

pirc

Police Investigations &
Review Commissioner



Memorandum of Understanding

between

THE POLICE INVESTIGATIONS AND REVIEW COMMISSIONER

AND

THE BRITISH TRANSPORT POLICE

AND THE BRITISH TRANSPORT POLICE AUTHORITY

Document Details	
Document Title	Memorandum of Understanding between the Police Investigations and Review Commissioner and the British Transport Police and the British Transport Police Authority.
Version	Final 1.0
Dated	<i>21 January 2022</i>
Author	Ilya Zharov

Table of Contents

1. Introduction	Page 4
2. Interpretation	Page 5
3. Complaint Handling Arrangements	Page 6
4. Complaint Handling Reviews	Page 7
5. CHR Reports	Page 9
6. Recommendations & Learning Points	Page 10
7. Reconsideration Directions	Page 10
8. Provision and sharing of information	Page 12
9. Power of Commissioner to issue Guidance	Page 13
10. Resolving Disagreements	Page 13
11. Reviewing the Agreement	Page 13
12. Signatories	Page 14

1. Introduction

1.1 This Memorandum of Understanding is between:

- The British Transport Police (BTP);
- The British Transport Authority (BTPA); and
- The Police Investigations and Review Commissioner (PIRC)

1.2 The PIRC, the BTP and the BTPA entered into an Agreement (“ the Agreement”), made under Article 4(1) of the Police, Public Order and Criminal Justice (Scotland) Act 2006 (Consequential Provisions and Modifications) Order 2007 (“the Order”), on 11 August 2014. (Appendix A)

1.3 In accordance with Article 4(8) of the Order, the Agreement made on 11 August 2014 has been approved by the Scottish Ministers and/or the Secretary of State for Scotland. The Agreement has not been amended, varied or terminated since approval.

1.4 The purpose of the Agreement is to establish and maintain suitable and effective arrangements by the BTP and the BTPA for i) handling of relevant complaints and ii) examination of the handling of relevant complaints which correspond to or are similar to those contained in Chapter 2 of Part 1 of the 2006 Act. The Agreement is in relation to complaints made about the actions or omissions of the British Transport Police, a constable of that force and any other persons specified in the agreement who serve with that force or who are employed by the British Transport Police Authority. The Agreement has effect only in respect of acts and omissions which occur in Scotland.

1.5 This Memorandum of Understanding sets out procedures and processes for the PIRC, the BTPA and the Chief Constable of the British Transport Police and their respective members of staff, to adhere to in respect of the complaint handling arrangements, complaint handling review process and the provision, sharing and exchange of information to allow each organisation to fulfil its functions and where necessary, obligations under legislation.

2. Interpretation

2.1 In this Memorandum of Understanding-

- “the 2006 Act” means the Police, Public Order and Criminal Justice (Scotland) Act 2006 as amended by the Police and Fire Reform (Scotland) Act 2012;
- “the Order” means the Police, Public Order and Criminal Justice (Scotland) Act 2006 (Consequential Provisions and Modifications) Order 2007;
- “the Agreement” means the agreement between the PIRC, BTP and the BTPA, which came into force on 11 August 2014.
- “the Memorandum of Understanding” means this Memorandum of Understanding (“the MoU”)
- “the Commissioner” means the Police Investigations and Review Commissioner;
- “the Authority” means the British Transport Police Authority;
- “the Chief Constable” means the Chief Constable, British Transport Police
- "senior rank" means a rank above chief superintendent
- “the BTP” means the British Transport Police
- “the CHR” means the Complaint Handling Review
- “the appropriate authority” means the policing body handling the complaint
- “the reconsidering authority” means the policing body reconsidering the complaint

3. Complaint Handling Arrangements

- 3.1 In terms of the Agreement, the Authority and the BTP agreed to establish and maintain suitable arrangements for handling of relevant complaints made about the actions or omissions of the BTP, a constable of that force and any other persons specified in the agreement who serve with that force or who are employed by the Authority.
- 3.2 In determining what those arrangements should be, the Authority and the BTP agreed to have regard to the [Statutory Guidance](#) issued by the Commissioner.¹
- 3.3 For the purposes of the Agreement and this MoU, a “relevant complaint” means a statement (whether oral, written or electronic) expressing dissatisfaction about an act or omission by:
- a) the Authority in discharging its responsibilities under Section 20 of the Railways and Transport Safety Act 2003;
 - b) the BTP; or
 - c) a person who, at the time of the act or omission, was a person serving with the BTP or Authority.
- 3.4 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
- 3.5 It does not include –
- a) any statement made by a person serving with, or who has served with the BTP or Authority, about the terms and conditions of that person's service with the BTP or Authority; or
 - b) a statement which consists of or includes an allegation of an act or omission which constitutes a crime.
- 3.6 A relevant complaint can be made 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;

¹ <https://pirc.scot/publications/?cat=guidance+for+police&from=&to=&category=Statutory+Guidance&sort=desc>

- 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.

3.7 The act or omission complained about does not need to have occurred in the course of a person's duty, employment or appointment (as the case may be) in order to constitute a relevant complaint.

3.8 For the purposes of the Agreement, a person serving with the BTP or Authority means –

- a) A constable of the BTP; or
- b) A person employed by virtue of section 27 of the Railways and Transport Safety Act 2003 (employment other than as a constable) by the Authority.

3.9 The BTP and the Authority shall notify all complainers in Scotland of their entitlement to seek an independent review by the Commissioner of the manner in which their complaints were handled. This will be achieved by inclusion of a standard paragraph in the final response letter to the complaint, which can be found at Appendix B.

4. Complaint Handling Reviews (CHRs)

4.1 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 by the appropriate authority (such an examination being a Complaint Handling Review).

4.2 The Commissioner may carry out a CHR under sub-paragraph 4.1(b) only if satisfied that the appropriate authority in relation to the complaint has taken reasonable steps to deal with the complaint.

4.3 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 appropriate authority in relation to the complaint –
 - has concluded its consideration of the complaint; and
 - has communicated its findings to the complainer;
- b) a period of 3 months or longer has elapsed between the date on which those findings were so communicated 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 justified the delay in requesting the review.

4.4 In terms of the Agreement and for the purposes of this MoU, the appropriate authority in relation to a complaint is -

- a) the Authority, where the complaint is in respect of an action or omission by the Authority;
- b) the Chief Constable of the BTP, where the complaint is in respect of an action or omission by the BTP;
- c) where the complaint is in respect of an action or omission which occurred at the time when the person was a constable of the BTP –
- where the person is of a senior rank, the Authority;
 - where the person is not of a senior rank, the Chief Constable of the BTP;
- d) where the complaint is in respect of an act or omission of a person at a time when the person was employed or appointed by virtue of section 27 the Railways and Transport Safety Act 2003 –
- the Authority, where the employee was under the direction and control of the Authority;
 - the Chief Constable, where the employee was under the direction and control of the Chief Constable of the BTP.

4.5 In sub-paragraph 4.4 (c), "senior rank" means a rank above chief superintendent.

4.6 Once a request for a complaint handling review has been accepted, the PIRC will formally submit a request for the BTP or the Authority to provide all relevant information in respect of the complaint under the review. The PIRC may also request that this information is provided in a particular form.

4.7 On receipt of the request made under paragraph 4.6 above, the Authority and the BTP shall provide the PIRC with all of the information gathered, relied upon, referenced and considered during the initial complaint handling.

4.8 Wherever possible, the BTP and the Authority shall submit the relevant information to the PIRC electronically and provide all requested information to the PIRC within **14 days** from the date that the information is requested. If the BTP or the Authority anticipates a delay or are unable to meet this timescale, the PIRC must be advised of the delay as soon as possible.

- 4.9 On occasion, the PIRC will require to request additional information from the appropriate authority while the complaint handling review is ongoing. In order to avoid delays during the review process, the BTP and the Authority shall supply the additional information requested within **7 days** from the date that the request is made and will advise the PIRC as soon as possible if this timescale cannot be met or a delay is anticipated.
- 4.10 The PIRC can discontinue a complaint handling review at any stage of the process if the Commissioner considers this to be the most appropriate course of action. The PIRC will advise the BTP/BTPA of any decision to discontinue a complaint handling review within **7 days** of the decision being made. On receipt of such notification, the BTP and BTPA will advise the officer(s) or member(s) of staff subject of the complaint of the Commissioner's decision to discontinue the complaint handling review.

5. CHR Reports

5.1 On completion of a CHR, the Commissioner will –

- a) inform the persons mentioned in sub-paragraph 5.2 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) draw up a report of the CHR and the conclusions, reasons and proposed action referred to in paragraph (a) and send it to the appropriate authority in relation to the complaint; and
- c) if the Commissioner considers it appropriate to do so, publish the report drawn up under sub-paragraph (b) in such manner as the Commissioner considers appropriate.

5.2 Those persons are –

- a) the complainer; and
- b) the appropriate authority in relation to the complaint

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

6. Recommendations & Learning Points

6.1 On 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.

- 6.2 The Authority and the BTP will notify the Commissioner within **14 days** of the CHR report being issued of the acceptance of the recommendations or learning points made in the report.
- 6.3 The Authority and the BTP will implement accepted recommendations and learning points within **40 working days** from the date the Commissioner's findings are communicated to the appropriate authority. The Authority and the BTP shall notify the Commissioner at the earliest reasonable opportunity where implementation timescales cannot be met.
- 6.4 On conclusion of the implementation, the Authority and the BTP will provide the Commissioner with any information or confirmation as the Commissioner deems necessary, in order to demonstrate and evidence successful implementation of the recommendation/learning point.
- 6.5 On receipt of the information/confirmation referred to in paragraph 6.4 above, the PIRC will assess the information provided and advise the Authority or the BTP whether the recommendation/learning point is deemed by the Commissioner to be successfully implemented. The notification of the successful implementation signals the end of the CHR process.

7. Reconsideration Directions

- 7.1 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").
- 7.2 A reconsideration direction may be given to the appropriate authority in relation to the complaint or, if the Commissioner considers it more appropriate to do so, to the Authority where the appropriate authority is the Chief Constable.
- 7.3 A reconsideration direction may be given as respects so much of the complaint as has been, or is, the subject of proceedings by virtue of section 36 (1) of the Railways and Transport Safety Act (General Regulations) 2003 only in so far as it relates to the extent of compliance with the procedures established by virtue of that provision.
- 7.4 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").

7.5 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.

7.6 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.

7.7 Where a reconsideration direction is varied under paragraph 7.6, the Commissioner may give –

- a) the reconsidering authority; or
- b) any person previously appointed to carry out the reconsideration,

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

7.8 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.

7.9 Where the reconsideration direction contains a supervision requirement, the reconsidering authority must not appoint a person unless the Commissioner has given notice to the authority that the Commissioner approves the person whom the authority proposes to appoint.

7.10 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.

7.11 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.

7.12 On the completion of the reconsideration, a person appointed under paragraph 7.11 must —

- (a) submit a report to the Commissioner; and

(b) send a copy of the report to—

(i) the reconsidering authority; and

(ii) where different, the appropriate authority in relation to the complaint.

7.13 A person submitting a report under this section is not prevented 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.

7.14 On receipt of the reconsideration report, the Commissioner will assess whether the reconsideration direction has been implemented and may:

- intimate to the reconsidering authority that the reconsideration direction has been implemented, or
- issue further direction and/or guidance as deemed appropriate

7.15 The Authority and the BTP will implement reconsideration directions within **40 working days** from the date the Commissioner's findings are communicated to the appropriate authority. The Authority and the BTP shall notify the Commissioner at the earliest reasonable opportunity where implementation timescales cannot be met.

7.16 On completion of the reconsideration, the Authority and the BTP will notify the officer or member of staff subject of the complaint, of the final determination and outcome.

8. Provision and sharing of Information

8.1 The Authority and the BTP shall –

- a) provide the Commissioner with all such other information and documents specified or described in a notification given by the Commissioner; and
- b) produce to the Commissioner all such evidence and other documentation so specified or described, as appear to the Commissioner to be required by the Commissioner for the purposes of the carrying out of any of the Commissioner's functions.

8.2 Anything falling to be provided or produced by the Authority or the BTP under paragraph 8.1, shall be provided or produced in such form, in such manner and within such period as may be specified in –

- a) the notification provided by the Commissioner; or
- b) in any subsequent notification given by the Commissioner for the purposes of this paragraph.

8.3 Nothing in this paragraph requires the Authority or the BTP to provide the Commissioner with any information or document, or to produce any other thing, before the earliest time at which it is reasonably practicable for the Authority or the BTP to do so.

9. Power of Commissioner to issue Guidance

9.1 The Commissioner may issue guidance –

- a) to the Authority or the Chief Constable;
- b) 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 the Agreement.

9.2 Before issuing any guidance under this section, the Commissioner shall consult –

- a) the Authority and the Chief Constable; and
- b) such other persons as the Commissioner thinks fit.

9.3 A person to whom guidance is issued under paragraph 9.1 must have regard to that guidance in carrying out the functions to which the guidance relates.

9.4 Any guidance issued under paragraph 9.1 may be varied or revoked by the Commissioner.

10. Resolving Disagreements

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

11. Reviewing the MoU

11.1 This Memorandum of Understanding becomes effective on 31 May 2022.

11.2 This memorandum of understanding 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. Interim reviews will be undertaken should any changes be made to the legislative framework within which the agreement operates.

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

12. Signatories



Signed

Date 16/05/22

Police Investigations & Review Commissioner



Signed

Date 11/04/22

Chief Constable of The British Transport Police



Signed

Date 13/04/22

Chief Executive of The British Transport Authority

Appendix A

The Agreement between the PIRC, the BTP and the BTPA made under Article 4(1) of the Police, Public Order and Criminal Justice (Scotland) Act 2006 (Consequential Provisions and Modifications) Order 2007 (“the Order”), on 11 August 2014.



Police Investigations &
Review Commissioner

AGREEMENT

between

THE POLICE INVESTIGATIONS & REVIEW COMMISSIONER

and

THE BRITISH TRANSPORT POLICE AUTHORITY

and

THE BRITISH TRANSPORT POLICE

CONTENTS

Page 3	Agreement in respect of the Investigative function of the PIRC
Page 7	Agreement in respect of the Review function of the PIRC
Page 15	Funding Annex in relation to Reviews

AGREEMENT IN RESPECT OF THE INVESTIGATIVE FUNCTION OF THE PIRC

1. INTRODUCTION

This agreement takes into account 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 2013 ("the Order"), and the Police Investigations & Review Commissioner (Investigations Procedure, Serious Incidents and Specified Weapons) Regulations 2013 ("the Regulations"). The agreement also recognises the obligations of both organisations under section 6(1) of the Human Rights Act 1998, and, in particular, the obligation to act compatibly with Articles 2 and 3 of the European Convention on Human Rights (ECHR).

This agreement relates only to the investigative functions of the Police Investigations & Review Commissioner ("the PIRC"). A separate agreement is in place with British Transport Police Authority ("the Authority") in relation to PIRC's review functions.

2. STATUTORY ROLE OF THE PIRC

Sections 61 and 62 of the 2012 Act renamed and extended the functions of the former Police Complaints Commissioner for Scotland (established in 2006). The PIRC's extended statutory functions include:

- to investigate, where directed to do so by the appropriate prosecutor, any circumstances in which there is an indication that a person serving with the police may have committed a crime, or the circumstances of any death involving a person serving with the police which the Procurator Fiscal is required to investigate under the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976; and
- to determine whether to investigate, where requested to do so by the Scottish Police Authority ("the SPA") or the chief constable of the Police Service of Scotland ("the PSS"), certain serious incidents involving the police.

The 2006 Act, as amended, vests PIRC investigators with '*all the powers and privileges of a constable throughout Scotland*' while conducting investigations on behalf of the PIRC. The Regulations make various requirements on the PSS and SPA regarding the provision of information and other assistance to the PIRC, and permits PIRC's investigators entry to premises used by the PSS or SPA.

The Police Service of Scotland (Senior Officer) (Conduct) Regulations 2013 also require that the SPA refer to PIRC potential misconduct by a senior officer of PSS if the SPA considers that the matter needs to be investigated.

The Order enables the PIRC, the Authority and the British Transport Police ("BTP"), to enter into an agreement to extend PIRC functions and associated requirements to the BTP. The Order relates only to matters that occur within Scotland.

3. A FRAMEWORK FOR COLLABORATIVE WORKING

The PIRC, the Authority, and the BTP agree that the PIRC may investigate and report, when requested to do so by the Authority or the chief constable of the BTP, on any serious incident involving the BTP.

In terms of the Order, a 'serious incident involving the British Transport Police' has, subject to certain qualifications, 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 BTP means:

- a) a circumstance in or in consequence of which a person has died or sustained serious injury¹ where –
 - i. the person, at or before the time of death or serious injury, had contact (directly or indirectly) with a constable of the BTP, or any person employed by the Authority under section 27 of the Railways and Transport Safety Act 2003 ("the 2003 Act"), acting in the execution 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 constable of the BTP, or any person employed the Authority under section 27 of the 2003 Act, acting in the exercise of their duties; or
 - ii. a constable of the BTP, or any person employed by the Authority under section 27 of the 2003 Act, has used a firearm, taser or incapacitant spray.²

The Authority and the chief constable of the BTP agree that they will refer to PIRC for investigation all 'serious incidents' as defined above, immediately it becomes clear that a matter should be referred. This agreement does not preclude the Authority from referring to PIRC a serious incident which the chief constable of the BTP has not referred, and vice versa.

The Authority or chief constable of the BTP may also choose to refer the following types of case to PIRC for investigation:

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

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'.

- 11 any circumstance in which a constable of the BTP, or any person employed by the Authority under section 27 of the 2003 Act, has, while acting in the exercise of their duties, used any item to:
 - o attempt to cause a member of the public a serious injury; or
 - o cause or attempt to cause a member of the public an injury which is not serious.
- 12 any circumstance in which a constable of the BTP, or any person employed by the Authority under section 27 of the 2003 Act has, while acting in the exercise of their duties, used a straight, side handled or friction lock truncheon (sometimes known as a baton).

The PIRC will investigate any serious incident defined at (a) above in which the person concerned has died. 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 BTP and may make recommendations on how an investigation of the incident should be taken forward.

The PIRC must investigate certain incidents if directed to do so by the Crown Office and Procurator Fiscal Service ("COPFS"). This include investigations of deaths which the Procurator Fiscal is required to investigate under the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976. It also includes circumstances in which there is an indication that a constable serving with the BTP, or any person employed by the Authority under section 27 of the 2003 Act, may have committed an offence.

The Authority and the chief constable of the BTP agree that they will, in respect of any PIRC investigation into a serious incident involving the BTP:

- 13 produce in a form acceptable to the PIRC investigators, any document, record or other information which the PIRC investigators may require;
- 14 permit the PIRC's investigators to –
 - o enter any premises which are used by the Authority or the BTP
 - o inspect those premises and anything on those premises which PIRC investigators consider to be relevant to the investigation; and
- 15 remove from those premises anything which the PIRC investigators consider to be relevant to the investigation; and
- 16 provide any other assistance to the PIRC that the PIRC investigators may reasonably require, and
- 17 ensure that referrals to the PIRC do not delay any initial action by the BTP in managing the scene or securing or preserving evidence.
- 18 provide PIRC investigators with assistance at the scene of a live incident.

The Authority and the chief constable of the BTP recognise that PIRC investigators have the powers and privileges of constables throughout Scotland.

Where, following an incident, there is a scene of interest to both BTP and PIRC, in matters that are directed by Crown Office and Procurator Fiscal Service, the directing Procurator Fiscal, PIRC and the BTP will, as soon as is reasonably practicable, discuss the incident and agree primary control of the scene. Primary control of the scene will normally lie with the organisation that is investigating the more serious potential offence.

4. RESOLVING DISAGREEMENTS

PIRC, the Authority and the BTP 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 people concerned, and failing that through discussions between relevant senior managers.

5. REVIEWING THE MEMORANDUM OF UNDERSTANDING

We will review this Memorandum annually to ensure the parties are working within the agreed framework, and consider whether the framework needs to be revised to meet changing circumstances.

Signed: 

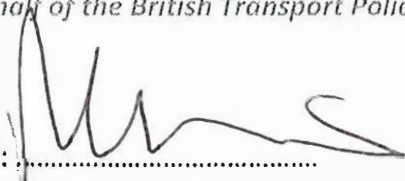
Date: 20.06.2014

Police Investigations & Review Commissioner for Scotland

Signed: 

Date: 17/08/14

On behalf of the British Transport Police Authority

Signed: 

Date: 24.07.2014

On behalf of the British Transport Police

AGREEMENT IN RESPECT OF THE REVIEW FUNCTION OF THE PIRC

1. BACKGROUND, EXTENT AND COMMENCEMENT

1. This Agreement is made under Article 4(1) of the of the Police, Public Order and Criminal Justice (Scotland) Act 2006 (Consequential Provisions and Modifications) Order 2007 ("the Order").
2. This Agreement shall come into force on the day after the day on which it is made and shall replace the Agreement between the Police Complaints Commissioner for Scotland and the British Transport Police Authority made on 20 May 2008.
3. In accordance with Article 4(8) of the Order, the making of this Agreement and the termination of the Agreement made on 20 May 2008 have been approved by the Scottish Ministers and the Secretary of State. This Agreement shall not be amended, varied or terminated without the approval of the Scottish Ministers and the Secretary of State.
4. This Agreement has effect only in respect of acts and omissions of those specified in paragraph 3(2) which occur in Scotland.

2. INTERPRETATION

In this Agreement-

1. "the Act" means the Police, Public Order and Criminal Justice (Scotland) Act 2006 as amended by the Police and Fire Reform (Scotland) Act 2012;
2. "the Order" means the Police, Public Order and Criminal Justice (Scotland) Act 2006 (Consequential Provisions and Modifications) Order 2007;
3. "the Agreement" means this Agreement;
4. "the Commissioner" means the Police Investigations and Review Commissioner;
5. "the Authority" means the British Transport Police Authority;
6. "the Chief Constable" means the Chief Constable, British Transport Police Force
7. the "appropriate authority" means the authority as defined in paragraph 9 of this Agreement.
8. the "reconsidering authority" means the authority appointed by the Commissioner to reconsider a complaint.
9. "relevant authorities" are the Chief Constable and the Authority
10. In paragraph 8(1)(c)(i), "senior rank" means a rank above chief superintendent.

3. "RELEVANT COMPLAINT" AND "PERSON SERVING WITH THE POLICE"

1. "Relevant complaint" means a complaint which is made, given or sent by any of the persons mentioned in sub-paragraph (6) to the appropriate authority in relation to the complaint.
2. In paragraph (1), "complaint" means a statement (whether oral, written or electronic) expressing dissatisfaction about an act or omission -
 - (a) by the Authority in discharging its responsibilities under section 20 of the Railways and Transport Safety Act 2003;
 - (b) by the British Transport Police; or
 - (c) by a person who, at the time of the act or omission, was a person serving with the British Transport Police or Authority.

3. A "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.

But "complaint" does not include -

- a) any statement made by a person serving with, or who has served with the British Transport Police or Authority, about the terms and conditions of that person's service with the British Transport Police or Authority; or
- b) a statement which consists of or includes an allegation of an act or omission which constitutes a crime.

4. An act or omission need not be one occurring in the course of a person's duty, employment or appointment (as the case may be) in order to fall within paragraph (2)(c).

5. A complaint need not identify a person serving with the British Transport Police or Authority who is the subject of the complaint in order to fall within paragraph (2)(c).

6. The persons referred to in paragraph (1) are -

- 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 paragraph (a) 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 a person falling within any of paragraphs (a) to (c).

7. For the purposes of this article, a person is serving with the British Transport Police or Authority means -

- a) a constable of the British Transport Police; or

- b) a person employed by virtue of section 27 of the Railways and Transport Safety Act 2003 (employment otherwise than as a constable) by Transport Police Authority

4. EXAMINATION OF MANNER AND HANDLING OF COMPLAINT

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").
2. The Commissioner may carry out a complaint handling review under sub-paragraph (1)(b) only if satisfied that the appropriate authority in relation to the complaint has taken reasonable steps to deal with the complaint.
3. On completion of a complaint handling review, the Commissioner must –
 - a) inform the persons mentioned in sub-paragraph (4) about-
 - the conclusions the Commissioner has drawn from the complaint handling review and the reasons for them;
 - what action (if any) the Commissioner proposes to take in consequence of those conclusions;
 - b) draw up 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 in relation to the complaint; and
 - c) if the Commissioner considers it appropriate to do so, publish the report drawn up under sub-paragraph (3)(c) in such manner as the Commissioner considers appropriate.
4. Those persons are -
 - a) the complainer; and
 - b) the appropriate authority in relation to the complaint
5. If, having completed a complaint handling review, 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").
6. A reconsideration direction may be given to the appropriate authority in relation to the complaint or, if the Commissioner considers it more appropriate to do so, to the Authority where the appropriate authority is the Chief Constable.

7. A reconsideration direction must be accompanied by a copy of the report sent to appropriate authority in relation to the complaint under sub-paragraph (3)(b)
8. A reconsideration direction may be given as respects so much of the complaint as has been, or is, the subject of proceedings by virtue of section 36 (1) of the Railways and Transport Safety Act (General Regulations) 2003 only in so far as it relates to the extent of compliance with the procedures established by virtue of that provision.
9. 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 complaint handling review) 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").
10. 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.
11. 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.
12. Where a reconsideration direction is varied under sub-paragraph (11), the Commissioner may give -
 - a) the reconsidering authority; or
 - b) any person previously appointed to carry out the reconsideration,
such directions as the Commissioner considers appropriate for the purpose of giving effect to the variation
13. In any report of a complaint handling review, the Commissioner may make recommendations to the Authority or the Force in respect of the handling of the complaint or the practice of the Authority or the Force in relation to any other matter.

5. TIME LIMIT FOR PROCEEDING WITH A COMPLAINT HANDLING REVIEW

1. The Commissioner will not proceed with a complaint handling review if –
 - a) it relates or, if it took place, would relate to a relevant complaint in respect of which the appropriate authority in relation to the complaint –
 - has concluded its consideration of the complaint; and
 - has communicated its findings to the complainer;

- b) a period of 3 months or longer has elapsed between the date on which those findings were so communicated and the date on which the Commissioner was requested to carry out the complaint handling review; and
- c) the Commissioner is not satisfied that there are exceptional circumstances which justified the delay in requesting the review.

6. APPOINTMENT OF A PERSON TO RECONSIDER COMPLAINT

1. Where a reconsideration direction is made under paragraph 4(5) the reconsidering Authority must appoint a person to reconsider the complaint to which the reconsideration direction relates.
2. But where the reconsideration direction contains a supervision requirement, the reconsidering authority must not appoint a person unless the Commissioner has given notice to the reconsidering authority that the Commissioner approves the person whom the reconsidering authority proposes to appoint.
3. 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.
4. Where the reconsideration of a complaint is subject to a supervision requirement, the Person appointed under paragraph 6(1) article 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

7. RECONSIDERATION OF COMPLAINT: DUTIES TO KEEP PERSONS INFORMED

1. This article applies where there is a reconsideration of a complaint under paragraph 4(5).
2. The reconsidering authority or, where the reconsideration of a complaint is subject to a supervision requirement, the Commissioner must provide the persons mentioned in subparagraph (3) 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 under paragraph 7; and
 - the outcome of any such action.
3. Those persons are -
 - the complainer;
 - the appropriate authority in relation to the complaint (except where that authority is the reconsidering authority); and
 - where the complaint is in respect of an act or omission by a person mentioned in article 3(2)(c) and identifies the person who is the subject of it, that person.

4. A person appointed under paragraph 5 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.
5. 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 Commissioner as to how the authority is to perform its functions under this article.

8. FINAL REPORTS ON CONSIDERATION

1. On the completion of the reconsideration, the person appointed under paragraph 5 must -
 - a) submit a report on it to the Commissioner; and
 - b) send a copy of the report to -
 - the reconsidering authority; and
 - where different, the appropriate authority in relation to the complaint.
2. A person submitting a report under this article is not prevented 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.

9. APPROPRIATE AUTHORITY IN RELATION TO A COMPLAINT

1. For the purposes of paragraphs 3 to 7, the appropriate authority in relation to a complaint is-
 - a) where the complaint is in respect of an act or omission of the British Transport Police Authority, the Authority;
 - b) where the complaint is in respect of an act or omission of the British Transport Police Force, the Chief Constable of the Force;
 - c) where the complaint is in respect of an act or omission of a person at a time when the person was a constable of the Force –
 - where the person was of a senior rank, the Authority;
 - where the person was not of such rank, the Chief Constable of the Force;
 - d) where the complaint is in respect of an act or omission of a person at a time when the person was employed or appointed by virtue of section 27 the Railways and Transport Safety Act 2003, the Authority where the employee was under the direction and control of the Authority, or the Chief Constable where the employee was under the direction and control of the Chief Constable.
2. In sub-paragraph (1)(c)(i), "senior rank" means a rank above chief superintendent.

10. PROVISION OF INFORMATION TO THE COMMISSIONER

1. The Authority and the British Transport Police Force shall -
 - a) provide the Commissioner with all such other information and documents specified or described in a notification given by the Commissioner to that person; and
 - b) produce to the Commissioner all such evidence and other things so specified or described, as appear to the Commissioner to be required by the Commissioner for the purposes of the carrying out of any of the Commissioner's functions.
2. Anything falling to be provided or produced by the Authority or the British Transport Police Force under sub-paragraph (1) shall be provided or produced in such form, in such manner and within such period as may be specified in -
 - a) the notification provided by the Commissioner; or
 - b) in any subsequent notification given by the Commissioner for the purposes of this paragraph.
3. Nothing in this paragraph requires the Authority or the British Transport Police Force to provide the Commissioner with any information or document, or to produce any other thing, before the earliest time at which it is practicable for the authority to do so.
4. A notification by the Commissioner under this paragraph may authorise or require information or documents to which it relates to be provided to the Commissioner electronically.

11. POWER OF COMMISSIONER TO ISSUE GUIDANCE

1. The Commissioner may issue guidance -
 - a) to the Authority or the Chief Constable;
 - b) 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.
2. Before issuing any guidance under this article, the Commissioner shall consult -
 - a) the Authority and the Chief Constable; and
 - b) such other persons as the Commissioner thinks fit.
3. A person to whom guidance is issued under paragraph (1) must have regard to that guidance in carrying out the functions to which the guidance relates.
4. Any guidance issued under sub-paragraph (1) may be varied or revoked by the Commissioner.

11. FUTURE AMENDMENTS TO THE ACT

This Agreement shall be interpreted and applied in accordance with any amendments made to the Act, and any regulations made by the Scottish Ministers under the Act, so far as these are relevant to the exercise of the Commissioner's functions under this Agreement.

12. AGREEMENT

The undersigned agree to be bound by the provisions of this Agreement and annex.

Signed: *[Handwritten Signature]*

Date: *30.06.2014*

Police Investigations & Review Commissioner for Scotland

Signed: *[Handwritten Signature]*

Date: *14 Aug 14*

On behalf of the British Transport Police Authority

Signed: *[Handwritten Signature]*

Date: *24.07.2014*

On behalf of the British Transport Police

FUNDING ANNEX IN RELATION TO REVIEWS

- 1 The parties to this Agreement recognise that this Agreement is a cross- jurisdictional arrangement with the aim of achieving consistent service provision across the UK.
- 2 The parties recognise that occasions may arise where the Commissioner incurs significant costs when dealing with complaint handling reviews under this Agreement.
- 3 This annex sets out a means by which the parties agree to discuss, negotiate and agree reimbursement in such cases.
- 4 If the Commissioner considers that the costs of dealing with a complaint handling review under this agreement will exceed or has exceeded an agreed trigger amount, the parties agree to enter discussions about reimbursement to the Commissioner of the cost of the complaint handling review.
- 5 The trigger amount shall be £7500.00 (seven thousand five hundred pounds).
- 6 The Commissioner's consideration of the complaint handling review will continue whilst reimbursement negotiations are ongoing.
- 7 A reimbursement agreement will be framed in terms of either
 - (a) cost of resources required (projected and actual); or
 - (b) a lump sum which anticipates likely resources required and which is not subsequently adjusted for actual expenditure.
- 8 Whilst the Commissioner will determine the costs incurred in any complaint handling review, the reimbursement agreement itself must be agreed by both parties.
- 9 If parties are unable to reach agreement within 60 days on an appropriate level of reimbursement, the matter will be referred to the Secretary of State and the Scottish Ministers.
- 10 This annex may be reviewed by the parties as and when the parties see fit.

Appendix B

Standard paragraph referred to at 3.9:

“If you are not satisfied with the way in which your complaint has been handled, you may request a review by the Police Investigations and Review Commissioner (PIRC). If you decide to contact the PIRC, you must submit an application form to them within 3 months of the date of this letter, otherwise they may not be able to deal with your complaint. The contact details for the PIRC are outlined below.

Telephone: 01698 542900

E-mail: enquiries@pirc.gsi.gov.uk

Online: www.pirc.scotland.gov.uk

Post: PIRC, 2nd Floor, Hamilton House, Caird Park, Hamilton, ML3 0QA”