



Criminal Justice Committee  
The Scottish Parliament  
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7th December 2023

Dear Committee members,

## **Call for Views: Police (Ethics, Conduct and Scrutiny) (Scotland) Bill**

### **Introduction**

Amnesty International is a global movement of over seven million people who stand up for humanity and human rights. Amnesty International UK (AIUK) is part of the worldwide Amnesty movement and is used as a collective name for AIUK Section (Limited Company) and AIUK Section Charitable Trust.

AIUK supports the policy objectives of the Bill, being to ensure that there are robust, clear and transparent mechanisms in place for investigating complaints, allegations of misconduct, or other issues of concern in relation to the conduct of police officers in Scotland.

This Bill has come at a critical time in Scotland's policing history as we await the findings of the Sheku Bayoh inquiry. On 25<sup>th</sup> May 2023, the outgoing Chief Constable Sir Iain Livingstone stated that in his view that Police Scotland is institutionally racist and discriminatory.<sup>1</sup>

AIUK's priority is to ensure there are no missed opportunities to embed a human rights-based approach within police accountability mechanisms and we have therefore commented on the proposals and made further recommendations for the Bill. The proposals also need to align with the proposed Human Rights Bill for Scotland,<sup>2</sup> which aims to incorporate the International Covenant on Economic, Social and Cultural Rights ('ICESCR'), the Convention on the Elimination of all forms of Discrimination Against Women ('CEDAW'), the International Convention on the Elimination of all forms of Racial Discrimination ('ICERD'), and the Convention on the Rights of Persons with Disabilities ('CRPD') and to recognise the right to a healthy environment into Scots law. The Police Investigation and Review Commissioner ('PIRC'), the Scottish Police Authority ('SPA') and Police Scotland will all be duty

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<sup>1</sup> Full statement available at: <https://www.scotland.police.uk/what-s-happening/news/2023/may/chief-constable-statement-on-institutional-discrimination/>

<sup>2</sup> <https://www.gov.scot/publications/human-rights-bill-scotland-consultation/>

bearers under the human rights Bill and will have a role to play in building a human rights culture in Scotland.

Our thematic priorities as we consider this Bill, are therefore accountability, independence, transparency, trust and confidence and respect for equality and human rights.

All references to the 2006 Act are to the Police, Public Order and Criminal Justice (Scotland) Act 2006. All references to the 2012 Act are to the Police and Fire Reform (Scotland) Act 2012.

### **Ethics of the Police (Consultation Question 1)**

**Recommendation 1: Amnesty International supports the proposal to put the Code of Ethics for Police Scotland onto a statutory footing ('the statutory code'), subject to our further recommendations.**

#### *Relevant International standards*

This process offers an opportunity to review and expand the current Code of Ethics for Policing in Scotland ('the Scottish Code') to ensure that it is brought fully into line with the Council of Europe Code of Police Ethics ('the Council of Europe Code'). The Council of Europe Code embeds respect for human rights and human dignity within its preamble: "*Convinced that public confidence in the police is closely related to their attitude and behaviour towards the public, in particular their respect for the human dignity and fundamental rights and freedoms of the individual as enshrined, in particular, in the European Convention on Human Rights.*" It is drawn from principles expressed in the United Nations Code of Conduct for Law Enforcement Officials and the resolution of the Parliamentary Assembly of the Council of Europe on the Declaration on the Police.

The Council of Europe Code is considerably more detailed than the Scottish Code. Twenty-three out of the sixty-six Articles that make up the Council of Europe Code relate directly to the issue of accountability. It can be briefly summarised as follows:<sup>3</sup>

Section II, Articles 3 – 5: Police should be established in law. Laws relating to the police should accord with international standards to which the country is a party and they should be clear and accessible to the public. The police should be subject to the same legislation as ordinary citizens.

Section III, Article 8, states: "[i]t must always be possible to challenge any act, decision or omission by the police which affects individual rights before the judicial authorities."

Section IV, Articles 12 to 17, require that the police must be organized with a view to earning public respect; they must be under the responsibility of civilian authorities; they should normally be clearly recognizable; they should enjoy "sufficient operational independence" and should be accountable for this; police personnel at all levels "shall be personally responsible and accountable for their own actions or omissions or for orders to subordinates"; there should be a clear chain of command

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<sup>3</sup> Amnesty International (2012) [Understanding Policing: a resource for human rights activists](#) para 8.3.3

and “it should always be possible to determine which superior is ultimately responsible for the acts or omissions of police personnel.”

Articles 19 to 21 state that the police shall be ready to give objective information on their activities to the public; the agency “shall contain efficient measures to ensure the integrity and proper performance of police staff, in particular to guarantee respect for individuals’ fundamental rights and freedoms”; there should be effective measures to combat corruption.

Articles 33 and 34 state that disciplinary measures brought against police staff shall be subject to review by an independent body or a court and that the public authorities must support police personnel who are subject to ill-founded accusations concerning their duties.

Section V, Articles 38 and 39 and 46 concern the duty of police to verify the lawfulness of their intended actions and to refrain from carrying out orders which are clearly illegal and to report such orders “without fear of sanction”. They must also report acts of corruption.

Section VI deals with accountability in particular. Articles 59-63 require that the police are: accountable to the state, the citizens and their representatives; subject to efficient external control; state control shall be divided between the legislative, executive and judicial powers; public authorities shall ensure effective and impartial procedures for complaints against the police; accountability mechanisms based on communication and mutual understanding between the public and the police, shall be promoted; codes of ethics, based on the principles set out in the Council of Europe Code, shall be developed in member states and overseen by appropriate bodies.

Finally, Article 66 requires that implementation of the Code be carefully scrutinised by the Council of Europe.

### *Analysis of the current Scottish Code*

The Scottish Code, as currently framed, requires those who contribute to policing in Scotland to respect the human rights of all people and officers, with express reference to the following articles of the European Convention on Human Rights.

- Article 2 (use of force / the right to life),
- Article 3 (the prohibition of torture and the dignity of all entrusted to their care),
- Article 5 (equal right to liberty and security),
- Article 6 (objective investigation of crime and presumption of innocence),
- Article 8 (respect for private and family life) and
- Articles 9, 10 and 11 (freedoms of thought, conscience or religion, expression, peaceful assembly, movement).
- It also references peaceful enjoyment of possessions under this heading, without reference to Article 1 protocol 1 of the Convention.

In contrast, the Council of Europe Code goes much further in spelling out what these rights mean in practice. Section 1 positions human rights as the foundation of the

code by including respect for fundamental rights and freedoms as one of the main purposes of the police.

Section 4 talks about the role of the police as an organisation in containing efficient measures to ensure the integrity and proper performance of police staff, in particular to guarantee respect for individuals' fundamental rights and freedoms. Section 4 goes on to embed human rights standards in training, with particular focus on the use of force and combatting racism and xenophobia.

Section 5 devotes 35 paragraphs to guidelines for police action and intervention, providing detail on what the ECHR Articles identified above mean in practice. For example, on deprivation of liberty, Articles 54-58 include provisions relating to:

- Deprivation of liberty to be as limited as possible
- Regard to the dignity, vulnerability and personal needs of each detainee
- Maintenance of custody records
- Provision of information
- Provision for safety, health, hygiene and appropriate nourishment
- Size and conditions of police cells
- Notification of a third party of their choice,
- Access to legal assistance
- Medical examinations
- Separation from other categories of detainees

The [Police Service of Northern Ireland Code of Ethics 2008](#) is also framed in considerably more detail than the Scottish Code with more of a focus on human rights.

**Recommendation 2: The Statutory Code should bring Scotland fully into line with the Council of Europe Code. It should position human rights as the foundation and should provide a clear and unequivocal explanation of the content of the rights and their relevance in the context of policing in Scotland. Our further recommendations below may assist to achieve this.**

#### *The requirement 'to have regard' to the Statutory Code*

Article 63 of the Council of Europe Code requires that a Code of Ethics of the police is developed in member states and overseen by appropriate bodies. Whilst the call for views asks about the requirement for police officers to have regard for the Code, the Bill itself is not framed in this way. Clause 2 (2) inserts s. 36A (2) into the 2012 Act and states that the Code of Ethics is a code which sets out the values of the Police Service and expectations relating to the conduct and practice of its constables and of police staff. In terms of duties, the Bill requires the Chief Constable to take steps to ensure that constables and staff have read and understood it and to keep a record of these steps in relation to each constable and member of staff.<sup>4</sup>

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<sup>4</sup> Proposed S.36A (3) 2012 Act

Although the Statutory Code will be referred to within the Constable's declaration,<sup>5</sup> the Bill does not frame the Statutory Code in terms of the duties on constables and staff at all, and this should be amended to put the issue beyond doubt. We also consider that 'to have regard' is a very low standard and does not give the Statutory Code the required respect. Officers and staff should be required to comply with the Statutory Code. The Statutory Code should be the foundation of training programmes as well as the standards of professional behaviour and regulations regarding conduct and discipline in order to act as a constant compass for those exercising policing functions.

**Recommendation 3:**

- a) **Clause 2 should amend s. 36A of the 2012 Act to frame the Statutory Code in terms of the duties on officers and staff to comply with it.**
- b) **Clause 2 should amend s. 36A of the 2012 Act to clearly position the Statutory Code at the heart of training programmes and standards of professional behaviour.**
- c) **Given the institutional issues identified by the former Chief Constable, and the requirements of section 4 of the Council of Europe Code, training programmes should offer a particular focus on combatting racism and misogyny.**

*Procedures for producing the Statutory Code*

We emphasise that this process offers a unique opportunity to place respect for human rights at the heart of the Code, but this is not fully reflected in the Bill as currently drafted.

*Who has duties to prepare, publish and revise the Statutory Code?*

Within the Northern Irish model, responsibility for the Code of Ethics rests with the Northern Ireland Policing Board,<sup>6</sup> as opposed to the Chief Constable of the PSNI. Following this model, whereby the duties would lie with the SPA, would offer greater public reassurance of independence and accountability. The SPA acknowledges their crucial role in enforcing and upholding fundamental human rights within their Corporate Strategy.<sup>7</sup>

**Recommendation 4: Clause 2 should be amended so that responsibility for the Statutory Code within the proposed s. 36A of the 2012 Act, should rest with the SPA rather than the Chief Constable.**

*To what sources must the drafter have regard?*

Under the Bill, in drafting the Statutory Code, the Chief Constable will be required to have regard to the policing principles, the standards of behaviour, Convention Rights, and any such human rights contained in any international convention, treaty,

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<sup>5</sup> Proposed S.36B (3) 2012 Act

<sup>6</sup> S. 52 Police (Northern Ireland) Act 2000

<sup>7</sup> SPA Corporate Strategy 2023-26

or other international instrument ratified by the United Kingdom as the Chief Constable considers relevant.

Under the current proposals for a Human Rights Bill for Scotland, duty bearers (which will include all policing bodies in Scotland as public authorities) will be able to read, apply and interpret the rights incorporated under the new Bill in line with international materials. In terms of the types of international materials involved, the Consultation lists general comments, recommendations of UN Committees, concluding observations, and other mechanisms at international or regional level.<sup>8</sup>

**Recommendation 5: In order to ensure clarity, avoid duplication and to contribute to the development of a human rights culture in Scotland, the duties on the drafters of the Statutory Code should be sufficiently broad to align with the interpretative obligation under the proposed Human Rights Bill for Scotland.**

*With whom must the drafter consult?*

As matters stand, the Bill requires the Chief Constable, in preparing the Statutory Code, to consult with those listed in schedule 2ZA.<sup>9</sup> The list does not include any person or organisation external to policing bodies or the Scottish Government. We emphasise that the Police (Northern Ireland) Act 2000 requires the Northern Ireland Policing Board, when issuing or revising their Code of Ethics, to consult the Police Ombudsman, the Northern Ireland Human Rights Commission and the Equality Commission for Northern Ireland.<sup>10</sup>

**Recommendation 6: The list of mandatory consultees for the draft Statutory Code in the proposed schedule 2ZA should include the Scottish Human Rights Commission and relevant civil society organisations, including those representing the interests of people with lived experience of police interventions, including those with negative experiences of policing as identified in Dame Angiolini's report.**

*Additional recommendations*

We understand that a Human Rights Working Group within Police Scotland has been established to provide strategic direction and governance towards the development of a human rights framework for Police Scotland. In January 2023 Police Scotland commissioned a baseline assessment of the approach to human rights by an

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<sup>8</sup> Consultation, page 14, available at <https://www.gov.scot/publications/human-rights-bill-scotland-consultation/>

<sup>9</sup> The Scottish Ministers, the Lord Advocate, His Majesty's Inspectorate of Constabulary in Scotland, the PIRC, the joint central committee of the Police Federation for Scotland, such persons as appear to be representative of senior officers, such persons as appear to be representative of superintendents, such persons that appear to represent the collective interests of police staff, such persons that appear to represent groups of individual constables or members of staff, characterised by reference to disability, race, colour, nationality or ethnic or national origins, religion, sex, sexual orientation, transgender identity

<sup>10</sup> S. 52 (5) Police (Northern Ireland) Act 2000



independent human rights lawyer and policy advisor.<sup>11</sup> These recommendations will inform the development of the human rights framework.

We look forward to publication of the detailed recommendations and outcomes of this work. The working group could potentially also provide a helpful steer to the work on the Statutory Code, given the importance of taking a human rights-based approach to policing.

We understand that the role of independent human rights and policy advisor was a temporary one. Going forward, this role could support development of use of force guidelines, ensure that human rights is central in police training programmes and develop and evaluate policing policy to ensure human rights-based policing in Scotland and to support preparations for the new human rights duties under the forthcoming Human Rights Scotland Bill.

**Recommendation 7: The role of independent human rights legal and policy advisor to Police Scotland should be made permanent and should be accompanied by clearly framed, statutory duties under the new Act to avoid missed opportunities to embed human rights standards in policing in Scotland.**

This Bill also presents opportunities to enhance the SPA's role in upholding Human Rights. The Northern Ireland Policing Board has a duty to monitor the performance of the police in complying with the Human Rights Act.<sup>12</sup> The Board has agreed a Human Rights Monitoring Framework, which sets out in detail the standards against which the performance of the police in complying with the Human Rights Act 1998 is assessed by the Board.<sup>13</sup> Each year the Board publishes a Human Rights Annual Report which contains an overview of the human rights monitoring work carried out during the year, highlighting both good police practice and areas in which practice could be improved. The Board also has an independent Human Rights Advisor who assists to monitor compliance with the Human Rights Act. It operates on a contract for services basis for a three-year period with an option to extend for a further two.<sup>14</sup>

**Recommendation 8: The Bill should include amendments to s. 2 and s.32 of the 2012 Act to put the Scottish Police Authority's stated commitment to enforcing and upholding fundamental rights onto a clear statutory footing, drawing from examples within the Northern Ireland Policing Board model.**

*The duty of candour (Consultation Question 2)*

**Recommendation 9: we support the proposal to place the duty of candour on a statutory footing as a step in the right direction.**

However, the Police Ombudsman for Northern Ireland conducted a five- year Review of the legislation underpinning the work of her Office. <sup>15</sup> At Recommendation 15 she outlined the need for compellability of serving and former police officers to assist in

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<sup>11</sup> Para 6.7 Minutes of SPA 25<sup>th</sup> May 2023

<sup>12</sup> S.3 (3) (b) (ii) Police (Northern Ireland) Act 2000

<sup>13</sup> <https://www.nipolicingboard.org.uk/monitoring-psni-compliance-human-rights-act-1998>

<sup>14</sup> <https://www.nipolicingboard.org.uk/human-rights-advisor>

<sup>15</sup> Review under Section 61(4) of the Police (Northern Ireland) Act 1998 6<sup>th</sup> November 2020

her investigations by attending for interview and producing documents within a reasonable time. The Angiolini Report similarly recommended that where a serious incident is being investigated by the PIRC, the investigators should also have a power, where it is necessary and proportionate, to compel police officers to attend within a reasonable timescale for interview.<sup>16</sup> We therefore question the basis for the policy position that ‘an explicit power for the PIRC to compel officers to attend is not considered necessary or proportionate at this time.’<sup>17</sup> We consider compellability to be an essential element of the investigative obligations inherent within Article 2 ECHR, as long as the officers are not suspects, who then have additional procedural rights.

**Recommendation 10: the Bill should amend the 2006 Act to give the PIRC the explicit power to compel officers to attend as witnesses.**

### **Police Conduct (Consultation Questions 3, 6, 7, 8)**

#### *Relevant international Standards*

AIUK’s starting point is that “*police misconduct, from minor offences to gross human rights violations, should never go unpunished and measures should be taken to prevent their recurrence.*”<sup>18</sup>

Misconduct must be dealt with promptly and transparently and the public must be kept informed of the outcome and any lessons learned. Disciplinary procedures should be impartial. Investigations should be carried out by an officer with equal or a superior rank to the officer under investigation.<sup>19</sup>

The UN General Assembly Resolution adopting the UN Code of Conduct for Law Enforcement Officials (‘UN Code of Conduct’) emphasises the need for accountability to the community as a whole, accountability to the law, internal discipline and the need for thorough monitoring.<sup>20</sup>

Several articles of the Council of Europe Code are relevant to this discussion:

- Police personnel shall be subject to the same legislation as ordinary citizens, and exceptions may only be justified for reasons of the proper performance of police work in a democratic society (Article 5)
- Police personnel, at all levels, shall be personally responsible and accountable for their own actions or omissions or for orders to subordinates (Article 16)
- The police organisation shall provide for a clear chain of command within the police. It should always be possible to determine which superior is ultimately responsible for the acts or omissions of police personnel (Article 17)
- The police organisation shall contain efficient measures to ensure the integrity and proper performance of police staff, in particular to guarantee respect for

<sup>16</sup> Independent Review of Complaints Handling, Investigations and Misconduct Issues in Relation to Policing (2020) para 52

<sup>17</sup> Para 57 Policy Memorandum

<sup>18</sup> Amnesty International (2012) [Understanding Policing: a resource for human rights activists p30](#)

<sup>19</sup> Ibid para 8.4.1.d

<sup>20</sup> General Assembly Resolution 34/169 adopting the UN Code of Conduct for Law Enforcement Officials, 17 Dec. 1979



individuals' fundamental rights and freedoms as enshrined, notably, in the European Convention on Human Rights (Article 20)

- Effective measures to prevent and combat police corruption shall be established in the police organisation at all levels (Article 21)
- Disciplinary measures brought against police staff shall be subject to review by an independent body or a court (Article 33).

#### *Proposals regarding police Conduct: Clauses 4, 6, 7 and 8*

Details of gross misconduct proceedings against 16 police officers who left Police Scotland in 2022 were published in response to an FOI request.<sup>21</sup> The misconduct proceedings related to serious matters including sexualised inappropriate conduct towards a female colleague, use of racist and homophobic language and inappropriate relationships and interactions with members of the public. Only two officers were dismissed without notice, with the remaining fourteen officers resigning or retiring before a gross misconduct hearing was due to take place.

**Recommendation 11: We support the proposals for strengthening the structures in place to address police conduct issues. These will ensure that the SPA will be liable for any unlawful conduct of the Chief Constable, applying misconduct procedures to former constables, establishing and maintaining an advisory list and a barred list and new procedures for any conduct issues relating to senior officers before an independent panel comprising police and non-police members.**

#### *Further recommendations*

In our view the Bill has missed an opportunity to address the lack of public access to misconduct hearings, although we understand this may follow by way of regulations.<sup>22</sup> The Angiolini Report concluded: "*Having weighed the benefits of conducting gross misconduct hearings in public with the benefits of conducting them in private I have concluded that the balance lies in favour of opening them up to the public and media. I recognise that facing serious disciplinary allegations is a potentially traumatic experience for officers and their families and that they have a right to respect for their privacy but I believe that those benefits are outweighed by the public interest.*"<sup>23</sup>

We trust that this recommendation will be addressed through regulations without delay. Meanwhile, anonymised case summaries and statistics around gross misconduct hearings should be made available to the public rather than relying on ad hoc FOI requests.<sup>24</sup>

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<sup>21</sup> Available at <https://www.scotland.police.uk/spa-media/pw1fsmhp/23-1363-dl-response.docx>

<sup>22</sup> Policy Memorandum para 193

<sup>23</sup> Para 19.125 (November 2020) Independent Review of Complaints Handling, Investigations and Misconduct Issues in Relation to Policing

<sup>24</sup> For example: <https://www.scotland.police.uk/spa-media/pw1fsmhp/23-1363-dl-response.docx#:~:text=ACC%20Speirs%20recently%20announced%20that,been%20published%20on%20the%20intranet.>

We understand that regulations will also follow regarding the appointment of an independent panel to determine a conduct case against a senior officer. It is as yet unclear how the panel will be appointed and the range of experience which will be reflected. This presents an opportunity to ensure that there is representation from a diverse range of backgrounds and experiences including minoritized groups as well as human rights expertise and to ensure transparency in terms of the procedures adopted.

**Recommendation 12:**

- a) **Regulations for hearing gross misconduct hearings in public should be consulted on and implemented without delay.**
- b) **The Chief Constable should publish anonymised case studies and statistics relating to gross misconduct hearings at regular intervals.**
- c) **Regulations made under Clause 8 governing independent panels relating to conduct of senior officers, should ensure that the panels will include representation from a diverse range of backgrounds and experiences including minoritized groups and human rights experts.**

**The Role and Remit of the Police Investigations and Review Commissioner  
(Consultation Questions 4, 5, 9 – 17)**

*Relevant international Standards*

The Council of Europe Code emphasises in general terms the importance of effective and impartial procedures for handling complaints against the police.<sup>25</sup> The police shall enjoy sufficient operational independence from other state bodies in carrying out its given police tasks, for which it should be fully accountable. Police personnel, at all levels, shall be personally responsible and accountable for their own actions or omissions or for orders to subordinates. The police organisation shall provide for a clear chain of command within the police. It should always be possible to determine which superior is ultimately responsible for the acts or omissions of police personnel.<sup>26</sup> Disciplinary measures brought against police staff shall be subject to review by an independent body or a court.<sup>27</sup>

The Amnesty International publication 'Understanding Policing' emphasises the important role that independent external accountability mechanisms play in ensuring scrutiny of the police and maintaining public confidence.<sup>28</sup> Independent mechanisms seek to serve as a voice for the public, ensuring police responsiveness and taking on responsibility for their activities. Such bodies need adequate powers to investigate complaints and to ensure that appropriate remedial action is taken. They also require sufficient resources and staff of a high reputation, both in skills and expertise.

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<sup>25</sup> Council of Europe Code Article 61

<sup>26</sup> Ibid, Articles 15 - 17

<sup>27</sup> Ibid, Article 33

<sup>28</sup> Amnesty International (2012) [Understanding Policing: a resource for human rights activists](#) para Para 8.4.4

For any system to be effective it is important that:<sup>29</sup>

- The procedures of the complaints office are widely publicised;
- The complaints procedures are easily accessible;
- The complainant does not feel threatened;
- The complainant is informed of what to expect and how to keep track of the complaint (this can include the complainant being given a reference number and the name of the officer dealing with the complaint);
- The complainant has access to witness protection if required;
- The system includes opportunities to settle disputes between police and members of the public in an informal way (often a dispute can be settled by a simple apology);
- Members of the public trust the system.

#### *Current role and remit of the PIRC*

The Police Complaints Commissioner for Scotland was renamed the Police Investigations and Review Commissioner under the 2012 Act. The PIRC's current functions relate to complaint handling and investigations.

In terms of complaint handling, the PIRC prepares Statutory Guidance on the handling of complaints about the police in Scotland. In April 2023, PIRC reported<sup>30</sup> that Police Scotland do not routinely capture equalities data in relation to complaints and this was also the finding of the Angiolini Report.<sup>31</sup> The PIRC recommended that to advance equality of opportunity, eliminate discrimination and foster good relations between persons who share a relevant protected characteristic and persons who do not share it, policing bodies should seek to capture and record equality evidence from complainers when they engage with the police complaints system. The latest Complaints Handling guidance covers the capturing and recording of equality evidence.<sup>32</sup> The PIRC can also review how policing bodies, operating in Scotland handle complaints made about them by members of the public, to determine whether or not the complaint was handled to a reasonable standard, but they cannot reinvestigate the original complaint.

The PIRC's investigations remit includes requests from the Crown Office and Procurator Fiscal Service ('COPFS') to investigate incidents involving the police. In practice this is instigated by the Criminal Allegations Against the Police Division ('CAAP-D'). The referrals include deaths in custody and allegations of criminality made about police officers.

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<sup>29</sup> Ibid, para 8.4.4.b

<sup>30</sup> PIRC (2023) Audit Report of Police Scotland on the triage of Complaints about the Police

<sup>31</sup> Independent Review of Complaints Handling, Investigations and Misconduct Issues in Relation to Policing (2020) para 9.6.3 – 9.6.4

<sup>32</sup> Paragraph 32 Statutory Guidance on Complaint Handling October 2022

Investigations can also be requested by the Chief Constable, SPA and other policing bodies, relating to other serious incidents involving the police. These 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.

The SPA can also refer allegations of misconduct by senior police officers of the rank of Assistant Chief Constable and above.

The PIRC has discretion to investigate relevant police matters which the Commissioner considers would be 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.

#### *Extension of the remit of PIRC*

We are not aware of any published materials which comprehensively reflect on the lived experience of people who have participated in the police complaints process, or which has evaluated levels of trust in the current system. The Angiolini report included submissions from members of the public who had experienced the complaints system and noted areas for improvement around accessibility, understanding the process, independence, a defensive attitude of the investigating officers, delays, and a reluctance to put anything in writing. Those who had experience of dealing with the PIRC reported feeling that there was a lack of independent review, a lack of trust that the police would not take the recommendations seriously, and concerns that the PIRC is partially staffed by former police officers.<sup>33</sup>

We also note that the PIRC has made recommendations to Police Scotland around improvements in their communication with people who have submitted a complaint.<sup>34</sup>

Translating this in terms of our thematic priorities and the international standards, the main areas for improvement would appear to be in relation to impartiality, accessibility, transparency and trust. Trust can be encouraged through the publication of reports giving statistics and information about action taken against police officers who violate human rights (while protecting the identity of victims).<sup>35</sup>

#### **Recommendation 13:**

- a) Subject to further recommendations below, AIUK supports amendments to the PIRC's remit to clarify:**
  - i. That the PIRC's investigatory powers into criminal offending apply to those who were constables or police staff at the time of the act being investigated but who have since resigned or retired or those who were not constables or police staff at the time of the relevant act but have since become so, or those who were off-duty at the time the incident occurred. (Clause 9)**

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<sup>33</sup> Angiolini Report pages 72 – 73

<sup>34</sup> PIRC (2023) Audit Report of Police Scotland on the triage of Complaints about the Police pages 14 - 17

<sup>35</sup> Amnesty International (2012) [Understanding Policing: a resource for human rights activists para 8.4.4.b](#)

- ii. That PIRC's investigatory powers into deaths involving a person serving with the police apply to off-duty police. (Clause 9)
  - iii. That police officers and staff who experience poor service can complain in their personal capacity. (Clause 10)
- b) Subject to further recommendations below, AIUK supports extension of PIRC's powers to include:
- i. functions in relation to any aspect of the regulatory disciplinary procedures, not just investigations (Clause 5)
  - ii. The power to publish recommendations regarding complaint handling, and for the SPA/ Chief Constable to respond, and for the PIRC to publish responses (clause 11)
  - iii. The power to review a policy or practice of the SPA, the Chief Constable or Police Scotland, where the PIRC considers that it would be in the public interest (Clause 15)
  - iv. The power to call in complaints being dealt with by the Chief Constable or the SPA (Clause 12)
  - v. The power to audit the handling of whistleblowing complaints dealt with in the first instance by Police Scotland and the SPA (Clause 13)
  - vi. to investigate serious incidents or allegations of criminality involving police officers from territorial forces other than Police Scotland, when undertaking a policing function in Scotland, and to put in place reciprocal powers for other UK jurisdictions (clause 14)
  - vii. to allow the PIRC direct access to Police Scotland's complaints database – Centurion – to audit and review files necessary to their function (Clause 16)
  - viii. The requirement to have a statutory advisory board. (Clause 17)

#### *Further recommendations*

However, in our view some of these proposals could be strengthened to achieve greater accountability and transparency. For example, the power to publish recommendations and responses to recommendations in Clause 11 and after a complaint is called in under Clause 12, should be strengthened to create a presumption that these documents would only be withheld from public scrutiny in exceptional circumstances e.g. to protect the safety of an individual. This could be an important step towards increasing transparency and public trust as currently very limited information is published on PIRCs website regarding the outcome of Complaint Handling Reviews and Investigations.

The HM Inspectorate of Prosecution in Scotland produced an inspection report on management of COPFS of criminal allegations against the police. The report concluded that in general that the public should be reassured by the robust scrutiny which is applied to on duty criminal allegations against the police. However, they identified scope for improvement in relation to timescales and communication with complainants. The report also highlights the need for greater transparency in the



handling of criminal allegations against the police by CAAP-D.<sup>36</sup> In the majority of cases they reviewed, there was no evidence that CAAP-D had been informed of a criminal complaint in cases referred from PIRC, at the earliest opportunity.<sup>37</sup> During their interviews with CAAP-D staff and stakeholders, they heard that there was a lack of clarity regarding the types of cases that should be referred to PIRC.<sup>38</sup>

It is therefore essential that there are no missed opportunities to ensure that the investigation stage at the PIRC (which results in the CAAP-D process being 'frozen') does not contribute further to the delay<sup>39</sup> or cause confusion or further lack of transparency for the public.

The requirement to have a statutory advisory board in Clause 17 presents an opportunity to ensure that human rights legal and policy advice is prioritised, as discussed above.

The enhanced access to Police Scotland's complaints database presents an opportunity for the PIRC to monitor Police Scotland's human rights compliance and to publish analysis of equality evidence, disaggregated by protected characteristics and to use this data to inform decision-making on investigations in the public interest. We note, for example, that PIRC's quarterly report to the SPA Complaints and Conduct Committee provides data relating to complaint handling reviews and a summary of recommendations made, but does not include any disaggregated equality data analysis.

#### **Recommendation 14:**

- a. Clauses 11 and 12 should be amended to require publication of the PIRC's recommendations and responses to recommendations unless there are exceptional circumstances to justify them being withheld from public scrutiny.**
- b. The Bill should commit the PIRC to publishing clear and publicly available operational guidelines and standards of communication between the PIRC and COPFS when the PIRC is fulfilling functions relating to investigation of criminal allegations against the police and the circumstances of any death involving a person serving with the police.<sup>40</sup>**
- c. Clause 16 should be amended to ensure that the PIRC monitors Police Scotland's human rights compliance and publishes analysis of equality evidence, disaggregated by protected characteristics and uses this data to inform decision-making on investigations in the public interest.**
- d. Clause 17 should be amended to ensure that the statutory advisory board for the PIRC includes human rights legal and policy advisers.**

#### **Additional comments**

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<sup>36</sup> September 2001 Inspection of the management by COPFS of criminal allegations against the police

<sup>37</sup> Ibid, para 142

<sup>38</sup> Ibid, para 154

<sup>39</sup> In 2019-20, PIRC submitted 86% of its investigation reports to CAAP-D within three months: PIRC, Annual report and accounts 2019-20.

<sup>40</sup> Under s.33A of the Police, Public Order and Criminal Justice (Scotland) Act 2006

### *Mode of appointment of the PIRC*

The role of PIRC is currently a ministerial appointment. The Angiolini report recommended that the PIRC should be appointed by Her Majesty the Queen on the nomination of the Scottish Parliament and should be made accountable to the Scottish Parliament.<sup>41</sup> This is in accordance with the 2009 opinion of the Council of Europe's Commissioner for Human Rights that each Police Ombudsman or Police Complaints Commissioner should be appointed by and answerable to a legislative assembly or a committee of elected representatives that does not have express responsibilities for the delivery of policing services. There is a missed opportunity within this Bill to address this as a means of ensuring public trust and confidence in the independence of this critical role.

**Recommendation 15: The Bill should amend s.33 of the 2006 Act to reflect that the PIRC should be a Scottish Parliamentary appointment.**

### *Police Scotland Independent Advisory Groups*

Independent advisory or review groups (IAGs) are used in Scotland to look at thematic policing issues. A Police Scotland FOI response indicated that as of 14<sup>th</sup> March 2022, there were four active advisory/ review groups<sup>42</sup> and one group which had concluded but not yet reported.<sup>43</sup> The SPA also use advisory/ review groups, sometimes jointly with Police Scotland, for example the Advisory Group on police use of temporary powers related to the Coronavirus Crisis. In addition, the previous Cabinet Secretary for Justice established the Independent Advisory Group on Emerging Technologies in Policing to scope the possible legal and ethical issues arising from emerging technological developments in Scottish policing.<sup>44</sup>

There are important questions around transparency, accountability and scrutiny in relation to advisory groups across the UK. By way of example, in April 2020, just under half of the members of the UK National Police Chiefs' Council's independent Taser advisory group quit. In their resignation letter, members stated that at that time no meaningful action was being taken to address the disproportionate use of stun guns against people from ethnic minority backgrounds, nor were police taking the issue seriously.<sup>45</sup> The letter raised specific concerns that their expertise was not being valued, the issues raised were not taken sufficiently seriously, commitments were not followed through and there was a lack of meaningful consultation. Following the resignations, the UK's National Police Chief Council agreed to conduct a new

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<sup>41</sup> Independent Review of Complaints Handling, Investigations and Misconduct Issues in Relation to Policing (2020) para 19

<sup>42</sup> Equality, Diversity, and Human Rights Independent Review Group, Professional Reference Group, National Independent Strategic Advisory Group and the Border Policing Command Independent Advisory Group

<sup>43</sup> Operation Urram Independent Advisory Group- relating to the planning and policing of the COP26 climate conference

<sup>44</sup> <https://www.gov.scot/groups/independent-advisory-group-on-emerging-technologies-in-policing/>

<sup>45</sup> <https://www.theguardian.com/uk-news/2020/apr/17/rights-groups-quit-uk-police-body-stun-gun-use-bame-people>

and comprehensive independent review of racism and Taser use and have committed to implementing the recommendations made, pending the conclusions of that review. At the time of writing, the review is ongoing and has not yet reported its findings.

In Scotland, there is no consistent, standardised information published on a designated part of the Police Scotland and SPA's website concerning IAGs. Whilst final reports are published, the papers and minutes for all IAGs are not consistently and routinely published.<sup>46</sup> Those which are published are often heavily redacted.<sup>47</sup>

**Recommendation 16: In light of the foregoing concerns the following essential criteria for Independent Advisory Groups should be built into regulations under the new Bill:**

- I. Clear and transparent terms of reference for every IAG, which allow the group to agree their own membership**
- II. The IAG should be chaired by one of the independent members and not by the policing body**
- III. IAGs should ensure diverse membership that genuinely represent local community voices and perspectives**
- IV. There should be timeous circulation of relevant data and information including credible, independent research and resources which does not originate from within policing bodies, to allow a more balanced discussion. There should be a process agreed whereby IAG members can table reports and resources for discussion where relevant to the meeting's agenda.**
- V. Sufficient budget is needed to improve inclusive participation by remunerating members and refunding expenses and to allow paid time off from employment (especially those members of minority or marginalised communities and those contributing lived experience).**
- VI. IAG's must be consulted in advance of all relevant major policy developments that fall within the remit of the group.**
- VII. Policing bodies must respond formally in writing to any recommendations made by an IAG with reasons.**
- VIII. All Minutes should be regularly published, and redactions should only be made where strictly necessary for GDPR compliance.**

If we can be of any further assistance, please do not hesitate to contact me.

Elizabeth Thomson

Advocacy Manager – Scotland, Amnesty International UK

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<sup>46</sup> For example, Police Scotland's National Taser Advisory Group first met on 4<sup>th</sup> February 2022 but we have not been able to locate their minutes online

<sup>47</sup> For example for the National Independent Strategic Advisory Group:

<https://www.scotland.police.uk/spa-media/1dsolqgw/22-0108-attachment-01.pdf>