Justice Committee

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

Supplementary written submission from Police Scotland

I refer to the foregoing evidence session of the Justice Committee held on 6 November 2018.

Having considered the evidence provided, Police Scotland finds it necessary to provide additional clarification on matters of factual inaccuracy which were presented to the Committee.

Since the inception of Police Scotland, we have handled in excess of 30,000 complaints and at the heart of our complaint handling procedures is our primary objective, to build public trust and confidence in policing. Police Scotland has made significant progress in developing complaint resolution procedures which now allows on average 40% of all complaints to be resolved early (Front Line Resolution) and to the satisfaction of those members of the public raising complaints.

PIRC (Police Investigations and Review Commissioner) Statutory Guidance and Police Scotland Standard Operating Procedures make it clear that only complaints which are non-serious, non-criminal and non-complex can be resolved by way of early resolution. It is worthy of note that the PIRC has recognised and encouraged the use of Front Line Resolution (FLR) or early resolution.

In effect, this allows for the concerns of a complainer to be assessed, recorded and dealt with in a timely and effective manner. This provides a full explanation to the complainer, with the matter still being recorded as a complaint and followed up by way of a letter to the complainer.

Please be assured, in every instance of a non-criminal complaint being concluded, the complainer has the ultimate right of recourse to the PIRC if they are dissatisfied with the manner in which the complaint has been dealt with by Police Scotland. Notwithstanding this entirely transparent approach, it is notable that less than 5% of persons ultimately choose to progress their complaint to the PIRC.

All criminal complaints are reported to the Complaints Allegations Against the Police Division (CAAPD) within Crown Office.

This in effect suggests that around 95% of complainers are sufficiently satisfied with the manner in which their complaint is handled. I would like to take this opportunity to offer some clarity and context around the examples provided by the PIRC to the Committee, which Police Scotland considers to be factually inaccurate in places.
Assessment and Recording of Complaint Allegations

You will be aware that in the evidence, a number of non-recent examples were cited in terms of complaint assessment, whereby serious criminality had been inappropriately recorded. I would offer the following response for each example highlighted.

Rape - Recorded as Incivility

The evidence provided that Police Scotland had recorded an allegation of rape as incivility. This is factually inaccurate and Police Scotland refute this assertion in the strongest possible terms. I must emphasise that the initial sexual crime that was reported to the Police and investigated by specialist officers, was not in relation to a serving officer.

The matter of incivility described in the Commissioner’s evidence arose as a consequence of the victim’s mother interacting with a local officer, which was separate from the crime under investigation.

I am surprised and disappointed that this inaccuracy was presented to the Committee, and even more so that this erroneous position was further reinforced when a request for clarification was made by a Committee member.

Unlawful Arrest - Recorded as Quality of Service

This example relates to an incident where a member of the public was arrested under the terms of a warrant by officers who erroneously identified the complainer as the person named in the warrant. The individual subsequently made a complaint about the police.

The complainer took up his option to engage with the PIRC following the complaint investigation, and as a consequence of PIRC’s Complaint Handling Review, this matter was reported to CAAPD and remains under consideration. As such it would be inappropriate to comment further.

Notwithstanding the differences in assessment by Police Scotland and the PIRC in this incident, this is indicative of the transparency of a process which has facilitated further enquiry, led by the complainer following communication by Police Scotland.

Assault - Recorded as Excessive Force

In this instance, the complainer made a complaint about the police regarding the actions of the officers during an arrest situation, whereupon an allegation was made that the complainer was punched or hit to the nose. Investigating officers noting the statement explained the difference between assault (criminal allegation) and excessive force (non-criminal allegation). The complainer thereafter asserted that the complaint should be one of excessive force rather than assault. This was documented and signed accordingly by the complainer on the ‘Heads of Complaint’ form.
Following investigation the complainer was provided with a response, which provided details of next steps to be taken should the complainer remain dissatisfied. This option communicated by Police Scotland was invoked, and following a PIRC Complaint Handling Review, the complainer contacted CAAPD, who instructed Police Scotland to submit a report for consideration, which was duly done. Following consideration, CAAPD determined that no criminal proceedings would be taken regarding this matter.

The categorisation of complaints is undertaken on a case-by-case basis, and is subject to an assessment of the circumstances. Accordingly, there will be occasions where there is a difference of opinion in terms of complaint categorisation.

I note that comment was also made by PIRC representatives that the scale of the problem cannot be quantified as there are no audits to determine the extent of the problem. This is inaccurate. The Scottish Police Authority (SPA) undertakes on a quarterly basis a review of complaints by means of dip-sampling. Furthermore, and notably, the PIRC has also undertaken an audit in relation to “Heads of Complaints”, which is the document used by Police Scotland to agree the nature of the complaint being made by the member of the public.

I would seek to reassure the Committee that the singular examples provided in the evidence session, notwithstanding the accuracy of same, are not indicative of any systemic issue which could have been identified in audits, but in fact represent isolated issues which in themselves are highlighted through the robust and transparent multi-agency process which is complainer-led.

In my role as ACC Professionalism, I report on all complaint matters through our Executive Force Tasking and Governance board. In addition, I report quarterly to the public session of the SPA Complaint and Conduct Committee and that report is subsequently published.

**Serious Incidents Involving the Police**

As part of the evidence submission, it was intimated that the definition of “serious incidents involving the police” as provided in Section 41B of the Police, Public Order and Criminal Justice (Scotland) Act 2006 may require to be re-visited given the level of discretion afforded to Police Scotland in terms of what may constitute a “serious incident”.

An example where a matter was not referred was highlighted, which was deemed by Police Scotland not to meet the threshold for serious injury (diagnosed as effusion, i.e. fluid in the joint), and therefore not a serious incident as defined in the legislation. Police Scotland has in place a robust assessment process whereupon incidents which may require to be referred to the PIRC are fully considered.

In quantifiable terms, in the period of April 2017 to March 2018, 421 matters were referred to the PIRC in line with the legislation, as a result of which the PIRC fully investigated 36 of those referrals. Thus, 92% of matters referred to PIRC by Police Scotland were not subject to further investigation; again we
believe this is indicative of an open and transparent referral process to which rigorous internal scrutiny is applied by Police Scotland.

**Criminal Allegations Against the Police (On / Off Duty)**

Another matter raised in the evidence session was the situation whereby officers are subject to allegations of criminality, either in the course of their duty or whilst they may be off duty. Insofar as the recording of criminal allegations against officers are concerned, any on-duty complaint which infers a ‘reasonable inference of criminality’ will be reported to CAAPD for consideration.

As part of this, the Crown Office and Procurator Fiscal Service (COPFS) specify that any “allegations of criminality which could not be described as minor in nature, which contain sufficient prima facie evidence (may also include high profile cases)” would be referred to them by Police Scotland within 48 hours.

In exceptional instances where a serious sexual crime is alleged against a serving officer, early contact is made with the Serious Sexual Offences Unit at COPFS to determine the most appropriate path to undertake. In all such cases to date, Police Scotland have been directed by COPFS to continue with the investigation.

With regard to off-duty matters, Police Scotland continues to follow the Lord Advocates Guidelines and matters are reported to the COPFS in accordance with the agreed process. Furthermore, it should be noted that off-duty matters are not solely investigated by local CID officers as alluded to by the Commissioner. The most appropriate resource is allocated for investigation depending on the circumstances, ranging from divisional officers for matters deemed less serious, to specially trained officers who are utilised nationally for more serious matters, e.g. National Rape Task Force for serious sexual offences. The established process for investigating off-duty matters is reflective of a long-standing agreement with COPFS.

**Whistleblowing**

Police Scotland treats allegations of wrongdoing extremely seriously, regardless of whether the allegation may be assessed as whistleblowing. A Whistleblowing Policy and Guidance was introduced in June 2017 and remains in place to date. The existing guidance is the subject of review in an effort to further simplify and promote the process of reporting wrongdoing, including ongoing work to secure the services of an external organisation to offer advice and guidance to individuals who may wish to raise issues of concern.

The introduction of Whistleblowing Guidance was completed in collaboration with stakeholders including both the SPA and PIRC. Police Scotland are committed to strengthening this policy through enhanced training, awareness raising and a robust internal communication strategy. The Force have engaged UK experts in Whistleblowing and in the coming months will seek to strengthen third party reporting.
Conclusion

During evidence session, Committee members enquired as to the reasons for the issues that were raised by the PIRC in relation to complaint assessment and categorisation. The response provided was that contributing factors were either by way of “incompetence or other more sinister aspects.”

Police Scotland works tirelessly to promote public confidence in policing and is extremely concerned that such assertions were offered to the Committee by means of the examples described above, at least one of which was completely erroneous. This assertion was provided without any supportive evidence and is utterly refuted by Police Scotland in the strongest terms.

Police Scotland is fully committed to support the review of complaint and conduct handling by Dame Elish Angiolini and her team, as commissioned by the Scottish Government.

I trust members will find the foregoing information helpful.

Alan Speirs
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Professionalism and Assurance
8 November 2018