I welcome Dame Elish Angiolini QC’s comprehensive review, which exposes a police complaint system not fit for purpose in a modern and democratic Scotland.

**My Background:**

Over the last 25 years both as campaigner and then a lawyer I have raised serious concerns about the role of the bodies involved in the investigation of police misconduct believing our system to be fundamentally flawed, lacking impartiality, transparency or robustness.

For the last five years I have of course represented the family of Sheku Bayoh who died in police custody, however as there is a pending public inquiry it would be inappropriate to raise those issues here.

Over the course of the last decade I have also represented multiple police officers forced to contend with flawed criminal investigations and misconduct investigations that have wrecked the lives of laws-abiding officers which led to my calling for the disbanding of the counter corruption unit and changing regulations to ensure that Data Protection Laws should not be used to ‘persecute’ innocent officers.
Following the successful defence of serving police officers on the issue of the Data Protection prosecutions, I was invited by Police Scotland to be a member of the SPA’s Counter Corruption Unit Reference Group. Over the last two years I was invited to give evidence to Dame Angiolini which uniquely has been based on the experience of civilian clients as well as those police officers I have represented.

This review is substantial, so I have tried to select what I believe to be the most fundamental issues and would welcome an opportunity to give a more detailed response in the new year as well as give evidence if required.

It is disappointing that an invite for submissions was not at this stage sent out to many of the organisations or individuals who submitted evidence to Dame Angiolini. I hope that an opportunity can also be afforded in due course to those who have felt the full impact of complaints investigations.

PIRC
In the most serious of cases the PIRC supposedly an independent investigating body with the equivalent powers of the police has appeared powerless when it comes to a death in custody.

Following a death in custody, repeated media leaks from ‘police sources’ are often seen as an attempt to criminalise, stereotype and negate the right to life of the deceased and build a narrative, whilst Police Scotland itself is frustrated at not being allowed by the Crown to speak on the issue, often for many years.

The impact of delays and leaks is a shattering of any confidence by the family of the deceased in the system to deliver justice and the truth. It is clear the present complaints process has neither the confidence of members of the public or even police officers. In several areas PIRC has been described as ‘toothless’ and reform is called for in areas where the police continue to investigate the police.
On far too many occasions senior officers have been ‘hung out’, reputations destroyed as matters were played out in press releases, PIRC Website updates allowing an atmosphere of innuendos.

**FUNDAMENTAL REFORM OF PIRC**

There must be legislative change leading to fundamental reform of PIRC and the whole system of police complaints as recommended by Dame Angiolini, if Police Scotland is to command the respect and confidence as a modern service.

I welcome that “The PIRC should be made accountable to the Scottish Parliament and should be appointed by HM The Queen on the nomination of the Scottish Parliament. The PIRC should not be accountable to the Parliament for criminal matters, for which the Commissioner is accountable to the Lord Advocate, and not for operational matters or decisions, in which she acts independently.”

**Former Police Officers**

There is a common perception that police officers who were guilty of serious wrongdoing could escape justice by retiring or resigning before, during or after an investigation, and that this had the effect of forcing the termination of the statutory misconduct proceedings. I welcome the finding and recommendation at paragraphs 49-

“I believe there is a strong public interest in dealing fully and thoroughly with police officers’ gross misconduct after they have left the police service and no longer hold the important office of constable.”

**CONFLICTING RESPONSES TO THE REVIEW**

The review will not make easy reading for Police Scotland’s Senior Executive. The commentary by the Chief Constable, the Scottish Police Authority and HMICS displays a genuine desire to learn and change and to listen to those associations whose members may face discrimination, yet their approach stands in stark contrast to the depressing and defensive response by the Scottish Police Federation.
Both the SPF’s submission to this committee and public statements following the review has been deeply disappointing, reflecting an unwillingness to change, hostile and defensive in its tone and what can only be perceived as a ‘child-like denial’ of the discrimination and racism found by the Review. It is unfortunate that the SPF refers to recommendations with inflammatory rhetoric such as ‘satisfying the blood lust of some’.

Whilst accountability and transparency has quite rightly been called for from Police Scotland, PIRC and the SPA, the SPF appear to be a law unto themselves (unlike in England and Wales the SPF cannot be subjected to freedom of information requests.) One can only imagine the despair of BAME officers or their associations to see their allegations raised in the review dismissed by the SPF as ‘partial’ and ‘untested.’

**RACISM & DISCRIMINATION**

One of the most serious allegations uncovered in the review is the issue of discrimination and racism. For far too long there has been a culture of denial of the issue of racism especially by those who represent the rank and file, the Scottish Police Federation. The fact is that they cannot even use the word ‘racism’ is telling, rather they prefer to refer to it as issues of diversity.

The review heard evidence from different groups and police officers that felt that “the Scottish Police Federation (SPF) did not represent all its members equally and that they did not represent Black, Asian and minority ethnic officers well. They were described as lacking empathy for minority groups and reliant on other support groups in relation to race issues.”

The Federation during the ‘Black Lives Matter’ protests on the 9th June 2020 in a circular to its members stated, “We also cannot be clearer that we reject any assertion that the Police Service of Scotland is institutionally racist.”

9.56 The Review heard evidence from different groups that they felt that the Scottish Police Federation (SPF) did not represent all its members equally and that they did not represent Black, Asian and minority ethnic officers well. They were described as
lacking empathy for minority groups and reliant on other support groups in relation to race issues.

9.57 In evidence an officer told the Review that she had not felt able to go to the SPF for help. She noted that the SPF represented “both sides” in internal complaints and that there was a lack of information for people who were the subject of a grievance; HR told them to go to the SPF, but not everyone is a member of the SPF.

At paragraph 34
34. Much of the evidence presented to me by some serving officers from Black and Asian minority ethnic communities was a chastening reminder that in the police service and in the wider community attitudes have not changed as much as they should have since 1999 - the year of the Macpherson report of the Stephen Lawrence Inquiry - or as much as we may like to believe that they have.

35. The Review heard evidence that although there was a drive to recruit officers from the Black, Asian and minority ethnic communities, the experiences of some recruits had caused them to leave the profession, often within three to five years. The Review was told during a focus group that ethnic minority officers were leaving because of the culture of the police and the way they were treated.

The review states that “BAME officers are fearful of reporting for fear of being characterised of playing the ‘race card’”

Whilst senior leadership have led the drive for diversity there is not a single officer from a minority ethnic background in a senior role above the rank of chief superintendent.

Whilst the SPF claim they have ‘excellent working relationships with the diversity staff associations’, one wonders why they fail to address the criticism they face from BAME officers and other groups who gave evidence to the review.
Perhaps such an approach reflects the fact that in 2020 the committee of the SPF of over 130 members appears to be visibly ‘all white’.

They also appear unwilling to address the conflict of interest that involves the SPF defending perpetrators, i.e. those accused of racism/discrimination whilst the complainers feel they are unrepresented or supported.

Dame Angiolini after referring to the Stephen Lawrence Report of 1999 on pages 132 states-

“Much of the evidence presented to me was a chastening reminder that in the police service and in the wider community attitudes have not changed as much as they should have since those words were written, or as much as we may like to believe that they have.”

page 139 para 9.35 it states a following a discussion with BAME officers-

“On the subject of promotion, that officer commented pointedly that it was easier for a person from a Black, Asian or minority ethnic background to become a doctor than to become a sergeant in the police.”

The PIRC’s website is sorely lacking in information relating to equality and diversity. Of course, this may simply be because PIRC finds itself generally lacking in this regard. The organisation’s gender equality figures are rightly public available\(^1\). No information, however, is available as regards the ethnic makeup of the organisation. In the context

**Guidance on discrimination for investigators pg. 149**

It is unacceptable that PIRC does not have any specific guidance for investigations on race and discrimination,

I therefore welcome the call for a broader, fundamental review of equality matters by an independent organization as well as the Chief Constable’s response to this request.

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POST-INCIDENT CONFERRAL FOLLOWING A DEATH IN CUSTODY-

One of the most damning criticisms made following deaths in custodies is the issue of ‘post-incident management’, where officers returning to their Police Office following a death are able to sit with each other and confer whilst refusing to provide operational statements to senior officers or the PIRC. There can be no justifiable reason to allow this to continue.

I welcome the recommendation

“In the case of a death in custody or following police contact, or in certain other circumstances, unless there are reasonable grounds to suspect criminal activity about the actions of an officer or officers, each individual officer should be interviewed as a witness as soon as practicable after the event and without reference to or conferral with other police officers or other witnesses.” (para 51 page 34)

The public have a legitimate expectation that police officers will give every assistance after a serious incident, families of the deceased should not have to learn that police officers can simply refuse to give statements to the PIRC for some several weeks whilst a narrative is drip fed to the media by their representatives or so called ‘police sources’

I welcome the recommendation at para 52-

“That assumption of co-operation should be put beyond doubt in the primary legislation, including in the wording of the constable’s declaration. Where such an 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.”

I welcome the finding on early separation of officers para. 53 page 34.

“Early separation of officers, other than in pressing operational circumstances, is the best way to ensure non-conferral in practice, give transparency to the process and preserve the integrity of each individual’s evidence. This is both in the interests of the individual police officers themselves and in the public interest in order to safeguard public confidence in the integrity of
their evidence. It is also standard practice when dealing with groups of witnesses who are not police officers. Civilian witnesses are separated as a matter of course to prevent the contamination of evidence......”

**Preservation of Evidence:** The state has a positive obligation to provide an effective investigation where a death has occurred in circumstances potentially engaging its responsibility. One aspect of this duty is the preservation of evidence. In the context of a death whilst being restrained by the police a great number of the most critical witnesses are likely to be police officers themselves. It is therefore imperative that their account is recorded accurately, without contamination or collusion.

The risks of contamination and collusion are well-established and can potentially contribute to a violation of the state’s obligation to protect life in terms of Article 2 of the European Convention on Human Rights. Repeated recommendations have been made about the importance of preserving evidence after a death in custody. The Casale review\(^2\) supported separation of police officers to prevent contamination or collusion. It recommended that “from the moment it is operationally safe to do so, [the police officers involved] should be kept separate until after their detailed individual factual account is obtained.”

**PARAGRAPHS 7.91 TO 7.104- PAGES 108-112**

7.1 Conferral happens when police officers or support staff who may have been involved in a serious incident come together at the conclusion of the incident to recover from the trauma of the incident and talk with each other....Post-incident procedures designed to manage the aftermath of a serious incident are critical because they mitigate the risk of evidence being contaminated, including the risk that in talking with each other officers who are witnesses might unknowingly influence the views of their colleagues. The perception that such interactions have happened can also have a detrimental impact on public confidence generally and the attitude and involvement of victims, families and other witnesses.

7.2 In the case of a death in custody or following police contact, or in certain other circumstances, unless there are reasonable grounds to suspect criminal activity about the actions of an officer or officers, each individual officer should be interviewed as a witness as soon as practicable after the event and without reference to or conferral with other police officers or other witnesses.

It is unacceptable that officers who are the “golden” witnesses to a death in their custody can refuse to assist in ascertaining the facts of the incident and that PIRC has no power to bring to bear with a view to obtaining the accounts of the relevant officers.

As time passes, recollections fade, and when taken in isolation from, or alongside the possible contamination referred to above, this means that the best evidence may no longer have been available by the time that officers eventually agreed to speak to investigators.

PIRC has no power to require a serving police officer to attend for interview. If a police officer simply declines to cooperate with a PIRC enquiry at all, unless PIRC considers it can properly arrest the officer then nothing can be done by PIRC to compel that officer to cooperate.

Neither is there now any requirement upon any officer facing possible criminal proceedings to produce an operational statement. As was noted by the Review of IPCC’s work in investigating deaths, other professionals exercising public functions such as doctors, nurses and social workers are under an obligation in terms of their professional codes to cooperate fully with professional investigation.

Delays cause significant distress to families of the deceased and the wider community, who are unable to understand why those officers would not cooperate with the inquiry. Such a damage to confidence in the state to properly account for its actions and for those of its individual actors is not easily repaired.

It is unclear why a move towards a general requirement of co-operation on part of police officers in deaths in custody would be desirable in England and Wales but not worth
considering in Scotland. It goes without saying that any reforms would require to respect the fundamental right of the privilege against self-incrimination, as recognised by the European Convention on Human Rights.

Police officers have a responsibility to give appropriate co-operation during investigations, inquiries and formal proceedings, participating openly and professionally in line with the expectations of a police officer when identified as a witness.

Therefore, I welcome the recommendation to place this on a statutory basis and it is only right that officers have a duty to assist.

THE COMPOSITION OF THE POLICE INVESTIGATIONS AND REVIEW COMMISSIONER (page 73-74).

For some members of the public, some serving police officers and some former officers, the knowledge that the PIRC is partly staffed by former police officers discouraged them from believing in the PIRC’s independence; it was feared that the PIRC investigators’ association with former colleagues might influence their judgement.

PIRC’s figures show that 54% of staff within the Investigations Team previously served with one of the eight Scottish legacy forces.\(^3\) As such, even before any officers previously employed in other jurisdictions are taken into account a majority of those carrying out the crucial task of investigation come from a policing background. This is significantly higher than the equivalent in England.\(^4\)

PIRC does not detail the background of its senior investigators, and only publishes details of its “Executive Team”, which in of itself is indicative of its lack of transparency. Both the Director of Operations and Head of Investigations come from a Scottish policing background.\(^5\)

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\(^5\) [https://pirc.scot/about-us/who-we-are/](https://pirc.scot/about-us/who-we-are/) (Accessed 8/18)
from equivalent organisations such as the former-IPCC indicates that police officers tend to be even more disproportionately represented at senior levels of the investigatory tree. The issue of ex-police officers investigating other officers is compounded in circumstances where the investigator was formerly employed by the force he or she now investigates.

**Data-paragraphs 7.10 to 7.13 pages 83 to 85**

While Police Scotland holds basic statistical data on the numbers of complaints it receives, its IT systems do not collate information on the gender, ethnicity or other aspects of the profile of those complaining or about the nature of the complaint in such a way as to facilitate readily analysis or research. This is unacceptable and we welcome the demand for such data to be collected.

**Body-worn video cameras (417- 420)**

There are approximately 80,000 body-worn video cameras in use by police officers in England and Wales. The arguments in favour of the use of body-worn video cameras include keeping the police accountable by providing evidence and corroboration; protecting officers from assaults or false accusation because the action of recording moderates the behaviour of all parties. I welcome the call for their introduction to Scotland.

**IN CONCLUSION**

Dame Elish Angiolini QC has produced a powerful and authoritative report that could turn Police Scotland into a modern 21st Century service that has the respect and confidence of both its officers as well as members of the community. It is imperative that the various institutions who stand accused of failing to deliver change are not allowed to obstruct or delay the implementation of the recommendations of the Review.

The power imbalance between bereaved families and the state is the most significant injustice of the complaints process. Creating a fairer and more just complaints system will ultimately protect lives and increase public confidence in policing. A thorough and independent investigation of complaints against the police is essential in any democratic society.