Justice Committee

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

Supplementary written submission from the Police Investigations and Review Commissioner

Thank you for the opportunity to provide evidence to the Justice Committee yesterday, in the course of which I highlighted some concerns regarding Police Scotland’s ongoing discretion to deal with matters which, in the interests of transparency, could more appropriately be directed to an independent organisation.

I identified three areas in which I consider Police Scotland continues to exercise that discretion.

Firstly, at the recording stage; secondly, in interpreting what, in Police Scotland’s view, is a ‘serious incident’ in terms of the legislation and finally, where Police Scotland pursue investigations into both on and off duty criminality without reference to the COPFS, thereby denying the Lord Advocate the opportunity to determine at the outset of the enquiry, whether an independent investigation is required.

I provided three examples illustrating the discretion afforded to the police at the recording stage:

(a) I referred to circumstances where someone complained to Police Scotland that they had been unlawfully detained for a number of days which Police Scotland recorded as a ‘quality of service complaint’. Police Scotland did not uphold the complaint and the person then applied to this organisation for a complaint handling review. At that stage, it appeared to us that the police actions at the core of the complaint amounted to potential criminal behaviour and we referred the matter to COPFS for consideration of an independent investigation. COPFS in turn directed me to investigate the conduct of a number of officers and that matter has now been reported to COPFS for consideration of criminal proceedings.

(b) The second example which I provided related to an allegation of rape. I require to clarify that the allegation of rape was not made against a serving police officer. The complaint was made about his actions relative to a rape investigation.

The complaint was categorised by Police Scotland as ‘incivility’ however, following the complainant’s application to this organisation for a complaint handling review and our intervention, Police Scotland eventually reported allegations of criminality about the police officer to COPFS as ‘an attempt to pervert the course of justice’.

I apologise for not articulating that more clearly in my evidence.

(c) In the third example, I referred to an allegation by someone who complained that he had been struck twice in the face by a police officer. Police Scotland recorded the matter as a complaint of ‘excessive force’ rather than as a criminal allegation of assault.
Again, the complainer who considered that he had indeed been assaulted, sought a complaint handling review and on assessing the matter, we directed the applicant to COPFS.

I thought it important to write to you with this more specific level of detail on these examples and provide a greater clarity than I conveyed yesterday.

Please do not hesitate to contact me should you require further information.

Kate Frame
Commissioner
6 November 2018