



OFFICIAL REPORT
AITHISG OIFIGEIL

DRAFT

Criminal Justice Committee

Wednesday 24 April 2024

Session 6



The Scottish Parliament
Pàrlamaid na h-Alba

Wednesday 24 April 2024

CONTENTS

	Col.
POLICE (ETHICS, CONDUCT AND SCRUTINY) (SCOTLAND) BILL: STAGE 1	1
SUBORDINATE LEGISLATION.....	33
Police Pension Scheme (Scotland) Amendment Regulations 2024 (SSI 2024/80)	33

CRIMINAL JUSTICE COMMITTEE
15th Meeting 2024, Session 6

CONVENER

*Audrey Nicoll (Aberdeen South and North Kincardine) (SNP)

DEPUTY CONVENER

*Russell Findlay (West Scotland) (Con)

COMMITTEE MEMBERS

- *Katy Clark (West Scotland) (Lab)
- *Sharon Dowey (South Scotland) (Con)
- *Fulton MacGregor (Coatbridge and Chryston) (SNP)
- *Rona Mackay (Strathkelvin and Bearsden) (SNP)
- *Pauline McNeill (Glasgow) (Lab)
- *John Swinney (Perthshire North) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Ian Clarke
Margaret Gribbon

CLERK TO THE COMMITTEE

Stephen Imrie

LOCATION

The David Livingstone Room (CR6)

Scottish Parliament

Criminal Justice Committee

Wednesday 24 April 2024

[The Convener opened the meeting at 10:00]

Police (Ethics, Conduct and Scrutiny) (Scotland) Bill: Stage 1

The Convener (Audrey Nicoll): Good morning and welcome to the 15th meeting in 2024 of the Criminal Justice Committee. We have received no apologies. Today, we continue taking evidence on the Police (Ethics, Conduct and Scrutiny) (Scotland) Bill at stage 1.

Before we get under way, I invite members to declare any interests.

Russell Findlay (West Scotland) (Con): I should declare an interest, as I have spoken to both witnesses in the past, in my previous job as a journalist, and I think that I have also, as an MSP, spoken to some of the first witness's clients.

The Convener: Thank you.

I welcome Margaret Gribbon to the meeting; Margaret is attending online. Thank you very much for taking the time to attend our meeting this morning—we really appreciate it.

I refer members to papers 1 to 3. I intend to allow around 45 minutes for this evidence session. I thought that it might be helpful if I opened with a question about the police complaints system. What do you think should be changed about the police complaints system, based on your own experience?

Margaret Gribbon: Good morning. First, I extend my thanks to the committee for giving me the opportunity to share the experiences of my police officer clients in relation to police handling of complaints.

In answer to your question, I would say that complaints against police officers of all ranks should be assessed, investigated and determined entirely independently of the police.

The Convener: Thank you. Are you able to expand a bit on that?

Margaret Gribbon: Yes. In addition to my experience in acting for police officers, last year, there was a batch of independent investigations: His Majesty's Inspectorate of Constabulary in Scotland, the independent review group and the internal sex equality and tackling misogyny working group all recognised that problems exist in the police complaints handling procedure. For

example, HMICS said that the misconduct processes were perceived to lack openness, transparency and fairness, and that the status quo, whereby Police Scotland reports on such matters to the Scottish Police Authority's complaints and conduct committee,

"provides limited assurance on the standards of integrity, ethics and values".

In its May 2023 report, the IRG looked at complaints primarily in the context of equality and diversity, which is where my experience lies. In relation to the police officers for whom I have acted, the complaints have been mainly what I call cop-on-cop complaints. The evidence that the committee heard last week was mainly about complaints by members of the public, in relation to which there is a remit for the Police Investigations and Review Commissioner. When it comes to complaints that are made by officers in the course of their duty, those complaints have been mainly—in the case of the officers for whom I have acted and currently act—misconduct complaints in relation to whistleblowing and alleged sexism and misogyny against fellow police officers. Therefore, they do not have the option of any form of independent scrutiny, unless they have the time and resources to take a complaint to an employment tribunal. Often, that is a last resort. For them, the PIRC is not a resort, so they are pretty much stuck with the professional standards department and the police investigating the police.

What the IRG found is consistent with all the cases in which I have acted for police officers. There are several recurring themes in those cases, one of which is an absolute failure to address issues of misconduct involving discrimination. That was one of the findings of last year's IRG report. The professional standards department plays a critical role in complaint handling—it is front and centre in determining how cases are assessed and investigated. That department is critical in setting the tone. The IRG found—and this is consistent with what clients I have represented have said—that the police were less prepared to address issues of misconduct where they involved discrimination.

We are starting from a place where we know that there are major problems, because of what the independent reviews have told us. Last year, an internal Police Scotland working group, the sex equality and tackling misogyny group, carried out a survey and got 528 responses. Of the police officers the group surveyed, a staggering 81 per cent agreed that sexism and misogyny was an issue within policing; 86 per cent of female colleagues had either been subjected to or witnessed sexism and misogyny; more than 40 per cent of male colleagues had witnessed sexism and misogyny; and only around half of those

surveyed thought that Police Scotland was tackling sexism and misogyny.

We know that there is an issue, given cases such as those of Rhona Malone and Karen Harper, where we see the consequences of complaints not being handled properly. That particularly applies to the Rhona Malone case, which was tragic on so many levels: Rhona Malone was an experienced and talented firearms officer, who had so much to offer to policing, but her health was affected to such an extent that she had to retire. The cost to the public purse was £1.5 million. From the cases that I have dealt with and am currently dealing with on behalf of police officers, I am afraid to say that nothing that I have seen has convinced me that there has been sufficient change since the Rhona Malone judgment. It is inevitable that there is going to be another case or cases of that type.

The complaints-handling procedure is crucial to that. Rhona Malone's complaints of sexism and misogyny were just not dealt with. The case was bold and overt, in that she had made a complaint that she had been victimised for raising concerns about a sexist email. The PSD tried to dissuade her from raising the complaint and, when she would not be dissuaded, it confirmed to her in writing that the complaint would be investigated. It was never investigated, however.

The Convener: Thank you, Margaret. There is a lot in there, but it was very interesting to hear that overview. A lot of things were going through my head when you were setting that out, and one of them was about the culture. I know that that broader issue about the culture in Police Scotland is not what we are here to discuss today but, from what we heard at last week's evidence session and from what you have outlined so far this morning, that issue is evident and present. Could you comment on that?

Margaret Gribbon: That is absolutely the case. We talk about "culture", but what does that mean? It is a vague, elusive term. To bring it alive for you, I can give you some examples.

I have acted for Rhona Malone and Karen Harper, and I can discuss those cases because there have been two employment tribunal judgments, and what I am discussing is in the public domain. At the moment, I have three other cases where I am acting for police officers, two of which are in the employment tribunal and one of which is about to be. I will give you some examples from those cases.

In the Karen Harper case, she lodged a grievance alleging sex discrimination against her by her sergeant. What happened then was that the sergeant who was the subject matter of that grievance alleged that PC Harper had been guilty

of off-duty criminal conduct. I see that as an example of the weaponisation of the complaint-handling procedure by PSD and Police Scotland, particularly for those clients who I have represented: the ones who are standing up and whistleblowing and are being courageous and brave enough to call out sex discrimination. In that case, the tribunal found that the allegations against PC Harper that stemmed from the sergeant were quite simply an act of retaliation. However, as part of that case, PSD investigated Karen Harper. She lived in a small town where everyone knew everyone's business, and PSD knew that she had been through a fairly acrimonious divorce and that her ex-husband was a former police officer. The complaints that had been made against PC Harper were completely unconnected to her ex-husband, but PSD officers visited the home of her ex-husband after she had raised the grievance and invited him to make a complaint against her in the form of a statement. That is one example of the culture.

The Convener: I will just interrupt you there. You have set out the issue that we are considering very well, but, in the interests of time, I would like to allow members to ask their questions. If we have time at the end, I might ask you to outline some of the other examples that you have mentioned.

For clarification, when you say "PSD", do you mean the police's professional standards department?

Margaret Gribbon: Yes. Hopefully we will talk about this in a bit more detail in relation to sections 5 and 8 of the bill, but you will know that PSD has responsibility in relation to complaints of misconduct against all officers below the rank of assistant chief constable, which make up the overwhelming majority of police complaints.

The Convener: That is helpful, thank you.

Sharon Dowe (South Scotland) (Con): Good morning. Earlier, you said that the police were less prepared to investigate complaints involving discrimination. Is there an issue because they do not want to investigate the complaints, or is it a problem with their procedures?

Margaret Gribbon: I think that the mentality is that they just do not want to investigate the complaints. I will give you an example from the case of Rhona Malone. She had tried to raise a grievance and was trying to tick all the boxes. I do not know whether you recall the case, but it involved her sergeant sending a silly sexist email saying, basically, "If there are enough male firearms officers on duty, I don't want to see two female firearms officers out on their own." It was clearly a blatantly discriminatory email, even though, for years, Police Scotland denied that it

was, until, on day 1 of the tribunal, everybody accepted that it was demonstrably a textbook example of an ill-judged and sexist email.

Rhona had complained about that email and believed that the officer who was dealing with her complaint had just dismissed it and was not taking it seriously. She then tried to raise a grievance about the mishandling of her complaint in relation to the email. It was clearly a grievance, but people and development—that is, human resources—said that it was not a grievance. It clearly was a grievance; the tribunal found that it was a grievance.

10:15

Rhona Malone then tried to raise the issue with the professional standards department. It tried to dissuade her, because at that point in time, she had her tribunal lodged. The department said, “Why don’t we deal with it as part of your tribunal mediation?” However, it had nothing to do with the tribunal, so she was resolute in making it quite clear to the department that she wanted it to investigate the matter. The department confirmed to her in writing that it would investigate, but absolutely nothing was done about that.

The professional standards department is supposed to log all complaints on its Centurion database and then an investigation would follow. In Rhona Malone’s litigation, the highest-ranking officer who gave evidence on behalf of Police Scotland—you might recall she had multiple victimisation claims, which the employment tribunal upheld—was the then head of the PSD. He was a chief superintendent. He was called upon to explain why, having stated in clear and unequivocal terms in an email to the officer that the PSD would investigate, it was not even recorded on the database and there was no investigation.

The tribunal found that the explanations for the failure to investigate by the PSD and by that chief superintendent were implausible. In evidence, he said, “Oh, you know, I get a lot of emails”. Well, don’t we all? He said, “I get a lot of emails and I dropped the ball”. Given my history with the Rhona Malone case and the other cases that I act in, I would say that there was never an intention to pick up the ball. Again, I really cannot explain the psyche.

I think that I saw in one of the reports—it was perhaps the Angiolini review—that Police Scotland is quite relaxed about holding its hands up and saying, “Yeah, we’re completely incompetent, but we don’t discriminate”. However, it does discriminate, and this is a classic example. None of this is rocket science, so the situation is inexplicable. In such cases, it actually takes more

energy and time not to deal with it properly than it does even to try to circumvent and dodge the issue. That creates problems for the officer, but it also raises a question about the integrity of policing. There are potential cost ramifications for the public purse when such cases end up in an employment tribunal.

Sharon Dowey: One of the comments in your evidence, in reference to the Rhona Malone case, was that Police Scotland obstructed every phase of the liability litigation. Will the bill’s provisions, such as having a statutory code of ethics or a duty to be honest in and co-operative with investigations, do anything to change that attitude? Will the bill as it stands just now help?

The Convener: Margaret, before you answer that, can I encourage you to focus some of your answers on the provisions of the bill? I know that it is often hard for people to do that without referring to individual cases, but we have limited time and other members are looking to come in. If it is possible for you to do that, that would be appreciated.

Margaret Gribbon: Yes. I would like to address the committee on the sections that I have looked at more closely, which are sections 5, 8 and 13.

To answer the question, I do not think that it will make a massive amount of difference in practice. My understanding is that the oath given by all police officers should be inherent in what they do day to day. If that is codified, I do not suppose that it will do any harm, but in the context of police complaints handling, I do not think that a duty of candour or a code of ethics on their own will be enough, I am afraid.

I am concerned about the limitations of some aspects of the bill, in particular in sections 5, 8 and 13. I would like to share those concerns with the committee.

As the committee will know, section 5 is supposed to widen the functions that can be conferred on the PIRC. That will be done through secondary legislation. That provision concerns key areas of senior officers’ misconduct procedures, including the statutory preliminary assessment function. Although anything that moves towards independent scrutiny is to be welcomed, we need to consider that the change will actually affect only senior officers, ranked ACC and above, so we are talking about a dozen or so officers—I think that there are 14 or 15.

As far as I understand it, we have 16,500 full-time equivalent police officers in Scotland. Section 5 will not affect the overwhelming majority of complaints against the police. The Angiolini review said that the majority of complaints against the police were against officers at the rank of constable. I do not know whether the committee

has up-to-date information on complaints, such as how many are dealt with each year, how many emanate from the public and how many come from the police. Essentially, for the overwhelming majority of complaints—99.9 per cent if not 100 per cent—the status quo will remain.

One of your witnesses, Mr Johnstone, referred to the procedures as “in-house investigation”, and that is essentially what it is. The status quo will remain and, for the vast majority of complaints, it will be a matter of the police investigating the police. While any move towards independent scrutiny is welcome, we need to consider that the measures in sections 5 and 8 will cover a tiny number of police officers. I do not know what percentage of complaints over the past five years have been in relation to ACCs and above, but I imagine that it will be tiny. Section 5 will not touch the vast majority of complaints.

As far as I understand it, the policy aspiration behind the bill is to ensure that

“there are robust, clear and transparent mechanisms in place”

for investigating allegations of misconduct against the police. In my view, the proposed legislation will not meet those objectives, unfortunately, given such a narrow definition of who section 5 applies to.

Sharon Dowey: You have mentioned a few litigation cases that you have dealt with. Could litigation be avoided if the complaints-handling system were completely reformed? Does the system need to be completely reformed?

Margaret Gribbon: Undoubtedly. If complaints were independently assessed, that would have a significant impact on the number of cases going to employment tribunal, or just on the number of cases of complaints generally.

There are resource implications. There are not just the compensation costs; you need to consider the time and the resources of Police Scotland’s in-house solicitors, potential use of external private solicitors, and all the legal fees. Such a reform would make sense from a public policy perspective.

We are rightly concerned about policing, and the public have concerns. We know that there is a problem with complaints handling but, unfortunately, the bill does not address that for the vast majority of misconduct complaints against police officers.

John Swinney (Perthshire North) (SNP): Good morning, Ms Gribbon. I am interested in your point about the necessity for independence in the complaints-handling process. I understand that there are three areas in which complaints may be given some consideration. The first relates to the

general HR relationships of a police officer who is serving with the organisation; the second is the professional standards department; and the third is potentially the PIRC. Is the committee to conclude that, from your experience and case load, you think that, under the current arrangements, procedurally and culturally, none of those three elements is working effectively to protect the public interest when it comes to complaints about police officers’ conduct?

Margaret Gribbon: I have very limited experience of the PIRC, because the officers whom I have acted for have not been deemed to be members of the public for the purposes of their complaint, so the PIRC did not have oversight there. Largely, my experience has related to misconduct complaints dealt with under the Police Service of Scotland (Conduct) Regulations 2014, which are for assistant chief constables and below. More often than not a misconduct complaint will fall under the remit of the PSD rather than HR, which deals with more grievance-type complaints. However, there can sometimes be an overlap.

My experience of what is called people and development in Police Scotland, which is HR, largely relates to the Rhona Malone case. It simply refused to deal with her complaint as a grievance. That was clearly a concern. However, I have a lot more experience of the PSD, and one of the recurring themes in the cases that I deal with is the role of the PSD.

I will give a stark example of that. I am currently dealing with a case for a detective inspector that relates to the inconsistent approach that they say the PSD takes. There is evidence that the PSD is not handling matters impartially and independently in some cases, and there is certainly evidence that suggests that there is outside interference in the decisions that it takes. In the case that I am currently dealing with, my client has alleged inconsistency of treatment. She says that she has called out sexism and misogyny against herself and other female officers in the area of policing that she works in, and in police officers’ attitudes towards female complainers of sex crimes. She made those complaints and she is now the subject of a PSD investigation for what she says are trivial misdemeanours that do not warrant a PSD investigation.

One example of inconsistency that she gave involves an officer whom she supervises. She and a sergeant have made complaints. They believe that that officer exhibits sexist and misogynistic conduct. The officer was guilty of off-duty criminal conduct. There are no ambiguities about that; British Transport Police was involved. The officer, who was intoxicated, abused a female transport worker and most of the incident was recorded on a

body cam. There was a preliminary assessment by the PSD, which can determine whether a matter falls into the category of gross misconduct, misconduct or an improvement action—colloquially, that is a slap on the wrist, if you like. An improvement action means that the matter is not subject to any investigation and does not go any further. The officer was guilty of off-duty criminal conduct and the professional standards department determined that that warranted only an improvement action. To me, that is inexplicable. You have a police officer who is guilty of an off-duty crime—he abused and alarmed a female transport worker. That behaviour was consistent with the behaviour that my client—a detective inspector—and a female sergeant spoke about in relation to this officer. Despite all that, he was issued with only an improvement action. That is just completely inexplicable.

10:30

John Swinney: Is it your point that the bill that we have in front of us does not get close to affecting a real source of difficulty, which is the effectiveness of the professional standards system in Police Scotland? Is that a fair summary of your position, Ms Gribbon?

Margaret Gribbon: Yes, that is correct. The PSD deals with everything for ACC and below.

Before I dealt with any of these cases, if you had asked me what the most important part of complaints handling is, I would probably have said determination; however, it is not. In a preliminary assessment, if the police are deciding—which they did in this case—that the off-duty criminal conduct of an officer does not even warrant an investigation, that is pretty serious. In itself, that is enough for alarm bells to ring and to make you think, “We cannot trust these people to impartially assess these complaints at any stage.” They have to be subject to independent scrutiny.

If my client’s case had gone on to an investigation and then to a hearing, there would have been a range of options open to Police Scotland, including verbal warning, first written warning and final written warning. However, the PSD concluded that the matter did not even warrant investigation. That is why I would say that some of the decisions being made by the PSD are unsafe.

I contrast that with my clients’ experiences of the conduct procedures being weaponised against them—against whistleblowers and those calling out sexism and misogyny. The same approach to complaints is not being adopted, and those experiences are pretty stark examples of that.

John Swinney: Thank you. My last question follows up on your earlier point about the

importance of independence in the process. You said a moment ago that you do not have much experience of or engagement with the PIRC, but would you see the PIRC as a body that could undertake independent handling and scrutiny of complaints, as you conceive of that process, or are you suggesting that we should consider a body that is even further removed from the existing structures of policing in Scotland for handling such complaints?

Margaret Gribbon: Ideally, we would have something that is further removed. I have heard the evidence from some of the previous committee witnesses about their perceptions of the PIRC, in that it is staffed by a lot of ex-police officers. I do not think that that in itself is a reason to bar them, because I believe that experience in the context of complaints handling, and those talents and skills, can be tapped into.

That leads me quite nicely on to section 8. Section 8 moves the responsibility for determining senior officers’ misconduct proceedings from the SPA to an independent panel, so there is not a role for the PIRC there. Therefore, the process is completely independent, and I understand that it will be introduced through secondary legislation. That is to be welcomed, and it follows on from the Angiolini review’s recommendation that the SPA should have no substantive role in senior officer misconduct proceedings. That makes sense, because those senior officers are rubbing shoulders with the senior management team at the SPA, who are the people who would be responsible for disciplining them if complaints were made against them.

However, the Angiolini review also recommended that a similar independent panel should be constituted for gross misconduct hearings for non-senior ranks, but the bill does not address that. The reason why she recommended that is that she took the view that all panels must be seen to have an impartial process. The legislation falls short on that, because it does not act on the review’s recommendations in relation to independent panels for all gross misconduct hearings for all ranks.

The Scottish Government’s policy memorandum for the bill says that its rationale for that decision is that the issue of proximity bias does not apply to non-senior officers. I accept that it does not apply to them to the same extent as it does to senior officers. However, the review recommendations in that respect did not stem only from concerns about proximity bias.

Angiolini stated that her recommendation would have resource implications and, at paragraph 12.61 on page 192 of her report, she said:

“However, those costs would relate only to a relatively small number of gross misconduct hearings in any given year and are outweighed by the benefits of increased independence, transparency and public confidence.”

Let us go back to the objectives of this bill, which are

“to ensure that there are robust, clear and transparent mechanisms in place”

for investigating complaints and allegations of misconduct against police officers. The bill does not do that. Section 8, which would apply to a tiny number of police officers, has the exact same limitations as section 5. However, we know that the vast majority of complaints are made against those who are in the ranks of ACC and below—mainly in constable ranks.

John Swinney: Thank you very much.

The Convener: I will bring in Russell Findlay.

Russell Findlay: Hello, Margaret.

Margaret Gribbon: Hi.

Russell Findlay: You described the weaponisation of the complaints process against officers. For people who do not know, that could quite often be summarised as turning the table on whistleblowers, the inequality of arms that exists in terms of legal representation, the selective application of evidence and the prolonging of proceedings, which, in some cases, are prolonged year after year after year. The result of that is careers being needlessly destroyed, health often being harmed and huge financial cost to the victim. I think that most of your cases, if not all, are female officers.

To bring that back to the bill, does the bill do anything to ensure that Police Scotland no longer uses those weaponisation tactics?

Margaret Gribbon: Unfortunately not, no. You have—

The Convener: Margaret, just before you continue, I wonder whether I can encourage you to give us slightly more succinct responses. I still have some members who would like to come in. Thank you.

Margaret Gribbon: Sure. I will answer that in the context of section 13, which deals specifically with whistleblowing. Section 13 is obviously to be fleshed out in secondary legislation, but it introduces, as far as I understand it, an obligation on the PIRC to keep under review arrangements for the investigation of whistleblowing complaints and to make recommendations. The wording is quite vague and I do not know exactly what it means, but, as I said, it may be fleshed out. However, there is also to be some type of audit role for the PIRC in relation to whistleblowing. The policy memo says that the idea is that that will

“encourage people to speak up when they see wrongdoing.”

The Angiolini review recognised that the PIRC audit function alone would not be sufficient to give whistleblowers confidence in reporting concerns. I share that view.

Some of your witnesses last week spoke about the importance of—

Russell Findlay: I want to come in and pick up on that point, Margaret. It may be worth our while trying to improve the section that you refer to in some way, and rather than using secondary legislation, being a bit more explicit in what the PIRC can do in that regard.

Margaret Gribbon: In relation to categorisation and what is audited and kept under review, let me give you another example. I represent a detective inspector. She submitted a very detailed witness statement to the PSD last year. It contained multiple allegations of breaches of the Equality Act 2010. It included criminal allegations against officers. It contained, without a doubt, 39 protected disclosures, which is the legal term for whistleblowing. However, Police Scotland did not deal with that complaint as a whistleblowing complaint. How on earth can any external body audit or review so-called whistleblowing complaints if Police Scotland does not categorise such complaints as whistleblowing complaints?

Russell Findlay: Does the bill need to ensure that when a clear whistleblowing complaint is made, such as the one that you referred to, it is treated that way by Police Scotland and all associated bodies?

Margaret Gribbon: Yes. However, based on my experience, the difficulty is that Police Scotland cannot be trusted to do so. That complaint was demonstrably a whistleblowing complaint—like Rhona Malone’s grievance was demonstrably a grievance. Given how important policing is, the process is too important to be left to chance. It should be subject to independent scrutiny or assessed independently.

The bill is silent on Dame Elish Angiolini’s recommendation that the PIRC should be added to the list of prescribed persons in the Public Interest Disclosure (Prescribed Persons) Order 2014. That was recommendation 20. That legislation is reserved, but the Scottish Government policy memo does not address that point at all. I do not know how difficult or otherwise it would be to do that.

Russell Findlay: I want to ask about Dame Elish Angiolini and the PIRC. She made more than 100 recommendations, but she stopped short of saying that Scotland should be subject to a Northern Ireland-style ombudsman. It is fair to say

that your trust in Police Scotland is pretty low, based on the cases that you have dealt with. Will the legislation, as it stands, result in a PIRC mark 2 that will be sufficiently credible and that will have sufficient teeth to protect members of the public and, indeed, police officers?

Margaret Gribbon: No. What does “keep under review” mean? Audit. Again, it goes back to the point that I made, which is that if Police Scotland does not record whistleblowing complaints as whistleblowing complaints, such complaints will be completely camouflaged. If the PIRC asked Police Scotland to give it data on all its whistleblowing complaints, but Police Scotland determines what is registered as a whistleblowing complaint, there will not be effective scrutiny, because the complaints are not being accurately recorded.

Russell Findlay: Some of the criticism of the bill has been about the financial cost. Apparently, there is potential that the cost will be much greater than is suggested in the financial memorandum. However, Police Scotland must spend significant sums of money on such cases each year and on payouts in the region of that which your client received. Has it been considered that the police could think again about the culture of pursuing such costly cases and use that resource to ensure that systems and complaints processes are improved?

Margaret Gribbon: The difficulty is the culture and the psyche. It seems to be an instinctive defence mechanism, and maybe that is natural. Although that is a criticism, it is more of an observation. We are talking about complaints handling procedures, but we are not talking about complaints such as, “Scottish Power left me on hold for an hour.” We are talking about policing; it is important. Public confidence in policing is not high and we are doing this against the background of the independent reviews that I referred to at the outset of my evidence. We have cogent evidence to say that we have cause to be concerned.

Given the importance of that, and in relation to section 13—

Russell Findlay: I was just going to say that I do not want to hog too much time, so I will pass back to the convener, if that is okay.

10:45

The Convener: Thank you very much, Russell; I know that you are clearly immersed in this particular issue. I will bring in Rona Mackay, and then we will have to conclude our session.

Rona Mackay (Strathkelvin and Bearsden) (SNP): Good morning, Margaret. I want to ask you about the SPA and your interactions with it. What

do you think its role should be, given your experience of dealing with the various authorities?

Margaret Gribbon: In theory, its role is supposed to be to hold the chief constable to account. My experience is that it has not done that, or that its oversight has been inadequate. I will give you an example. In the Rhona Malone case, one of her complaints that was upheld was that Police Scotland victimised her in the handling of her ill-health retirement application. We recovered documentation from Police Scotland that clearly showed that it was lying to Constable Malone in relation to the reasons for the delay of the IHR. The SPA has an oversight function on pensions and it was openly copied into those emails. In theory, the SPA is the watchdog.

It appears that there is a culture of there not being any consequences if you do not follow the rules. My perception is that the SPA is too close to Police Scotland. The bill addresses that in certain respects: section 5 and section 8 would remove those functions from the SPA where it has previously had responsibility for the misconduct of senior officers. That is pretty obvious—that should never have been the position from the outset. I would hope that the independent body would not be the SPA.

Rona Mackay: That is helpful. Would you say that ex-police officers and, perhaps, members of the judiciary should not be part of the independent body? Would you like to see representatives on it coming from other walks of life?

Margaret Gribbon: No, not necessarily. You cannot presuppose that, because someone is an ex-police officer or someone was a member of the judiciary, they have certain biases. Ex-police officers will have many talents and skills that they can bring. It is about the culture in which you operate—the culture of the organisation should be to effectively hold Police Scotland to account. The bigger picture is that it is good for policing that we deal with complaints properly. I can understand the cynicism and perceptions of people who believe that police would automatically defend police, but I think that it would really depend on the culture. If an independent body was populated by a majority of ex-police officers, that would be concerning, but I think that there would be a role for them to play in any external body. I know that some of your witnesses from last week would probably disagree with me.

The Convener: That has brought us swiftly to time. I will ask a final question. You have covered quite a lot, with particular reference to the PIRC and what is not in the bill. Is there anything else, particularly about the police complaints system, that has not been covered and that you would like to touch on before we end our session?

Margaret Gribbon: I have a brief point on section 13. Dame Elish recommended that the PIRC should be added to the list of prescribed persons but the policy memorandum does not address that at all. I do not know how difficult or otherwise it is to liaise with the Westminster Government on reserved issues, but I know that the Independent Office for Police Conduct, for example, which carries out similar functions to the PIRC, is already listed as a prescribed person in the Public Interest Disclosure (Prescribed Persons) Order 2014. That would be an effective and significant change, because it would give a police officer the statutory right to make their whistleblowing complaints directly to the PIRC, even if they have not made those complaints to Police Scotland. I think that that would allow the bill to do what it seeks to do, which is to encourage people to speak up when they see wrongdoing.

The Convener: Thank you, Margaret. That is really helpful. I thank you for attending the meeting. We have picked up some valuable points from you, and we are grateful to you for giving up your time. There will be a short suspension to allow a changeover of witnesses.

10:50

Meeting suspended.

10:56

On resuming—

The Convener: I welcome to our meeting Ian Clarke. Ian, it is very important that we hear the views of those who have personal experience of the police complaints system, and the committee is interested to hear your perspective of what is being proposed in the bill.

I intend to allow around 45 minutes for this evidence session, and it might be helpful if I open up with a general question about the police complaints system. I am aware that you have a response that you would like to share with us. What do you think should be changed about the police complaints system, based on your experience? Please just take your time in your response.

Ian Clarke: Thank you. The majority of police officers, serving and ex, could sit here and relay examples of how they or colleagues have been unfairly treated during misconduct proceedings. Ten years ago last week, I supposedly committed the crime of assault by preventing a suicide attempt. Over those 10 years, my experience of the misconduct process has been mirrored in investigations by Dame Elish Angiolini, HM Inspectorate of Constabulary in Scotland, the PIRC, the SPA and journalists, who have all

evidenced that the standard of investigation into police misconduct is very poor.

My experience was that I was found not guilty after a three-day trial, when the sheriff ruled that there was no mens rea and there was a lack of credible evidence. The expert witness who was used by COPFS changed his mind and supported my defence when evidence missed out by the investigation was revealed to him. The investigation into me failed to establish that much of the evidence was hearsay, and it ignored the fact that the medical evidence contradicted the witness claims. I have anecdotal evidence of other police officers whose trials were ended because of a poor standard of investigation.

In 2014, the BBC reported on alleged breaches of data protection law. Freedom of information requests revealed that there was often a lack of evidence, and I found that the conviction rate for the reported breaches was only about 7 per cent. The scandal was again the subject of a BBC documentary in 2018—"A Force in Crisis"—which found that, out of 118 reports, there had been two convictions.

In 2016, the HMICS published a report into the conduct of the counter-corruption unit. The report said:

"A common theme was the legality, proportionality and the apparent lack of procedural fairness carried out by the CCU when dealing with police officers and members of police staff."

In 2017, I made a series of freedom of information requests and found that, from 2013 to 2016, although the conviction rate for all crimes was an average of around 86 per cent for the public, it was more like 7 per cent for police officers.

The PIRC used to put information about its rulings on misconduct investigations on Twitter—X—which showed that it consistently found that about 50 per cent of those investigations were unsatisfactory. In 2019, it reported a 44 per cent decrease in the proportion of complaints that were handled to a decent standard.

11:00

In 2017, *The Sun* ran the headline "Ex-cop on brink of suicide after being 'fitted up by anti-corruption officers over murder bid case'". There have been multiple instances of police officers killing themselves while being the subject of misconduct inquiries. I spent large periods off sick with situational clinical depression and anxiety, and I was on antidepressants during the final two years of my service.

Police Scotland is very poor at managing the stress that is caused by misconduct investigations.

It took 122 weeks for my case to go to trial, when the average, according to figures from the SPA, was 54-and-a-half weeks. It was exactly 900 days from the incident to the day when I was found not guilty, which ended the proceedings by COPFS. The majority of that delay was due to CAAPD, which sat on my report for more than a year, with no updates and no apparent action.

There is plenty of anecdotal evidence of police waiting for years for the PSD to conclude its misconduct investigations, which are separate from any criminal proceedings. That is excessive and causes additional stress, not just to the police but to their families. I take this opportunity to thank my wife, family and friends, who supported and stood by me. Not everybody has had that.

In 2016, the SPA stopped publishing figures on how many police and staff were suspended or on restricted duties, with its final report showing that, out of 166 police and staff on restricted duties, 27 had been in that position for more than 700 days.

In 2018, *The Herald* reported that nearly 80 police officers had resigned while being investigated for misconduct. My experience was that I was able to take early retirement. I could no longer cope with the pressure. Colleagues have provided me with plenty of anecdotal evidence of police found not guilty at trials who were then forced into accepting misconduct sanctions by PSD. My own limited experience of PSD investigations during my service was that they were distrustful and aggressive and assumed guilt. I could not face that.

I started by saying that there is a lot of evidence of police being treated badly during the misconduct process. However, what you will never get is a police officer telling you how their misconduct was excused or covered up. In 2018, the PIRC reported to the Justice Committee that it had found evidence of criminal allegations being treated as misconduct. A PSD quarterly report in 2019 recorded that there had been an increase of 161 per cent in the number of police being reported for assault, proving the scale of criminality that was being hidden.

The 2019 Angiolini review of complaints handling found instances of the public reporting that their complaints were being excused by the investigating officer. I worked where inspectors dealt with complaints, and the trend was to excuse police who were considered good officers. Investigations were led by the opinion that the investigating officer held of the person whom they were investigating. The public also reported that they felt under pressure not to complain or that their complaints were dragged out for too long. That was very much my experience when I complained. Complaints were lost, they took

months and they were passed around between divisions.

A chief inspector from my home division visited my home and told me that he did not think that it was his job to investigate my complaint. A PSD inspector then visited my home and told me that he was the devil's advocate, as he sought to excuse the misconduct by witnesses and whoever had conducted the investigation. I met an inspector from the custody division who finally took on the investigation into my complaint. He had retired, so he felt that it was safe for him to tell me that he had been put under pressure from management to dismiss all of my complaints. In the end, most were dismissed or advice was given. As Dame Angiolini said to the Justice Committee when she answered questions about her review—I will paraphrase—if that is how the police treat one another, what about how they treat the public?

The complaints and misconduct process can and does work in many cases, but there is far too much scope for it not to work. It is far too easy to hide and excuse misconduct, and, if anything, the greatest risk is not to police officers who are guilty of misconduct but to innocent police and police who report their colleagues for misconduct. Based on my experience and from the investigations that I have referred to, the present system needs to be changed so that it is driven by evidence and not opinion. It needs to be fair and open, with no pressure placed on complainers, and no early decisions on who is guilty, believing the victim or taking sides. It needs to be quicker, and it needs to be high risk to police who are guilty of misconduct and low risk to the innocent and reporters in order to restore some of the lost confidence in policing in Scotland.

The Convener: Thank you; we are grateful for that opening statement.

It would be helpful to clarify a couple of points. You spoke about COPFS. Just for clarification, by that, do you mean the Crown Office and Procurator Fiscal Service?

Ian Clarke: Yes.

The Convener: Another point that might be of interest to members is about the process. It is normally the case that, if a misconduct process is to be undertaken, it will commence after the outcome of a court trial.

Ian Clarke: Yes; both will start at the same time, but when it is decided that the matter will be reported to CAAPD, the misconduct part is paused, and it will restart at the end of the criminal proceedings.

The Convener: That is a helpful clarification.

You made final points about a process that is fair, open and based on evidence. You will have heard in our earlier session a contribution from our witness on the independence of the process. That was subject to members' questions. Will you comment on the importance of an independent process, regardless of the level or seriousness of the misconduct allegation that is being dealt with?

Ian Clarke: I am sorry, but what do you mean by the independence of the process?

The Convener: In respect of misconduct and the police complaints system, we heard earlier about the importance of the process being independent. Do you have a similar view?

Ian Clarke: It certainly needs to be more independent than it is. Basically, you will find that, for minor misconduct, the sergeant or inspector on the shift will investigate the police officer. Obviously, their opinion of that police officer will have a strong bearing on their final decision, and I am quite sure that that works its way up through the ranks.

I believe that, for more serious misconduct, somebody who is a degree separated from the police officer whom they are investigating tends to be drafted in. I can relate an experience that I had. A sergeant phoned me about an incident to ask me questions about the police officer who was involved, particularly to push their involvement to one side as much as possible. Obviously, when the matter goes a step further, there is the Crown Office and CAAPD, which have another layer of oversight, and there is the PIRC on top of that. The further away the investigator is from the person whom they are investigating, the better.

The Convener: Thanks. I am sure that we will come back to that.

I open up questions to members.

John Swinney: Good morning, Mr Clarke. I have a technical question. Can you explain what CAAPD is?

Ian Clarke: It is the department in the Crown Office that deals with criminal complaints against the police. CAAPD does not quite stand for criminal complaints against the police department, but that is kind of what it is.

John Swinney: Thank you for that. I recall that reference now.

You bring a perspective to the discussion that is very different from what we have heard from other witnesses so far, and it is a really important perspective. However, it illustrates that the system basically does not seem to be satisfactory from anyone's perspective. Is that a fair reflection of the evidence that you have given to us in the context of the other evidence that we have heard?

Ian Clarke: Yes, I agree with that. The system as it stands is very satisfactory for a police officer who is guilty of misconduct—even criminal misconduct—and can rest assured that that misconduct will be excused or covered up. There is far too much opportunity for that. The system does not really work at all for the public and honest police officers.

John Swinney: That is a very significant statement that you have just put on the record, which sharply focuses your evidence. Thank you for that.

The bill includes a provision that will apply the duty of candour to police officers in relation to their actions, but, listening to you, it strikes me that we need to consider carefully whether the obligations that we say to the Government should be in the bill should be applied to the process of complaints handling within the police service. In your powerful opening statement, you have recounted to us that things that we would all consider to be absolutely essential—fundamentally, truth and integrity—are not always present in the system, as you have experienced it as a serving police officer.

Ian Clarke: I agree with that. As I said, it is not just me. I still occasionally bump into former colleagues, who, when I tell them about my experience and what has been happening, embark on their own horror stories.

John Swinney: If a complaint is made against a police officer, there will be a desire on the part of that police officer to have the matter resolved openly, properly and timeously, but, in your experience, that has not been the case. Is that correct?

Ian Clarke: Yes, that is correct.

The Convener: I will bring in Russell Findlay.

Russell Findlay: So far, your evidence has been clear and compelling. However, I suppose that some people might wonder about the fact that, even though the incident that started all this took place a decade ago, you were sufficiently motivated to come to the Parliament's Criminal Justice Committee to talk about police complaints legislation. Will you explain how the issue has affected you and why it was so important for you to come here today?

Ian Clarke: It terminated my career. It is luck on my part that I had long enough service, which meant that, despite the pension changes, I was able to take early retirement on a full pension. However, I lost a huge lump sum, so it had a huge financial effect. It has had an enormous emotional effect, not just on me but on my family as well. I would go as far as to say that I do not trust the police, but that is not all; I do not trust the Crown

Office or the PIRC. I do not trust any part of the system whatsoever, because all of it let me down.

I did not commit a crime. There is no rationality as to why I should have been put on trial. I was subject to three days of intense scrutiny, during which every word that I said and every slight movement that I made were examined, for stopping a death in custody. That level of scrutiny rarely, if ever, gets applied to situations in which there has been a death in custody. "Shattered" would be a good word to use.

Russell Findlay: That brings me on to my next question. You have already mentioned CAAPD, which is the Crown Office's criminal allegations against the police division. It has been in existence since 2013. Hundreds of cases go there, but very few result in prosecutions. Some previous witnesses have described the PIRC, CAAPD and all those other entities as being almost like a firewall around the police, rather than entities that will support officers or the public in relation to complaints.

Last week, we heard that one witness made criminal allegations about police officers to the police, which should have been reported to CAAPD but were not. Should the bill include a provision whereby either police officers or members of the public can report directly to CAAPD, to ensure that that potential gap is plugged?

Ian Clarke: Yes.

Russell Findlay: You touched on the very sensitive issue of officers dying by suicide, which the committee has discussed in the past. There have been cases of suicide by officers who, at the time, were the subject of prolonged complaints proceedings. To my extreme concern, when we raised the issue initially, the Scottish Police Authority asked Police Scotland, which responded to the SPA by saying that none of those cases was due to work-related issues. In my opinion, they were not wholly candid.

11:15

I wonder whether, from a legislative perspective, anything could be done so that there is an automatic fatal accident inquiry when there is the suicide of an officer, as happens with deaths in custody. Every case in which a prisoner dies in custody is subject to an automatic fatal accident inquiry. None of the police officers who we know have died from suicide—some of whom were subject to on-going complaints proceedings that they deemed unfair and prolonged—was the subject of a fatal accident inquiry. Should the bill also address that issue?

Ian Clarke: Yes. My very simple answer to that is: absolutely, yes.

Russell Findlay: Do you have anything to add in that respect?

Ian Clarke: No.

Russell Findlay: Okay. Thank you very much.

Pauline McNeill (Glasgow) (Lab): Good morning, Mr Clarke. I listened carefully to what the previous witness, Margaret Gribbon, said, from which I picked up that the bill before us is quite inadequate. I am trying to work out for myself, based on your very important case and evidence, what the heart of the problem is that we need to fix. That is where I am coming from.

As you said in answer to John Swinney and Russell Findlay, it seems extraordinary that someone such as you, who tried to do a good thing by preventing a suicide, has ended up in court. That is the first point.

I read your testimony, and I also read about the case in the press. It is clear that, when the case got to court, the sheriff said that there was no credible evidence against you. I have read about a few cases in which, similarly, it was down to the credibility of the witnesses and the evidence. I presume that some of those witnesses were police officers.

I have questions about CAAPD. That issue concerns me because, even if there was, let us say, corruption in the police in relation to an allegation, I would think that CAAPD—given the responsibility of the Crown Office to determine the quality of evidence—would find that, in a case such as yours, there was no case to answer.

Could you talk me through what happened in your case? Who were the accusers, and how did it get from the starting point to a police report in the first place? You are a police officer, so it is clear that, when a crime is committed, it is reported, and then a police report goes to the procurator fiscal. I am just trying to understand what happened.

Ian Clarke: Again, I never really investigated any complaints—that was always done at a higher rank when I worked in the police. As I said, the opinion of the investigating officer, or the person investigating, seems to play quite a large part. The two police custody and security officers who reported me reported me to somebody who I did not get on with at all. That person then reported me to somebody else—an inspector—who I did not get on with at all. What appears to have happened is that they just took the word of those two PCSOs. They did not question it, and they did not check it against any other evidence. As I said, the claims of the PCSOs were contradicted by the medical evidence; they just started the ball rolling.

One of the problems in the job is that, once the ball is rolling, you are stuffed. Nobody really wants to stop it. Someone would need to be very brave to do so, because they would need to come forward and say, “Police Scotland or CAAPD have got it wrong. That officer has actually done nothing wrong.” Then they would run into conflict with police management or with CAAPD, because they would be saying that the organisation is wrong. It is a lot easier to just let the ball roll, and the police officer who is being complained about is just isolated. It is far easier to pick one side than it is the other. Once that ball had started rolling with me, there was no stopping it.

I was extremely disappointed in CAAPD for taking the witness evidence without ever questioning it. Initially, I had no idea what I had done wrong. I was marched out of the custody suite by an inspector who said, “I don’t know what this is about.” I went home, and a couple of days later, I went in to see a superintendent, who said, “I have no idea what this is about, but I have been told that you are a danger to the public, and you are now going to be put on restricted duties.” I was sitting there thinking, “What have I done?”

A number of months later, I finally got a notification that I was going to be subject to misconduct proceedings. In the part that said what it would actually be about, it just said, “Assault”—one word. I did not assault anybody, so I had no idea what it was about. The matter then went to CAAPD. When I got the notification, I went to see a solicitor and asked, “So, what’s going to happen?” He said, “What are your plans for the next couple of years? There’s one person working in CAAPD for the whole of Scotland, so the backlog is enormous.” I suspect that that is one of the reasons why there was very little scrutiny. After a quick read through the evidence, the conclusion was made: “That looks like it’s an assault. Let’s just put it to trial.”

When the case went to trial, my defence solicitor spoke to the fiscal who was going to run the trial, and the fiscal told him that he felt very sympathetic towards me, and he would not be inclined to try and prosecute, but he had been ordered to.

Pauline McNeill: That is really helpful for our understanding. I am trying to relate what you are saying to the bill and to how the bill might help. You have explained really well what happened. Once things have kicked off, it is as if there is reaffirmation and more reaffirmation until the matter gets to the top. That seems like a cultural thing.

Ian Clarke: Yes.

Pauline McNeill: You might then think that, at least if there is another body that is independent from the police, it could say, “Hold on a minute,”

and everyone could get through it. That did not happen, however. We can perhaps check what the resource arrangements are for CAAPD, but do you happen to know whether it is a central unit or a regional one?

Ian Clarke: I think that it is central. Going back to 2016, I remember the solicitor at the time saying that, when Scotland had lots of police forces, there was one CAAPD unit for each force but, when the police centralised, they ended up with just one.

The Convener: We should be able to find that out.

Pauline McNeill: What you have said is very helpful, Mr Clarke. I am clear about your misconduct complaint, your retirement, the timescales and the delays: it is easy to work out what you think is wrong there. Other than that, is there anything in the bill that you think would have helped your situation, or is there anything missing from the bill that would have made the difference and that would have stopped the ball rolling before the case reached the criminal court two or three years on?

Ian Clarke: I would highlight what is in the bill regarding the duty of candour. The bill angles the duty of candour at the police officer who is being investigated, but I would like it to be made very clear that it is also about the police officers who are doing the investigations—that it also applies to them. The bill needs to make that really clear, and it needs to be accompanied by sanctions if there is a failure in that regard.

As for the one thing that the bill is missing, I was not sure what questions I was going to be asked, but I wrote down an answer that would be quite relevant to what you have said. In thinking about whether we should be required to produce a code of ethics and to introduce a duty of candour, my answer is yes, and that it should include consequences—disciplinary, criminal or both—for failure to comply. If they are ignored or broken, codes and duties that are not backed by sanctions are voluntary, and that can have very serious consequences, not just in relation to misconduct but for all investigations. It is hard to prove a lie. A duty of candour is a lower bar, and it should be easier to prove dishonesty.

The code and duty should not apply only to police officers who are under investigation; they should also apply to COPFS and the PIRC—the people doing the investigations. There is widespread mistrust within the police of the present misconduct system and of the behaviour of the PSD, the PIRC and CAAPD. As has been said, standards of investigation are poor.

I go back to a code of practice under a previous piece of legislation—it was introduced by Dame Elish Angiolini, incidentally. Section 164 of the

Criminal Justice and Licensing (Scotland) Act 2010 introduced a code of practice regarding the disclosure of evidence, including exculpatory evidence, and the requirements to investigate all reasonable lines of inquiry and to train reviewing officers to ensure that that happens. That is not backed by any sanctions for breaking that code.

My experience of the investigation into the allegation against me was that reasonable lines of inquiry were not followed, exculpatory evidence was not disclosed, my case was not subject to any review, and the code had been breached on multiple occasions.

My complaints to Police Scotland, COPFS and the PIRC were all about that but, with the code being voluntary, it was easy to excuse those breaches. I think that, in relation to how the police and, in criminal cases, CAAPD investigate complaints for which the section 164 code of practice is relevant, something like that code should be included in the bill. The code sets a standard to make investigations evidence led, fair, thorough and less able to be influenced by opinion. That could be applied to both criminal and non-criminal parts of the complaints system.

The bill states:

“Constables act with candour and are open and truthful in their dealings, without favour to their own interests or the interests of the Police Service.”

That is best achieved by evidence-led investigations, as set out in the code of practice, which means that scrutiny of standards is codified.

To give a practical example, we had a vandalism toolkit and a domestic violence toolkit. The toolkit basically said that, if vandalism or domestic violence is reported to you, you must do A, B, C and D. It stated that you must investigate those individual things, and that you are not allowed to conclude the investigation until that has been done.

Margaret Gribbon talked a lot about not being able to trust the police. You cannot. However, if there is a set procedure that they must follow and they will be punished if they do not do so, that would go a long way to driving up standards. I am sorry to say this, but all the evidence that I spoke about at the beginning shows that the police are reviewed, they are shown that they are not working to a very good standard and then nothing changes. A few years later, there is another review and another investigation, and nothing has changed. The only way to make the change is to force the change.

Pauline McNeill: I do not have any further questions. However, from what you have said, it is clear that duties of candour and honesty need to be applied to everyone, including witnesses and all the police officers who are involved in any

investigation. The issue is how we do that. Presumably, when they go to court, they take the oath anyway, and it is meant to be perjury if you tell lies in court. However, that is more difficult law.

That is really helpful—thank you.

Rona Mackay: Thanks very much for your evidence—it is really helpful to the committee. I want to ask you about non-disclosure agreements in misconduct cases. Were you subjected to one of those at any point?

Ian Clarke: No, I was not.

Rona Mackay: Do you know whether they are widely used?

Ian Clarke: I do not. I was told about questions that I might be asked, so I have looked up those issues. I do not see how non-disclosure agreements are compatible with the duty of candour, in which the duty is to be open and truthful in dealings. NDAs are the opposite of that.

In March 2023, the SPA reported on use of NDAs and stated that there was no attempt to prevent whistleblowing or to hide misconduct. However, in 2021, there was a freedom of information request about what NDAs were being used for. The response said that there was one relating to whistleblowing, one about sexual harassment and one about pregnancy. The majority were for sex, age or disability discrimination. All those are indicative of misconduct. One related to sexual harassment, but the police say that they are not covering up misconduct. I just do not see that.

I retired from the police. I thought about pursuing a case against Police Scotland, and I went to a solicitor, who initially said that the case would be on a no win, no fee basis. However, after one exchange of letters with Police Scotland, the solicitor came back and told me that he wanted a £16,000 down payment and expected the costs to double beyond that. That was the point at which I said, “No. Stop. I’ve had enough of this. I can’t cope.”

Rona Mackay: NDAs are not addressed in the bill. Maybe we should find out more about how widely used they are. I suspect that they should be addressed in the bill.

Ian Clarke: I think that I am safe enough mentioning Rhona Malone and Karen Harper. They were junior officers who complained against senior officers. When you look at the 2021 freedom of information request, it is very indicative that those were complaints against senior police and members of police staff. Those are the kind of cases where Police Scotland is using non-disclosure.

11:30

Rona Mackay: That is interesting. Thank you.

Sharon Dowey: I will go back to something that you said earlier. Did you say that when you were put under investigation, you spoke to a senior officer who said that you were on restricted duties because you were a danger to the public, but at that point you did not know what you had done?

Ian Clarke: Yes.

Sharon Dowey: So, there is an issue with the police misconduct disciplinary procedures. Did anybody speak to you about that at the beginning of the case, to take a statement or ask you for more details about what happened?

Ian Clarke: No. Again, the solicitor to whom I spoke told me that there was only one person dealing with all criminal complaints for the whole of Scotland. He also said that, if I was interviewed, he would be present and that I should give a statement. He said that he thought that in my case it was highly unlikely that I would be interviewed, because they play fast and loose with human rights. You need be told what the accusation is only if you are charged. If they do not interview you, they do not need to tell you what the complaint against you is.

I went nine months before finding out about the assault allegation. I was charged by a detective chief inspector, who basically told me that they did not see how it was an assault. Of course, under the culture then there was no way that he was going to turn around and say, "I'm not charging that police officer. This is nonsense. Get rid of this." The ball was already rolling, so he had to keep going.

Sharon Dowey: Is there anything in the bill that would have helped your case at that time? Would it have addressed the fact that you were put on restricted duties and told that you were a danger to the public? I take it that you saw the solicitor before you were told by your employer what the problem was?

Ian Clarke: Yes.

Sharon Dowey: Does the bill address that issue?

Ian Clarke: No, I do not think that it does. Here is a point. I arrived at work at 11 o'clock at night, walked into the custody suite and was greeted by an inspector whom I had never met in my life. It was really embarrassing; in front of all my colleagues, I was marched straight back out again, as she was saying to me, "I have no idea what this is about." At that moment, she should have had a very good idea of what it was about and I should have been told. Maybe the bill should address that.

In anecdotal evidence from others, I have heard that keeping police officers in the dark, as well as the length of time that the process takes, are features. I mentioned earlier the counter-corruption unit and the issues with data protection. My period of restricted duties was at the height of that happening. I knew that I just had to stay there and not ask anybody, or look up any system at all, because they would be watching me like hawks, had I finally cracked and tried to find out what was going on and why I was on restricted duties. A provision in the bill to stop that happening would help.

Sharon Dowey: I find that quite hard to believe. I do not know whether that could be dealt with through a provision in the bill. I am not sure whether the committee is sighted on the police procedures or can be sighted on them. It seems to be a bit bizarre that you can go for nine months without knowing why you are on restricted duties.

The Convener: That would be very much an operational issue, but we can maybe consider getting a wee bit more background information on the context of restricted duties, including when they are utilised, what they are utilised for and so on. We can come back to that.

Sharon Dowey: If you have people on restricted duties, that is also a strain on the police, because those people are not doing their full job.

When you were with Police Scotland, was there a sense that officers resign as a way to avoid scrutiny as part of the misconduct process, or do people resign because of the stress that they are under while being investigated?

Ian Clarke: Both. From my experience and from general anecdotes and having seen things happen to colleagues, the answer is that it happens for both reasons. In the present system, the bad apples can quite easily escape, which drives out the good apples because of the inadequacies in investigation. As I said, the evidence shows the incredibly poor conviction rate.

Sharon Dowey: Do you agree that it should be possible for the misconduct procedure to commence and continue against former officers for allegations that, if proved, would amount to gross misconduct, or should it apply only to gross misconduct?

Ian Clarke: If somebody retires or resigns and the allegation against them is incivility during an arrest—something minor—I do not see why it would be reasonable for that process to continue. However, it should be automatic for all criminal cases and, maybe, for the most serious misconduct cases.

Sharon Dowey: By the same token, how do you feel about the intention to allow proceedings

against former officers to commence or continue for up to 12 months after an officer has left the force, unless specific criteria are met?

Ian Clarke: I also agree with that. All parts of the legal process have time periods after which it is accepted that it would be unfair, or possibly a breach of human rights, to continue them.

The Convener: In your evidence, you raised the issue of the Lord Advocate's code of practice on disclosure of information not being enforced with regard to criminal allegations that are made against police officers. Can you provide the committee with a bit more information and your thoughts on that? What do you think might be required to resolve that issue?

Ian Clarke: That code of practice is—like the vandalism toolkit—a very good code for instructing the police and for setting out how an investigation should be conducted. The Criminal Cases Review Commission and the evidence-based justice lab at the University of Exeter found that the most common causes of miscarriages of justice—I argue that what happened to me was a miscarriage of justice—are official misconduct and disclosure failings. From my experience of what happened in my case and anecdotally from others' experience, the problems that happen in all police investigations seem to be particularly acute when it comes to complaints handling and misconduct investigations.

The Convener: That is an interesting point.

Fulton MacGregor (Coatbridge and Chryston) (SNP): Good morning, and thank you for your evidence so far. A lot of it seems to me to come down to the initial period, which seems to be absolutely crucial. We have heard evidence from you today about a truly horrendous situation that might, had matters been dealt with properly in the first place, never have transpired. We have also heard, from other witnesses, evidence of almost the opposite—that had things been looked at properly in the first place, the situation could have been dealt with better.

Do you have any ideas—either on what the bill proposes or any other suggestions—about how the process can be made better at that very early stage, when complaints are first made? I know that you have talked a lot about that today. What can we, as a committee, do with regard to the bill?

Ian Clarke: I think that I will be repeating myself. If all police officers know from the start that there is a set standard to which they have to investigate allegations, that should drive up standards from the very beginning.

I will give an example. As a custody sergeant, the most common complaint that I received was, "These handcuffs are too tight." That was

investigated by me putting my finger inside the handcuffs and looking for marks around the wrists to establish whether that was the case. If the handcuffs were not on too tight and there were no marks around the wrists, end of—I would not take the complaint.

The complaint against me was apparently that I had, in effect, assaulted that person but right from the very beginning—within 20 minutes, or maybe less—they were examined by a nurse who found no injury. Therefore, that complaint should have been kicked out instantly, because what the witness was describing did not match what could be seen. That should have been picked up at the very beginning. The only thing that I can think of that would help would be that, from the very beginning, those who carry out an investigation know what they must do when that happens.

Fulton MacGregor: It is interesting that you gave that example, because that was where I was going with my second question. Let us take the discussion back to all complaints about the police from members of the public. I am sure that we can all imagine—you will know from your experience, because you have cited an example—that a substantial proportion of those complaints will possibly be either minor or common, such as handcuffs being too tight, or even malicious, on the basis of someone's interactions with the police. A lot of other complaints are really serious. How do we ensure that there is a system that can deal with such cases adequately by branching them off quite quickly so that police resources are not used up? Do you understand where I am coming from on that?

You gave the example of a complaint about handcuffs. With regard to the bill, you would probably want the process for investigating such things to continue to be dealt with in the way that you described, but does that need to be included in an earlier system that deals with everything?

Ian Clarke: It seems that important aspects of the bill are the codifying of ethics and the duty of candour. I say that the bill should also codify exactly how an investigation is conducted. Funnily enough, one of the issues is that I am sure that a lot of members of the public would probably think that that is quite funny—"Ho, ho. What happened to me happened to that police officer." However, the fact that it happened to me explains why it will often happen to the public. If police officers have more confidence in the system, they will engage more with it. If they see a system that they know has been, in effect, codified to be fair and thorough, to follow set procedures and to avoid certain types of complaint not being dealt with as they should be, which was mentioned earlier—Margaret Gribbon referred to that—it would then be hard for that kind of situation to happen.

The Convener: We know that the trial that you were the subject of concluded that, in essence, there was no case to answer. I am interested in whether there was any acknowledgement of that by Police Scotland—whether there was any apology or redress—and what that would mean to people who are in the situation in which you found yourself. Should Police Scotland at the very least acknowledge that what happened was, in essence, an injustice?

Ian Clarke: I think that the bill's proposal on the duty of candour would make it harder for Police Scotland to do what it did to me, which was basically to excuse what happened, which was clearly wrong. Yes—it would be nice to have an acknowledgement from Police Scotland. You are probably thinking more about police officers who retire or resign and thereby escape a misconduct hearing. However, I am certainly in the other group of people: I would have loved, after I retired, to go to a misconduct hearing to get my head around why Police Scotland did to me what it did.

There are other consequences. I now work for a local authority. Obviously, it wanted a reference from my past employer. I had to say, "You're not going to get one", then explain why I was not going to give the local authority a reference from Police Scotland. At least I had a couple of very detailed news reports, thanks to the *Daily Record*, to explain what had actually happened. I was able to show that to say, "This is why you're not going to get a reference from my previous employer." However, other police officers might not have that. Misconduct might have been reported in the press, but there might then have been nothing further reported, so they will have that allegation over their heads forever. The process can take so long that police officers genuinely retire during it; the situation would particularly affect such officers. Therefore, there should be a conclusion.

The Convener: Thank you. It seems to be bizarre that you had to seek recourse to media coverage of your case.

We have just about come to the end of our time, Ian. As members have no more questions, would you like to add anything that we have not discussed this morning? Is there anything that the committee should know with regard to the bill's provisions?

Ian Clarke: No. As you can see, I had written things down. I am quite confident that I have been through them and raised all the points that I wished to raise. Thank you.

The Convener: Thank you very much indeed. We are grateful to you for taking the time to come in. The committee has picked up a lot of valuable ideas and perspectives from you.

We will have a short suspension to allow our witness to leave.

11:45

Meeting suspended.

11:51

On resuming—

Subordinate Legislation

Police Pension Scheme (Scotland) Amendment Regulations 2024 (SSI 2024/80)

The Convener: Before the committee goes into private session to review this morning's evidence, we will consider a negative Scottish statutory instrument. I refer members to paper 4.

Before we begin, I wish to declare that I am a retired police officer—with Grampian Police and Police Scotland—so I have an interest in these pension matters.

Members have no questions on the instrument. Are members content with it?

Members *indicated agreement.*

The Convener: That completes our deliberation on the SSI and the public part of our meeting.

11:52

Meeting continued in private until 12:28.

This is a draft *Official Report* and is subject to correction between publication and archiving, which will take place no later than 35 working days after the date of the meeting. The most up-to-date version is available here:
<https://www.parliament.scot/chamber-and-committees/official-report>

Members and other meeting participants who wish to suggest corrections to their contributions should contact the Official Report.

Official Report
Room T2.20
Scottish Parliament
Edinburgh
EH99 1SP

Email: official.report@parliament.scot
Telephone: 0131 348 5447
Fax: 0131 348 5423

The deadline for corrections to this edition is:

Friday 24 May 2024

Published in Edinburgh by the Scottish Parliamentary Corporate Body, the Scottish Parliament, Edinburgh, EH99 1SP

All documents are available on
the Scottish Parliament website at:

www.parliament.scot

Information on non-endorsed print suppliers
is available here:

www.parliament.scot/documents

For information on the Scottish Parliament contact
Public Information on:

Telephone: 0131 348 5000
Textphone: 0800 092 7100
Email: sp.info@parliament.scot

