Justice Committee

Post-legislative scrutiny of the Police and Fire Reform (Scotland) Act 2012

Written submission from Anonymous 2

Background

I have personal experience of Police Scotland’s internal complaints handling process. I will focus my submission on Chapter 10 of the Police and Fire Reform (Scotland) Act 2012 - Complaints and Investigations. In my experience the processes available to make complaints against the police, provided by the Police & Fire Reform (Scotland) Act 2012, are not fit for purpose, for the following reasons, and due, in part, to the following ‘processes’.

Police Scotland

As with its predecessor, Strathclyde Police, Police Scotland’s complaint investigations are carried out by its Professional Standards Department (PSD) and/or its Counter-Corruption Unit (CCU), recently re-branded Anti-Corruption Unit (ACU). Whilst these departments investigate complaints about every other police officer and department, which may provide the appearance of openness and transparency, they also investigate themselves, and officers from each of these departments, an entirely closed process, and the very definition of the absence of openness and transparency.

Crown Office Procurator Fiscal Service (COPFS)

Allowing the involvement of the COPFS in the investigation of complaints against the police suggests the ‘impartiality’ they rely on in their web page exists, it does not. It is that simple. The COPFS prosecute criminal cases in Scotland, therefore, if any criminal case is subsequently ‘over-turned’, due to police wrong-doing, that the COPFS have not previously detected, and/or reported, there is a clear failing in the process that allowed the case to be prosecuted in the first place, and a fundamental failure that prevented its failings from being detected at an earlier point, and/or reported. In my experience the COPFS are rarely far behind when the police are found to have done something wrong. In extremely simplistic, and childish, terms, the COPFS’ claimed ‘impartiality’ is like one end of a piece of string claiming it has no relationship, reliance upon, or duty to protect, the other end, in this case Police Scotland, and that not doing so would not present a high risk of harm to itself, and vice-versa. It’s clearly, in my opinion, simply untrue, and easily identified as such, by anyone looking to identify it.

Police Investigations and Review Commissioner (P.I.R.C)

Prior to 2013, as the Police Complaints Commissioner for Scotland (P.C.C.S) was the forerunner of the P.I.R.C. I had some involvement with it, which always concluded with something along the lines of ‘your complaints clearly infer criminality, we are not authorised to examine anything which might infer a criminal act has been committed by a police officer’. Having been replaced, and re-branded the PIRC in
2013, the situation has improved very little. The PIRC also informed me that they
could not look at my complaint as it clearly inferred a criminal act may have been
committed by a police officer, which is 100% accurate in relation to my complaint
inferring criminality. That however, is a very unsatisfactory response from a public
body which can look at anything which it thinks ‘is in the public interest’ for it to look
at. More-over, it also confirms that the most serious complaints are the subject of the
least amount of ‘independent investigation’, as the decision to allow the P.I.R.C. to
examine an allegation of ‘criminality’ is made by the C.O.P.F.S, a totally
unacceptable, frankly bizarre, and hard to believe, situation, for the reasons of the
C.O.P.F.S’ possible earlier failings.

Scottish Police Authority (S.P.A)

I also have a limited amount of experience of the SPA, again, unfortunately, none of
which is of a positive nature. It has become apparent from my situation that it is not
down to the actions of ‘rogue’ low-ranking officers with questionable methods, and
that several high ranking, up to, and at least including, Deputy Chief Constable
(Designate) ranked individuals, are involved in at least parts of the conduct I have
complained about, and provided documentary proof of. In my opinion, the SPA is a
useless body, one more intent on stating a complaint is ‘not a relevant complaint’
than it is about examining serious misconduct, or even criminality, committed by
officers of Assistant Chief Constable, and higher, ranks.

Risk Management – Police Scotland & The COPFS (I would assume)

The Professional Standards Department, and Anti-Corruption Unit, of Police
Scotland operate with the core function that their purpose is the “management of
risk”, both organisational, and reputational. I assume the COPFS also operate within
that ‘caveat’. This core function is a direct bar to the open and transparent
investigation of some complaints against the police, but potentially any complaint
against the police. To allow such a situation means the ‘management’ of that risk is
being carried out by the very body responsible for the existence of the complaint
(therefore the risk) to begin with.

If an investigatory body is allowed to balance the risk caused by the conduct
complained of, against the potential damage to its own reputation, the potential
reputational risk will always trump an open and transparent investigation of an
investigatory body, by that body. What ‘management of risk’ might entail, or extends
to, has also never been defined, to my knowledge. If it doesn’t have a definition, then
technically nothing, no matter how illegal, is beyond it, or falls outside the definition
of ‘management of risk’. On 22/7/18 an investigation was reported by the BBC
relating to “Allegations of "serious corruption and malpractice"” in the Metropolitan
Police. The investigation allegedly related to the way the Metropolitan police
investigated itself. It would be very, and dangerously, naïve to assume that this
conduct is confined to the Metropolitan Police, and no other police forces, or that
they do not operate in the same way.

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Police Scotland and the COPFS investigate complaints about police officers via the Centurion System, but report other identified criminality via the recognised reporting method for reporting criminality which can lead to a prosecution, a Standard Police Report, currently referred to as an SPR2, as we are now on the second version of it. Even the company which produces the Centurion System did not market it for crime recording purposes, as there is no facility to record crime via any method other than a crime report, but that is exactly one of the uses Police Scotland put it to. The deployment of an Advice & Guidance report circumvents most criminal justice processes, and also creates a system of gathering evidence which cannot be audited by an accused, or their lawyer, as many accused persons, and their lawyers, simply do not know they were the subject of such an ‘investigation’. Whether Advice & Guidance reports were intended to result in a system designed to circumvent disclosure rules, or not, it could easily be put to that use. I am aware of only one written reference to these reports, regarding the Emma Caldwell case in a Daily Record report dated 10/6/18. Why have neither Police Scotland, nor the COPFS, reported one another for preparing reports in relation to complaints against the police that the Police Scotland Complaints Against the Police Standard Operating Procedure (S.O.P) doesn’t appear to be aware exists?

Data Protection – Police Scotland & COPFS

Police officers in Scotland charged with any type of criminality, by Police Scotland, whether on, or off, duty have the written decision regarding whether they are to be prosecuted, or not, sent to Police Scotland by the COPFS. Such a decision appears to me to be highly private and confidential information, and likely to be the subject of strict data protection rules, which appear to be easily ignored by Police Scotland, and the COPFS. It is my opinion that the sharing of such information cannot be anything but a glaringly obvious data protection breach.

Conclusion

I have no issues with ‘routine’, and / or obviously malicious, complaints against the police being dealt with by the police, COPFS, and other bodies, but, there must be a completely independent investigation, free from the oversight of the COPFS, and of any ‘oversight’, by any party connected to the matters complained of, or any arm of the criminal justice process, which can be corroborated by the available evidence, or which alleges serious criminality, and / or corruption, on the part of police officers, or any other part of the criminal justice process, otherwise one, or more, of the foregoing ‘processes’ is likely to form part of the investigation of that complaint, any one of which can be a bar to openness and transparency, but which when combined could amount to a pure and simple cover-up. The decision to allow the independent examination of a complaint must also not be allowed to be taken by any of the bodies concerned, or even possibly concerned, in it existing, also a feature of the current system. I say this for the reasons I’ve laid out above. The foregoing is not an exhaustive list and is designed merely to highlight several of the more common issues persons making complaints about Police Scotland, to Police Scotland, might encounter, whether unwittingly, or not.
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As for your own office, if it is serious about getting to the bottom of the complaints against the police process, and the many failings, and hurdles, which I consider exist within that minefield, it is my respectful opinion that hearings involving senior police officers, HMICS, the PIRC, the COPFS, the SPF, the SPA, etc, etc will achieve nothing in that regard. An examination of potential failings within a process, isn’t much of an examination, if it only hears from one side of the discussion, nor is it open or transparent. The foregoing circumstances being the case, it’s the side claiming ‘all is well, nothing to see here’, claiming all is well, as usual, with no counter arguments, or evidence, being heard to refute that claim.

Such an ‘examination’ serves only to provide a platform on which those perpetrating the foregoing, and many other matters, will offer meaningless assurances, and platitudes, claiming that nothing is wrong with the process, and on the few occasions something does go wrong, the ‘process’ itself, and the various cogs of it, identify, and remedy, the problem. In my experience, nothing could be further from the truth, and any suggestion that this is the world we live in is about as far from the reality of the situation being examined as it could be.

Thank you for allowing to make a late submission regarding the investigation of complaints against the police. I hope the foregoing is of some use to your office’s considerations of that topic.