both the preliminary and final reports, the Authority has not confined itself to implementing only those recommendations listed in the relevant "SPA" chapters of the reports. Across both reports, there are 12 recommendations specifically listed in relation to the SPA and, of those, three – which require legislative change - are effectively directed to the Scottish Government. However, there are numerous other recommendations throughout both reports which are equally applicable, or relevant, to the Authority, including those which are directed specifically to other bodies. There are also a number of key observations in both reports which, while not formal recommendations, also require to be considered. Moreover, there are a large number of recommendations directed specifically to Police Scotland, implementation of which requires to be kept under review by the Authority and its committees. The SPA has therefore considered both reports fully in the round.

As well as pursuing implementation of the recommendations in both reports, a substantial amount of work has been undertaken in other, related areas, including the development of a Memorandum of Understanding (MoU) between the PIRC, Police Scotland and the SPA; and consultation on the PIRC's revised Statutory Guidance on Complaint Handling.

The MoU contains detailed provisions on all aspects of the PIRC's investigatory function, including referrals made by Police Scotland/the SPA of "serious incidents involving the police" (as defined in legislation); COPFS-directed investigations;

¹ <https://www.spa.police.uk/spa-media/d5go3fdp/rep-b-20210115-item-9-spa-response-to-independent-review-of-complaints-handling.pdf>

and the investigation of alleged misconduct by senior officers of Police Scotland. The MoU was signed by the parties in August 2020.

An updated draft of the PIRC's Statutory Guidance on police complaints handling was issued to the Authority for comment in August 2020. The final version of the guidance is expected to be issued in the near future.

Recommendations in the final report

The recommendations and key observations in the final report have been collated by the Authority's Complaints team, and actions identified to implement those which are applicable or relevant to the SPA's functions, and which do not require legislative change. The implementation plan is presently in draft form and will be developed through discussions with the Complaints and Conduct Committee. However, a draft of the plan was shared with the Scottish Government for the purposes of preparing its initial analysis of the recommendations.

The final report lists eight recommendations in the chapter which deals specifically with the Authority, although again there are other recommendations and observations elsewhere in the report which are equally applicable or relevant to the SPA. Those recommendations directly applicable to the Authority, and which do not require legislative change, are summarised below, along with initial views as to how these will be implemented.

- (1) The PIRC should work collaboratively with the SPA to agree and embed a proportionate and effective approach to the preliminary assessment of misconduct allegations against senior officers, until such time as this function is removed from the SPA.

Draft changes have already been made to the Authority's Guidance on the Conduct Regulations detailing the factors which the SPA may take into account in conducting preliminary assessments of misconduct allegations against senior officers. These have been the subject of consultation and the revised guidance will be submitted to the Complaints and Conduct Committee for approval once the PIRC's statutory guidance is issued. Discussions will take place with the PIRC to establish what further collaborative work can be undertaken in this area, pending legislative change.

- (2) The Complaints and Conduct Committee should hold Police Scotland to account for delays in investigations into complaints and misconduct. Where there is evidence of excessive delays in PIRC investigations having an effect on policing in Scotland, the Committee should raise the matter with the PIRC.

The Chief Constable should publish annually Police Scotland's performance in dealing with complaints, against the timescales set out in the PIRC's statutory guidance; and the Complaints and Conduct Committee should scrutinise and hold to account Police Scotland's performance in this area.

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Currently, Police Scotland reports detailed statistical and contextual information on complaint and conduct matters to the Authority's Complaints and Conduct Committee quarterly. While these published reports include figures as to the number and nature of complaints, they do not contain details of the time taken to investigate complaints and alleged misconduct. Discussions will take place with Police Scotland with a view to the inclusion of this information in future reports, in order that the Committee may exercise appropriate oversight in this area.

- (3) To increase public confidence in the system, the Complaints and Conduct Committee should consider using its minutes as a means of sharing with the public more of their substantive discussions and how Police Scotland is being held to account in this area; and also whether some of the content within minutes of its private sessions, where some strategic and policy matters are discussed, can be included in the published minutes.

Implementation of this recommendation will be achieved by changes to minute-taking practice, and by reviewing the minutes of private sessions with a view to publication of items with appropriate personal privacy and GDPR safeguards.

- (4) The Complaints and Conduct Committee's scrutiny function should be reported on in the SPA's annual report, drawing out particular trends etc. and using complaints data as an indicator of communities' satisfaction or dissatisfaction with policing services.

Initial proposals on how this recommendation can be implemented will be submitted to the Committee by the SPA Complaints team in March, with a view to incorporating in our 2020/2021 Annual Report.

- (5) Police Scotland and the SPA should consider expanding the collection of diversity data and the publication of information in order to enhance their understanding, and public understanding, of attitudes and concerns in different communities.

The SOG is considering ways in which the Authority, Police Scotland, the PIRC and COPFS can standardise the diversity data which each body collects. The Authority's online equality and diversity monitoring forms will also be enhanced as part of the current website development project.

- (6) The SPA and Police Scotland should consider together what role the Complaints and Conduct Committee or Policing Performance Committee may have in relation to the discussion of ethical issues in policing.

This recommendation will be discussed with Police Scotland and the outcome reported to the Policing Performance Committee.

- (7) The SPA should confirm each year in its annual report whether, based on an assessment by the Complaints and Conduct Committee, the Chief Constable has suitable complaint handling arrangements in place.

This recommendation is based on the Authority's duty under section 60(3) of the Police and Fire Reform (Scotland) Act 2012. Section 60(3) requires the Authority

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to keep itself informed as to the manner in which "relevant" complaints (as defined in legislation) are dealt with by the Chief Constable, with a view to satisfying itself that the arrangements maintained by the Chief Constable in this connection are suitable.

The PIRC has a similar statutory duty under section 40A of the Police Public Order and Criminal Justice (Scotland) Act 2006. Section 40A provides that the PIRC must keep under review all arrangements maintained by the Chief Constable (and the SPA) for the handling of relevant complaints; and seek to secure that those arrangements are, among other things, efficient and effective.

In light of these complementary functions, any confirmation of the suitability of Police Scotland's arrangements for handling relevant complaints will be based on an assessment by the Complaints and Conduct Committee, as well as consultation with the PIRC.

- (8) Independent Custody Visitors should, as a matter of course, check with custody officers and with detainees that a third party has been notified of their detention.

This recommendation has been raised with the Authority's Independent Custody Visiting team, who have confirmed that the aide memoir provided to visitors already provides for such checks to be made. Visitors are also trained to ask if a third party has been notified and to confirm this with custody officers and staff.

Oversight of SPA and Police Scotland recommendations

Within the Authority, the Complaints and Conduct Committee will lead on keeping under review the implementation of the recommendations applicable to or relevant to the Authority and Police Scotland. In addition, the Authority's People Committee and Policing Performance Committee will also play a role where the recommendation relates more to their respective terms of reference. The Authority has requested a regular progress update from the Chief Constable in respect of the work to review the approach to equality and diversity issues raised in Dame Elish's report. The first update is anticipated to be reported to the Authority's public meeting on 24 February 2021.

**Scottish Police Authority
5 February 2021**