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Police Investigations &
Review Commissioner



**POLICE
SCOTLAND**
POILEAS ALBA

SCOTTISH POLICE
AUTHORITY

MEMORANDUM OF UNDERSTANDING

Between

The Police Investigations and Review Commissioner

and

The Chief Constable of the Police Service of Scotland

and

The Scottish Police Authority

For the purposes of ensuring effective co-operation between PIRC, PSOS, and the Authority in the provision, sharing and exchange of information or services, to allow each organisation to fulfil their statutory functions and obligations.

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Document Details	
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Glossary of Terms

The following acronyms and abbreviations are used throughout this document:

PSOS / Police Scotland	Police Service of Scotland
The Authority	Scottish Police Authority
PIRC	The staff of the Police Investigations and Review Commissioner
The Commissioner	The Police Investigations and Review Commissioner
COPFS	Crown Office and Procurator Fiscal Service
ECHR	European Convention on Human Rights
The 2006 Act	The Police, Public Order and Criminal Justice (Scotland) Act 2006
The 2012 Act	The Police and Fire Reform (Scotland) Act 2012
The 2013 Order	The Police and Fire Reform (Scotland) Act 2012 (Consequential Provisions and Modifications) Order 2013
The 2013 Regulations	The Police Investigations and Review Commissioner (Investigations Procedure, Serious Incidents and Specified Weapons) Regulations 2013
The Senior Officer Conduct Regulations	The Police Service of Scotland (Senior Officers) (Conduct) Regulations 2013
The 2016 Act	The Criminal Justice (Scotland) Act 2016
UK GDPR	The UK General Data Protection Regulations
DPA	The Data Protection Act 2018
CHR	Complaint Handling Review
PAVA	Pelargonic Acid Vanillylamide (Incapacitant Spray)
NIB	National Intelligence Bureau
SPR	Standard Prosecution Report
The 2017 Order	Police Investigations and Review Commissioner (Application and Modification of the Criminal Justice (Scotland) Act 2016) Order 2017

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INTRODUCTION

1. Introduction and Purpose

1.1 This document details a Memorandum of Understanding (MoU) between:

- The Police Investigations and Review Commissioner (hereinafter referred to as the Commissioner), having their Head Office at Hamilton House, Hamilton Business Park, Caird Park, Hamilton, ML3 0QA
 - The Chief Constable of the Police Service of Scotland (hereinafter referred to as the Chief Constable), having their headquarters at Tulliallan Castle, Kincardine, Fife, FK10 4BE;
- and
- The Chief Executive of the Scottish Police Authority (hereinafter referred to as the Authority) having their headquarters at 2 Clyde Gateway, French Street, Glasgow, G40 4EH .

1.2 This MoU sets out how parties will work together to fulfil their statutory functions. It describes the respective functions, powers, duties and obligations of each of the parties in accordance with all applicable legislative provisions.

1.3 In applying the MoU, all parties will work collaboratively and in a spirit of mutual co-operation to fulfil their respective functions and responsibilities. The Chief Constable, the Commissioner and the Authority agree that any member of their staff or police officer will seek to adhere to the procedures or processes outlined hereinunder in this MoU. It is acknowledged, however, that circumstances may arise in which it is necessary for one or more of the parties, acting in good faith, to depart from the terms of this MoU.

2. Effective Date and Periodic Review

2.1 This MoU becomes effective when signed by all parties.

2.2 This MoU will be reviewed after three years. Any Party to this MoU may request a Review, in writing, at any time and interim reviews must be implemented should any changes to the legislative framework the MoU operates within be made.

2.3 Any party may seek to end this MoU, giving 1 month's notice, in writing to all other parties.

3. Statutory Functions

- 3.1 The primary legislative functions for the Commissioner are contained within the 2006 Act and the 2013 Regulations. For the Chief Constable and the Authority these are contained within the 2012 Act and the Senior Officer Conduct Regulations.

4. Information Sharing

- 4.1 There is a requirement for information to be shared by Police Scotland and the Authority to PIRC to enable PIRC to discharge its statutory function¹.

- 4.2 PIRC currently has access to Police Scotland's Criminal History System (CHS).

In addition to accessing the CHS system, PIRC also receives information from Police Scotland via Egress. With the introduction by Police Scotland of Body Worn Video (BWV) there will be circumstances when footage from the BWV cameras will be provided to PIRC. Police Scotland's Professional Standards Department (PSD) will be the point of contact for PIRC and PSD will coordinate the provision of the BWV footage to PIRC.

For all information provided to PIRC from Police Scotland and the Authority, PIRC will ensure that all requirements are met in accordance with the UK General Data Protection Regulation (UK GDPR) and Freedom of Information (Scotland) Act 2002 (FOISA) and in accordance with PIRC's Record Retention Policy.

PART 1 – INVESTIGATIONS

5. PIRC Investigations

- 5.1 PIRC's investigative function is as set out at Sections 33A, 41B and 41C of the 2006 Act².

6. COPFS Directed Investigations

- 6.1 COPFS may direct PIRC to undertake investigation of:

- Criminal allegations against serving police officers, members of police staff or members of the Authority's staff; and
- Deaths in custody or deaths following police contact.

¹ Police Investigations and Review Commissioner (Investigations Procedure, Serious Incidents and Specified Weapons) Regulations 2013/118 (Scottish SI) Regulation 5 – Co-operation and assistance.

² While PIRC's statutory investigative function relates to all policing bodies operating in Scotland, for the purposes of this MOU, reference is made to Police Scotland and the Authority only.

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- 6.2 COPFS has also issued standing instructions to PIRC in terms of section 33A(b)(i) of the 2006 Act to investigate:
- all allegations of 'on duty' criminal assault and associated offences made against police officers or police staff; and
 - certain allegations of unlawful detention (and all associated criminal allegations), occurring in Scotland, made on or after 1 April 2024 that have been notified to PIRC by Police Scotland.
- 6.3 The allegations of unlawful detention to which the standing instruction applies includes only those allegations of unlawful detention that would amount to obvious criminal conduct if established, i.e. where the principal criminality alleged is a deliberate intention on the part of a police constable or Police Scotland member of staff to unlawfully deprive the complainer of their liberty. It is not intended that the standing instruction will apply to any allegation of unlawful detention that arises as an ancillary allegation following upon a principal criminal allegation concerning another matter, or where the unlawful detention has not been deliberate but has occurred because of mistake or maladministration.

6.4 Notification and Timescales

Police Scotland will notify COPFS and PIRC of:

- any death in police custody; and
- any death following police contact.

Notification by Police Scotland to COPFS and PIRC should occur as soon after the incident as reasonably practicable. In the case of a death occurring 'out of hours' Police Scotland should notify COPFS at the earliest opportunity.

Where PIRC is directed by COPFS to investigate a criminal allegation against a police officer or member of police or Authority staff, PIRC will notify Police Scotland or the Authority, as appropriate, **within three working days**.

7. Referrals by Police Scotland and / or the Authority

- 7.1 Police Scotland or the Authority, as appropriate, must request PIRC investigate any serious incident involving a constable, member of police staff or member of the Authority's staff.
- 7.2 Upon receipt of such request, PIRC will assess the referral and determine whether or not an investigation is required.
- 7.3 Referrals by the Authority will, unless not available, be made by its Chief Executive or Deputy Chief Executive Officers.

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- 7.4 Referrals by Police Scotland will be made via PSD, except for referrals in respect of any use of Pelargonic Acid Vanillylamide (PAVA) by officers which will be made on agreed pro-forma documents via Police Scotland's Operational Safety Training (OST).
- 7.5 Referrals to PIRC will normally take the form of a briefing document outlining the full circumstances of the incident as known at the time of referral. The briefing document may be accompanied by statements, CCTV or any other material considered appropriate by Police Scotland or the Authority to allow PIRC to make an assessment.
- 7.6 Where insufficient information is available, PIRC may request such additional material from Police Scotland or the Authority as is required.
- 7.7 PIRC undertakes to complete its assessment within **5 working days** following receipt of the referral (and any additional material requested or provided) and notify Police Scotland or the Authority of its decision.
- 7.8 Deaths and serious injury in police custody, deaths following police contact or discharge of conventional firearms leading to injury may be referred verbally to PIRC by PSD to allow immediate decisions to be taken. A follow up briefing document and other relevant material must be provided to PIRC as soon as practicable thereafter.
- 7.9 Where Police Scotland instigate Post Incident Procedures (PIP) following a death or serious injury, PIRC will be notified immediately of the decision by PSD and afforded the opportunity to attend the incident and PIP suite(s) dependent on circumstances. Such a notification will be considered a referral to PIRC.

7.10 Notification and Timescales

Police Scotland will undertake the following notifications to PIRC:

- For a death following police contact and where it is considered that there may be contributable or causal factors, notification will occur as soon after the incident as is reasonably practicable.
- For incidents where serious injury has occurred and the person's life may be at risk given the nature of the injuries, notification will occur as soon after the incident as is reasonably practicable.
- For an incident where conventional firearms have been discharged resulting in injury but not death, and in all instances where a PIP is instigated, notification will occur immediately after the incident to allow PIRC attendance at the PIP.
- For all other incidents, including use of Taser, notification will occur **within 24 hours** of PSD being informed of the incident or on the Monday following any incident occurring at a weekend.
- For a PAVA discharge, notification will occur **within 5 working days** of the incident.

8. Misconduct

8.1 Conduct issues relating to Senior Officers

Where Police Scotland receives an allegation of misconduct against a senior officer,³ it must provide the Authority with all details of the allegation to allow the Authority to conduct an assessment of whether the conduct – if proved – would amount to misconduct or gross misconduct. If the Authority determines that the conduct would amount to either, it must decide whether the allegation is to be investigated. If it is to be investigated, it must refer the allegation to PIRC.

- 8.2 Where PIRC assesses that the alleged conduct, if proved, would amount to gross misconduct, it must investigate the allegation. Where PIRC assesses that the alleged conduct, if proved, would amount to misconduct, PIRC may investigate the allegation or refer the allegation back to the Authority (with such recommendations as are considered appropriate). Where PIRC assesses that the alleged conduct would amount to neither misconduct nor gross misconduct, PIRC must refer the allegation back to the Authority (with such recommendations as are considered appropriate).
- 8.3 PIRC undertakes to complete its assessment of any referrals from the Authority within **5 working days**. Where additional information is required to allow the assessment to be completed, PIRC will complete its assessment **within 5 working days** of receipt of any additional material. On completion of its assessment, PIRC will notify the Authority of its decision.
- 8.4 PIRC undertakes to complete any investigation timeously. In this regard, the Authority and Police Scotland will provide all necessary assistance to facilitate access to witnesses as soon as possible. Where a person is on sick leave, PIRC will ascertain if there is a medical reason why they cannot be interviewed. Where there is no medical reason why the person cannot be interviewed, PIRC will seek to interview the person in order not to delay the overall investigation.
- 8.5 The Authority and Police Scotland undertake to provide PIRC with all documents or other material requested, as part of such a conduct investigation, **within 15 working days** of receipt of a request. Where it is not practicable to meet this timescale, the Authority and Police Scotland will notify PIRC and seek to agree a timescale within which such documents or material can be provided.
- 8.6 Where further allegations are made during the course of an investigation, which are referred by the Authority to PIRC, PIRC undertakes to complete its assessment of these referrals **within 5 working days**. Where additional information is required to allow the assessment to be completed, PIRC will complete its assessment within **5 working days** of receipt of this. On completion of its assessment, PIRC will notify the Authority of its decision.

³ Senior officer being an officer of Chief Constable, Deputy Chief Constable or Assistant Chief Constable rank – s7 Police and Fire Reform (Scotland) Act 2012, as amended.

8.7 Conduct issues relating to Federated or Superintendent ranks and members of police or Authority staff

PIRC has no legislative authority to investigate potential misconduct by Federated or Superintendent ranks or members of Police Scotland or Authority staff.

8.8 If, when undertaking any type of investigation, PIRC identifies such potential misconduct; conduct which may breach the Standards of Professional Behaviour⁴ (Appendix F); or conduct that may be considered a performance or disciplinary matter, there is a legitimate public interest and expectation that such matters will be investigated. As such, PIRC will notify PSD or the Authority to allow those organisations to conduct the necessary internal investigation.

8.9 Section 46 of the 2006 Act provides that PIRC may disclose information obtained during the course of an investigation for the purpose of enabling Police Scotland or the Authority to carry out any function. Nothing in that section requires or authorises the disclosure of any information relating to a particular investigation carried out by PIRC on the direction of the appropriate prosecutor under section 33A(b) of the 2006 Act **unless the appropriate prosecutor consents to such disclosure.**

8.10 Co-operation, Assistance and the Provision of Information

8.11 Regulation 5 of the 2013 Regulations sets out the co-operation and assistance that must be provided to PIRC by Police Scotland and the Authority in order that PIRC can carry out investigations effectively. These obligations apply specifically to investigations conducted under section 33A(c) and (d) of the 2006 Act. Police Scotland and / or the Authority undertake to provide to PIRC **within 15 working days** of request, any information, records, documents or recordings requested as relevant to the investigation. Where it is not possible or practicable to meet this timescale, Police Scotland and / or the Authority undertake to notify PIRC accordingly and agree revised timescales within which the information will be provided.

8.12 Information Sharing for Conduct or Misconduct Proceedings where a Criminal Investigation Occurs

PIRC will notify Police Scotland or the Authority **within 48 hours** of the submission of a report to COPFS CAAPD. It is for Police Scotland or the Authority, as appropriate, to notify the subject officer(s) when there is a reasonable inference of criminality and to provide specific detail of the allegation. It is for Police Scotland or the Authority to put in place sufficient measures relating to welfare considerations for a subject officer or member of police or Authority staff. Police Scotland or the Authority will notify the subject officer, member of police staff or member of the Authority's staff that they are subject to a criminal investigation by PIRC.

8.13 Information will not be provided by PIRC to Police Scotland or the Authority for the purpose of conduct or misconduct proceedings, without the prior consent of COPFS⁵.

⁴ See Appendix F.

⁵ Section 46(6) of the 2006 Act.

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Where appropriate, limited disclosure – being information necessary to advise Police Scotland or the Authority the nature of any allegations at the outset and whether there is likely to be additional offences – may be provided with COPFS consent in order to allow consideration by Police Scotland or the Authority of relevant conduct matters.

- 8.14 During the investigation if there are any significant developments that substantially weaken or strengthen the case against the officer, the timing and disclosure of such information will be discussed and agreed with COPFS to ensure that the ongoing investigation and any potential criminal proceedings are not compromised.

8.15 Witness Statements

Regulation 5 of the 2013 Regulations provides for co-operation and assistance. A relevant person must, where required to do so for the purposes of an investigation under section 33A(c) or (d) of the 2006 Act, produce, in a form acceptable to the Commissioner, any document, record or other information PIRC may require. Where an officer, member of police staff or member of the Authority's staff, acting in their professional capacity, is a witness to the matter being investigated, PIRC may request a witness statement be given or taken from them by PIRC investigators.

- 8.16 Police Scotland or the Authority, as appropriate, may request any police officer, member of police staff or member of the Authority's staff who is a witness in a PIRC investigation to co-operate with the investigation and provide any document, record or other information, which may include the provision of a witness statement or witness account.
- 8.17 Where a police officer, member of police staff or member of the Authority's staff refuses without reasonable excuse to co-operate with a PIRC investigation through the provision of information, PIRC will notify Police Scotland or the Authority accordingly for their consideration of misconduct or disciplinary proceedings.
- 8.18 Police Scotland, the Authority and PIRC will work co-operatively to ensure, as far as reasonably possible, that all relevant witness testimony is provided.
- 8.19 PIRC will take into consideration the needs of any person having a relevant protected characteristic under and in terms of the Equality Act 2010, as amended. In terms of the duty to make adjustments PIRC will ensure that reasonable adjustments are put in place in order to facilitate the gathering of evidence.

9. Investigation Processes

- 9.1 PIRC will notify Police Scotland – generally via the Assistant Chief Constable, Professionalism and Assurance – in writing, of any COPFS instruction or PIRC decision to investigate an incident or criminal allegation as soon as reasonably practicable.
- 9.2 PIRC will also notify Police Scotland's Head of PSD of the decision or instruction to investigate.

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- 9.3 PIRC will notify the Authority– generally via the Chief Executive of the Authority – as soon as reasonably practicable, of any decision to investigate or instruction to investigate a member of the Authority’s staff or senior officer of Police Scotland.
- 9.4 Any such letters of notification will include notification under the 2006 Act and / or the 2013 Regulations as appropriate, requiring the Chief Constable or the Authority to provide any document, record or other information PIRC may require to undertake its investigation.
- 9.5 PIRC will make clear in correspondence to Police Scotland or the Authority, the status of any person involved in an investigation (witness or suspect). If a person’s status changes, PIRC will notify Police Scotland or the Authority who will advise the person accordingly. Police Scotland or the Authority will notify any officer or member of staff when they are the subject of a criminal investigation by PIRC, unless the investigation may be hampered in doing so. PIRC will ensure Police Scotland or the Authority are informed at the earliest opportunity when they can advise officers or staff subject of criminal investigations to allow necessary welfare support to be provided by Police Scotland or the the Authority as appropriate.
- 9.6 PIRC will appoint a member of its Investigations staff as the lead investigator for any investigation and notify Police Scotland or the Authority of that person’s identity.
- 9.7 Police Scotland or the Authority will appoint an appropriate ‘single point of contact’ (SPOC) for every PIRC investigation to facilitate the acquisition and provision of any document, record or other information to PIRC. The SPOC will also be the conduit for facilitating any witness or other interviews of Police Scotland or the Authority’s staff. Where a SPOC is on annual leave or absent during a PIRC investigation, they will identify another person to undertake their role.
- 9.8 For complex investigations, involving more than one business area of Police Scotland, it may be necessary to appoint additional SPOCs to facilitate the provision of information, etc.

10. PIRC Reports

Types of Reports

- 10.1 PIRC produce different reports dependent on the type of investigation:
- Investigation reports – submitted to COPFS;
 - Specialist Reporting Authority (SRA) reports – submitted to and on the instruction of COPFS;
 - Death investigation reports – submitted to COPFS;
 - Investigation reports – submitted to Police Scotland or the Authority;
 - Misconduct reports – submitted to the Authority.

10.2 Report Publication

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PIRC may publish:

- Police Scotland referred investigation reports;
- COPFS death reports where COPFS has decided that no Fatal Accident Inquiry (FAI) will take place, and where agreement has been obtained from COPFS prior to publication; and
- Public interest reports.

10.3 PIRC will not publish:

- Investigation reports submitted to COPFS;
- Death reports where a FAI is to be or has been held;
- Any report where there are ongoing legal proceedings;
- Misconduct reports.

10.4 PIRC produces two types of report in respect of investigations referred by the Chief Constable or the Authority under Section 33A(c) of the 2006 Act:

- Full reports; and
- Public facing reports.

10.5 Full reports contain all the details of PIRC investigations and are for consideration by the Chief Constable or the Authority as appropriate. Full reports contain the names of any person relevant to the investigation. Full reports will not be published.

10.6 Public facing reports are published and contain a summary of the investigation, findings and recommendations but do not normally identify any person.

10.7 Prior to publication of the public facing report, PIRC will submit a draft of the full report to Police Scotland or the Authority for factual accuracy checking. PIRC will take cognisance of any identified error of fact, omission or additional representation made by Police Scotland or the Authority, before finalising the report. Where significant changes are requested, PIRC will consider those and where agreed re-submit the draft report for a further factual accuracy check prior to publication.

10.8 Where Police Scotland or the Authority have taken steps, implemented change, or introduced revised policies and procedures as a result of their own internal review of the matter subject to investigation, PIRC should be notified during the factual accuracy check and may make mention of these measures within the public facing report.

10.9 Where PIRC identify any matter, during the course of any investigation, which may impact on public, officer, or staff safety and which requires immediate action by Police Scotland or the Authority, PIRC will notify them at that time and not wait until the full investigation report is submitted or the publication of the public facing report.

10.10 PIRC may also issue public facing reports to COPFS, HMICS and the Scottish Government, as appropriate.

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10.11 Prior to publication of a public facing report, PIRC will generally provide Police Scotland or the Authority with at least **48 hours' notice** of the date and time of publication.

10.12 Sensitive and Intelligence Material within Reports

Where a PIRC investigation has examined sensitive or intelligence derived material during the course of the investigation – and it may be necessary to reference that material within a report – a copy of the draft report will also be provided to Police Scotland's National Intelligence Bureau (NIB). The NIB can identify any concerns it has in respect of the report or section(s) of the report containing the material. PIRC will examine any concerns identified by the NIB and consider any necessary adaptations to the report that may be appropriate. All existing regulatory safeguards will be applied when the Commissioner determines the inclusion of sensitive or intelligence derived material.

10.13 Where a PIRC investigation examines highly sensitive material during the course of an investigation, the procedure above will be followed. In addition, consideration will be given by the Commissioner to the level of Government Security Classification (GSC) marking applied to the report and whether it can be published in any format. PIRC will engage with the NIB or relevant Senior Responsible Officer in this regard.

10.14 Findings and Recommendations

PIRC reports provided to Police Scotland or the Authority may contain Findings and Recommendations.

10.15 Recommendations are designed to address any issues identified as a result of the investigation. Recommendations may be specific to the investigation or address wider issues identified as a result of the investigation.

10.16 Police Scotland or the Authority will notify PIRC **within 3 months** of receiving the report of any steps taken or measures implemented to address the Recommendations. In the event that recommendations are not completed and discharged within the 3-month period, Police Scotland or the Authority, as appropriate, will provide an interim update in any event.

10.17 Where Police Scotland or the Authority fail to accept any Findings or Recommendations, the rationale will be articulated in writing to PIRC.

11. Suspension or Duty Restrictions

11.1 PIRC has no authority to take decisions on whether an officer, member of police staff or member of the Authority's staff is to be suspended or have restrictions placed upon them as regards the discharge of their duties.

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- 11.2 Where PIRC considers that allowing the person under investigation to remain in their current role may be prejudicial to an effective criminal or misconduct investigation or contrary to the public interest, they will notify the reasons for their concerns in writing to Police Scotland or the Authority, as appropriate. Responsibility for any decisions taken regarding such concerns and any action necessary rests solely with Police Scotland or the Authority as appropriate.
- 11.3 In circumstances where the Authority requires to undertake a review of a senior officer's suspension, PIRC agrees to provide the Authority with such information as it may require regarding the status of the investigation and any relevant findings. Such information will be disclosed by PIRC under section 46(1)(b) of the 2006 Act solely for the purposes of assisting the Authority in carrying out suspension reviews under regulation 6(5)(b) of the Senior Officer Conduct Regulations.
- 11.4 PIRC will continue to work with PSD to minimise any potential detrimental welfare impact of PIRC contact with officers and staff during their investigation.

12. Charging for Services

- 12.1 The Authority must provide forensic services to Police Scotland, PIRC and the Lord Advocate (COPFS).⁶
- 12.2 The Authority cannot charge PIRC for any services, information, documents, forensic or scene examinations or any other support provided to a PIRC investigation⁷.

13. Suspect Interviews and Arrest procedures

- 13.1 PIRC investigators are afforded all of the powers and privileges of a constable when undertaking any investigation on behalf of the Commissioner.
- 13.2 During the course of a criminal investigation, PIRC investigators may require to interview a police officer, member of police staff or member of the Authority's staff as a suspect.
- 13.3 Generally, PIRC will notify Police Scotland PSD or the Authority, as appropriate, in advance of any intention to interview an officer or member of staff as a suspect.
- 13.4 PIRC will not normally arrest any police officer, member of police staff or member of the Authority's staff at their home or place of work, unless it is deemed appropriate.
- 13.5 It is the responsibility of Police Scotland's PSD or the Authority to notify the police officer, member of police staff or member of the Authority's staff that they are to be the subject of a suspect interview and invite them to present themselves on a specified time and date, at an identified police office, for the purposes of interview. Operational

⁶ Section 31 Police and Fire Reform (Scotland) Act 2012, as amended.

⁷ Section 87(7) 2012 Act.

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decisions regarding whether the officer or member of staff is arrested upon attendance for interview for the purposes of conducting said interview will rest with PIRC.

- 13.6 Police Scotland's PSD or the Authority will appoint a dedicated liaison officer to any PIRC investigation where an officer, member of police staff or member of the Authority's staff is to be subject to a suspect interview. The role of that liaison officer will be to facilitate all aspects of the PIRC interview including, identification of suitable premises, access to premises, video and audio recording equipment and briefing of custody staff, should that be necessary.
- 13.7 PIRC undertakes, insofar as may be practicable, that if an officer, member of police staff or member of the Authority's staff attend for interview under caution or are arrested (not officially accused), their attendance / arrest will be in a police area or sub-division other than that in which they serve. These matters will be facilitated by Police Scotland's PSD.
- 13.8 Where it is necessary to arrest an officer, member of police staff or member of the Authority's staff, other than a person who has attended a pre-arranged suspect interview, Police Scotland's PSD or Authority staff will accompany PIRC investigators at the arrest.
- 13.9 In order to ensure that appropriate aftercare and welfare measures can be implemented, PIRC arrests will, **where possible**, be planned in advance, and the appropriate Police Scotland Criminal Justice Services Division (CJSD) Area Commander will be alerted by PSD staff, allowing the relevant custody staff to be informed by PSD in advance. In the unlikely event that a spontaneous arrest has to be presented by PIRC at a Police Scotland custody suite, relevant on duty supervisors will inform the relevant senior custody staff immediately.
- 13.10 When a PIRC arrest is within a custody suite, the relevant on duty supervisors will require to consider the wider impact on the routine operation of the custody suite and to consider any protections or limitations that require to be put in place.
- 13.11 Responsibility for the care and welfare of any officer, member of police staff, or member of the Authority's staff who is under arrest and held in custody rests with Police Scotland.
- 13.12 Where possible PIRC will undertake to provide Police Scotland or the Authority prior notification of interviews / arrest to ensure that appropriate aftercare and welfare measures can be implemented.
- 13.13 The National Custody System (NCS) will remain the recording platform for all matters relating to the care and welfare of an individual whilst they are in custody. PIRC staff are not NCS trained and will have no access to the system.
- 13.14 The 2016 Act sets out the ranks of police officer responsible for making decisions at the various stages of the custody process. The corresponding PIRC grades of staff for these decisions when made by PIRC are set out within Article 3 of the Police

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Investigations and Review Commissioner (Application and Modification of the Criminal Justice (Scotland) Act 2016) Order 2017.

- 13.15 PIRC will inform the custody supervisor at the custody suite of the identity of the nominated PIRC investigator who will be responsible for each stage of any custody decisions relating to the investigation, including:
- Authorisation for keeping in custody
 - Custody Review
 - Investigative Liberation – release on conditions
 - Modification or removal of conditions
 - Release on Undertaking
 - Rights to have a solicitor present
 - Right to have intimation sent to another person
 - Right to have intimation sent to a solicitor
 - Right to consult with a solicitor.
- 13.16 Authorisation to keep an individual in custody, under and in terms of section 7 of the 2016 Act, must be made by a PIRC investigator of the grade of deputy senior investigator or above who has not been involved in the investigation⁸.
- 13.17 Police Scotland custody staff will record on the NCS all required information other than the rationale for PIRC custody decisions which will be recorded as '*Decision taken by PIRC and recorded on the PIRC Policy File*'. Police Scotland custody staff will ensure any NCS custody record for the individual under arrest is restricted viewing to prevent unauthorised access by any other staff members.
- 13.18 The 6-hour review process⁹ and any decision to extend the custody beyond 12 hours¹⁰ must be made by a PIRC investigator of the grade of Senior Investigator or above¹¹. The PIRC senior investigator undertaking this role will consult with the Police Scotland Custody Review Inspector to ensure the decision is recorded on NCS. The review, however, will be undertaken by the senior investigator only.
- 13.19 Where a PIRC senior investigator authorises the taking of Criminal Justice samples these will be taken by Police Scotland staff.
- 13.20 PIRC will take cognisance of the needs of any person identified to PIRC as having or who identifies that they have a relevant protected characteristic under and in terms of the Equality Act 2010 as amended and notify Police Scotland custody staff of any necessary or reasonable adjustments required to be put in place for any person.

⁸ Article 3 2017 Order.

⁹ Section 13 2016 Act.

¹⁰ Section 11 2016 Act.

¹¹ Article 3 2017 Order. Also, if the custody is believed to be under 18 years of age, the decision to extend the custody beyond 12 hours must be made by a PIRC member of staff of the grade of Head of Investigations or above.

- 13.21 In the event any necessary or reasonable adjustments are made for a suspect person's interview, the lead investigator will record a policy decision in terms of the decision and the associated rationale. In the event an arrest is necessary an arrest strategy will be devised accordingly.

14. Sensitive and Intelligence Material

- 14.1 The provision of sensitive and intelligence material gives rise to additional concerns regarding its use, storage, and handling. PIRC recognises the fundamental requirement to manage intelligence material appropriately, particularly that arising from secret or sensitive sources and will give due weight to any concerns expressed by Police Scotland or the Authority in respect of such material and sources.
- 14.2 Police Scotland will maintain responsibility for and undertake a duty of care in protecting the sources of intelligence.
- 14.3 All intelligence material which may have a bearing in respect of a PIRC investigation will be provided by Police Scotland (under necessary handling safeguards). This includes material obtained from secret or sensitive sources but excludes intercept derived material¹².
- 14.4 Where such material has a bearing on the duty of COPFS to investigate a death or serious crime, it is for Police Scotland to consider what relevant disclosure should be made to COPFS. Where such material has a bearing on an investigation in which Article 2 of ECHR is engaged, i.e. death following police contact, Police Scotland will ensure that such information is disclosed to PIRC in a non-attributable format while meeting their obligations under the safeguards.

14.5 Determination of Relevance

Relevance to a matter under investigation is determined by PIRC as the investigating agency. It is not for Police Scotland and / or the Authority to decide what is relevant to a PIRC investigation or to decide what material should or should not be provided to allow PIRC to undertake an effective investigation.

- 14.6 PIRC and Police Scotland recognise the need to work co-operatively when managing and handling intelligence material and to give due consideration to any concerns raised by the organisations in respect of such matters.

15. Provision of Support

15.1 Incident Scenes and Investigation Considerations

¹² Sections 53 to 58 of the Investigatory Powers Act 2016 creates legislative (safeguards) in respect of the disclosure of intercept material. Intercept material will not be disclosed to PIRC.

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Following any incident which may give rise to a PIRC investigation, Police Scotland will inevitably be first on the scene. Where this is the case, Police Scotland will be responsible for the initial control and management of the scene. Once investigative primacy is passed to PIRC, then they will be responsible for the scene and any associated investigative activity, including the management of scene examinations.

- 15.2 Where it is considered that transferring Police Scotland control of scene examination activity to PIRC presents unnecessary risks to evidence gathering, particularly when it relates to fragile evidence recovery, which may potentially be lost, then such examinations may be permitted to conclude at the direction of the PIRC lead Investigator. In all such instances, where examinations are permitted to continue, the PIRC lead investigator will make a Policy record and document the associated rationale.
- 15.3 PIRC may request Police Scotland or the Authority's scene examiners to undertake additional actions in respect of incident scene examination and evidence gathering.
- 15.4 Situations may arise where a dual investigation occurs i.e. where Police Scotland and PIRC are investigating separate and distinct aspects of an incident. An example being where Police Scotland has deployed armed resources in response to a crime and a person posing a threat to the lives of the public who is then shot by officers during the incident. In such scenario, Police Scotland would investigate the crime and PIRC would investigate the firearms discharge. Where such dual investigations occur, the senior staff in charge of both investigations (Police Scotland and PIRC) will liaise and determine which investigation or aspect of the investigation will take primacy in respect of the need for evidence gathering and scene examination.
- 15.5 Where required, investigation strategy meetings will be held to ensure remit and roles are understood and key actions agreed. This will include forensic strategies which will be documented and all decisions made in relation to the examination of the scene will be recorded, with appropriate consultation where necessary with COPFS.
- 15.6 Once scene examination has been completed PIRC and Police Scotland lead investigators and scene examiners should agree and document a strategy for the submission and examination of the productions. Again, where appropriate, this should be completed in consultation with COPFS.

15.7 Family Liaison

Responsibility for notification of the death to family members immediately following the death **rests with Police Scotland**. This will be the case irrespective of who the investigating agency will be. Notification of the death is separate to the role performed by Family Liaison Officers (FLOs).

- 15.8 Following any death investigated by Police Scotland or PIRC, Family Liaison Officers (FLOs) may be deployed. While PIRC operate a 24 hour on-call, for deaths out with normal business hours, it is likely that Police Scotland will have greater resource to deploy initial FLOs. This should be considered to ensure families have access to immediate support and assistance in the hours immediately following a death.

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- 15.9 PIRC FLOs will be considered for deployment subsequent to the notification of the death and in the following instances:
- Death in police custody;
 - Death following police contact; or
 - In investigations not involving death, where the involvement of FLOs may enhance the provision of information and assistance to the family and also the gathering of crucial information from family members.
- 15.10 Where Police Scotland has deployed FLOs following a death as the initial investigating agency, and there is a later decision that the investigation should be undertaken by PIRC, responsibility for family liaison should transfer to PIRC FLOs. Taking cognisance of the need to effectively support the family, it is imperative that during the initial decision making stage and any handover there are no gaps in the provision of support to the family. All decisions will be documented. This will be covered and agreed within any initial strategy meeting or discussions.
- 15.11 The PIRC FLOs will consider the needs of any person identified to PIRC as having or who identifies that they have a relevant protected characteristic under and in terms of the Equality Act 2010 as amended and put in place any necessary or reasonable adjustments in order to facilitate the gathering of their evidence or the provision of information to them.

16. Communications and the Media

- 16.1 Police Scotland, the Authority, and PIRC each have communication teams that manage liaison with the media.
- 16.2 Each organisation recognises the demand that can arise for an immediate news release or statement following any incident. In order to ensure consistency of facts and information provided to the media subsequent to an incident or ongoing investigation, the communications teams of Police Scotland, the Authority and PIRC should, where feasible and appropriate, liaise before issuing statements to the media.
- 16.3 In any investigation instructed by COPFS, PIRC, Police Scotland and the Authority may publish an initial statement confirming PIRC's instruction but thereafter will liaise with COPFS's communication team before making any further media release.
- 16.4 Prior to the publication of any PIRC investigation report, an embargoed copy of the report and associated media release will be provided to Police Scotland or the Authority at least **48 hours** in advance of publication for information purposes only.

PART 2 – COMPLAINT HANDLING REVIEWS

17. Statutory Functions

- 17.1 The primary legislative functions of PIRC, the Chief Constable, and the Authority in relation to complaint handling are set out in Sections 33A(a) and 34-41 of the 2006 Act and Section 60 of the 2012 Act.

18. Complaint Handling Reviews

- 18.1 The Commissioner may, at the request of –

- a) the person who made the complaint ("the complainer"); or
- b) the Appropriate Authority in relation to the complaint,

examine the manner in which a relevant complaint has been dealt with (such an examination being a Complaint Handling Review (CHR)).

For the purposes of this MoU, the Appropriate Authority is the Chief Constable or the Authority.

- 18.2 The Commissioner may carry out a CHR only if satisfied that Police Scotland or the Authority has taken reasonable steps to deal with the complaint.

- 18.3 The Commissioner will not proceed with a CHR if –

- a) it relates or, if it took place, would relate to a relevant complaint in respect of which the Authority or Police Scotland –
 - has concluded its consideration of the complaint; and
 - has communicated its findings to the complainer; and
- b) a period of 3 months or longer has elapsed between the date on which those were so communicated to the complainer and the date on which the Commissioner was requested to carry out the CHR; and
- c) the Commissioner is not satisfied that there are exceptional circumstances which justify the delay in requesting the review.

- 18.4 Once a request for a complaint handling review has been accepted, PIRC will request the complaint file(s) contained on Police Scotland's Centurion system. PIRC will formally submit a request to the Authority or Police Scotland to provide all relevant information in respect of the complaint under review.

- 18.5 On receipt of the request made under paragraph 18.4 above, the Authority and Police Scotland shall provide PIRC with that information and wherever possible electronically and will do so **within 15 working days** from the date that the information is requested. If the Appropriate Authority anticipates a delay or is unable to meet this timescale, PIRC must be advised of the delay as soon as possible.

- 18.6 Where PIRC requires to request additional information from the Authority or Police Scotland, the Authority or Police Scotland shall supply such additional information **within 15 working days** from the date that the request is made and will advise PIRC as soon as possible if this timescale cannot be met or a delay is anticipated.
- 18.7 PIRC can discontinue a complaint handling review at any stage of the process if the Commissioner considers it to be the most appropriate course of action. PIRC will advise the Authority or Police Scotland of any decision to discontinue a complaint handling review **within 5 working days** of the decision being made. On receipt of such notification, the Appropriate Authority will advise the officer(s) or member(s) of staff who are the subject of the complaint of the Commissioner's decision.

18.8 CHR Reports

On completion of a CHR, the Commissioner will –

- a) inform the persons mentioned in sub-paragraph 18.9 about -
 - the conclusions the Commissioner has drawn from the CHR and the reasons for them;
 - what action (if any) the Commissioner proposes to take in consequence of those conclusions;
- b) prepare a report of the complaint handling review and the conclusions, reasons and proposed action referred to in paragraph (a) and send it to the Appropriate Authority; and
- c) if the Commissioner considers it appropriate to do so, publish said report in such manner as the Commissioner considers appropriate.

18.9 Those persons are –

- a) the complainer; and
- b) the Appropriate Authority.

18.10 Where the identity of the officer or member of staff subject to the complaint is known, the Authority or Police Scotland will provide that person with a copy of the CHR report.

19. Recommendations and Learning Points

- 19.1 Upon conclusion of a CHR, the Commissioner may make recommendations to address any failings or shortcomings identified in the handling of the complaint. The Commissioner may also identify individual or organisational learning designed to improve police complaint handling or service delivery.
- 19.2 The Authority or Police Scotland will notify PIRC **within 10 working days** of the CHR report being issued of the acceptance of the recommendations or learning points made in the report. If however the Authority or Police Scotland considers a recommendation or learning point to be flawed or erroneous, they will notify PIRC **within 10 working days** of the CHR being issued that they are formally rejected.¹³

¹³ PIRC Statutory Guidance paragraph 176.

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- 19.3 The Authority or Police Scotland will implement accepted recommendations and learning points **within 40 working days** from the date the Commissioner's findings are communicated to the Authority or Police Scotland. The Authority or Police Scotland shall notify PIRC at the earliest reasonable opportunity where implementation timescales cannot be met and ensure that the complainer is provided with regular progress updates.
- 19.4 On conclusion of the implementation, the Authority or Police Scotland will provide PIRC with any information or confirmation as the Commissioner deems necessary, in order to demonstrate and evidence successful implementation of the recommendation / learning point.
- 19.5 On receipt of the information / confirmation referred to in paragraph 19.4 above, PIRC will assess the information provided and advise the Appropriate Authority whether the recommendation / learning point is considered by the Commissioner to have been implemented. The notification of the successful implementation signals the end of the CHR process.

20. Reconsideration Directions

- 20.1 If, having completed a CHR, the Commissioner is of the opinion that the complaint should be reconsidered, the Commissioner may give a direction requiring the reconsideration of the complaint (a "reconsideration direction").
- 20.2 A reconsideration direction may (either or both) –
- a) instruct that the reconsideration of the complaint is to have regard to such further information as may have become available (whether or not as a result of the CHR) after the complaint was dealt with;
 - b) contain a requirement that reconsideration of the complaint is to take place under the supervision of the Commissioner (a "supervision requirement").
- 20.3 In deciding whether a reconsideration direction should contain a supervision requirement, the Commissioner shall have regard to –
- a) the seriousness of the case; and
 - b) the public interest.
- 20.4 The Commissioner may at any time issue a direction varying a reconsideration direction by inserting or, as the case may be, deleting a supervision requirement.
- 20.5 Where a reconsideration direction is varied under paragraph 20.4, the Commissioner may give –
- a) the Appropriate Authority; or
 - b) any person previously appointed to carry out the reconsideration,

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such directions as the Commissioner considers appropriate for the purpose of giving effect to the variation.

- 20.6 Where a reconsideration direction has been given, the Appropriate Authority must appoint a person to reconsider the complaint to which the reconsideration direction applies. The person appointed to reconsider the complaint must be one who was not previously involved in the investigation, consideration, or determination of the complaint.
- 20.7 Where the reconsideration direction contains a supervision requirement, the Appropriate Authority must not appoint a person unless the Commissioner has given notice that the Commissioner approves the person whom the Appropriate Authority proposes to appoint.
- 20.8 A person appointed to reconsider a complaint must provide the Commissioner with all such information as is reasonably required by the Commissioner for the purposes of the Commissioner's functions.
- 20.9 Where the reconsideration of a complaint is subject to a supervision requirement, the person appointed under this section to reconsider the complaint must comply with all such requirements in relation to the carrying out of that reconsideration as may be imposed by the Commissioner in relation to that reconsideration.
- 20.10 On the completion of the reconsideration, a person appointed under paragraph 20.6 must submit a report to the Commissioner. Such a report is often referred to as “*Section 40*” report. The report must provide sufficient detail about all enquiries carried out during the reconsideration and the evidence gathered. The report must include the assessment of the available evidence and the proposed outcome/determination of the complaint.
- 20.11 On receipt of the reconsideration report, the Commissioner will assess whether the reconsideration direction has been implemented and may:
- intimate to the Appropriate Authority that the reconsideration direction has been implemented, or
 - issue further direction and/or guidance as deemed appropriate.
- 20.12 The Authority and Police Scotland will implement reconsideration directions **within 40 working days** from the date the Commissioner’s findings are communicated to the Appropriate Authority. The Authority and Police Scotland shall notify PIRC at the earliest reasonable opportunity where implementation timescales cannot be met. The Authority and Police Scotland will keep the complainers regularly updated during the reconsideration process.
- 20.13 On completion of the reconsideration, the Authority or Police Scotland will notify the officer or member of staff subject of the complaint of the final determination and outcome.

21. Discretionary Decisions

- 21.1 The Commissioner may exercise their discretion in terms of section 35 of the 2006 Act and decide not to proceed with a Complaint Handling Review, following a detailed assessment of the CHR application and the information provided by the Authority or Police Scotland in terms of paragraphs 18.5 and 18.6 above.
- 21.2 If a decision is made not to proceed with a CHR, PIRC will formally notify the complainer and the Appropriate Authority in writing of the decision made and the reasons behind it within **15 working days** from the completion of detailed case assessment.
- 21.3 When writing to the complainer and policing body to provide formal notification of the discretionary decision not to proceed, PIRC will provide an explanation for the decision and may also contain recommendations and/or learning points. The implementation of recommendations and learning points contained within such correspondence by the Authority or Police Scotland will follow the same procedure as recommendations and learning points identified in CHR reports (paragraph 19 above).

22. Missed Complaints

- 22.1 On receipt of the complaint files under paragraphs 18.4-18.6 above, PIRC will undertake an assessment to identify complaints (if any) that are suitable for a review. If, as a result of this assessment, any complaints made by the member of the public that have not been recorded or responded to by the policing body are identified, these will be categorised as 'Missed Complaints'.
- 22.2 While complaints identified as missed complaints may be eligible for a CHR, it is recognised that undertaking a review in such circumstances may not be in the best interest of the parties. Accordingly, missed complaints identified during the assessment process may be referred back to the policing body for further action / progression. PIRC will also advise the complainer of the decision to refer any missed complaint back to the policing body.
- 22.3 On receipt of any missed complaints referral, the Authority or Police Scotland shall confirm to PIRC within **5 working days** that the complaint(s) referred back will be progressed through the established complaint handling procedures. A notification confirming this will also be sent to the complainer at the earliest opportunity by Police Scotland.

23. Publication of CHR reports

- 23.1 At the conclusion of the CHR process, the Commissioner may publish any CHR report in the manner the Commissioner considers appropriate.

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23.2 All PIRC CHR reports are anonymised to reduce the risk of identification of any parties involved in the complaint or referred to in the CHR report. Generally, PIRC will only publish an executive summary of the CHR report on PIRC's official website. The executive summary will provide a brief synopsis of the complaints reviewed and the PIRC CHR conclusion and determinations. The PIRC website will be regularly updated to reflect implementation of recommendations, learning points and reconsideration directions.

24. Sensitive and Intelligence Material

24.1 PIRC may require to view sensitive and intelligence material to inform complaint handling reviews. The complaint handling review will only consider the procedural aspects of intelligence material, i.e. how it was recorded, assessed, processed, or relied upon in the context of the incident giving rise to the complaint(s). The PIRC CHR report will not disclose any details or particulars of the sensitive or intelligence material provided to PIRC for the purposes of the complaint handling review.

24.2 PIRC will request sensitive or intelligence material for the purpose of a complaint handling review only if such material has been referred to or relied or founded upon by Police Scotland or the Authority in responding to the complaint from members of the public. If PIRC considers it necessary to request such material to inform the review, the procedures set out in Appendix C will be followed.

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Signatories to the Memorandum of Understanding

Signed

Name **Laura Paton**

Date **17 September 2025**

Police Investigations and Review Commissioner

Signed

Name Jo Farrell

Date 09/12/2025

Chief Constable, Police Service of Scotland

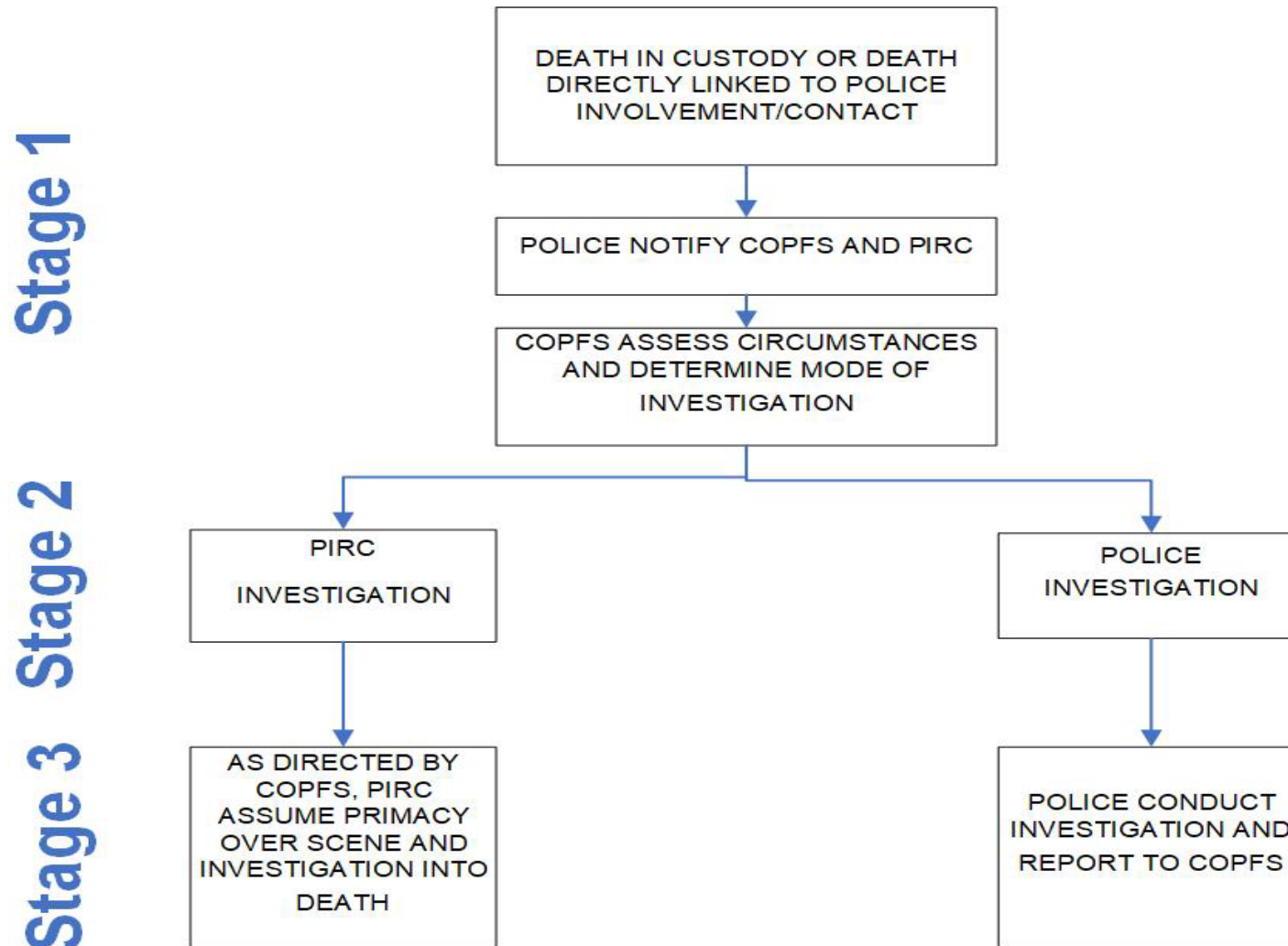
Signed

Name Chris Brown

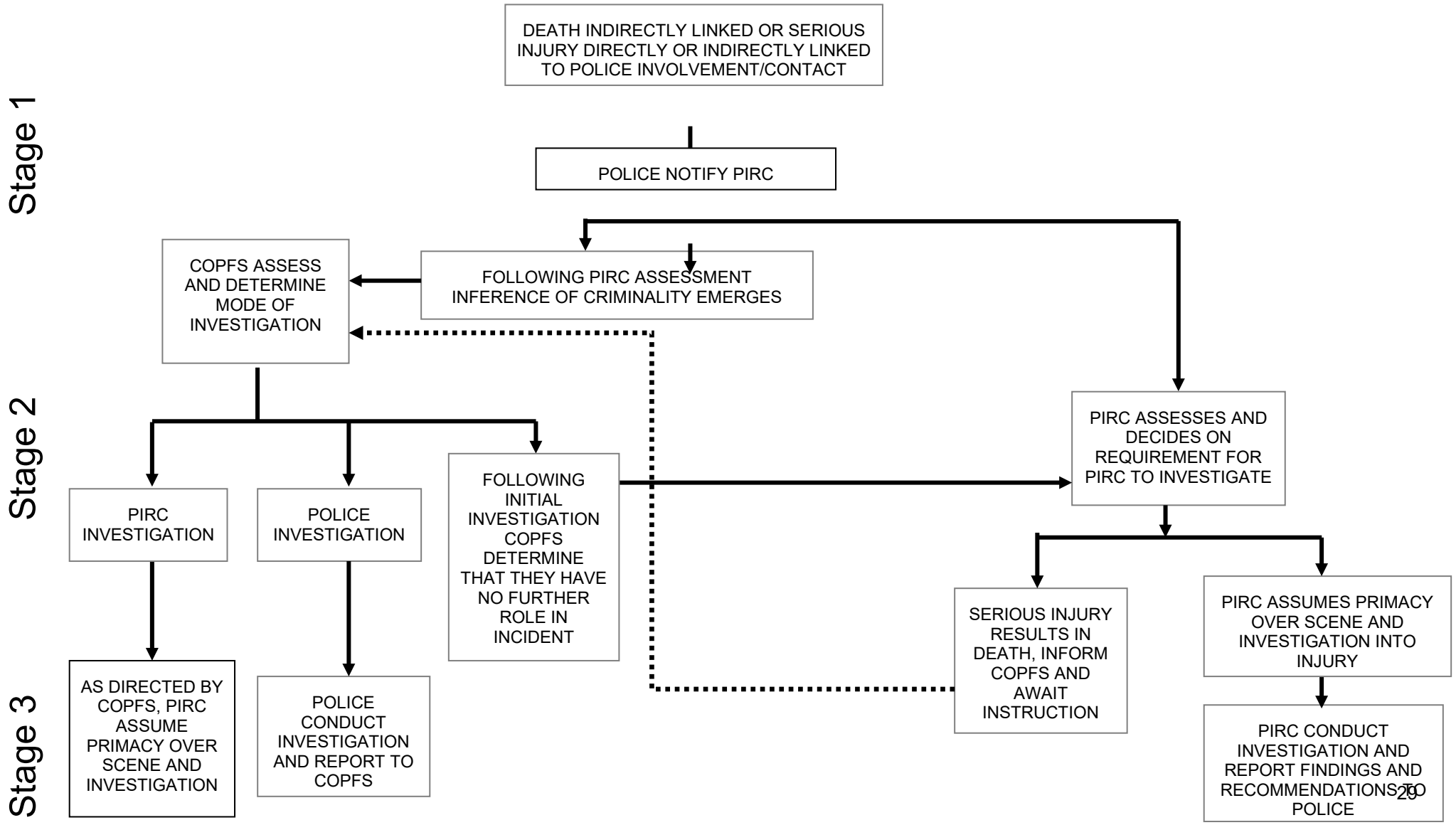
Date 8-12-25

Chief Executive, Scottish Police Authority

APPENDIX A Initial Operational Response – Death Investigations



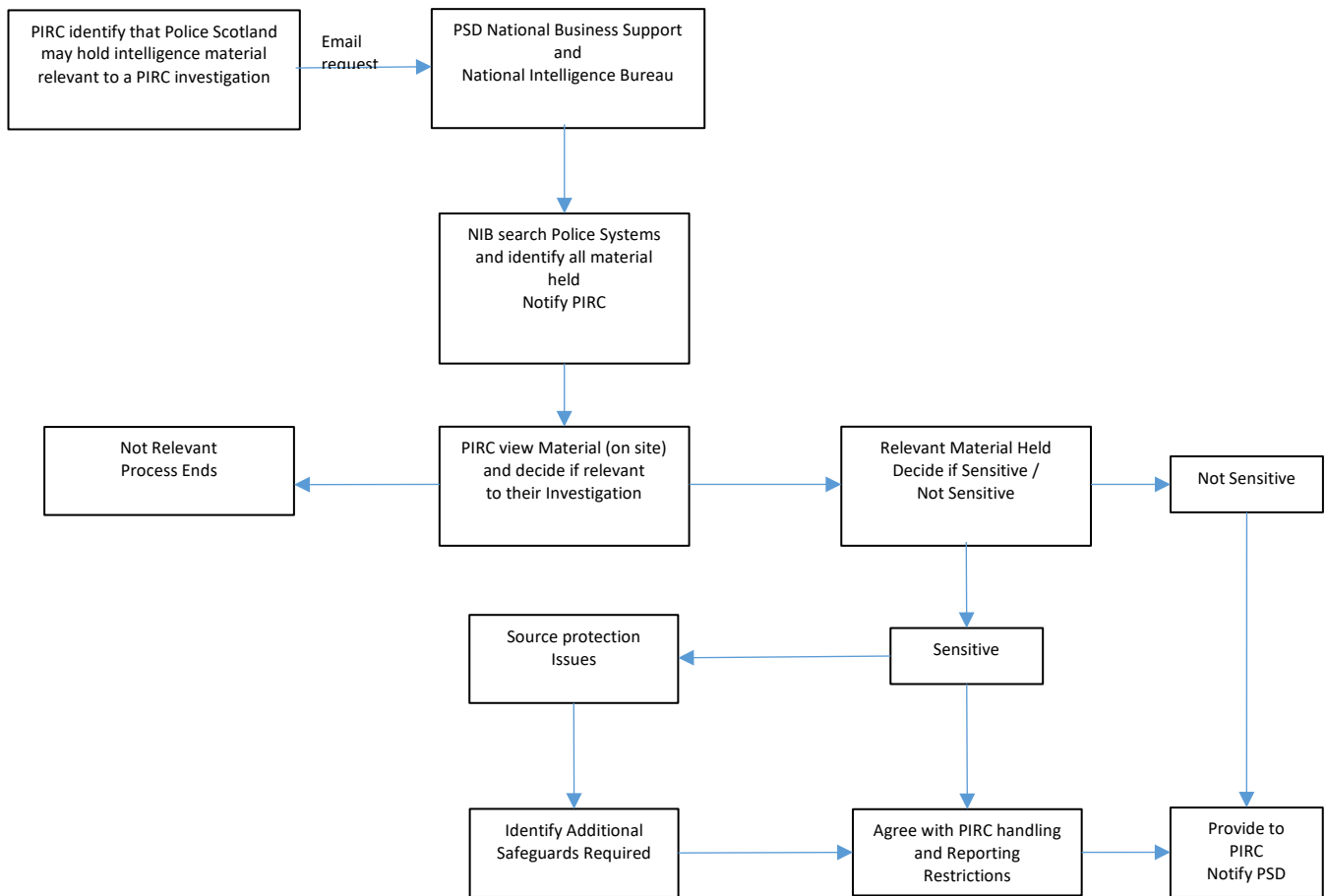
APPENDIX B Initial Operational Response – Serious Injury



APPENDIX C Disclosure of Intelligence Material to PIRC: Process

The chart and explanatory provisions below outline how intelligence material will be provided to PIRC, conditions, safeguards and processes to be applied.

Disclosure of Intelligence Material to PIRC
(for the purposes of a PIRC investigation)



Stages:

1. PIRC email request to PSD National Business Support (PSDNationalBusinessSupport@scotland.police.uk) and the National Intelligence Bureau (scdpiircrequests@scotland.police.uk)
2. PSD & NIB acknowledge receipt of email.

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3. PSD save request on Centurion file adding progress entry outlining request for intelligence.
4. NIB undertake research of police systems, identify all intelligence held and notify PIRC within 5 working days of receipt.
5. PIRC view intelligence 'on site' and determine whether it is of relevance to its investigation.
6. Not relevant – process ends – no intelligence provided.
7. Relevant material held. NIB identify to PIRC if there are any source protection or sensitivities attached to the material, its disclosure or publication.
8. The NIB provide the material to PIRC:
 - a. Not sensitive / No source protection issues – PIRC may reference the material in its investigation reports – send via PSD for factual accuracy check prior to publication. Any concerns should be identified.
 - b. Sensitive / Source Protection issues – supply material to PIRC, protectively mark material, agree with PIRC restrictions on handling and use, including further reference to the material in reports and submissions – send via PSD/NIB for check prior to publication. Any concerns should be identified.
9. PIRC will manage and safeguard protectively marked material and restrict access to vetted NPPV staff who need access for the purposes of a specific investigation. Staff who are briefed on information, which may identify the source of intelligence, will be made fully aware of their responsibilities in relation to the handling restrictions.
10. PIRC will maintain a record of all persons who have had access to material, including COPFS and other agency staff.
11. Once the PIRC investigation is complete and in accord with the PIRC weeding policy, PIRC will notify PSD that the material is to be destroyed and either:
 - i. return the material to Police Scotland at their request; or
 - ii. securely destroy the material and record its destruction.
12. Should PIRC consider it necessary to make an approach to a source of intelligence, including following direction from COPFS, consultation will be held with Police Scotland prior to undertaking such action. This will enable agreement to be reached as to a mechanism to enable Police Scotland to ensure appropriate safeguards and duty of care requirements are in place.

APPENDIX D Sharing of Information between Police Scotland, The Authority, PIRC and COPFS in conduct matters

Information sharing between PIRC and Police Scotland or the Authority for the purposes of conduct matters is covered within paragraphs 8.12 and 8.13 of this MoU.

Information will not routinely be provided by PIRC to Police Scotland or the Authority for the purpose of conduct or misconduct proceedings. It is, however, recognised that there may be situations – outwith those referred to in said paragraphs – where Police Scotland or the Authority proactively seek information from PIRC in relation to conduct matters.

It is anticipated that the information sought will include the PIRC report and information contained within statements that PIRC have taken during the course of an investigation under section 33A(b)(i) & (ii).

PIRC reports are confidential reports to COPFS created and submitted for a specified purpose: for COPFS to consider prosecution. They contain more than just facts and a narrative of events. They often contain intelligence, opinion, hearsay, subjective observations and subjective analysis of evidence. Such information can be crucial to a prosecutor in reaching a decision in terms of prosecution. Further, the reports may contain information that make it inappropriate to raise proceedings because it is not in the public interest to do so. Due to the existence of such information within a PIRC report it is essential that these documents remain confidential and not be shared.

However, while a PIRC report cannot be shared in its entirety, some information within the report may be capable of being shared, including, the facts and narrative of events. Where Police Scotland or the Authority seek such disclosure and PIRC identify information that can be shared, this request and proposed disclosure will be provided to COPFS to obtain consent to share the information under and in terms of section 46(6) of the 2006 Act, as amended.

The position as regards statements is akin to that of the PIRC report: the statement is a confidential document obtained by PIRC for the purposes of provision to COPFS to support a decision regarding prosecution. They are not taken for the additional purpose of being used in

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conduct proceedings and indeed this may lead to the risk of future non-engagement on the part of the witnesses which could have a serious impact on the effective administration of justice.

If Police Scotland / the Authority, in considering information that they have in respect of a misconduct issue, require a statement to supplement information already held then they should make a direct approach to the witness in order to obtain a statement for the specific purpose of misconduct proceedings.

Consideration will only be given to disclosure of the PIRC witness statement where:

- the witness provides explicit written consent for the PIRC statement to be used;
or
- the witness fails to engage with Police Scotland / the Authority in respect of a further statement for the purpose of the misconduct proceedings.

In either circumstance, PIRC would require to seek the authority of COPFS in terms of section 46(6) of the 2006 Act as amended to disclose the statement.

It is noted that the disclosure of PIRC witness statements should be in **exceptional circumstances only** and not as a matter of routine.

Each incident must be considered on a case by case basis to ensure that nothing is proposed for sharing that could prejudice outstanding, pending or any future criminal proceedings. It must be borne in mind that COPFS has an ongoing duty of review following a no proceedings decision.

APPENDIX E Protocol for Secondment of Police Officers to PIRC

Introduction

E.1 Investigations need to be carried out by properly skilled, professional, and experienced investigators and, where required, by specialist staff. It may therefore be necessary, from time to time, for PIRC to supplement its resources with secondments of staff from other policing or scrutiny bodies. The 2006 Act provides for such secondments from Police Scotland.

Agreeing secondments

E.2 Where it is evident to PIRC that it requires additional or specialist resources in order to carry out an investigation effectively, the Commissioner will present a business case in writing to the Deputy Chief Constable (People & Professionalism).

E.3 The business case will outline:

- A summary of the key issues under investigation
- The number of staff required to undertake the investigation
- The type of staff required to undertake the investigation
- The anticipated duration of the secondment
- The terms and conditions that will apply
- PIRC's role in conducting the investigation

E.4. Where necessary, the relevant managers or their nominated representatives will meet for further discussion of the business case. However, Police Scotland recognise that PIRC may be legally constrained from providing further details about the investigation. Police Scotland will confirm in writing if it agrees to PIRC's request.

E.5 If, during the course of an investigation, PIRC identifies a need to extend the anticipated duration of a secondment, it will present Police Scotland with a supplementary business case that:

- outlines the reasons for the extension, and

- confirms a revised termination date.

Key principles

Duties of seconded staff

- E.6 Staff seconded to PIRC will be involved only in conducting the investigation for which they were seconded. PIRC will not use such staff for any other investigation or any other task unless this has been subject to a separate business case submitted to Police Scotland. Seconded staff will not have access to information on any other investigation.
- E.7 A constable appointed under secondment has all the powers and privileges of a constable throughout Scotland and is subject to the direction and control of PIRC.

Independence of seconded staff

- E.8 Police Scotland undertakes to second staff who have no personal or operational connection to the matter or the individual(s) subject to investigation and who do not operate within the command of the individual or individuals subject to investigation. Seconded members of staff will be asked by PIRC to disclose such connections. Where possible, seconded staff will normally come from an area geographically distant from the area in which the matter under investigation took place.

Independent oversight

- E.9 PIRC will appoint an investigator of the appropriate level to oversee the work of seconded staff. The appointed PIRC investigator will lead the investigation, be responsible for directing the activities of seconded staff and for assuring the quality of their work relating to the investigation.

Terms and conditions

Pay, travel and subsistence

- E.10 Primary responsibility for assuring that staff act with integrity while performing their duties lies with their employers. On this basis Police Scotland agree that seconding personnel to undertake investigations relating to their staff is cost neutral. They agree to continue paying the salaries of staff seconded to PIRC, including overtime payments, and to meet subsistence costs incurred during the course of the investigation. Seconded staff submitting paper copies of their claims to Police Scotland will receive confirmation from the PIRC senior manager conducting the investigation that the staff member incurred the expenses claimed. Police Scotland agree to make appropriate transport available, and fuel costs payable, to their seconded staff to enable them to travel to and from the investigation and to carry out the investigation.

Annual leave

- E.11 Seconded staff will receive their contractual annual leave and public holiday entitlement and follow Police Scotland procedures for submitting requests for leave. At the outset of the investigation, they will notify the relevant PIRC senior manager of any pre-authorised leave to enable him or her to plan the investigation. When planning further leave, seconded staff will endeavour to take due account of the demands of the investigation.

Working hours and overtime

- E.12 Normal working pattern for seconded staff will be Monday to Friday 8.00 to 16.00, including refreshment time. Overtime may be necessary from time to time to complete an investigation. This will be payable at the relevant Police Scotland rates. Any claims submitted by seconded staff will be supported by confirmation by the PIRC senior manager that the number of hours claimed is accurate. PIRC undertakes to minimise the amount of overtime worked and out-of-pocket expenses accrued by seconded

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staff, other than in exceptional circumstances. Should such circumstances arise, PIRC will discuss the matter with Police Scotland.

Sickness

- E.13 Seconded staff will follow Police Scotland procedures for reporting periods of sick leave to their line managers. In addition, they will notify the PIRC senior manager conducting the investigation.

Performance appraisal and performance monitoring

- E.14 Following the period of secondment, PIRC will provide an assessment of the member of staff's performance for inclusion, if desired, in the member of staff's annual appraisal. Should PIRC have any concerns during an investigation about a member of staff's performance and PIRC is unable to resolve this, the matter will be referred to Police Scotland for further discussion.

Employee liability insurance

- E.15 Staff seconded to PIRC will remain covered by Police Scotland employee liability insurance during the period of secondment.

APPENDIX F Police Scotland Standards of Professional Behaviour

These standards reflect our expectations of our officers, whether on or off duty.

Honesty and integrity

We act with honesty and integrity and do not compromise or abuse our position.

Authority, respect and courtesy

We act with self-control and tolerance, treating members of the public and colleagues with respect and courtesy in line with our values.

We do not abuse our powers or authority and respect the rights of all individuals.

Equality and diversity

We act with fairness and impartiality. We do not discriminate unlawfully or unfairly.

Use of force

We use force only to the extent that it is necessary, proportionate and reasonable in all the circumstances.

Orders and instructions

We give and carry out only lawful orders and instructions.

Duties and responsibilities

We are diligent in the exercise of our duties and responsibilities.

Confidentiality

We treat information with respect and access or disclose it only in the proper course of our duties.

Fitness for duty

When on duty or presenting ourselves for duty, we are fit to carry out our responsibilities.

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Discreditable conduct

We behave in a manner which does not discredit the Police Service or undermine public confidence in it, whether on or off duty.

Challenging and reporting improper conduct

We report, challenge or take action against the conduct of others which has fallen below the Standards of Professional Behaviour.