

**INDEPENDENT REVIEW OF REFERENCE
AND PROBITY CHECKS FOR
DEPUTY POLICE COMMISSIONER
APPOINTMENT IN 2023**

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6 March 2025

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OVERVIEW

Between December 2022 and March 2023, the Public Service Commission (the Commission) managed the selection and appointment process for two statutory Deputy Commissioners of Police. One of the successful applicants was Jevon McSkimming, who was appointed to the role on 11 April 2023. Both the Commission and the Government were satisfied at that time that he was a fit and proper person for the role in terms of expertise, experience and personal integrity. About 18 months later, while managing two other appointment processes (for an interim and a permanent Police Commissioner), the Commission learnt that the Independent Police Conduct Authority (IPCA) had received a referral from Police concerning a complaint against Mr McSkimming. As a result, the IPCA is now monitoring an investigation by Police into serious allegations against Mr McSkimming. It was sufficient for me to know only that these allegations related to a personal relationship Mr McSkimming had with a woman about five years before his appointment which ended badly. The complaint was only referred to the IPCA in October 2024, well after his appointment as Deputy Police Commissioner in April 2023.

It was against that backdrop that I was asked to determine whether the Commission's appointment process, especially its reference and probity checks into Mr McSkimming's suitability for the role, followed its standard processes and procedures and that its probity and reference checks were thorough and appropriate. The scope of my review was deliberately narrow: to focus only on the Commission's (no other party's) processes and procedures given the purpose of the review – to identify lessons and possible changes as part of a continuous process of improvement – and because it is for the Police and IPCA – not me – to investigate this relationship and what may, or may not, have flowed from it.

Overall, the Commission's standard processes and procedures (against which I evaluated its probity and reference checks) are well considered and sound. Stakeholders can have every confidence in these processes and procedures. As with other appointments, this appointment process occurred in a series of defined stages. I examined each of these four stages (some in more detail than others). My findings in summary are:

Stage 1: Planning and preliminary steps: The Commission followed its standard processes and procedures and planned the appointment process well. It selected experienced staff to handle the appointment process, and was committed to running a sound, contestable and merit-based process that included comprehensive reference and probity checks.

Stage 2: Shortlisting and interviews: The Commission followed its standard processes and procedures in its shortlisting of candidates. The questions it asked of candidates about integrity and conduct were considered and appropriate. However, I recommend the Commission changes how, and when, these questions are asked and that it gives earlier and more emphasis to the fit and proper person test when recruiting for statutory roles where this criterion applies.

Stage 3: Reference and probity checks: The Commission followed its standard processes and procedures and undertook extensive reference and probity checks all designed to satisfy itself that Mr McSkimming was a fit and proper person for the role. All standard pre-employment checks were carried out, including a very extensive search of all public information (including social media) on Mr McSkimming, which revealed nothing of concern. All the Commission's (six) referee checks conformed to its standard processes and procedures. The questions asked of referees were all appropriate and canvassed a range of relevant matters, including the one relating to integrity,

conduct and behaviour. The Commission followed up all matters that emerged from referee checks with comprehensive and meticulous inquiries – bar one (the personal relationship: see below). The Commission made a wide-ranging request of Police to search relevant databases and files to identify any complaints or matters of concern (an extra probity-related step taken with roles as constitutionally important as this one was). The Police files revealed absolutely nothing that called into question Mr McSkimming’s integrity and character. (Seven conduct-related complaints were identified and only three were upheld. The Commission probed further – and appropriately so – into each of these.) One matter that emerged from the search of the Police databases was a whistleblower complaint related to perceived irregularities in procurement processes for property projects involving Mr McSkimming. This matter was a “flag” for the Commission and it probed it extensively. It made all the necessary and appropriate inquiries of the IPCA to find out whether it had received or investigated any conduct-related complaints about Mr McSkimming and more generally whether it had any concerns if he were appointed to the role. As of March 2023, the IPCA informed the Commission it had no active complaints against, or concerns about, Mr McSkimming whatsoever.

It was only the matter of a “strange relationship” that emerged in one reference check that I consider was not followed up with the same degree of diligence or attention to detail that the Commission had shown in probing other matters. I consider the questions asked of the referee and Mr McSkimming in two phone calls on this matter were not as thorough as they could have been. Follow-up questions were needed either at the time of these calls or later. It is impossible to know what further inquiries at the time would have revealed but if follow-up questions had been asked, it is unlikely the answers would have made any difference to the decision to nominate Mr McSkimming. He was a highly credible candidate for the role.

Stage 4: Assurance and nomination: The Commission followed its standard processes and procedures in this last stage in deciding whether it could safely nominate Mr McSkimming. Based on the information available to it at that time about the personal relationship, which lacked the results of the further probing I considered was needed, the Commission did not have adequate grounds to conclude this was relevant to the fit and proper test. The relationship was firmly in the past; there had been no “noise for the last five years [from the other party to the relationship] about the breakup”; and most importantly, Mr McSkimming told the Commission he disclosed the relationship during the process of gaining 9(2)(a) privacy security clearance, as well as to his Police colleagues (though to whom exactly he disclosed it is unknown). As the chair of the appointment process rightly observed, there came a point where the Commission had to trust the soundness of other government agencies’ vetting processes: “We can’t hear rumours and run our own investigation into them.” At this final stage of the process, the Commission was entitled to place considerable reliance on the fact that this relationship had not prevented Mr McSkimming from being granted a 9(2)(a) privacy security clearance. Therefore, nor should it have gotten in the way of this appointment based on its knowledge of the matter at that time.

I have identified seven areas where the Commission can improve its processes and procedures for future appointments of Police and other statutory roles. They are: an earlier and greater focus during the appointment process on the fit and proper test; expanding the interview question about integrity and conduct into a series of discrete questions; documenting candidates’ answers to these questions; considering whether to require the Police Commissioner to formally disclose any matter that may affect an appointment; improving referee and probity checks; providing guidance for staff about conducting referee and probity checks especially in relation to personal or private matters; and documenting some process improvements. The Commission has accepted all recommendations and pleasingly has already begun implementing some. I am confident that if it does so, its appointment processes will be a standard setter for the public sector.

SECTION ONE: INTRODUCTION

A Deputy Commissioner of Police is a statutory role appointed by the Governor-General on the recommendation of the Prime Minister. Under the Policing Act 2008, the Public Service Commissioner is responsible for managing the selection and appointment process for such roles and for providing advice on nominations to the Prime Minister and Minister of Police (the appointment process).¹ The Act does not set out the steps required of this process, so the Commission tailors the processes used for the appointment of public service chief executives (as set out in the Public Service Act 2020) to fit Police appointments.

Between 19 December 2022 and 28 March 2023, the Commission managed the appointment process for two statutory Deputy Commissioners of Police. The process began in early December 2022 when the Cabinet Appointments and Honours Committee agreed to establish one or more statutory Deputy Commissioner of Police positions. The Commission's appointments team planned and executed the process, which included advertising the positions, assessing and shortlisting candidates, holding interviews, conducting reference and probity checks, and nominating suitable candidates for appointments.

One of the two nominations, Jevon McSkimming, was appointed by the Governor-General as a Deputy Police Commissioner on 11 April 2023. Both the Commission and the Government were satisfied at the time that his expertise, experience and personal integrity made him a fit and proper person, as required under the Policing Act 2008, to be appointed to the role.

In September 2024, the Minister of Police advised the Commission to begin the appointment process for a new Commissioner of Police. To enable this, an interim Police Commissioner had to be appointed for a brief period from among existing statutory Deputy Police Commissioners. Mr McSkimming put his name forward for the interim position. While carrying out probity checks on Mr McSkimming (a standard procedure and necessary for all Police Commissioner appointments), the Commission learned that the IPCA had received a complaint against Mr McSkimming. In late October 2024, Tania Kura was appointed to the interim role for the period 11 November to 24 November 2024 and on 25 November, Richard Chambers was appointed to the permanent role.

The IPCA is currently monitoring a Police investigation into what the Commission told me were "serious allegations" against Mr McSkimming² (for convenience, the IPCA investigation). It was neither necessary nor appropriate for me to be apprised of the details of these allegations except in the broadest terms – whether a professional or personal matter and when these allegations came to the IPCA's attention. It was sufficient for me to know only that the allegations related to a personal relationship Mr McSkimming had with a woman about five years before his appointment as a Deputy Police Commissioner, and that the relationship ended badly and, to use his words, generated some "noise" (from the other party to the relationship) at the time but not since. The allegations came to

¹ It is the Public Service Commissioner who is responsible for managing the process for the appointment of chief executives and statutory officers such as a Deputy Police Commissioner. However, these appointments are usually managed by a Deputy Public Service Commissioner and members of the Commission's Leadership, Development and Recruitment Team in the Public Sector Performance Group, referred to here simply as the appointments team.

² At the time my review commenced, and as reflected in my terms of reference, the IPCA was considering conducting an independent investigation into the Police handling of the underlying complaint. No final decision has yet been made as to whether any such investigation will take place.

the IPCA's attention in October 2024, well after Mr McSkimming's appointment as Deputy Police Commissioner in April 2023.

Purpose and scope

My terms of reference (Appendix 1) require me to determine whether the Commission's reference and probity checks into Mr McSkimming's suitability for appointment as a statutory Deputy Commissioner of Police were thorough and appropriate, and whether the Commission should take any extra steps to ensure it obtains all information relevant to the integrity and character of shortlisted applicants in future appointments. The terms ask that in the course of my work I assess and make findings and report on the appointment process, including factual findings about what checks were conducted, and with whom, about Mr McSkimming; the information obtained as a result; and the steps the Commission took in respect of that information. Specifically, I am to examine whether:

- the probity and reference checks were conducted consistently with the Commission's standard processes and procedures and were thorough and appropriate
- the questions asked of Mr McSkimming and others about his integrity and character were consistent with the Commission's standard processes and thorough and appropriate
- there were any additional steps the Commission could have taken during or after its probity and reference checks regarding Mr McSkimming.

In conducting my review, I am required to consider the Commission's written processes and procedures for the appointment of Deputy Police Commissioners and other similar statutory roles as well as the November 2018 report of the Government Inquiry into the Appointment Process for a Deputy Commissioner of Police by Mary Scholtens QC (the Scholtens Inquiry). Out of scope of my review are the:

- appointment process as it related to the other Deputy Police Commissioner appointed in April 2023
- appointment processes for the interim Police Commissioner and Police Commissioner in 2024
- civil, criminal or disciplinary liability of any person.

I note that the Commission of its own volition decided this review was appropriate. It did so recognising the need for all stakeholders to have confidence in its appointment processes and to identify any lessons and/or improvements to these processes for future appointments. I commend the Commission for taking this step.

This report covers private and confidential matters. I am relying on the Commission therefore to take account of the Privacy Act 2020 considerations in the distribution of this report (in whole or in part) to any third party. It is especially important that the candidate's privacy is fully respected.

Approach

I adopted an informal and investigative approach to my review. I considered a wide range of material relating to Mr McSkimming's appointment (and particularly the reference and probity checking), including relevant legislation, the Commission's written processes and procedures for such appointments, Mr McSkimming's application (and supporting material) for the role and all

correspondence, memoranda and file notes relating to his appointment. As with any review, there was no substitute for interviews, and I interviewed key Commission staff involved in the appointment process. All interviews were treated as confidential to ensure full and frank discussion and all interviewees answered my questions openly and honestly. Their insights and views – about what, if anything, might be done differently in the future – showed considerable thought and were most helpful. I am especially grateful to Deputy Public Service Commissioner Tania Ott, who oversaw my review, for her assistance and for her meaningful contributions to ideas for improving the Commission's processes. As with all reviews, the intent is to identify lessons and possible changes as part of a continuous process of improvement. My report consists of three sections: this introduction (including context for the review), facts and findings, and improvements.

Context

Some brief background is needed to put this appointment process into context: the legislation; the Commission's processes and procedures (against which I am to evaluate its probity and reference checking); the meaning of "fit and proper"; and the Scholtens Inquiry.

Legislation

Two pieces of legislation have a bearing on my review. The first is the Policing Act 2008. Relevantly, section 13 provides that the Governor-General may, on the recommendation of the Prime Minister, appoint one or more statutory Deputy Police Commissioners.³ A Deputy holds office at the pleasure of the Governor-General, who may, and in the event of the Police Commissioner's incapacity, appoint an acting Police Commissioner for a period. Section 14 gives the responsibility for managing the process for the appointment of the Police Commissioner and Deputy Police Commissioners to the Commission. The appointee is required to be a "fit and proper" person, reflecting, unsurprisingly, the importance of the role (see further below). The Act itself – in section 8 – underscores that "principled, effective and efficient policing services are a cornerstone of a free and democratic society under the rule of law"; that effective policing relies on a "wide measure of public support and confidence"; and that every officer must act "professionally, ethically, and with integrity". It is therefore immediately apparent how critical it is that the selection and appointment process is rigorous and the Commission, Police and any other stakeholders involved in the appointment process discharge their responsibilities throughout the appointment process diligently and appropriately.

The second piece of legislation is the Public Service Act 2020, more particularly schedule 7, which sets out the process to be followed for the appointment of public service chief executives. The Commission told me that it takes this process as its "starting point" for what are described as "unusual appointments" (see further below) such as a Deputy Police Commissioner because it is, to use its words, a "robust, merit-based and fair process". Schedule 7 sets out a series of sequential steps to be taken by the Commission in managing chief executive appointments from start to finish, beginning with notification to relevant Ministers of a vacancy for an appointment and ending with Cabinet approval and the appointment. I am satisfied the Commission followed the statutory processes to the letter.

³ The Police Commissioner can appoint other deputies, but these are not statutory roles holding the responsibilities as set out in the Policing Act 2008.

Processes and procedures

Core documents that guide the Commission (in order of significance) in its appointment processes and procedures are briefly set out below.

Schedule of Unusual Appointments: This is a Cabinet Office document and records at a high level the process for various appointments that are generally required by statute (such as the Police and Deputy Police Commissioners) or are integral to the legislative or executive branches of Government (such as the Solicitor-General, Auditor-General and Chief Parliamentary Counsel, to name but a few). These appointments are regarded as “unusual” because they are generally appointed by the Governor-General and held at the pleasure of the Crown (that is, they hold warrants, they are not employees). Many of these appointments are managed by the Commission. It told me that this document helps guide it, particularly at the “early planning stages” of any appointment process, and especially when advising Ministers on what the appointment process will entail in any given case.

Chief Executive Recruitment Law Guide: This document prepared by the Commission’s lawyers provides excellent guidance for staff on matters to be considered in any appointment process. It:

- clarifies responsibility for decision-making (whether an appointment is for a Minister, Prime Minister or the Governor-General)
- sets out what the Commission must do in relation to each of the statutory steps under both Acts outlined above
- sets out “advice and commentary” about the processes and procedures for “other appointments”, including specifically Deputy Police Commissioners
- gives legal advice on relevant criteria for these appointments, in particular what “fit and proper” means
- covers processes for reappointments, acting appointments and transfers of chief executives between departments.

One very experienced member of the appointments team described it as “the bible” that the team follows faithfully in making all appointments.

Public Service Chief Executive Appointments Manual: This is what the Commission describes as a “living document” that sets out in detail the steps it takes to recruit and appoint a chief executive or statutory officer (such as a Deputy Police Commissioner). It sets out all the practical steps to be taken in making any appointment, again from start to finish, and includes templates for, among other things, preparation of applicant packs, minutes of decision-making (for the long and short listing of applicants), interviews packs (including prompts for questions), referee and probity checks and papers to Ministers and Cabinet for appointments. It is regularly updated.

Workforce Assurance Model Standards: Everyone who appoints a person to the public service must follow these standards (issued by the Commission). The thrust of this document is that recruitment processes must be carefully managed with “robust reference and screening checks” of candidates for public sector roles. To “practice what we preach” (to use one interviewee’s words), the Commission follows the standards – to the extent relevant – in its appointment process for any statutory role such as the one filled by Mr McSkimming. A Model Standards Workforce Assurance Support Pack sets out the various steps to be followed in any appointment process from start to finish.

I am satisfied that the Commission followed these processes and procedures in this appointment process – apart from one matter where it could have probed more deeply (see next section). That said, I doubt any such probing would have changed the decision to nominate Mr McSkimming for appointment as a Deputy Police Commissioner.

Fit and proper

Fit and proper is not defined in section 13 of the Policing Act 2008. The Commission – with the benefit of advice from Crown Law – describes the test (appropriately so in my view) as **9(2)(h) legal privilege**

9(2)(h) legal privilege i.e. that the person is honest and trustworthy and has the necessary experience, qualifications or characteristics to perform the role”.⁴ The New Zealand Police’s own Policing Directions in New Zealand for the 21st Century (May 2007) describes the test as one that has “stood the test of time, and has seen successive Commissioners and Deputies drawn from the pool of experienced officers within the ranks of New Zealand Police ... who can discharge the specific responsibilities of the job, and maintain appropriate standards of staff integrity and conduct”.⁵

A recent Supreme Court case expanded on the nature of the test, saying it is:⁶

- to be interpreted considering the purposes of the relevant legislation
- objective in nature, and that it is necessary to focus on the relevance of the past conduct and not be influenced by sympathy for the position of the applicant
- forward-looking and designed to assess the risk of any future misconduct or harm (and I would add, bring into disrepute), the profession in question.

Punishment for past conduct has no place in the test, it added. The Court also noted that where an offence is involved (and I would say the same applies to any other incident or matter pertaining to a candidate’s integrity) its nature, and the time that has lapsed since the offending, is to be considered. As will become apparent, this was a factor that influenced the appointments team’s conclusion that Mr McSkimming’s earlier relationship and any associated “noise” was firmly in the past.

Particularly important in the current context is the need to have regard to the nature and importance of the role of a Deputy Police Commissioner. **9(2)(h) legal privilege**

9(2)(h) legal privilege It is because of both the importance of the role and, as several interviewees noted, the fact that applicants invariably came from within the Police ranks and that each will have his or her own “supporters in a highly competitive process and culture”, that it is critical to get the decision right. For these reasons, I suggest some improvements in probity and reference checking in section three, specifically in relation to Police roles and more generally for all public sector appointments.

⁴ Chief Executive Recruitment Law Guide, pg 36.

⁵ Policing Directions in New Zealand for the 21st Century, pg 49.

⁶ New Zealand Law Society v Stanley [2020] 1 NZLR 50.

⁷ Chief Executive Recruitment Law Guide, pg 35.

Scholtens Inquiry

My terms of reference require me to have regard to the 2018 Scholtens Inquiry (especially its recommendations), which resulted in changes to the Commission's processes and procedures. There are some remarkable similarities between what happened during and after both the 2018 and 2022-2023 appointments, although there are also some very important differences.

In her wide-ranging inquiry, Ms Scholtens examined almost all aspects of the appointment of Wallace Haumaha as a Deputy Police Commissioner in May 2018. Mr Haumaha was appointed by the then Prime Minister and Minister of Police from two candidates at the end of what she described as "a careful and reasonably typical process" for the appointment of senior public servants. Some weeks later, two matters surfaced in the media. The first was that a survivor's advocate, Louise Nicholas, who worked closely with Police supporting survivors of sexual violence, expressed "significant reservations" about his appointment because of statements, she said, he gave to Operation Austin, the investigation into allegations by her and others of sexual assault by Police officers in Rotorua many years earlier. The second matter was allegations of bullying and inappropriate conduct by Mr Haumaha of members of a project team in 2016 involving Police, Justice and Corrections working together to improve the outcomes for Māori in the criminal system.⁸ The terms of reference for that inquiry required Ms Scholtens to examine, identify and report on the adequacy of the process that led to his appointment; whether (and what) relevant information was properly provided to, or gathered by, the Commission; and whether the Commission provided all such relevant information to Ministers and if not, why not. These tasks were against a backdrop of considering what information officials can reasonably be expected to obtain about candidates and what information Ministers can reasonably be expected to receive to make sound decisions and recommendations.⁹

Ms Scholtens found the process was "sound" and the Commission did not fail to identify any "available and relevant information" either about Ms Nicholas's concerns or the alleged bullying. Neither the appointee nor the then Police Commissioner (or the Commission) was aware of Ms Nicholas's concerns because both men believed these concerns had been resolved well before Mr Haumaha's earlier appointment as an Assistant Commissioner in 2017. Nor had there been any complaint made to the Police about any alleged bullying or inappropriate conduct at the time of the 2016 project or since his appointment as a Deputy. "Without a complaint there was nothing to take into account," Ms Scholtens said.¹⁰ As to whether information on these matters should have been provided to the Commission, she said there was "no simple yes or no answer". Ideally, all risks, including the possibility of adverse comment about an appointment, would be gathered by the Commission. But neither matter – for the reasons she canvassed set out above – was known to the Commission. There were risks she described as "unknown unknowns".¹¹ As to what information the Commission provided to Ministers (and further, what Ministers can reasonably expect to be provided), she noted the important public interest in ensuring appointments "are not undermined because of subsequent, unanticipated, uninformed or inaccurate publicity" so that it is important, wherever possible, that the Commission provides information to Ministers that it does not consider to be relevant to the merits of an appointment but that enables them to be able to respond to any later adverse publicity.¹²

⁸ Scholtens Inquiry, pg 2.

⁹ Scholtens Inquiry terms of reference (scope and purpose), pg 60.

¹⁰ At pg 3.

¹¹ At pg 3.

¹² At pg 35.

Ms Scholten's recommendations were "minor" in nature because she did not see any "systemic concerns" with the appointment process. But given the advent of social media, and the fact unanticipated publicity can undermine a public appointment, she recommended a focus on strategies to "better identify possible risks" (or the "unknown unknowns"):

- take care to be explicit when seeking information from candidates and referees that they should think widely, pointing out the risk of matters that might be seen as irrelevant gaining some traction if the candidate were to be appointed
- ensure that references are sought from a significant number and a diverse mix of referees, appropriate to the role
- use its ability to approach people other than nominated referees, where appropriate, to seek anonymous, confidential views from employees and other persons whose perspectives may not otherwise be reached
- undertake a review of international best practice to identify further improvements that might be made to the appointment process, focusing on identifying and managing risks associated with unexpected publicity.¹³

All her recommendations were implemented. As to the first three, all have been incorporated into the Commission's processes and procedures. The Commission has, for example, added an integrity and conduct question to its standard interview questions; it now seeks a minimum of five referees (compared with two or three previously); and it ensures at least two are non-nominated referees (where previously it was one or none). As to the fourth recommendation, the Commission conducted a review of international best practice but found little academic research on risks associated with unexpected publicity. That aspect of the review was, in the Commission's words, "inconclusive", although it said it has regard to international research and best practice when designing its appointment process.

It was abundantly clear to me from my interviews that all members of the appointments team had the lessons from this inquiry "at the forefront of their minds", as one interviewee put it. They were all "watchful" about what candidates and referees said about conduct and behaviour. And those in the appointments team responsible for the reference and probity checking said they had her report "very much in mind" when delving into several probity-related matters – that they "bore into" matters of concern.¹⁴

I would emphasise that the Scholtens Inquiry was required to examine Mr Haumaha's appointment process as a whole and to identify what information, or knowledge, all those in the appointment process had about Ms Nicholas's concerns or the alleged bullying. Consequently, Ms Scholtens interviewed a wide-range of people – well beyond Commission staff – to establish the facts of the matter including what the then Police Commissioner (who was a member of the appointments panel) knew about both matters. My review, on the other hand, is confined to examining the reference and probity checks that the Commission carried out with Mr McSkimming's appointment (although necessarily in the context of the appointment process more generally). It was therefore not for me to examine and make findings about what the Police in 2022-2023 knew (or did not know) about the relationship Mr McSkimming had with a woman some five years earlier. Suffice to say, there was nothing on the Police files that noted any such relationship (see section two).

¹³ At pg 3.

¹⁴ At pg 13.

I add too that my terms of reference specifically excluded me from seeking access to information held by other organisations and individuals or interviewing individuals other than Commission staff without prior written approval from the Commission to do so. In the end, I considered it neither necessary, nor appropriate, to seek such approval for two reasons. The first is that, as mentioned above, my terms of reference are solely focused on the Commission's processes and procedures in relation to this appointment process. The second is that the Commission was appropriately conscious, as was I, that I did not in any way cut across the IPCA investigation (and indeed also suppression orders made by the District Court in relation to a matter before it – of which I have no particulars whatsoever). Undoubtedly, the IPCA (and/or the Police) will interview all relevant individuals for the purpose of its investigation.

SECTION TWO: FACTS AND FINDINGS

This section sets out the steps taken by the Commission in managing Mr McSkimming's selection and nomination for appointment as a Deputy Police Commissioner by the Prime Minister and relevant Ministers. As with all such appointments, the process occurred in a series of defined stages. I describe each stage below, some briefly for context purposes, others more comprehensively because of their relevance to the Commission's probity and reference checks.

Stage 1: Planning and preliminary steps

In November 2022, the then Police Commissioner advised the then Deputy Public Service Commissioner, Dame Helene Quilter, that the Police wanted to appoint two statutory Deputy Police Commissioners for various strategic and operational reasons. The appointments team assembled a smaller group to carry out this task. The team's manager, although only in the role five months, was very experienced at such work, having been involved in 21 public sector-related appointments or reappointments. The Commission, conscious that Dame Helene was shortly to retire, and that its preference was to have the same Deputy Public Service Commissioner chair any appointment process from start to finish, assigned the task to Deputy Public Service Commissioner, Heather Baggott. Ms Baggott would assume responsibility for all liaison with relevant Ministers and the Prime Minister about the appointment process. This was the first time she had chaired an appointment process, but she had sat on several appointment panels for public sector chief executives and had some limited involvement in the appointment of the Police Commissioner in 2020. It was clear to me she was an experienced public sector servant and well qualified for the job. At the same time, and in consultation with the Police Commissioner, the appointments team asked recruitment agency Sheffield Search (Sheffield) to be involved in selecting and recruiting appropriate candidates. Sheffield had handled the recruitment of many executives into, and within, the Police, and its knowledge of the organisation made it a useful asset in this appointment process. As one interviewee said: "Police appointments are tricky given the nature, importance and competition for the role."

On 7 December 2022, the Cabinet Appointments and Honours Committee considered a paper from the Minister of Police setting out the rationale for establishing a vacancy for one or more (using the language of the statute) Deputy Police Commissioners and confirming that the Commission would manage the appointment process. On 9 December, the Commission prepared a briefing paper for the Prime Minister, Minister of Police and Minister for the Public Service outlining briefly the appointment process and next steps. The paper attached a position description drafted by the Commission (in consultation with the Police and Sheffield) setting out the requirements of the role. The position description made clear the role entailed five "leadership priorities": operational, strategic, organisational and personal leadership and partnerships (an ability to form effective relationships with others). It said the candidate must be a fit and proper person and listed all the skills required of the job, almost all of which matched the five leadership priorities except for a brief mention of the need for candidates to display "honesty, integrity and a demonstrated sense of ethics in all decisions and actions". The paper's recipients were asked to "review and confirm" the position description. There was no feedback, and the Prime Minister and Ministers of Police and for the Public Service approved the position description. On 19 December, Cabinet confirmed its agreement to establish one or more additional deputy roles. The vacancies were advertised on the Commission, Police and SEEK websites the same day.

The Commission prepared a standard application form for applicants to complete, which included an authority (under the Privacy Act 2020) allowing the Commission to approach referees, search personnel files of current and previous employers, verify qualifications, undertake credit and security checks and vet for personal suitability. Applicants were asked to provide a covering letter and CV, along with the completed application forms. Applications closed on 16 January 2023. The Commission received six applications, including one from Mr McSkimming.

It was plain to me that the appointments team planned the process well. It followed its standard processes and procedures, selected experienced staff to handle the myriad of associated tasks and was committed to running a sound, contestable and merit-based process that included comprehensive and appropriate reference and probity checks.

Stage 2: Shortlisting and interviews

At the close of applications, the Commission set up a shortlisting panel comprising the two Deputy Public Service Commissioners, the Deputy Commissioner to whom the appointments team reported and the Police Commissioner to review applications and make a shortlist of interviewees. Panel members met on 20 January 2023 to discuss the applications. Five others joined the meeting: two members of the appointments team, two recruiters from Sheffield, and Dr Sharon Rippin from PsychforLeaders, who would undertake psychometric assessments for the shortlisted candidates. A minute of the meeting noted that Ms Baggott set out the Commission's role in the appointment process, while the Police Commissioner set out what he was looking for in candidates. The panel also had the benefit of a "candidate report" from Sheffield following an in-depth interview with Mr McSkimming that reported on his interest in the role, his strengths and areas for further consideration. It noted that he presented as a "dynamic, strategic and authentic leader" who was "energised by the possibility of becoming DC". The report recommended him for shortlisting.

Panel members disclosed professional relationships and/or social acquaintances they had with applicants, but each (appropriately) agreed "they could be impartial" in shortlisting candidates. After discussing each applicant's "mix of skills and experience", the panel shortlisted b(2)(a) privacy candidates, including Mr McSkimming. The minute does not record any discussion of the fit and proper test. The appointments team told me that, at this stage of the process, "the essential focus was on the candidates' expertise and experience to do the role and that issues of integrity, ethics and conduct came later in the process". Whether this should be so, I discuss in section three.

Mr McSkimming then underwent a standard psychometric assessment by PsychforLeaders. This assessment consisted of two parts. The first tested his capabilities against the five leadership priorities by requiring him to complete two online questionnaires to test his leadership approach and self-assessment skills and his personality preferences, along with an in-person interview with Dr Rippin. The second part was a mock media interview with broadcaster Kim Hill to test his media skills. The appointments team manager told me he performed well in the interview – indeed, "convincingly so". A report from PsychforLeaders dated 9 February scored Mr McSkimming "strong" or "sound" in all the five leadership priorities.

The appointments team then carried out the necessary preparatory work for formal interviews scheduled for 13 February 2023. By this stage, the Commission had already decided on the composition of the interview panel and, in accordance with usual practice, tested the makeup of the panel with the Minister of Police and Minister for the Public Service as well as the Prime Minister. They were all satisfied with its composition and suggested no alterations or additions, as is

sometimes the case.¹⁵ The interview panel comprised the two Public Service Deputies and the Police Commissioner, who had all been on the shortlisting panel, an experienced Crown solicitor and a Kaihautū, who could advise on Māori perspectives.

In accordance with usual practice, panellists received a 14-page interview pack consisting of an agenda, information for panellists, interview questions and the position description. The pack noted, among other things, the need for a candidate to be a “fit and proper” person. It said panellists’ functions in assessing the candidates were to provide a “perspective on the wider community interests; and/or [their] expertise in a particular field and/or experience as a chief executive”. The pack went on to note that the impending interviews were part of a “wider selection process that assists the panel’s chair to make a final recommendation for appointment to the Governor-General”. This is a point worth repeating: the panel assists the chair but does not make the recommendation.

I should note here that, 9(2)(h) legal privilege

the role of the Police Commissioner in this appointment process overall was reasonably limited, being confined to consultation on the position description (as noted earlier), the formal interview, and follow-up where needed in the all-important probity checks. 9(2)(h) legal privilege

The information pack included a set of 10 interview questions for the panel, but I was told these were “prompts” only. The questions covered such topics as motivation, ability to do the job, operational leadership, strategic leadership, partnerships, capability and experience in Te Ao Māori, and experience in dealing with Ministers and politicians. (One question missing, in my view, was that regarding relationships with stakeholders – employees, colleagues, managers and people with whom the applicant has had dealings inside and outside the Police and how the candidate thought these different stakeholders might react to his or her appointment if successful: see section three). Especially relevant to my review were the last two questions headed “Integrity and Conduct”:

- Is there anything you need to disclose about your integrity, conduct or behaviour, either past or present, that could bring you or the New Zealand Police into disrepute?
- Is there anything that we have not asked today that you should disclose? If yes, please explain.

The interview questions were prepared by a very experienced appointments team lead who drafted suggested questions having regard to past Police Commissioner and Deputy Commissioner interviews, the position description, and the recommendation of the Scholtens Inquiry to frame questions about integrity and past conduct in the broadest possible terms to uncover anything that might jeopardise an appointment. He “tested” these questions with other members of the appointments team and the Commission’s Assistant Commissioner responsible for the Commission’s day-to-day dealings with the Police Commissioner and the Police more widely and incorporated comments from them. Relevantly, the integrity-related questions were not altered.

Mr McSkimming was interviewed on 13 February 2023. A minute of the Commission’s decision of the same date noted that the panel found him “very impressive, thoughtful, with a strategic mind, [and

¹⁵ Email correspondence dated 27 January 2023 between the Commission and the Office of the Minister for the Public Service (who liaised with other Ministerial offices on the Commission’s behalf).

¹⁶ Guide, pg 36.

that he] came across as an authentic leader". It agreed that Mr McSkimming "met the character test as a fit and proper person" and should therefore advance to the next step in the process. I asked both Deputy Public Service Commissioners about their recollection of how Mr McSkimming answered these two all-important integrity and conduct questions because, regrettably, there is no written record of his responses. Ms Baggott candidly acknowledged her surprise at learning, while preparing for my interview, that the Commission had not retained her handwritten notes of the interview. Being her first role as chair, she had assumed, wrongly, that they would be retained. I understand the need for the Commission to destroy panellists' notes for privacy reasons, but it means there is no written record of precisely how these questions were asked and answered.

Ms Baggott told me, however, that she had a "clear recollection" of this part of the interview. First, she said she used the questions only as a prompt and that she "stressed the importance of understanding anything that might come out in the future that could bring the Police, him or the process into disrepute". She added: "I emphasised the importance of the message – I did not just read the words." Secondly, she clearly remembered that the candidate answered to the effect: "No, there is nothing." She said she went on to invite him to "reflect and that if there was anything further, he remembered he wanted to say about this question to come back to me". Her recollection is that he said he would come back to her if he needed to do so. Ms Baggott told me his body language as well as his words assured her there was no cause for concern. Dame Helene had the same recollection of the interview in both the way the questions were put and the way Mr McSkimming answered them. She too – because of her participation in so many high-profile public appointments – was "very attuned" to "body language and behaviour". And unsurprisingly, both had in mind the Scholtens Inquiry when making their assessments of Mr McSkimming. Dame Helene's assessment was that he was a "very smart man, articulate and analytical, [who] met the fit and proper person test". As the longest-serving Deputy Public Service Commissioner and a seasoned public servant, her assessment carried a lot of weight. Dame Helene's participation in the appointment process ended here. She was not involved in any of the probity and reference checks that followed the interview.

I am satisfied that all the steps taken in stage two of the appointment process, and particularly the interview, followed the Commission's standard process and procedures and that the questions about integrity and conduct were considered and appropriate. However, I recommend the Commission changes how, and when, these questions are asked, and that it makes and keeps a written record of the responses and more generally that it puts more focus on the need for candidates to meet the fit and proper test at the earlier stages of its appointment processes: see section three.

Stage 3: Reference and probity checks

From mid-February to the end of March 2023, the Commission undertook extensive reference and probity checks, all designed to satisfy the Commission that Mr McSkimming was a fit and proper person for the role. I set out the facts, and my findings, about these checks under the headings: standard pre-employment checks, reference checks, Police checks, and the IPCA check. (I note that the Commission in fact needed to undertake these same checks for the other successful candidate, so its workload was heavy.) My focus is only on these checks as in so far as they concerned Mr McSkimming. I address the matter of the personal relationship that emerged from one referee check that has prompted the IPCA investigation at the end of this section of my report. It is convenient to address all aspects of this one matter together.

Standard pre-employment checks

On 24 February, the Commission delegated to Sheffield responsibility for the standard pre-employment checks after satisfying itself the search firm's checks met the Commission's comprehensive requirements for pre-employment checks as set out in its core documents. Sheffield in turn contracted Staffchecks, a firm specialising in background vetting for recruitment of staff, to do this work. A report from Staffchecks to Sheffield dated 6 March stated as follows:

Previous convictions: Ministry of Justice checks revealed Mr McSkimming had no criminal convictions.

Credit and related: Searches of an extensive range of financial, company and credit-related sites revealed no relevant information pertaining to Mr McSkimming. This was apart from two searches. A search of relevant company records revealed Mr McSkimming's appointment to the Police Welfare Fund Limited (but from which he resigned 15 February 2017) and a directorship of Exotic Car Tours NZ Limited: see below). A search of credit rating agencies revealed a handful of credit-related inquiries as part of his applications for credit. These raised no concerns.

Social media reports: A very extensive search of all public information (including social media) on Mr McSkimming revealed nothing of concern. Searches included not just his Police roles but also his involvement with Exotic Car Tours NZ Limited. The search even extended to closed Facebook accounts of current and past Police members, which the report noted "often have robust discussions in relation to members". But the search revealed nothing of concern and to the contrary, the accounts showed that Mr McSkimming had a "long and distinguished Police career and is held in high regard by all". This social media report included as an attachment a list of all media items dating back to 2020 about Mr McSkimming.

I am satisfied the Commission followed its standard processes and procedures in all these standard pre-employment checks. The checks were thorough and appropriate.

Referee checks

In its standard application form, the Commission asked Mr McSkimming to provide details of referees who could "make informed comment on [his] suitability for the role". Mr McSkimming nominated five referees. Consistent with the Scholtens Inquiry, and appropriately so, the appointments team chose only three, adding another three non-nominated referees whom it considered could provide useful comment. It chose the latter three to gather comment from, a direct report, a current colleague and a system sector colleague (someone with whom he had worked on all-of-government projects). The three nominated referees comprised a previous senior Police manager to whom he reported, a past Police senior executive and colleague and an iwi/ Māori leader. The Commission was satisfied, as am I, that this represented a good mix of referees to interview. The appointments team had fully taken on board the Scholtens Inquiry's recommendation to ensure a generous and diverse mix of both nominated and non-nominated referees. The appointments team (including the chair) met to decide who would carry out each reference check. Team members were aware of the importance of these checks, and how it would be helpful to "match" a member of the team with a particular appointee if he or she personally knew – or at least had had some dealing – with the referee so that this might help encourage the referee to be more candid. Ms Baggott undertook one check, and the other five were split between the appointments team manager and the Deputy Commissioner to whom the manager reported.

I read the written records of all six verbal reference checks, which were conducted between 23 and 27 February 2023. All followed a standard format, and all were typed up at the time of the interviews. They stated who carried out the check and when and contained details about the referee's relationship to the applicant. Callers followed a standard template, beginning with an introduction (the reason for the call) and emphasising the Commission's desire for "honesty and frankness" in sharing the referee's "views and insights" into the applicant. Questions covered the applicant's leadership style, capabilities (in both businesses-as-usual and crisis settings), ability to work with others and so on. Each referee was also asked: "Is there anything about [the applicant's] integrity, conduct or behaviour, either past or present, that could bring him/her or New Zealand Police into disrepute? Think also about matters that could otherwise seem insignificant but could gain traction should [the applicant] be appointed to the role".

Two referees raised no matters in answer to this question. The other four raised one or more matters. One was a "rumour about his family" (which on further investigation was found to relate to an inheritance and was of no relevance or consequence). Another was a "disagreement with a staff member" (which was also deemed irrelevant because there was no record in the Police files of any such complaint, and no other referee raised the matter). The other three were matters which needed follow-up and involved:

- his use of a phone while driving (disclosed, in any event, on the Police database and considered as part of that check: see below)
- his involvement in a procurement decision that was the subject of a whistleblowing complaint (also disclosed on the Police data base and investigated thoroughly as part of that check: see below)
- a "strange relationship with a woman" (the matter most germane to this review: see below).

Several referees also mentioned that Mr McSkimming and his family ran a business renting luxury cars when talking about his commercial acumen. An appointments team member asked Ms Baggott whether the Commission should follow this up in case his involvement in Exotic Car Tours NZ Limited (the business in question) could be regarded as secondary employment. Also raised was the question of whether the Deputy Police Commissioner was required to have no business interests, and whether this business could be a potential conflict of interest. Ms Baggott ordered follow-up checks. The Commission searched the Companies Office and found that the company's last annual return was made on 25 November 2020, and that on 17 February 2022 the Registrar of Companies gave notice of its intention to remove this company from the Register on the grounds that the Registrar believed the company was no longer carrying on business and there was no proper reason for the company to continue in existence. On 17 March 2023, in a phone call with the Deputy Commissioner, Mr McSkimming explained that the COVID-19 pandemic had wiped out the market for luxury car tours and he then decided to wind up the company. He sent the necessary paperwork to the Inland Revenue Department and had been waiting 18 months for a response. His accountant had ceased trading during the pandemic, and he was unaware that no more annual returns had been filed. Mr McSkimming filed a return to the Companies Office the very same day. These checks were, in my view, appropriate and thorough, and I agree with the Commission that the results had no impact on the fit and proper person test.

All six reference checks were loaded on to the appointment team's SharePoint site (or portal) for viewing by the chair and appointments team members only. No-one could recall whether they read each reference check as it was loaded. All, however, read a collation of verbal reference checks prepared on 10 March by the appointments team lead, which summarised each referee's answers.

The collation set out each referee's answers to the integrity and conduct question in full, given their importance to the fit and proper person test.

I am satisfied all these reference checks conformed with the Commission's standard processes and procedures. The questions were all appropriate and thoroughly canvassed relevant matters, including the one relating to integrity, conduct and behaviour. The prompt to interviewees to think about anything "insignificant that could gain traction" was, in my view, a very useful addition to the wider question. It was this question that appeared to have led two referees to raise personal-related matters. I consider it would have been helpful if there had been a few follow-up questions of the referee about the "strange relationship". I address below what this follow-up might have consisted of, and how far the Commission could have gone in asking questions about "the strange relationship" of both the referee and Mr McSkimming, further on in my report.

Police checks

As already noted, the Commission takes its chief executive processes and procedures as its "starting point" for Police Commissioner and Deputy Police Commissioner roles. For these, and Chief of Defence roles, it takes the extra probity-related step of thoroughly checking all these organisations' HR and conduct-related files and databases for any matters whatsoever relating to the candidate in question. It does so because of the seniority and constitutional significance of these roles, as well as the fact that candidates come from a relatively small internal pool within their organisation. This important additional probity and integrity check was followed in this case, as set out below.

On 16 February 2023, the appointments team manager called the Director of the Integrity and Conduct at Police seeking probity-related information to establish that the two candidates met the fit and proper test requirement for Deputy Police Commissioner roles. She sent a follow-up email that day confirming the discussion and copied it to several of his colleagues. She asked for the three "standard criteria reports" used for Police personnel checks (relating to any employment, criminal or conduct-related matters) and the "standard summary report going back over all conduct-related complaints for the last 20-30 years". She said this report might include "very minor matters and historic matters [but] it was appropriate in the circumstances to look at all sources of information" so the Commission could satisfy itself that all candidates for the Deputy Commissioner roles met the fit and proper person test if appointed. In essence, the Commission wanted to know – and appropriately so – about any complaint that might have been made against Mr McSkimming, no matter what it was about.

This wide-ranging request required the Police to search various databases, including its integrity and conduct-related and legal databases, its HR files, and its Kia Tū line, which allows staff to raise confidentially anything of concern falling short of a complaint. The Director of the Police Integrity and Conduct Unit searched the integrity and conduct-related databases. Colleagues reported back to the Commission on the other searches. The results of each of these searches are set out below.

Integrity and conduct database checks

On 20 February 2023, the Director of the Police Integrity and Conduct Unit wrote in a memorandum to the Commission that he had searched the Police's Professional Conduct Record and its National Integrity Unit databases for information on Mr McSkimming. He said in a "summary" that there were:

- no current/live employment sanctions

- no current/active criminal and/or employment investigations where the employee was the “suspect” (criminal) or “subject” (employment)
- no upheld “historic matters that are significant or potentially call into question an employee’s alignment with our core values”.

Standard report: Attached to his memorandum was the “standard report” the Commission had asked for containing all professional conduct-related matters concerning Mr McSkimming going back as far as 1998. The report listed seven “complaints or incidents” and briefly noted the nature of each, whether upheld, and any action taken as a result. The appointments team lead was instructed to study the report, and he considered the contents sufficiently important that he met the Director on 17 March 2023 to obtain more information. He wrote a memorandum summarising the meeting that same day. The appointments team lead told me – and this is apparent from the written records also – that he was particularly interested in learning about three “upheld complaints” and whether they raised any concerns about Mr McSkimming’s suitability for appointment. Later, as the appointment process was drawing to a close, the appointments team lead summarised all seven complaints/incidents, including what further information he had learned at the 17 March meeting, and the conclusions he had come to on each of these, in a report dated 28 March to Ms Baggott entitled “Assurance over Deputy Commissioner of Police Nominations”. This report documented very well, in my view, each of the seven items in the standard report as follows:

- A 1998 complaint of assault and “other failure”. This was a complaint of assault after Police attended a party, which was not upheld. However, the database showed that a matter described as “other failure” was upheld and that counselling took place as a result. There was no disciplinary action. It was this item that the appointments team lead probed in some detail – evident from the documents and my interview with him. His conclusion was that this was a distant complaint from a time when recording in the database was “variable”. He was satisfied that this “other failure” was a minor incident that resulted in a meeting with a senior officer to set expectations and “did not impact on the fit and proper person test”.
- A 1999 complaint of unlawful arrest, which was not upheld.
- A 1999 complaint of unreasonable treatment by the Police and denial of rights. This related to an allegation about Mr McSkimming’s alleged attitude and language used during an arrest. It resulted in a “conciliated outcome” with no disciplinary action but some “training”. Further inquiries of the Director of the Integrity and Conduct Unit led the appointments team lead to conclude the matter was a “historic, low-level event that resulted in further training” only and “did not impact on and the fit and proper person test”.
- A 2004 complaint by a mother of assault on her son during arrest, which was withdrawn.
- A 2006 complaint of false accusations and an officer going out of his way to cause distress, which was not upheld.
- A 2015 complaint about using a phone while driving. This was a complaint by a member of the public about what appeared to be the use of a cell phone by a Police officer while driving. The complaint was upheld. The Director explained that the complaint resulted in an infringement notice, an \$80 fine and 20 demerit points. Again, the appointments team lead concluded that this “did not impact on the fit and proper test”.
- A 2018 complaint about driving while looking at a cell phone. This was an allegation relating to “off-duty driving behaviour”, and the report noted that Mr McSkimming was given a written warning. The Director said that Mr McSkimming had “admitted being distracted while driving”, “was spoken to, and received a written warning”.

The Director emphasised to the appointments team lead that there was nothing “out of the ordinary” about Mr McSkimming’s standard report. He apparently said “everyone that has a frontline role will have complaints of assault and inappropriate language. The critical thing is whether they were upheld”. I concur with the Commission’s conclusions. None of these seven items raised doubts about whether Mr McSkimming was a fit and proper person for the role. Indeed, as one Deputy Public Service Commissioner rightly noted: “I would be more likely to call into question if the record showed no such complaints.” They are a common, but regrettable, accompaniment to Police work.

Procurement: The Director went on to note in his 20 February 2023 memorandum that the unit was currently undertaking “fact finding inquiries regarding a disclosure made more than 2 years ago under the Protected Disclosures (Protection of Whistleblowers) Act 2000”. He said this disclosure related to “perceived irregularities in procurements processes associated with a company delivering several [New Zealand Police] property projects dating back to circa 2018”. At the time, Mr McSkimming was “named as part of the wider disclosure by virtue of his Executive leadership roles in these projects and more specifically in relation to perceived non-compliance with Government procurement rules”. He emphasised that to date these enquiries had not identified any evidence to substantiate the allegations. Moreover, these allegations were not focused “solely or specifically on Mr McSkimming”. He said the matter was the subject of a protected disclosure, and Mr McSkimming had not been, and should not be, notified of it.

Since these procurement-related issues were clearly a “flag”, the appointments team and others followed up with comprehensive inquiries. The appointments team lead discussed it at his meeting with the Director of the Integrity and Conduct Unit on 17 March 2023. The chair discussed it with the Police Commissioner by email and at a meeting on 24 March. And the Commission’s legal team considered whether the matter could give rise to concerns in any way about Mr McSkimming’s honesty or trustworthiness. The Commission unearthed two audit reports relating to the procurement process and ultimately was satisfied that the disclosure did not give rise to any concern. Ms Baggott noted, however, that she thought the “Police paperwork was untidy” and had some lingering concern over the one audit report’s conclusions about the absence of procurement documentation. But she was satisfied with Mr McSkimming’s response after the Police Commissioner put the allegation to him. Mr McSkimming had replied that he was “astounded to learn that key documentation had not been located and was confident that further enquiries should reveal it”. The Commission regarded the procurement matter as “unresolved”, although this did not alter its assessment that Mr McSkimming met the fit and proper test.¹⁷ I agree. And there can be no doubt that its probing into this matter was both thorough and appropriate.

HR and related checks

The other checks of the Police related to HR, legal and Kia Tū searches as follows:

HR checks: As the Commission had requested, the Police searched its HR files on Mr McSkimming. Email correspondence from, among other people, the Police HR Manager People Operations on 28 February 2023, advised the Commission that the Police had undertaken a “manual check of all hardcopies or electronic HR files ... with no adverse results returned”. In other words, there was absolutely nothing on Mr McSkimming’s HR file that noted any past or current complaints or employment-related matters.

¹⁷ Commission Report: Nominations for the appointment of Deputy Commissioner of Police, 28 March 2023 (consider further below).

Legal checks: The Police, again at the request of the Commission, also searched its legal databases to see whether there were “any matters that would raise questions regarding the ‘fit and proper’ test” for Mr McSkimming. Email correspondence from the Manager – Legal (Employment Relations) on 28 February 2023 advised that she had “been unable to find any matters which named [Mr McSkimming] as the subject of a complaint”. She noted that complaints dealt with by the legal team included personal grievances where the Commissioner of Police was named as the respondent. She said there were matters where Mr McSkimming had agreed to and/or approved settlements but simply because he held the delegated authority to agree to these (on a denial of liability basis) from the Commissioner. She added that she had asked senior team members to advise if there were any “matters sitting outside the system” concerning the candidate and that these team members “confirmed there are not”. Finally, she said she had checked with a former Employment Relations Director, and she too had “confirmed that there are no matters to her knowledge that sit outside our records”. It was plain to me that the Police Manager – Legal did a very thorough search so that she could advise the Commission that, having used her “best endeavours to do the search”, there were, to the “best of [her] knowledge no complaints recorded on the legal team’s folder” concerning Mr McSkimming. She clearly understood the importance of the request.

Kia Tū: On 27 February 2023, the Police Kia Tū Manager advised the Commission by email that she had undertaken “checks on Kia Tū” and there was “no record of speak up or Kia Tū complaints for matters” relating to Mr McSkimming.

I am satisfied that the Commission followed its standard processes and procedures in its probity-related checks with the Police and moreover, that the questions it asked of the Police were thorough and appropriate. The Police files revealed absolutely nothing that would have called into question Mr McSkimming’s integrity and character. And the Police’s responses to the questions asked of them by the Commission made this equally clear. Indeed, I compliment the Commission on how assiduously it investigated all Police-related material.

Checks with Independent Police Conduct Authority

Any assessment of a candidate for appointment as a Deputy Police Commissioner, or indeed a Police Commissioner, necessitates, unsurprisingly, a check with the IPCA to learn whether it has received or investigated any conduct-related complaints about a candidate for the role and more generally whether it would have any concerns if that candidate were appointed to the role. On 16 March 2023, Ms Baggott met the Chair and General Manager of the IPCA to discuss any such complaints, investigations or concerns. The appointments team supplied Ms Baggott with talking points for that meeting, and notes were taken by the Commission’s Chief Legal Officer who attended the meeting along with Ms Baggott. There is thus – as there should be – a very good written record of the meeting, its purpose and precisely what was discussed. In setting up the meeting, the Commission helpfully informed the IPCA beforehand of the purpose of the meeting, which was so the Commission could assess, as required, whether Mr McSkimming (along with the other candidate for the two roles) was a “fit and proper person” and more generally to hear from the IPCA on the “suitability of each of the applicants for the role, given your knowledge of each person”. Ms Baggott noted at the meeting that this was its “last step of [its] probity process”.

At the meeting, Ms Baggott explained how the Commission assessed the fit and proper person test and that the applicants had consented to the Commission approaching the IPCA to seek any information about “any complaints or records” that related to the applicant’s conduct and integrity. She informed the IPCA that the Commission had, as already noted, obtained “full access to

everything on [Mr McSkimming's] HR files as well as everything from the integrity unit, which we have reviewed". She noted, too, that Mr McSkimming also had 9(2)(a) privacy security clearance" (a matter I come back to later). She was very direct in her questions of the IPCA about any information it might have about Mr McSkimming "arising from current complaints you have received about [him] in your role or completed investigations, insofar as you can share that information with us". The purpose of the meeting and the information the Commission needed from the IPCA could not have been clearer.

The IPCA's Chair and General Manager advised Ms Baggott at the meeting that there were "no current or completed complaints or investigations" relating to Mr McSkimming. Nor was the IPCA "aware of any previous instances where [he was] the subject of a complaint/investigations". The IPCA's representatives went on to add that "[its] complaint system relies on Police to let us know about complaints. Nothing on our side. But it is rare we wouldn't have anything [i.e. complaints] that Police has". In other words, if there had been a complaint to the Police about Mr McSkimming's conduct, the IPCA would know about it.

Ms Baggott also took the opportunity to explore more generally the IPCA's views of Mr McSkimming's "suitability" for the role. Both attendees indicated they knew Mr McSkimming and had "no concerns with [him] from an ethical perspective". Indeed, the manager added that Mr McSkimming was "highly intelligent, very analytical and incisive in [his] views". Towards the end of the meeting, Ms Baggott asked the IPCA whether there was anything else it was aware of that the Commission should consider in assessing whether he met the fit and proper person test. On this, she noted that the Commission was aware that the IPCA was looking into the policing of the protest and occupation at Parliament in February and March 2022. She was advised that completion of its review was not far off, and the IPCA offered to share an embargoed copy of it to assist the Commission in completing its probity checks once the report was completed. But both the Chair and General Manager made clear to Ms Baggott that the review did not raise any issues of misconduct by Mr McSkimming, who had a leadership role in the policing of the protest and occupation, and nor did the report contain any "adverse comments" about him or indeed any other individual member of the Police. Given the Commission was keen to report to Ministers by the end of March, it was decided that rather than waiting for the IPCA's report (which would not be available until the first week of April) the IPCA would confirm in writing its confidence that there were "no matters of concern" about Mr McSkimming in relation to this review. Ms Baggott's response was: "That could work." The IPCA followed up on its promise and in an email from its Chair to Ms Baggott dated 28 March confirmed there were "no matters of concern regarding [Mr McSkimming] arising from our review of the policing of the protest and occupation of Parliamentary grounds".

To be clear then, as of March 2023, the IPCA had no complaints against or concerns about Mr McSkimming. To use Ms Scholtens' words, the fact that a complaint would later eventuate was "an unknown unknown", and that "without a complaint there was nothing to take into account".¹⁸ I am satisfied the Commission's questions of the IPCA were thorough and appropriate.

Stage 4: Assurance and advice to the Prime Minister and relevant Ministers

Towards the end of March 2023, the Commission, by now in the final stage of its appointment process, collated all relevant information so it could:

¹⁸ See earlier discussion of the Scholtens Inquiry at pg 9 of my report.

- provide an in-person update to the Police Commissioner about the appointment process
- provide an assurance report to Ms Baggott that she could confidently nominate Mr McSkimming as a suitable candidate for the Deputy Police Commissioner role
- prepare its report to the Prime Minister and relevant Ministers to nominate Mr McSkimming for the role
- draft a series of reports and formal papers to follow through the necessary Cabinet processes to make the appointment on 11 April 2023.

I discuss each of these four steps in turn.

Update to Police Commissioner: A written note dated 24 March 2023 records a meeting between Ms Baggott and the Police Commissioner to update him on the appointment process. Ms Baggott “walked through [with the Commissioner] all elements of the process” which had been, she said, “really robust”. She told him there were a “couple of things” the Commission would bring to the attention of Ministers, but she did not believe any of these affected Mr McSkimming’s suitability for appointment. She noted that the Commission had undertaken all referee checks, spoken with the IPCA, and received the Police standard probity report from its Director of its Integrity and Conduct Unit. She informed the Police Commissioner that the report would include very brief details of the seven incidents/complaints on the Police databases focusing more particularly on those that had been upheld. She said the reason these things were to be “brought to the attention of Ministers is to address perception risks – a term that Mary Scholtens used in the Haumaha report”. (She noted, too, his “business interests, which [were] in the process of being wound down” and were not of any concern.)

The Police Commissioner’s response was that “you’d struggle to find officers that don’t have complaints upheld. I don’t think it will become an issue, but I can think of instances when it might be”. Ms Baggott said that the Commission would be clear in its advice to the Prime Minister and other Ministers that Mr McSkimming met the fit and proper test regardless. She added: “It’s just so that when Ministers announce, someone might come out of the woodwork, and in that case they’re aware in advance”. Ms Baggott told me that, in emphasising this point to the Police Commissioner, she had the aftermath of the Haumaha appointment at the forefront of her mind. She said the Commission would, however, make sure it got Crown Law advice on this threshold point, namely what information precisely was relevant to the fit and proper person test for disclosure to Ministers.

Assurance report to chair of appointments process: On 28 March 2023, the appointments team lead prepared a detailed (and a very good) report to Ms Baggott to give her the assurance that the Commission had run a rigorous appointment process, and that Mr McSkimming met the fit and proper person requirement. He copied this to other members of the appointments team, including the Commission’s internal lawyers. He shared earlier drafts of the report dated 20 and 22 March with the team (including the lawyers) for their input and comment. The second draft was also shared with the chair. (I return to the topic of these drafts in my consideration of the personal relationship). There were no substantive differences between the draft and final reports pertinent to my review. In his assurance report, he set out the relevant background to the appointment (including brief reference to the Scholtens Inquiry and the need to identify “perception risks” as well as “facts” relevant to any appointment); the key steps that the appointments team had taken in designing an assurance programme for this appointment (noting the different stages at which information had been sought on integrity and conduct, beginning with the application form and ending with a comprehensive range of referee and probity checks with external parties); and finally, the scope of the relevant information that was sought on Mr McSkimming’s suitability for the role.

The report embedded links to, among other things, the Commission's "360-degree view of the composition of the referees" (so Ms Baggott could be assured they were a good "mix"); the collated verbal reference check document of 10 March (which, as already noted, set out what each referee said in response to the integrity and conduct question in full); the notes of the Commission's meeting with the IPCA of 16 March; a file note of a telephone call the Commission had with Mr McSkimming on 17 March and the notes of the meeting with the Police Commissioner on 24 March. He went on to note that the two Police databases had been searched and the results "received and reviewed ". He noted further still that the appointments team manager had checked with Police "senior staff" for any matters that might have been "sitting out of the [Police] system on other files", including the Police HR, employment-related and Kia Tū files. Importantly, there were none.

There then followed a comprehensive table listing each of the matters that had emerged during the Commission's referee and probity checks, the further enquiries (even investigations) undertaken by the appointments team arising from these checks, and the team's conclusions that none of these altered the result of the fit and proper person test. These matters included:

- the seven items from the standard report from the Director of the Police National Conduct and Integrity Unit
- the protected disclosure complaint relating to alleged breach of procurement rules
- Mr McSkimming's business and commercial interests
- the disagreement with a staff member, which one referee had raised.

I have addressed all these above and concluded that the Commission appropriately and thoroughly inquired into all these matters, and none affected the fit and proper person test. The only other matter that the appointment team lead addressed in this table was "family issues", a reference to two matters that emerged from the referee checks. I have already dealt with one (the "rumour about his family" which on further probing proved to be irrelevant). The other relates to his "strange relationship" with a woman five years earlier, which I address at the end of this section.

Report to Prime Minister and other relevant Ministers: Consistent with its usual processes for the appointment of statutory roles, the appointments team began preparing in late March 2023 its report to the Prime Minister, Minister of Police and Minister for the Public Service nominating Mr McSkimming for appointment to one of the two Deputy Police Commissioner roles. Draft reports were prepared and circulated to members of the appointments team (including the chair) and the Commission's internal lawyers before a final report was agreed upon. I reviewed the drafts, as well as the final report, dated 28 March 2023. Differences between the drafts and final report were irrelevant to my review. What was clear to me, was that the appointments team carefully considered what should be included, and excluded, from that report at the time. At this time, the Commission thought there would be both a written and oral briefing to the Prime Minister and relevant Ministers about Mr McSkimming's appointment. The Commission was particularly aware that this would allow it to confine the written report to those matters truly relevant to the fit and proper test, while the oral briefing could raise any information that might be considered relevant to the appointment – that is, any issues of "perception risks" or of a "no surprises" nature.¹⁹ I return to this point later in my discussion of the personal relationship matter.

¹⁹ Commission internal emails dated 24 March 2023.

The final report followed the Commission's standard template providing the Prime Minister and relevant Ministers with the advice they needed to make their recommendation to the Governor-General to appoint Mr McSkimming to the role, including the need for Mr McSkimming (and the other candidate) to meet the fit and proper person test for appointment. The 10-page report included an executive summary; the recommended actions to be taken; the purpose of, and background to, the report; the criteria for the role, including the need to meet the fit and proper person test – that is, that the nominee be "honest and trustworthy ... and [have] the necessary experience, qualifications or characteristics to perform the role"; brief details about Mr McSkimming; and concluding with the Commission's advice to recommend him (and the other candidate) for appointment and next steps. Most importantly for my purposes, the report included as an appendix, a summary of the appointment process. This appendix gave particular attention – and rightly so – to the comprehensive conduct, integrity and referee checks that the Commission had undertaken on Mr McSkimming so the Prime Minister and relevant Ministers could have every confidence in the Commission's appointments process. The report noted that these included:

- referee checks of "both nominated and non-nominated referees to provide a 360-degree view of each applicant"
- follow-up on "all matters raised by referees that could impact on the conduct and integrity" of Mr McSkimming
- a review of Mr McSkimming's employment-related files, professional conduct files, and the complaint databases held by the Police
- the Commission's meeting with the IPCA
- a pre-employment vetting check that included a check of criminal records and outstanding fines, credit checks, company searches and the like relating to his business interests and social media searches to cross-check that no other conduct matters had been raised in the media but not recorded in any of the information otherwise obtained.

The report went on to emphasise that the "conduct integrity checking process has been comprehensive" (I agree), but that, despite this, "there may be conduct and integrity matters relating to the nominee that we have not been appraised of due to the scope and completeness of some Police personnel records". The report noted, too, that the IPCA had advised the Commission of its intention to publish its review into Police operations during the protest at, and occupation of, parliamentary grounds in 2022. The Commission noted that it was still waiting on written advice from the IPCA that it had no concerns about the "key leadership role" that Mr McSkimming had in that operation, but that the IPCA had already confidently advised Ms Baggott there were no matters of concern.

The report annexed a two-page résumé of Mr McSkimming's career, noting, among other things, that he held 9(2)(a) privacy security clearance and had recently applied for this to be upgraded to 9(2)(a) privacy; the panel's initial observations of him as a suitable appointee; referees' views (very briefly) as to "strength" and "areas for support"; and finally a table headed "Conduct and Integrity Checks". This table listed all professional conduct matters, including the seven incidents recorded in the Police's professional conduct databases (discussed above) and provided brief details about the three incidents that were upheld. The Commission's advice in relation to all three was that these incidents did not "impact on [Mr McSkimming] being fit and proper" for nomination. Appropriately, however, it went on to note that these incidents could "create a perception risk should the incidents become known following the appointment". (The Commission was clearly conscious here of the lessons of the Scholtens Inquiry.) The table also included a summary of the protected disclosure matter, which again, I, have already canvassed above. The table went on to note that no issues had

emerged from Police personnel and related files or media searches. The Commission confirmed that Mr McSkimming had no convictions and had an acceptable credit rating. The Commission took the precaution of having Crown Law review the final draft report to confirm its approach in providing information from the Police databases and referees at an appropriate level of detail, in other words to provide what was necessary for the Prime Minister and Ministers to recommend the appointment but not so much as to unnecessarily burden them). In this, it followed its Chief Executive Recruitment Law Guide, 9(2)(h) legal privilege

. Crown Law had only a handful of suggestions, none pertinent to my task. The report was duly provided to the Prime Minister and other Ministers on 28 March 2023. Inquiries of their offices revealed that no oral briefing was required. The Prime Minister and the Minister for Police noted their written approvals on the report to nominate Mr McSkimming for appointment and to take the necessary next steps to make that appointment.

The appointment: A few days later, the Commission, in a report dated 31 March 2023, sought the Prime Minister's approval to lodge a paper (attached) with the Cabinet Appointment and Honours Committee on 5 April 2023. The Prime Minister duly did so. There then followed successive reports to the Prime Minister and relevant Ministers (31 March and 3 April) providing the Prime Minister and relevant Ministers with a briefing for the meeting of the Appointments and Honours Committee on 5 April 2023 for the purpose of recommending that the Committee note the Prime Minister's intention to recommend to the Governor-General the appointment of Mr McSkimming as a Deputy Commissioner of Police for five years. On 5 April, the Commission provided the Minister for the Public Service an Aide-Memoire, as it was described, for the purposes of briefing the Executive Council (which the Prime Minister had asked him to carry out in relation to Mr McSkimming's appointment as a Deputy Commissioner of Police). The paper noted among other things that the Prime Minister had written to the Administrator of the Government (who would be presiding at this Executive Council Meeting rather than the Governor-General) setting out his recommendation to appoint Mr McSkimming to the role. That letter was attached to the aide-memoire along with Mr McSkimming's resume.

On 11 April 2023, the Administrator of the Government (on behalf of the Governor-General) duly appointed Mr McSkimming as a Deputy Commissioner of Police for a term of five years beginning on 17 April 2023 and ending on 16 April 2028.

I am satisfied that the Commission followed its standard processes and procedures in this last important stage of its processes in nominating Mr McSkimming to the Prime Minister and Ministers of Police and for the Public Service that he was a suitable candidate to be appointed to the Deputy Commissioner role. The updating of the Police Commissioner, the assurance report to Ms Baggott, and the succession of papers provided to the Prime Minister and relevant Ministers were all clear, considered and at an appropriate level of detail. Stakeholders can have every confidence in the Commission's appointment processes. The only issue – and it is very specific to the facts here – is whether some of the documents in this last stage of the process should have disclosed, or disclosed in a greater level of detail, the nature of a personal relationship Mr McSkimming had with a woman five years earlier, a matter to which I now turn.

The personal relationship

My terms of reference necessarily required me to address this matter in some detail, specifically to consider whether the questions the Commission asked of Mr McSkimming and others (especially the referee who raised this relationship in her interview) were thorough and appropriate, and whether

the Commission should have taken extra steps during or after its probity checks regarding this appointment. Here, I examine the questioning of the referee and Mr McSkimming, and the reports the Commission prepared afterwards and what they disclosed about the matter. In short, I conclude that the questions asked of these two individuals about the relationship were not as thorough as they could have been. Follow-up questions were needed. The various documents referring to this matter sometimes omitted salient information. In the absence of such follow-up questions, the Commission was entitled, however, to conclude that the relationship was not relevant to the fit and proper test. And, even if follow-up questions had been asked, it is unlikely the answers would have made any difference to the decision to nominate Mr McSkimming for appointment. He was a very credible appointee.

The referee check: As noted in my discussion of the Commission's referee checks in February 2023, one referee mentioned a "strange relationship" Mr McSkimming had had with a woman some years earlier. The Deputy Commissioner conducting this check told me he "pushed [the referee] a little" to think about anything in Mr McSkimming's past or present conduct, no matter how trivial, that might call into question his integrity or conduct. According to the note he typed up during the phone call, she said:

"He had a strange relationship with a woman that was almost stalking him. She was not well. She got out of hand. If it was a member of the public, you would send the Police to deal with it. They had to change his cell phone number and email. He managed to work this through with 9(2)(a) to help her."

The Deputy Commissioner said that, in the course of his discussion with the referee about the relationship, he asked some follow-up questions, although this was not apparent from the file note. Understandably, he could not recall the exact wording of these questions in response to her mention of the "strange relationship", but he was clear in his mind that he pressed for more information, and this is what he meant to convey when he wrote that the referee mentioned the relationship "when pushed". Having gleaned brief details about the relationship, he considered it unnecessary to take the conversation any further. I acknowledge it would have been difficult to decide on the spot whether further follow-up questions were needed, given the matter was personal and not professional, and also given the referee had in every other respect been "glowing" about Mr McSkimming.

He also said that the referee disclosed no hint – in her words or tone – "of any impropriety on the part of Mr McSkimming in this relationship", and indeed her view was that the woman was "unwell". He added that he formed the distinct impression from the phone call that it reflected well on Mr McSkimming in that he had helped the woman through the break-up. He said two things in particular swayed him against any further questions: first, it had taken some "pushing" even to "get this information from the referee", and second, the relationship was "in the past". As someone with an audit background who was perfectly able to "probe matters when needed", this was not, in his view, a matter warranting further questions.

Deciding how far to probe a referee about a candidate's family or personal relationship is always a difficult one. Such questions intrude into the candidate's privacy. Also, none of the Commission's written processes and procedures offer staff any guidance about when it may be appropriate to inquire into such matters and, if so, how. I recommend in section three that such guidance be added to the Commission's Chief Executive Recruitment Law Guide. However, there were, in my view, three

possible “red flags”, or warning signs, in the referee’s comments that needed more probing. These were:

- the description of the relationship as “strange”
- the statement that the woman was “not well” and had “stalked” him to the point where he had had to change his email and phone number
- the fact that Mr McSkimming had had to “work this through with 9(2)(a) [REDACTED] to help her”.

I consider it would have been prudent to have asked the referee three follow-up questions, particularly considering the importance and public-facing nature of this role and the fallout caused by the Haumaha appointment.

My first question would have been whether this woman was employed by the Police or as a Police officer. If she had been with the Police at the time the relationship started, or indeed any time afterwards, this could have breached any Police policy regarding relationships between senior officers and staff; or if such relationships are permitted, whether senior Police officers should, at the very least, declare them in a conflict of interest register or the like. I do not know whether there is any such policy, and nor is it necessary for me to know this given the limited nature of my review. But asking this question might have alerted the Deputy Commissioner to consider whether he, or anyone else in the appointments team, might need to pursue this line of inquiry; and whether, depending on the answer, it might be prudent for Ms Baggott, as chair of the process, to speak to the Police Commissioner about whether he knew anything about this relationship and any implications it might have for Mr McSkimming’s appointment (possibly at the 24 March meeting she had to update the Police Commissioner on the process). I should add that I believe the referee’s intention in saying “if it was a member of the public, you would send the Police to deal with it”, was to point out that if Mr McSkimming had been a member of the public, he would have asked the Police to talk to the woman about the alleged stalking. But the comment could equally be read as implying the woman was not a member of the public with whom the Police could have had a stern word to put an end to it. Asking the follow-up question would also have resolved this ambiguity.

My second question would have been to ask whether the relationship was “strange” only because of the “stalking” (which he said he elicited with his questions) or whether there were other aspects to the relationship that warranted the use of the word “strange”. This might have revealed more information about the way the relationship ended and reinforced the Deputy Commissioner’s view that this behaviour said more about the woman’s health than any impropriety on Mr McSkimming’s part. Or, whether there was any risk of a repetition of stalking or other behaviour that could risk the very thing Ms Scholtens warned the Commission to be alert to – possible public media comment that could undermine an appointment.

My third question would have been to understand better why Mr McSkimming had to “work through” the breakup with 9(2)(a) [REDACTED]. What I would have wanted to know was whether this had anything to do with the woman’s age as well as her health (which was what the Deputy Commissioner understood the position to be). This in turn could have raised another red flag – particularly if she were young.

I do not consider it would have been appropriate to have gone any further than this out of respect for the discomfort these questions might have caused the referee. But these further questions could – at the very least – have elicited more information about the relationship to guide the Deputy Commissioner (and any advice from others within the appointments team) about how far to probe

with Mr McSkimming the nature of this relationship and whether there were any aspects of it that could either call into question his integrity and conduct or might raise a “perception risk”, that is the possibility of any later public media comment that could undermine the appointment. I emphasise that I can understand why the Deputy Commissioner did not consider it necessary to put these further questions to the referee, and no criticism is intended by the omission to do so. The whole purpose of this review is to identify lessons to help the Commission with future appointments when personal matters surface and how to manage them.

This typed reference check was loaded on to the Commission’s SharePoint document management system that only members of the appointments team could access, given the sensitive and confidential nature of the appointment process. It was not emailed at the time to any member of the appointments team, including the chair. A question that arises – see the next section on improvements – is whether it would be advisable in future to alert members of the team to any issues emerging from one referee check so that appointments team members might raise that same matter – if they considered it appropriate to do so – with other referees.

On 2 March 2023, the appointments team lead sent a memorandum to Ms Baggott (and copied to the Deputy Commissioner and manager of the appointments team) updating her on referee checks and issues that had emerged during the appointment process up to that point. One issue, he noted, was that a referee had mentioned an “unwell woman stalking him”. At a subsequent weekly appointments team meeting, the appointments team – including the chair – decided the matter needed to be put to Mr McSkimming for comment.

Phone call with Mr McSkimming: On 17 March 2023, the Deputy Commissioner called Mr McSkimming to discuss two matters: his involvement in Exotic Car Tours NZ Limited and his relationship with the woman. He and other appointments team members told me it was decided he was the appropriate person to make the call, given his seniority and familiarity with company-related matters. The appointments team lead emailed him some prompts earlier in the day covering both matters. Regarding the relationship, the lead wrote that the Deputy Commissioner should ask for “his side of what happened with the person who was almost stalking him a few years ago ... is this likely to come out and cause him a problem (if [he] were to be appointed)?” The appointments team lead clearly had in mind the Scholtens Inquiry.

As it happened, the Deputy Commissioner was out of the office that day on a leadership day out with his management team but given the need to press on with the appointment process, he decided to make the call anyway. He said he stepped out of a meeting to make the call, which he thought lasted about 10 minutes. He was unable to type up notes at the same time as, or immediately after, the call, but helpfully he made a handwritten note as he was talking to Mr McSkimming, which I was able to review and discuss with him. He noted six points:

- Mr McSkimming had “discussed” the relationship in his 9(2)(a) privacy security clearance vetting process and to “Police colleagues”.
- Mr McSkimming had had a relationship that “went a bit feral” (words used, to the best of his recollection, by Mr McSkimming).
- 9(2)(a) privacy .
- There had been “no noise for five years” (words used to the best of his recollection by Mr McSkimming).
- She might say he “influenced her to have the relationship”, but he denied this – it was a mutual one.

- They met at a 18(c)(ii)

I note that it does not especially matter whether the words “feral” or “noise” were McSkimming’s or the Deputy Commissioner’s. Mr McSkimming would undoubtedly accept that the relationship ended badly, and therefore I had no need to discuss the call or the file notes with him.

The Deputy Commissioner told me that, as a result of this call, he believed the matter had no bearing on the candidate’s integrity and conduct. Mr McSkimming had disclosed it in his security clearance process and indeed to Police colleagues (see further below); there had been no “noise” (whatever that meant) since the break-up five years ago; and they met at a 18(c)(ii) which he took to mean they met in a social – and not work-related setting. It was no more than a “relationship” that had gone wrong but was now firmly in the past. The Deputy Commissioner also told me that, despite being unable to recall exactly what was said during the call – other than using his handwritten note (and a later typed note: see below) as a guide – he had a firm recollection of Mr McSkimming’s tone, which was “very calm”, and he did not seem “bothered at all” by the matter. His impression from the call was that Mr McSkimming’s view was that “this would not be an issue in terms of his behaviour”. Also, it was clear to him that Mr McSkimming had some “sympathy” for the woman, which led him to the same view as the referee, which was that the woman was unwell at the time.

On 20 March 2023, three days after the phone call, the Deputy Commissioner asked the appointments team lead to type up the handwritten note of this phone call because he was pressed for time. He handed over the handwritten note and talked him through it, adding further points he remembered about the conversation, together with his conclusions. The Deputy Commissioner subsequently reviewed a draft and made some changes before finalising the file note. (None of his changes were significant for my purposes). I reviewed the typed file note and discussed it with the appointments team lead and Deputy Commissioner. The note – consistent with the handwritten one – said Mr McSkimming had started the relationship after meeting her through a sports group after his marriage broke up; the relationship had “broken off years ago”; there had been a “bit of noise around the breakup from the other party to the relationship” but none for the past five years; and the “only allegation” (more likely the Deputy Commissioner’s words, not Mr McSkimming’s) the woman could make would be that Mr McSkimming had “influenced” her to begin the relationship. The file note went on to record – and again I am satisfied this was the Deputy Commissioner’s conclusion and not Mr McSkimming’s words – that there were “no allegations of anything breaking any laws at the time”.

The Deputy Commissioner said his recollection was that he was “paraphrasing” some of the conversation and the typed file note was not a “verbatim record”, nor intended to be such a thing. As Ms Scholtens said, “without a complaint there is nothing”, and this, the Deputy Commissioner told me, was what he was trying to elicit in his call with the candidate: was there any complaint or allegation from anyone about this relationship that might have an impact on the fit and proper test or risk undermining the appointment? Relevantly, the police records had, he knew, revealed no such complaint. The typed note finished by saying the Deputy Commissioner “undertook that [the Commission] would not be telling Ministers of this matter without talking to [Mr McSkimming] again first”. This was entirely fair and appropriate given privacy and natural justice considerations.

There are, in my view, two reasons why neither the Deputy Commissioner nor the appointments team could be criticised, after this call, for considering the matter closed and irrelevant to the fit and proper test. The first is that Mr McSkimming said he had disclosed the relationship during his

security clearance interview, and the second is that he said he had disclosed it to Police colleagues (although to whom exactly he disclosed the relationship is unknown).

To understand why the first reason carried such weight, it is worth briefly explaining the New Zealand Security Intelligence Service's security vetting assessment processes, which are rigorous in the extreme. A public document issued by the Service explains the vetting process in some detail, emphasising that it is an "examination on a 'whole-of-person, whole-of-life' basis to [determine] the candidate's suitability to hold a national security clearance". It stresses that "all available and reliable information about the candidate, past and present, favourable and unfavourable, should be considered in reaching a determination". The guideline further notes that the vetting will include personal relationships, including sexual behaviour and goes on to say that "sexual behaviour that [among other things] reflects gross lack of judgment or discretion, or which may subject the candidate to undue influence or coercion, exploitation or duress can raise questions about the candidate's reliability, trustworthiness and maturity". Conditions that might mitigate security concerns – particularly in relation to personal relationships or sexual behaviour – is whether such behaviour is minor, "or so much time has passed ... that it's unlikely to recur and does not cast doubt on the candidate's current reliability, trustworthiness or good judgment".²⁰

Given that Mr McSkimming said – and there's no reason to doubt this – that he disclosed the relationship as part of his security clearance, the Commission could have been satisfied that the nature and any consequences of this "strange relationship" would have been fully vetted by the Service. As Ms Baggott rightly observed: "There comes a point when the Commission has to trust in other parties' processes ... we can't hear rumours and run our own investigations into them. It's not our role and it's not appropriate." I consider the appointments team was therefore entitled to place considerable reliance on the fact that the New Zealand Security Intelligence Service must have been satisfied Mr Mc Skimming was a fit and proper person to hold a 9(2)(a) privacy security clearance.

Secondly, Mr McSkimming told the Deputy Commissioner he had disclosed the relationship to his Police colleagues. The Deputy Commissioner already knew that this included the referee who had been a senior Police executive at the time, and he therefore could presume the Police had no concerns that the relationship had any impact on his integrity or conduct. The chair told me that after learning about this telephone call – see further below – she took comfort from the fact that Mr McSkimming had disclosed the relationship to his colleagues. She also took comfort from the "seniority of the referee who understood the purpose of the integrity checks". She surmised that the Police Commissioner, who sat on Mr McSkimming's appointments panel (and was a Deputy Police Commissioner at the time of the relationship), was among those Mr McSkimming told about the relationship. She said she further surmised that the Police Commissioner would have raised the matter with her if he thought it was relevant to questions of integrity and conduct. I am sure the Police Commissioner would have done exactly that if he had had any such concerns (see further below). For both these reasons, I can well understand why the Commission did not think they needed to take this matter further.

As with the referee check, but perhaps even more importantly here, I would nonetheless have asked four follow-up questions of Mr McSkimming either on the call or later. Again, these are more relevant to what can be learned for future appointments than what the Commission should or could have asked at the time or later.

²⁰ <https://www.protectivesecurity.govt.nz/guidance/personnel-security/managing-national-security-clearances/assessment-criteria>.

The first would have been to ask him to explain what he meant by the relationship going “feral”. I would have wanted to know whether he was referring to the stalking the referee had mentioned or some other behaviour that the woman concerned could repeat in the future. The second would have been to ask what he understood by her view that he “influenced” her to have the relationship. Given his seniority, I would have wanted to know whether the woman had any concerns about an imbalance of power or coercion – whether real or perceived. And this is especially if it was this concern that the supposed “noise” was about five years earlier. I acknowledge that Mr McSkimming had – when he made this comment – emphasised it was not his view, and the relationship was mutual. But I consider it warranted further probing. The third question would have been to ask precisely which Police colleagues he had disclosed the relationship to, and why? This could have established whether the (then) Police Commissioner who was on the interview panel was aware of the relationship. Armed with this information, Ms Baggott could have raised the matter with him, if she thought it appropriate, at their meeting on 24 March when she updated him on the appointment process, which included conducting further integrity checks on remaining matters, especially the procurement issue. The final question would have been whether this woman was with the Police at the time he started the relationship or indeed any time after, and if she were, what was her age.

The 20 March 2023 file note was loaded on to the Commission’s document management system but was not emailed to any other members of the appointments team, including the chair, at that time. It was, however, embedded in two drafts of the assurance memorandum given to the team, including the Commission’s internal lawyers, for comment on 20 and 22 March (although, as noted earlier, the chair received only the 22 March draft). But the file note was one of 10 documents embedded in the memorandum, thereby posing the obvious risk that it might not be read. Indeed, no one in the appointments team could recall opening and reading it at the time. And nothing in the covering email from the appointments team lead drew their particular attention to any need to read and reflect on it. Rather, their recollection was of simply relying on a summary of the matter in the memorandum itself. This is unfortunate because, discussing the file note with other appointments team members suggested to me that some of them might have decided, if only with the benefit of hindsight, that more questions should have been put to Mr McSkimming about the relationship – particularly about his comment that she might say he “influenced” her to have the relationship.

Assurance memorandum: On 28 March 2023, the appointments team lead gave the chair, along with rest of the team, the final assurance memorandum to satisfy her that she should nominate Mr McSkimming for appointment. The memorandum specifically drew attention to the “strange relationship” and “fully and fairly summarised” 9(2)(h) legal privilege [REDACTED] – what the referee had said about the relationship. The memorandum went on to note that “further information” had been sought on the matter; that the “relationship began after the breakup of [Mr McSkimming’s] marriage”; that it was “disclosed during the process of gaining top-security clearance, and ... to his colleagues”; that the relationship did not last; and that Mr McSkimming had “no noise for 5 years on this matter” (implying no risk of any later media comment that could undermine the process). What it did not include from the handwritten or typed file notes of the 17 March conversation was that the relationship had gone “feral” or, most importantly in my view, that Mr McSkimming had mentioned that the other party might say that he “influenced” her to embark on the relationship. The appointments team lead’s conclusion – which was the same as that of the other team members, all of whom had input into the memorandum – was that there was “no suggestion there was any impropriety on the part of Mr McSkimming” and therefore the matter “did not impact on the fit and proper person test”.

Reading the assurance memorandum, I am not surprised the chair was satisfied the matter had no impact on the fit and proper person test. Without the benefit of follow-up questions of both the referee and Mr McSkimming, there wasn't sufficient evidence to suggest otherwise. Whether the fact of this relationship, and how it ended, raised any risk that the woman concerned could go public and risk undermining the appointment (a risk identified in the Scholtens Inquiry) is another matter (see further below).

Report to the Prime Minister: As is already apparent from my discussion of this document in stage 4 of the Commission's processes, the Commission's 28 March 2023 report to the Prime Minister and other relevant Ministers made no reference to the matter. I consider this entirely appropriate. Based on the information available to the Commission at that time, which lacked the results of any further probing, it is my view that it was entitled to conclude the relationship was not relevant to the fit and proper person test. It may be, however, that had there been an oral briefing, the Commission, and more particularly its chair, would have had the very difficult decision to make about whether to raise the matter with Ministers if only as one of those "perception risks" or as "no surprises" information that 9(2)(h) legal privilege – taking on board the Scholtens Inquiry – suggested is better left for an oral, rather than written, briefing. I do not feel able to say whether, if there had been an oral briefing, the matter should have been raised given the limited information available to the Commission at that time. Only hindsight tells us that there was such a risk given the IPCA investigation currently under way. Although, I surmise it may not have been this appointment that led to the October 2024 complaint but rather the fact Mr Skimming would undoubtedly be in the running for the permanent Police Commissioner role when the then Police Commissioner announced his early resignation late September – and indeed, there was media comment to that effect in late October.

The appointment: One final point needs to be made. Although it is impossible to know what further inquiries at that time would have revealed if follow-up questions had been asked, I am satisfied that, on the information available to me, it was very unlikely the answers would have changed the Commission's decision to nominate Mr McSkimming. The referee – a very experienced former Police executive – clearly saw no impropriety on Mr McSkimming's part regarding this relationship and would probably have held to that view. Mr McSkimming, when spoken to, was confident the matter had no relevance to questions of his integrity and conduct. I'm sure he would have taken the same position if questioned further. And if further probing had given the chair reason to raise the matter with the Police Commissioner, I surmise that he, too, would have considered it irrelevant to the question of Mr McSkimming's suitability for the role. It was a personal relationship, and it was in the past. I did not consider it necessary to interview the then Police Commissioner or Mr McSkimming to verify that that is the approach both men would in all likelihood have taken, given my review's singular focus on the Commission's – not Police's – processes. Also, my presumptions do not reflect on them adversely in any way, so natural justice did not require me to do so.

Lessons: The Commission followed its standard processes and procedures in addressing this matter. But I do consider that the questions asked of the referee, and Mr McSkimming, were not as thorough and appropriate as they could have been. Indeed, there is a striking difference between how, for example, the Commission probed deeply into the procurement-related matter but only lightly into this relationship, albeit, for reasons that I have said were understandable in the circumstances. Consistent with the purpose of this review, I consider there are a handful of lessons to be drawn for future appointments of Deputy Police Commissioners (and indeed the Police Commissioner) and potentially more generally for public sector chief executives. I list these briefly because some will be self-evident from the discussion above. They are as follows:

- the need to ask follow-up questions of any interviewee in response to red flags (even if this means contacting the interviewee later after due reflection)
- the need to consider whether a personal matter like this one might be better put to a candidate in person, particularly given the importance of body language, and whether the chair of the appointment process should be present at any such meeting (It is, after all, the chair who must ultimately decide whether to nominate a candidate for appointment.)
- the importance of typing up file notes at the time of the interview so the Commission has an accurate record of what was said and by whom (noting that the typed file note omitted some matters from the handwritten note, added others, and contained a mix what the candidate said and the conclusions the Deputy Commissioner drew from the conversation)
- the need for guidance in the Chief Executive Recruitment Law Guide about how and when Commission staff should probe matters of a personal nature in assessing whether a candidate – particularly for the all-important Police roles – is a fit and proper person for appointment
- the need to consider whether the same guide provides guidance on how to deal with matters of a personal nature that, while not strictly relevant to the merits of the candidate, could raise “perception risks” that might risk undermining an appointment (On the one hand, I agree wholeheartedly with Ms Scholtens that, [u]nsubstantiated concerns and innuendos should not impede an appointment”,²¹ but on the other, she concluded in her own inquiry that Ministers can expect to be told of any information that might risk undermining an appointment because of “subsequent, unanticipated, uninformed or inaccurate publicity”).²²
- the need for the chair of the panel to receive an assurance report at least, say, two days before the formal report to the Prime Minister and Ministers nominating a candidate for appointment. (Ms Baggott received the final assurance report on the same day the formal report went to the Prime Minister, which is insufficient time, in my view, for the chair to consider the report and carefully reflect on whether any matters require further follow-up before making a recommendation)
- the need to have a balanced representation of men and women among those conducting reference checks (as was the case here) but especially at subsequent discussions among members of the appointments team about matters that emerge from these checks – to ensure sensitivity to gender-related questions, such as power imbalances and coercion
- the need to probe personal relationships with a similar degree of diligence as that devoted to examining other personal matters, such as credit ratings, social media posts and work relationships, particularly given the distinction between private and professional life does not exist in the case of very senior appointments.

As to suggested improvements: see section three.

²¹ At pg 3.

²² At pg 35.

SECTION THREE: IMPROVEMENTS

Based on the lessons discussed in section two, I have found seven broad areas where the Commission can make practical improvements to its process and procedures, especially in relation to its reference and probity checks. I stress again, however, that the Commission's overall appointment processes are sound and well managed. These improvements include: an earlier focus in the appointment process on the fit and proper test; changes to the interview question about integrity and conduct; documenting candidates' answers to integrity and conduct questions; considering whether to require the Police Commissioner to formally disclose any matter that may affect an appointment; improving referee and probity checks; providing guidance for staff about conducting referee and probity checks especially in relation to personal-related matters; and documenting process improvements. I have discussed the recommendations with the Commission, which has accepted them all and, pleasingly, has already begun implementing some.

Put earlier focus on fit and proper person test

The Commission should place earlier and greater emphasis during the appointment process on the fit and proper person test when recruiting for any Deputy Police Commissioner (and Police Commissioner) and indeed any other statutory roles where this criterion applies. Specifically, I suggest the following:

Include a separate section in the position description: The position description should include a separate paragraph clearly headed fit and proper person test that discusses briefly what this means for candidates applying for a statutory role. It could follow the more generic "person profile" part of the position description. Key points to emphasise would be:

- the statutory criterion (section 13 of the Policing Act 2008) and only candidates who consider they meet this statutory test should apply
- a clear, concise definition of the test (the Commission could draw on the material in my discussion of the fit and proper person test in section one to prepare a plain English summary of the test.)
- the need for candidates to be ready to answer questions during the interview, and afterwards, if necessary, about any past or present, real or perceived, professional or personal matters relating to their conduct, integrity or behaviour that could bring the organisation into disrepute or undermine an appointment.

The position description under the heading "Person profile" for the Deputy Police Commissioner role mentioned only that a Deputy Police Commissioner had to be a "fit and proper person" with a range of skills, all of which, however, largely related to leadership and operational abilities and experience. There is only brief reference to the need to display "honesty, integrity and a demonstrated sense of ethics in all decisions and action" and even then, only in relation to the need for "strong leadership and interpersonal skills". This important criterion warrants more than a mere brief mention.

Provide an information sheet on what to expect: Candidates should receive an information sheet before the interview giving them – albeit in only the broadest of terms – an indication of what to expect in relation to satisfying the Commission of their ability to meet the fit and proper test. Relevantly, it would warn candidates that panel members will ask a series of questions relating to their integrity and conduct and whether they are aware of any matters – past or present, professional or personal related, real or perceived – that could bring the Police into disrepute or undermine the

appointment, if successful. The information sheet should go on to add that this will include asking the candidate about any matter – even an “insignificant” one (an elaboration currently put to referees but not candidates) – that could impact on the fit and proper person test. Candidates should be informed that these questions will take place in two stages:

- questions of integrity and conduct relating to professional matters that will be asked with the full panel present
- questions of integrity and conduct relating to personal matters and involving privacy or other sensitive considerations that will be asked by the chair in the panel’s absence.

Providing a comprehensive explanation of how the Commission will go about satisfying itself at this stage of the process that candidates meet the fit and proper test should both encourage full candour from, and avoid embarrassment for, candidates if senior colleagues are present

Explore self-assessment of integrity and ethics: The Commission should explore with PsychforLeaders or other reputable organisations that provide psychometric testing whether the two online assessments that candidates for important roles of this type complete could specifically test for integrity and ethics. Although PsychforLeaders told me standalone integrity tests have limitations (observing that integrity was a “complex trait influenced by values, context and behaviour over time, making it difficult to measure reliably through self-reported assessments”), I nonetheless recommend that the Commission investigate this option. Integrity and ethics are so important to roles such as that of Police Commissioner and Deputy Police Commissioner that it would be worth at least considering whether further questions focused specifically on integrity and ethics (including issues of disclosure) could be added to the self-assessment questionnaires.

Split integrity and conduct question into series of questions

The current all-embracing question on integrity and conduct (see pg 14) risks making it too easy for the candidate to respond with a simple no. For this reason, I suggest the Commission splits the current question into a series of discrete questions that enable a more comprehensive evaluation of whether a candidate meets the fit and proper test or that there is any “perception risk” that might later undermine an appointment. The breakdown should be as follows:

- any actual (or real) matters candidates may be aware of about their integrity, conduct or behaviour that may bring the organisation into disrepute or could undermine the appointment
- any perceived matters that candidates may be aware of about their integrity, conduct or behaviour that could bring the organisation into disrepute or could undermine the appointment
- any matters, even if insignificant, that candidates may be aware of about their integrity, conduct or behaviour that could bring the organisation into disrepute or could undermine the appointment.

Putting to candidates the prompt that is already put to referees – namely, whether there is anything, even insignificant, that could reflect on their integrity or conduct – is, in my view, a good one. It was, after all, only the question that led one referee to mention the “strange relationship”. Given the importance of, to use Ms Scholtens’ words (and the Commission’s own words in its Chief Executive Law Recruitment Guide), identifying “perception risks”, it would be useful to clearly focus the candidate’s attention on both real, as well as perceived, matters that might affect an appointment.

This would not be dissimilar to the way the Commission and other public sector agencies emphasise the need for candidates to disclose any matters perceived as well as real in conflict-of-interest declarations. One person's perception can be another's reality, hence the importance of breaking down the current question. As can be seen from my suggested wording, I also recommend the questions extend to any conduct or behaviour that could undermine the appointment, not simply bring the organisation into disrepute.

In asking these questions, I recommend the Commission keep separate professional and personal matters. Questions about the former should be asked, as noted above, when all the panel is present because their views will be important in determining whether such matters affect integrity or conduct in the workplace. Questions about any personal matters, however, should be raised – and appropriately so – with the chair alone present to encourage the candidate to be fully open about any such matters that might have an impact on the fit and proper test. It can be – as already noted above – embarrassing for a candidate to answer such questions when senior colleagues may be on the appointments panel, thereby risking less than full candour.

The Commission should continue to ask candidates at the end of this series of questions to reflect on whether there is anything they have omitted that should be brought to the Commission's attention, and if so, to contact the chair directly.

Note: in section two, I suggested – and it is a suggestion only – that the Commission might like to supplement its standard interview questions with one asking candidates for their view of the likely reaction of stakeholders – within and outside their organisation – to their appointment to the role. In my experience, this hypothetical question can test candidates' self-awareness by requiring them to gauge stakeholder reactions; and secondly, require them to disclose whether any stakeholders might react unfavourably to their appointment. The interview panel can then weigh up the response in their deliberations. It may be less relevant to the fit and proper test, but it is highly relevant to "perception risks", that is whether the appointment could result in subsequent adverse comment in the media – even if, using Ms Scholten's words, it is uninformed or unsubstantiated.

Document and file record of answers to integrity and conduct questions

As well as taking handwritten notes during an interview in which a candidate is questioned about integrity and conduct matters, the chair of the appointments process should also type up these notes (or provide to a staff member to type up and check the note when completed) immediately afterwards for filing away. A typed record is essential in the event questions emerge later about what a candidate did or did not say. At present, the Commission has no notes – handwritten or typed – which records this crucial part of the interview.

Consider requiring Police Commissioner to formally disclose any matter that may affect an appointment

Given the importance of the statutory Deputy Police Commissioner roles, the Commission should consider whether a formal requirement should be imposed on the Police Commissioner to disclose anything he or she may be personally aware of about the candidate's integrity, conduct or behaviour that could bring the organisation into disrepute or undermine the appointment. The Police Commissioner – like the candidate – should be asked to consider any matter, real or perceived, even if seemingly insignificant, that could have an impact on the fit and proper test.

This would not, in my view, be an onerous requirement on the Police Commissioner. I am not suggesting the Police Commissioner would need to independently undertake probity checks. That is the responsibility of the Commission in accordance with statutory processes. It is a step that could come later on, that is when the Police Commissioner – as here – is updated about all probity and reference checks. At that point, the Police Commissioner could be required to provide a written assurance to the Commission that he or she is not aware of anything that that could affect in any way the appointment. I hasten to add that the Police Commissioner would need to exercise careful judgment in deciding what is relevant, and what is not. Gossip, rumour or innuendo is not relevant. But incidents or relationships that could lead to a perception of impropriety should be disclosed,

Improve referee and probity checks

The appointments team, especially the chair, should give careful consideration to who conducts referee checks to ensure the nominated individuals have the necessary seniority and experience, and that there is a good gender balance (as was the case here). Also, the appointments team should, once all referee checks have been completed, devote time at its next weekly progress meeting to a careful consideration of the results, what might require follow-up and for what purpose, and who would conduct follow-up interviews – noting that it may not always be the person who conducted the original interview. It is especially at a meeting like this that there is a need for a balanced representation of women and men to ensure sensitivity to gender-related questions such as power imbalances or coercion. Robust discussion among team members that constructively challenges information received from reference and other probity checks (referees and candidates), and that questions assumptions and encourages different points of view is often the best way to arrive at balanced, well-considered decisions. In addition, appointments team members should update one another about the results of referee checks so that, if one referee raises a matter of concern, another referee might be asked – carefully – whether he or she was aware of that same matter. I note that PsychforLeaders considers referee checks to be the best way to evaluate integrity and ethics because these traits are best judged from observed conduct and behaviour. This simply reinforces how critically important these checks are to any appointment process.

Provide guidance for staff about conducting referee and probity checks

The Commission's Chief Executive Recruitment Law Guide should set out guidance for Commission staff about when it is appropriate to probe matters of a personal or sensitive nature, how that should be done, and Privacy Act 2020 and other legal considerations to consider in doing so. In the absence of such guidance, there is too much risk of subjective judgment in deciding whether to probe a personal matter. Guidance should include how to:

- be alert for what I have described as “red flags” and follow these up in any interview of referees or candidates, whether at the time or later
- ask follow-up questions and how far the interviewer can go in probing potentially relevant personal or private matters
- respond to interviewees (particularly referees) who express concern about answering any follow-up questions and what explanation staff should give about the necessity of doing so
- consider natural justice considerations in probing such matters (particularly in the case of a candidate)
- be aware of any unconscious gender bias (A female interviewer is more likely to be alert to questions of coercion or imbalance of power in the case of, say, a relationship between a

candidate and a young person, making it important to obtain a diversity of views about how to proceed with such a personal matter.)

Guidance should also include when and how to bring perception risks relating to a personal or private matter to the attention of relevant Ministers so they can make sound decisions but also avoid the risk that subsequent media comment may undermine an appointment. The decision about whether to raise such a matter is a difficult one, in part because the mere act of doing so could impede a good appointment. The decision should be discussed at the most senior levels within the Commission, and, if the decision is to brief Ministers, it should be done with the candidate's prior knowledge (for natural justice reasons) and in an oral rather than written briefing.

Update documentation to include process improvements

The Commission's core documents (more particularly the Chief Executive Recruitment Law Guide) should be updated to stress:

- the importance of, wherever possible, taking verbatim notes of interviews or telephone calls with referees and candidates (A contemporaneous record of these meetings is always important. It would be useful to emphasise, too, the importance of distinguishing in any file note or memorandum between the interviewee's words and the interviewer's own thoughts or conclusions.)
- the need to bring to the attention of the chair of the appointments process and appointments team members any particularly important documents that have been uploaded to the portal, so they know to look at them at the time – and not sometime later (One possibility may be an automatic electronic alert each time such a document is uploaded to SharePoint, along with the document's title and level of importance (whether high, medium or low), thereby highlighting whether a meeting is needed to discuss any follow-up steps.)
- the need to consider the advisability of embedding numerous documents in assurance memoranda where they risk being overlooked; or at the very least, to consider directing readers' attention to those documents that are critical to the conclusions and therefore warrant careful reading and reflection
- the need for the chair of the appointment process to receive the final assurance report at least two days before the lodging of formal papers nominating, or recommending, any public sector appointment.

I am confident that if all these recommendations are implemented, the Commission's appointment processes and procedures for Police Commissioners and Deputy Commissioners (and potentially more widely for important public sector roles), including its reference and probity checks, will become benchmarks for public sector recruitment.



Miriam R Dean CNZM KC

6 March 2025

Terms of Reference



Te Kawa Mataaho
Public Service Commission



Independent review of reference and probity checks for Deputy Police Commissioner appointment

Background

1. Under the Policing Act 2008, the Public Service Commission (PSC) is responsible for managing the process for the appointment of the Commissioner of Police and statutory Deputy Police Commissioners. The Public Service Commissioner must provide nominations for these roles to the Prime Minister and the Minister of Police. The Prime Minister makes a recommendation to the Governor-General, who then makes the appointments.

2022-2023 Deputy Police Commissioner recruitment process

2. Between 19 December 2022 and 28 March 2023, PSC supported an appointment process for two Deputy Police Commissioner roles.
3. As part of this process, PSC undertook external reference and probity checks, including with the Police Executive, Independent Police Conduct Authority (IPCA), referees and candidates.
4. Following this process, PSC recommended Jevon McSkimming to the Prime Minister and the Minister of Police, for appointment to one of the two Deputy Police Commissioner roles. The Governor-General appointed Jevon McSkimming as a Deputy Police Commissioner on 11 April 2023.

2024 Interim and Permanent Police Commissioner recruitment processes

5. On 25 September 2024 PSC began a process to appoint an interim Police Commissioner to allow time for recruitment for the permanent Police Commissioner role to be undertaken. Jevon McSkimming put his name forward for both roles.
6. In October 2024 during probity checks undertaken in relation to Jevon McSkimming's application for the interim Police Commissioner role, PSC asked the IPCA if there were any live matters in relation to Jevon McSkimming.
7. Between October 2024 and December 2024, IPCA advised PSC it had commenced an investigation into a complaint about Jevon McSkimming.

Other matters

8. Currently the IPCA is overseeing a police investigation into serious allegations against Jevon McSkimming. The IPCA is also leading an investigation into the Police's handling of these allegations.

The request for a review

9. The PSC wishes to obtain an independent review of whether the reference and probity checks conducted on Jevon McSkimming in 2022-2023 prior to his appointment as Deputy Police Commissioner were thorough and appropriate, and what recommendations the reviewer might have on additional reference and probity checks (if any) PSC might reasonably undertake in future.

The reviewer

10. The review will be conducted by Ms Miriam Dean CNZM KC. The reviewer will report to the Public Service Commissioner.

Purpose

11. The purpose of this review is to determine whether:
 - a) The reference and probity checks conducted by PSC prior to recommending the appointment of Jevon McSkimming as a Deputy Police Commissioner in 2023 were thorough and appropriate, and
 - b) there are any additional steps PSC should take in future appointment processes, to ensure all information relevant to the integrity and character of shortlisted applicants is obtained.

Scope

12. The review is to independently assess, make findings and report on the appointment process that PSC ran between 19 December 2022 and 28 March 2023. This should include making factual findings about what checks were conducted and with whom in relation to Jevon McSkimming, the information obtained as a result, and the actions PSC took in respect of that information.
13. It should include an examination of whether:
 - a) the probity and reference checks undertaken by PSC as part of the appointment process were conducted consistently with PSC's standard processes and were thorough and appropriate in the circumstances
 - b) the questions asked of Jevon McSkimming and others about his integrity and character were consistent with PSC's standard processes and were thorough and appropriate, and
 - c) there were any additional steps that PSC should have taken during or after its probity and reference checks regarding Jevon McSkimming.
14. In making these assessments the reviewer is to consider:
 - a) The PSC's written processes and procedures for the appointment of a Deputy Police Commissioner of Police; and
 - b) the recommendations of the 2018 Government Inquiry Into the Appointment Process for a Deputy Commissioner of Police.
15. Based on their findings, the reviewer may also make any recommendations on how PSC could improve its processes for appointments under the Policing Act if she considers any such improvements may be helpful.

Out of scope

16. The review will not examine the 2023 Deputy Police Commissioner appointment process as it related to any other applicants who applied for the role.
17. The review will not consider the appointment processes for the Interim Police Commissioner or the Police Commissioner except to the extent any aspect of these appointment processes may be relevant to the earlier appointment of Jevon McSkimming to the Deputy Police Commissioner role.
18. The review will not determine the civil, criminal or disciplinary liability of any person.

Natural justice and related investigations

19. The review will meet applicable natural justice obligations.
20. The review must:
 - a) avoid prejudice to the maintenance of the law, including the prevention, investigation and detection of offences

- b) ensure that any current or future criminal, civil, disciplinary or other proceeding or investigation is not prejudiced (to the extent possible), and
- c) In particular the review must observe court suppression orders that have been made in a case currently before the courts.

Process

- 21. The independent reviewer will determine her own process, noting it will involve a review of the documents held by PSC concerning Mr McSkimming's appointment in 2023. The reviewer may interview PSC staff who worked on the appointment process.
- 22. To respect the integrity of other ongoing investigations, and to focus on the purpose of this review, the reviewer will not seek access to information held by other organisations or individuals and will not seek to interview individuals other than PSC staff. Where the reviewer considers that obtaining information held by others would assist the purpose of this review, she will obtain written approval from PSC before seeking such information.
- 23. The reviewer will not disclose any information she receives as part of her review other than to enable her to fulfil the purpose and scope of the review.
- 24. The reviewer will maintain the legal privilege of any legally privileged information disclosed to her during her review and do her best to ensure nothing in her report results in an implied waiver of privilege.
- 25. The reviewer will keep confidential all records including interview notes, communications, documents and deliberations and destroy all this material at the end of the review.

Deliverables, timeframe and reporting

- 26. The review will be carried out as soon as practicable, with an indicative reporting date of 7 March 2025. The intention is for the review findings to be provided to government Ministers for their information. The review report will be subject to the Official Information Act and Privacy Act regarding public release considerations. Any release of information relating to this review will respect suppression orders that have been made in a case currently before the courts.



Sir Brian Roche, KNZM
Public Service Commissioner
January 2025