



Police Investigations &
Review Commissioner

Agreement between
THE POLICE INVESTIGATIONS & REVIEW COMMISSIONER
and
THE CIVIL NUCLEAR POLICE AUTHORITY
and
THE CHIEF CONSTABLE, CIVIL NUCLEAR CONSTABULARY

Document Details	
Document Title	Agreement effective <i>add date here</i>
Version	V1
Date of Issue	<i>Add date of issue here</i>
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Status	DRAFT

Abbreviations

The following abbreviations are used in this document:

Abbreviation	Explanation
Authority	Civil Nuclear Police Authority
Constabulary	Civil Nuclear Constabulary
Chief Constable	Chief Constable of the Civil Nuclear Constabulary
COPFS	Crown Office and Procurator Fiscal Service
PIRC	The Police Investigations and Review Commissioner
ECHR	European Convention on Human Rights

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1. Legislative basis

This agreement recognises the provisions of the Police Public Order and Criminal Justice (Scotland) Act 2006 Act ("the 2006 Act") as amended by the Police and Fire Reform (Scotland) Act 2012 ("the 2012 Act"), the related Consequential Provisions and Modifications Order 2007 ("the 2007 Order"), the Consequential Provisions and Modifications Order 2013 ("the 2013 Order"), and the Police Investigations and Review Commissioner (Investigations Procedure, Serious Incidents and Specified Weapons) Regulations 2013 ("the Regulations"). The agreement also recognises the obligations of the parties under section 6(1) of the Human Rights Act 1998, and, in particular, the obligation to act compatibly with Articles 2 and 3 of ECHR.

2. Purpose

2.1 The purpose of this agreement is to:

- agree a framework for collaborative working;
- commit to the spirit of independent scrutiny;
- demonstrate respect for human rights; and
- confirm that the PIRC, the Constabulary and Authority will be aware of and fully respectful of each other's powers, duties, responsibilities and privileges as provided for by law.

2.2 The agreement relates only to incidents that occur in Scotland.

3. A Framework For Collaborative Working: Investigation Of Serious Incidents

3.1 In terms of section 3(4) of the 2013 Order, a 'serious incident involving the Constabulary' has the same meaning as a 'serious incident involving the police' in section 41B of the 2006 Act. Accordingly, for the purposes of this agreement, a serious incident involving the Constabulary means:

- a) a circumstance in or in consequence of which a person has died or sustained serious injury¹ where –

¹ The term 'serious injury' means a fracture, deep cut, deep laceration, injury causing damage to an internal organ or the impairment of any bodily function, or severe psychological trauma from which the victim's recovery is expected to be difficult or impossible

- (i) the person, at or before the time of death or serious injury, had contact (directly or indirectly) with a member of the Constabulary, any other person serving with the Constabulary, or any person employed by the Authority, acting in the exercise of their duties; and
 - (ii) there is an indication that the contact may have caused (directly or indirectly) or contributed to the death or serious injury;
- b) any other circumstance in or in consequence of which –
- (i) a person has otherwise sustained serious injury at a time when the person was being detained or kept in custody by a member of the Constabulary, any other person serving with the Constabulary, or any person employed by the Authority; or
 - (ii) a member of the Constabulary, any other person serving with the Constabulary, or any person employed by the Authority, has used a firearm².
- c) any circumstance in which a member of the Constabulary, any other person serving with the Constabulary, or any person employed by the Authority has, while acting in the exercise of their duties, used any item to:
- (i) attempt to cause a member of the public a serious injury; or
 - (ii) cause or attempt to cause a member of the public an injury which is not serious.
- d) any circumstance in which a member of the Constabulary, any other person serving with the Constabulary, or any person employed by the Authority has, while acting in the exercise of their duties, used a straight, side handled or friction lock truncheon (sometimes known as a baton).

3.2 The Authority and the Chief Constable agree to refer to PIRC for investigation all 'serious incidents' defined at (a) and (b) above, immediately it becomes clear that the matter should be referred. The Authority and the Chief Constable may also refer to PIRC for investigation those serious incidents defined at (c) and (d).

3.3 The PIRC will investigate any serious incident defined at (a) above in which the person concerned has died unless it is a matter which is

² The definition of use of a Taser or Spray is 'discharge' of these articles. The definition of use of other firearms is 'instances where the police have discharged a firearm or presented a firearm at a person'

being, or has been investigated, by any other person under the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976 Act. On receipt of all other referrals the PIRC will decide whether or not to investigate the incident. Should the PIRC decline to investigate, the PIRC will refer the matter back to the Authority or the Chief Constable and may include, for their consideration, recommendations on how an investigation of the incident might be taken forward.

3.4 The Authority and the Chief Constable agree that, in respect of any serious incident referred to PIRC for investigation, they will:

- produce in a form acceptable to the PIRC, any document, record or other information which the PIRC may require;
- The Authority shall use all reasonable endeavours, subject to the Nuclear Industries Security Regulations 2003 (also subject to GSC, vetting requirements), to permit the PIRC's investigators to –
 - (i) enter any premises which are used by the Authority or the Constabulary subject to the appropriate prior notice, wherever possible.
 - (ii) inspect those premises and anything on those premises which PIRC investigators consider to be relevant to the investigation; and
 - (iii) remove from those premises anything which the PIRC investigators consider to be relevant to the investigation; and
- provide any other assistance to the PIRC that the PIRC investigators may reasonably require,
- ensure that referrals to the PIRC do not delay any initial action by the Constabulary in managing the scene of a live incident or securing or preserving evidence, and
- provide PIRC investigators with assistance at the scene of a live incident.

3.5 The Authority and the Chief Constable recognise that PIRC investigators have the powers and privileges of constables throughout Scotland.

4. A Framework For Collaborative Working: Complaint Handling

4.1 The PIRC, the Authority, and the Chief Constable agree that the PIRC may examine the handling by the Authority or the Constabulary of any relevant complaint if requested to do so by the complainer or the appropriate authority³ in relation to the complaint (such an examination being a "complaint handling review"). Where the request for a complaint

handling review is made by the appropriate authority, the PIRC may carry out a review only if satisfied that the appropriate authority has taken reasonable steps to deal with the complaint.

- 4.2 For the purposes of this agreement a relevant complaint means a statement (whether oral, written or electronic) expressing dissatisfaction about an act or omission by the Authority, the Constabulary or a person who at the time was a person serving with the Constabulary or employed by the Authority.
- 4.3 A relevant complaint is one made, given or sent by:
- (a) a member of the public who claims to be the person in relation to whom the act or omission took place;
 - (b) a member of the public not falling within (a) above who claims to have been adversely affected by the act or omission;
 - (c) a member of the public who claims to have witnessed the act or omission;
 - (d) a person acting on behalf of any of the above.
- 4.4 A relevant complaint may relate to –
- (a) any action taken, or failed to be taken, by or on behalf of the subject of the complaint;
 - (b) the standard of any service which the subject of the complaint has provided or failed to provide.
- 4.5 However, a relevant complaint does not include:
- any statement made by a person serving with, or who has served with the Constabulary, or by a person employed by, or who was employed by the Authority, about the terms and conditions of that person's service or employment; or
 - a statement which consists of or includes an allegation of an act or omission which constitutes a crime.
- 4.6 In order to constitute a relevant complaint, the act or omission need not be one occurring in the course of a person's duty, employment or appointment, nor does the complaint need to identify the person who is the subject of the complaint.
- 4.7 On completion of a complaint handling review, the PIRC must compile a report containing the conclusions of the review, the reasons for those conclusions and any action the PIRC proposes to take arising from

conclusions. The PIRC will provide a copy of the report to the complainer and the appropriate authority³.

- 4.8 Where the person who is subject to the complaint is identified, the appropriate authority must provide that person with a copy of the report.
- 4.9 If, having completed a complaint handling review, the PIRC is of the opinion that the complaint should be reconsidered, the PIRC may give a direction requiring the reconsideration of the complaint (a "reconsideration direction"). A reconsideration direction may be given to either the Constabulary or the Authority ("the reconsidering authority") regardless of which of these bodies was the appropriate authority in relation to the complaint. A reconsideration direction must be accompanied by a copy of the report sent to the appropriate authority in relation to the complaint.
- 4.10 A reconsideration direction may be given as respects so much of the complaint as has been, or is, the subject of misconduct proceedings by the Authority or the Chief Constable only in so far as it relates to the extent of compliance with the relevant misconduct procedures.
- 4.11 A reconsideration direction may (either or both)—
- 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 complaint handling review) after the complaint was dealt with;
 - contain a requirement that reconsideration of the complaint is to take place under the supervision of the PIRC (a "supervision requirement").
- 4.12 In deciding whether a reconsideration direction should contain a supervision requirement, the PIRC must have regard to—
- the seriousness of the case; and

³ where the complaint is in respect of an act or omission of the Authority, the appropriate authority is the Authority; where the complaint is in respect of an act or omission of the Constabulary, it is the chief constable of the Constabulary; where the complaint is in respect of an act or omission of a person who at the time was a person employed or appointed by virtue of schedule 10, part 3, paragraph 6(1) of the Energy Act 2004, it is the Authority; where the complaint is in respect of an act or omission of a constable of a rank above chief superintendent, it is the Authority; and where the person was below the rank of Chief Superintendent, it is the chief constable of the Constabulary.

- the public interest.
- 4.13 The PIRC may at any time issue a direction varying a reconsideration direction by inserting or, as the case may be, deleting a supervision requirement. Where a reconsideration direction is varied the PIRC may give—
- the reconsidering authority; or
 - any person previously appointed to carry out the reconsideration, such directions as the PIRC considers appropriate for the purpose of giving effect to the variation.
- 4.14 Where a reconsideration direction is issued, the reconsidering authority must appoint a person to reconsider the complaint to which the direction relates. Where the reconsideration direction contains a supervision requirement, the reconsidering authority must not appoint a person unless the PIRC has given notice to the authority that the PIRC approves the person whom the authority proposes to appoint. Where the reconsidering authority is the appropriate authority in relation to the complaint, the person appointed must be one who was not previously involved in the consideration of the complaint. Where the reconsideration of a complaint is subject to a supervision requirement, the person appointed 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 PIRC in relation to that reconsideration.
- 4.15 The reconsidering authority or, where the reconsideration of a complaint is subject to a supervision requirement, the PIRC, must provide the appropriate authority, the complainer and the person about whom the complaint has been made (where relevant) with all such information as will keep those persons properly informed, while the reconsideration is being carried out and subsequently, of—
- the action (if any) which is taken in respect of the matters dealt with in any report; and
 - the outcome of any such action.
- 4.16 A person appointed to reconsider a complaint must provide the PIRC with all such information as is reasonably required by the PIRC for the purposes of the PIRC's functions. Where the reconsideration of a complaint is not subject to a supervision requirement the reconsidering authority must comply with any direction or guidance given by the PIRC as to how the authority is to perform its reconsideration functions.

4.17 On the completion of the appointed person's reconsideration, the person must—

- submit a report on it to the PIRC; and
- send a copy of the report to the reconsidering authority and, where different, the appropriate authority in relation to the complaint.

4.18 A person submitting a report under this provision is not prevented, subject to any impact on national security by any obligation of secrecy imposed by any rule of law or otherwise from including all such matters as the person thinks fit in the person's report.

4.19 In terms of the 2007 Order, any person may disclose information to the PIRC if the disclosure is made for the purposes of the exercise or carrying out by the PIRC of any of the PIRC's functions. Information disclosed by the PIRC under section 46 of the 2006 Act to any public body or office holder must not be further disclosed except—

- for a purpose connected with any function of that public body or office holder; and
- with the consent of the PIRC.

4.20 A disclosure under the 2007 Order does not breach—

- any obligation of confidence owed by the person making the disclosure; or
- any other restriction on the disclosure of information (however imposed).

4.21 Nothing in the 2007 Order authorises—

- a disclosure, in contravention of any provisions of the Data Protection Act 1998, of personal data which are not exempt from those provisions; or
- a disclosure which is prohibited by Part 1 of the Regulation of Investigatory Powers Act 2000.

4.22 The Authority and the Chief Constable agree that, in respect of any complaint handling review to be carried out by the PIRC, they will produce in a form, manner and timescale specified by the PIRC, any document, record or other information which the PIRC may require. The Authority and the Chief Constable will do so at the earliest time at which it is practicable to do so.

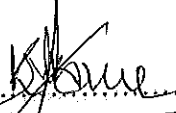
4.23 The PIRC may issue guidance to the Authority and the Chief Constable and to persons appointed to reconsider complaints, about the carrying out by the persons to whom the guidance is issued of any of the functions conferred on them by virtue of this agreement. A person to whom guidance is issued must have regard to that guidance in carrying out the functions to which the guidance relates. The power to issue guidance includes power to vary or revoke any such guidance.

5. Resolving Disagreements

The PIRC, the Authority and the Chief Constable are committed to working together in an environment of mutual trust and respect and in promoting a culture of openness. This approach should minimise the risk of disagreements. Should disagreements arise, they should be resolved amicably between the staff concerned, and failing that through discussions between relevant senior managers.

6. Reviewing The Agreement

This agreement will be reviewed by the parties every three years to ensure the parties are working within the agreed framework, and consider whether the framework needs to be revised to meet changing circumstances. Any of the parties may request a review at an earlier point, if required. The agreement will not be varied, or terminated without the approval of the relevant Secretary of State and the Scottish Ministers.

Signed 

Date..... 23 February 2017

Police Investigations & Review Commissioner

Signed 

Date..... Feb 7, 2017

Chair, Civil Nuclear Police Authority

Signed Mr Griffiths

Date 10th February 2017

Chief Constable, Civil Nuclear Constabulary