

# LEARNING POINT

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pirc

Police Investigations &  
Review Commissioner

## Prisoner safety, care and wellbeing

When to dynamically assess  
risk and take action

## Police referrals to PIRC

Avoiding unnecessary  
investigation enquiries

## How much is enough?

Getting the balance right in  
complaint enquiries



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# WELCOME

Welcome to Issue 15 of our best practice publication, *Learning Point*. This provides a good opportunity to introduce myself as the new Police Investigations and Review Commissioner, having just taken up the post a few weeks ago. You can find out more about my background and appointment at [pirc.scot](http://pirc.scot).

I have already been busy examining the issues facing police officers serving in Scotland and look forward to working alongside Police Scotland and other organisations to explore how we can continue to drive excellence in standards of policing.

*Learning Point* is one of the ways that we highlight recurring issues identified during our investigations and complaint handling reviews that may impact on public confidence. By sharing this knowledge, we aim to encourage an environment of learning, facilitating dialogue and change that will increase public confidence in policing.

In this issue, we explore how to ensure the safety of people being transported in police vehicles through preventing access to harmful items. We also highlight some investigations statistics and provide advice on the type of information to give us when making a referral and how it can help avoid a full investigation. In reviews, we look at how much enquiry is required

when responding to a complaint, as well as noting the recurring issues we face with statements provided by police officers.

We want this publication to be a useful resource and I would encourage you to take the opportunity to provide feedback on the content and format, letting us know what you would like to be included. Please take a few moments to complete our survey at [surveymonkey.co.uk/r/LearningPoint15](https://surveymonkey.co.uk/r/LearningPoint15)

**Michelle Macleod**  
Commissioner





# Investigations:

## Prisoner safety, care and wellbeing

Recently, the PIRC has identified potential safety issues in respect of arrested persons having access to items that could be used to self-harm while being transported in police vehicles. This primarily relates to volatile persons or those with mental health issues.

In one case, a woman who was intoxicated, aggressive and volatile had been arrested and, while in the cage area of a cell van, set fire to her clothing despite being handcuffed. An officer put the flames out with his hands. In another example, a man who had been arrested and was being conveyed in a police van deliberately set fire to himself, causing serious burns. Both people required treatment in hospital. Aside from the obvious trauma to both individuals concerned, this took up additional officers' time and healthcare resources.

In another incident, two people were placed in a police van without being searched. One of them then cut the other's throat with a sharp knife, causing serious injury, before inflicting similar wounds on himself.

Police routinely search arrested persons for weapons, drugs or 'sharps' (needles), removing them when they find them. Other items, such as keys, lighters, etc, are routinely left with the person and removed

when they arrive at a police office and are processed into the custody suite. When arresting volatile and unstable people, officers should dynamically assess the risk they pose to themselves and consider removing items which could be used to self-harm before placing them in a police vehicle.

Where officers do not remove such items from arrested persons they should ensure that they maintain observations throughout the journey to the police office. Many police vans used to transport arrested persons have rear facing passenger seats which provide a direct and continuous view of the person and allow for immediate intervention should the person require assistance. Other vehicles have view panels which allow the prisoner to be monitored.

Police Scotland guidance states, 'Where a cage van is being used for the carriage of prisoners, the escort will ideally occupy the seat nearest the cage so that they may keep the prisoner under observations

at all times' and 'A detainee must not be given the opportunity to hide something they would not be allowed to keep once in custody, particularly items they may use to harm themselves, you or a colleague.'



### LEARNING POINT

Prior to conveying volatile or vulnerable persons in police vehicles, officers should consider removing any items from them which could be used to self-harm. Where such items are not removed, observations should be maintained in line with police procedures.





## Investigations: Police referrals to PIRC

The Police, Public Order and Criminal Justice (Scotland) Act 2006 and the PIRC Regulations 2013 place a duty on the Chief Constable to refer serious incidents involving the police to the PIRC. The PIRC then decides whether an independent investigation is required.

A serious incident involving the police is any incident where a person has died or sustained serious injury and the person had contact, directly or indirectly, with the police at or before the time of the incident. There should also be an indication that the police contact may have caused or contributed to the death or serious injury. There is also a requirement to refer police use of firearms, including Taser, to the PIRC. Because CS/PAVA spray falls within the definition of a prohibited weapon under Section 5 of the Firearms Act 1968, its use should also be referred to the PIRC.

In some instances it will be obvious that an incident should be referred to the PIRC. However, in instances of indirect contact, where the police were never 'hands on' or in any form of contact with

the person, it may not be so apparent that there is a need to refer the matter. Examples of such indirect contact may include:

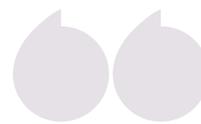
- Police vehicle pursuits;
- Missing person investigations – where a failure to act or pursue lines of enquiry, which may have traced the person alive, may be considered an act of omission;
- Persons receiving an injury when running away from the police or jumping out of windows to avoid arrest.

Following referral, the PIRC Investigations Team undertakes an assessment of the incident, examining CCTV, statements or other material and decides whether the incident requires a full investigation.

From April 2018 to March 2019, 508 referrals were made to the PIRC, including 470 by policing bodies. Of the 508 referrals, there were:

- 17 deaths following police contact
- 4 deaths in custody
- 23 criminal allegations against the police
- 104 serious injury following police contact
- 66 conventional use of firearms
- 34 use of Taser
- 260 use of PAVA





**In many referrals the decision not to investigate can be assisted by the quality of briefing, statements, CCTV or other evidence collected and provided by Police Scotland, giving a comprehensive picture of what happened. Where such material is lacking, it can be difficult to determine what happened and whether the police action was necessary or proportionate, giving rise to a need to undertake a full investigation.**

During 2018-19, following assessment, the PIRC decided to investigate 30 incidents, 6.5% of the 458 incidents referred by Police Scotland. These included:

- 4 deaths following police contact (an additional eleven were instructed by the Crown Office and Procurator Fiscal Service (COPFS) – see below);
- 13 serious injury following police contact;
- 2 conventional firearms use;
- 7 Taser use;
- 4 PAVA use.

Of the other 428 Police Scotland incidents, following assessment, the PIRC considered that the actions of the police were necessary and proportionate and did not infringe a person's rights under Article 2 or 3 of ECHR and therefore did not require an investigation. 93.5% of referrals did not lead to an investigation.

A further 12 incidents were referred to the PIRC by other policing bodies, one of which led to a full investigation.

The PIRC is also directed to undertake investigations by the Lord Advocate and the COPFS. In 2018 to 2019 the PIRC was instructed to investigate 36 matters:

- 4 deaths in custody;

- 11 deaths following police contact;
- 21 investigations into allegations of criminal behaviour by police officers.

Put into context, Police Scotland deals with about 2.5 million calls per year and about 1.7 million incidents. The PIRC investigated 30 Police Scotland referrals and 36 COPFS referrals, or 0.004% of all Police Scotland incidents.

The decision by the PIRC on whether to investigate any incident referred by the Chief Constable is based on an assessment of the circumstances, to determine whether any act or omission by the police may have caused or contributed to the death or serious injury, or to determine whether the use of force was necessary or proportionate. These decisions are informed by information provided by the police and additional evidence independently sought by the PIRC.

In many referrals the decision not to investigate can be assisted by the quality of briefing, statements, CCTV or other evidence collected and provided by Police Scotland, giving a comprehensive picture of what happened. Where such material is lacking, it can be difficult to determine what happened and whether the police

action was necessary or proportionate, giving rise to a need to undertake a full investigation.

Referrals to the PIRC are made via the Professional Standards Department (PSD) of Police Scotland. Where an officer is in doubt as to whether any matter should be referred to the PIRC, advice and guidance should be sought from PSD staff.

#### LEARNING POINT

Referrals should be accompanied with a comprehensive briefing on the full circumstances and all other relevant material. This may avoid any further investigation by the PIRC and use of police resources in assisting enquiries.

If in doubt as to whether a matter should be referred to the PIRC, advice and guidance should be sought from PSD staff.



**Find out more about investigations at [pirc.scot](https://pirc.scot)**



# Reviews:

## How much is enough?



**During the last financial year, we reviewed over 500 individual heads of complaint and made 217 recommendations to Police Scotland to address various issues identified. A brief analysis of our recommendations highlights two major themes: insufficient enquiries undertaken during the complaint investigation (36%) and the standards of final response letters (40%).**

We examined the most common issues in relation to final response letters to complainers in Issue 13 of *Learning Point*, published in July 2018. In this edition we will focus on the proportionality and sufficiency of the complaint enquiry.

The proportionality of the complaint enquiry has to be assessed on a case-by-case basis by the enquiry officer and determined against the merits of the specific complaint under investigation. The statutory guidance provides that the enquiry officer should:

*“make every reasonable effort to investigate all of the relevant circumstances and information surrounding the complaint. The investigation must be proportionate and should reflect the ability to provide a reasonable response. Ultimately, the investigating officer is responsible for determining what level of information is required to conclude the complaint, and for ensuring the information gathered is of suitable quality and quantity to enable a full and informed response to be provided to the complainer.*

*It may be necessary for the investigating officer to obtain statements, conduct interviews, visit relevant places and seize*

*documents, CCTV footage and other such evidence. The investigating officer should also access records and specialist advice if necessary, in order to fill any gaps in information regarding the complaint. (this list is not exhaustive).”*

The level of enquiry expected to be undertaken will often depend on what information is already available to the enquiry officer and what information could be considered necessary in order to establish the key facts surrounding the complaint. In some cases, the availability of CCTV footage or audio recordings may allow the enquiry officer to conclude the investigation quickly and provide a definitive decision about the complaint. However, in more complex cases, or those involving serious incidents, more extensive enquiries may be needed.

**The key thing is to ensure that all potentially relevant evidence proportionate to the nature of the complaint is gathered. In cases where the evidence is finely balanced, the enquiry officer should consider whether there are any obvious outstanding lines of enquiry that could potentially tip the evidential balance one way or the other.**



### 2018-19 stats at a glance:

527

Heads of complaint reviewed

217

Recommendations issued

55

Reconsideration directions issued

49

Learning points identified





For example, in PIRC/00399/18, the complainer alleged that the subject officer was uncivil towards her and she felt intimidated. She stated that because of that, she had to ask her support worker for assistance to contact the officer on her behalf. The subject officer provided a statement denying the allegation. The complaint enquiry officer contacted the applicant's support worker in relation to a different complaint, but failed to seek an account about this specific allegation.

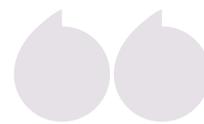
Without an account from the support worker, the available evidence was finely balanced. An account from the support worker could have provided additional evidence that may have supported either the applicant's or the subject officer's position, tipping the balance of probabilities either way. In this instance, obtaining a statement from the support worker is not only proportionate, but also necessary in order to properly address the complaint.

We also observed instances where statements obtained from police or civilian witnesses did not address specific allegations. It is the enquiry officer's responsibility to ensure that witness statements and accounts are sufficiently focused on the issues at the heart of the complaint. It is usually not appropriate, during the final assessment of the available evidence, to rely on the fact that a witness did not mention specific issues/facts/conduct/incidents in their statement if the enquiry officer did not specifically ask about these matters

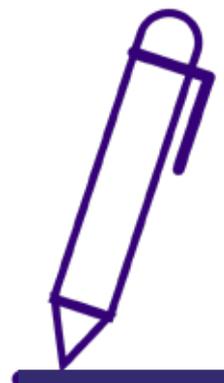
whilst obtaining the statement. We would encourage enquiry officers to be proactive in their enquiries, seeking additional accounts or clarification where the available statements or accounts do not sufficiently address the matters raised.

Where the complaints made are of a very general nature, i.e. an officer was unprofessional or uncivil, we would encourage the enquiry officer to seek further clarification from the complainers. In such cases, the onus is on the enquiry officer to try to establish why the complainer has reached such a view and determine the root of their dissatisfaction. Failure to do so may render the complaint enquiry insufficient and, irrespective of the subject officer's position, it will be difficult for the final response letter to go on to adequately address the crux of the complaint.

However, we also noted that in cases where the complainers intentionally did not provide specific details, or were simply unable to identify any specific action or interaction with the officers that caused them to be dissatisfied, the enquiry officer may have been restricted in terms of the available and reasonable lines of enquiry. In these instances, the question of proportionality must be carefully considered. This highlights the importance of seeking clarity and understanding with the complainer at the early stages of the complaint enquiry, which in turn enables the enquiry officer to identify necessary and proportionate lines of enquiry.



**We would encourage enquiry officers to be proactive in their enquiries, seeking additional accounts or clarification where the available statements or accounts do not sufficiently address the matters raised.**





## Statements

A decision whether to obtain full statements from the complainant, subject officer or witnesses is also closely linked to the issue of proportionality. The key consideration for the enquiry officer must not be the method of getting the necessary information, but rather the relevancy, significance and proper recording of the information. The statutory guidance states that it is best practice to obtain a statement of complaint from the complainant:

*“Some complaints will be less straightforward and will necessitate further enquiry. This will usually involve face to face meeting with the complainant, at which time the complainant should be given the opportunity to fully outline their complaint. As previously stated, it is best practice to obtain a statement of complaint from a complainant. The enquiry officer should take time to ensure that all of the complainant’s areas of dissatisfaction are clearly identified and captured, and the complainant should be asked to agree these by signing the statement.”*

Accordingly, wherever possible, practical and proportionate, we would always encourage enquiry officers to obtain a full statement from the complainant. Further guidance on complaint statements is provided within the Complaints about the Police Standard Operating Procedure (CAP SOP).

In certain cases, it may not be possible or practical to obtain statements from the

complainant, or they may have already provided very detailed correspondence describing their complaints. The enquiry officer should adopt the approach described above to identify and capture the individual complaints. Each recorded complaint should be independent of other allegations and capable of being upheld or not upheld individually. Lack of clarity and understanding at the initial stages of the complaint process is likely to undermine the efficiency and relevancy of any subsequent complaint enquiry. Although it is not necessary to note witness statements on every occasion, from a complaint handling review perspective, it is imperative that in cases where statements are not obtained that the enquiry officer clearly documents the enquiries undertaken and the information that has been gathered. Detailed notes must be made of verbal interactions such as telephone conversations and copies of these and any email exchanges must be retained on the complaint file. As stated in the statutory guidance:

*“Record Keeping is an integral part of the complaint handling process, whether it is through local complaint handling or specialist complaint investigation. A comprehensive record benefits the complainant, the police, and the public. It allows the complainant to be fully informed as to the handling of the complaint; it protects the police against claims of poor complaint handling, and makes for a transparent complaint handling system that is open to scrutiny.”*

**Finally, all officers providing witness statements as part of complaint enquiries must ensure that their statement is their own version of events, not a copy of statements from other witnesses.**

**Over the last few years we have repeatedly highlighted this issue through individual or organisational learning points within CHR reports. Regrettably, this issue still persists and we have identified a further three instances this year where officers appear to have replicated their colleagues’ statements.**

**The failure to provide individual accounts is not simply contrary to the provisions of the CAP SOP, but it is likely to diminish the credibility and reliability of the statements, undermining public confidence in the complaint handling process. The enquiry officer should be vigilant in identifying such instances and remind officers of the provisions of the CAP SOP. Where appropriate, this should also be taken into consideration at the determination stage of the complaint process.**



Find out more about our complaint handling review outcomes at [pirc.scot](https://www.pirc.scot)

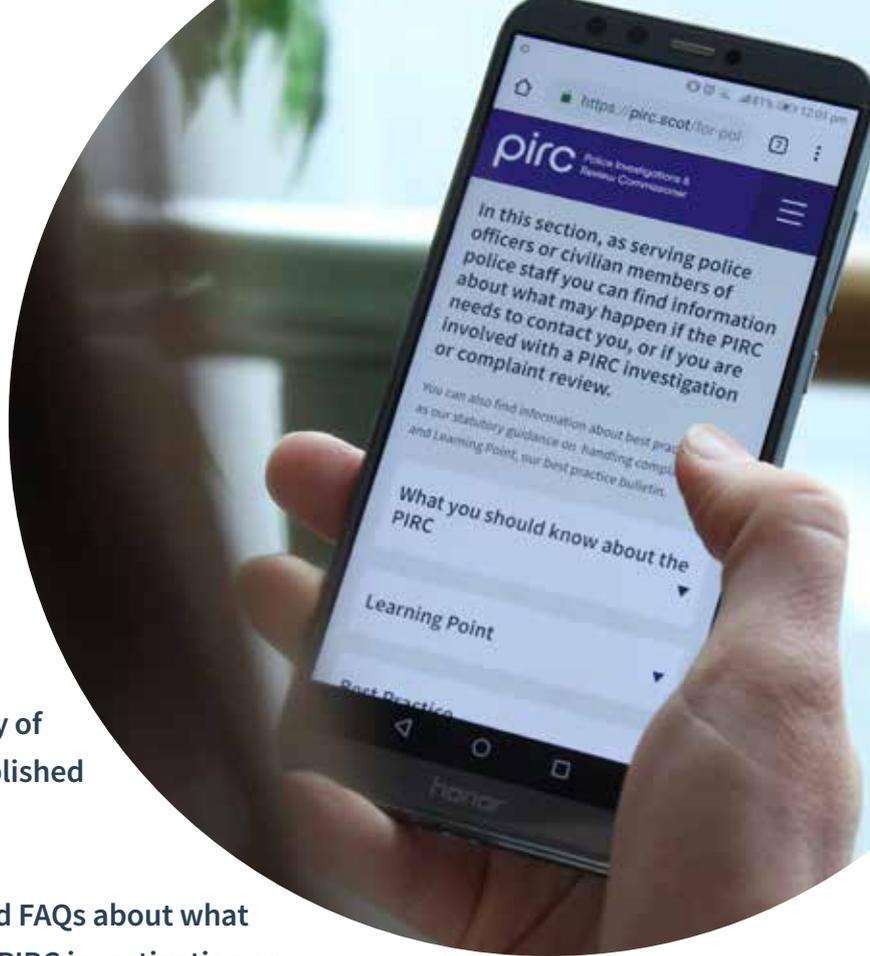


# Get connected

[pirc.scot](https://pirc.scot) is home to a whole library of publications, including our investigation reports and complaint handling reviews.

There's also a section dedicated to information for police officers and police staff. There you have access to the library of previous issues of *Learning Point*, our published audits and statutory guidance.

Additionally, you can find information and FAQs about what you need to know if you are involved in a PIRC investigation or complaint handling review.



Find out more at [pirc.scot/for-police](https://pirc.scot/for-police) >>

## Your views

We hope you've enjoyed this issue of *Learning Point* and find the new format easy to navigate and digest. We're keen to develop the publication in future, to make it a useful and valuable resource for our readers.



We want to hear your views. Please take a few moments to complete our survey at [www.surveymonkey.co.uk/r/LearningPoint15](https://www.surveymonkey.co.uk/r/LearningPoint15) or contact us at [communications@pirc.gov.scot](mailto:communications@pirc.gov.scot).



# Get in touch

If you have any queries about the topics covered in this issue, or would like to speak to a member of our team, please contact us at [enquiries@pirc.gov.scot](mailto:enquiries@pirc.gov.scot).

If you would like to be added to our mailing list please email [communications@pirc.gov.scot](mailto:communications@pirc.gov.scot).

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