Introduction

The Scottish Chief Police Officers Staff Association (SCPOSA) is the representative body of all senior police officers (Assistant Chief Constable, Deputy Chief Constable and Chief Constable) in Police Scotland. The Association is affiliated with the Chief Police Officers Staff Association (CPOSA) which represents officers of similar ranks in England, Wales and Northern Ireland.

SCPOSA represents its members in all matters concerning pay, conditions, misconduct and complaints. Due to the senior level of its members and their involvement in the most strategic issues of policing in Scotland, SCPOSA does not offer views in relation to other matters relating to policing.

Scope of Response

The content of this submission will be restricted to issues and experiences concerning the functions of the Scottish Police Authority (SPA) and the Police Investigations and Review Commissioner (PIRC) in carrying out their functions under the terms of the Act in relation to the management of complaints and matters of misconduct concerning senior officers.

As such this response can be considered to be in response to Question 5 of the call for written views “Are there any other issues you would like to raise in connection with the operation of the 2012 Act?”

Pre Reform Position

Prior to the establishment of Police Scotland issues of misconduct and complaints against senior officers were dealt with by the constituent Police Boards and Joint Police Boards with appropriate oversight from Her Majesty’s Chief Inspector of Constabulary and the Crown.

Post Reform

Chapter 10 of the 2012 Act established the responsibilities of the SPA in relation to complaints against the police and established the PIRC from its predecessor body. In general terms the Act laid out the responsibilities of both bodies and enabled the enactment of detailed Regulations concerning the management of complaints and matters of misconduct in respect of senior officers. On this basis the Police Service of Scotland (Senior Officers) (Conduct) Regulations 2013 (the 2013 Regulations) came into force on 1 April 2013. These Regulations have been utilised since reform to deal with issues surrounding senior officers and have found to be lacking in many areas including having no provision at all for dealing with conduct, occurring prior to
2013, of senior officers who were not of that rank at their inception. Areas of more specific concern to the Association are highlighted below.

Position of the Association

SCPOSA unequivocally recognises the need for a fair, proportionate, transparent and robust system to deal with matters of complaint, misconduct and allegations of criminality in relation to senior officers. Whilst acknowledging this need the Association strongly defends the rights of senior officers to be dealt with timeously, sensitively and with a recognition of the high profile and relatively vulnerable position which they hold in the policing of Scotland.

Prior to reform, the Association was involved in the drafting of post reform provisions and in the management of transitional measures. During the period leading to reform the Association consistently expressed concerns that the provisions being put in place were not appropriate and lacked safeguards and due process for the protection of both the Authority and the officers concerned. Whilst these concerns were to a degree acknowledged, the drafting of the Regulations came towards the end of the legislative programme to enable reform and time constraints made further consideration and refinement impossible. The current regime was therefore enacted with what are seen by the Association as inherent flaws. These flaws have been highlighted to the Scottish Government and SPA on a consistent basis and whilst having been acknowledged, have not been the subject of reform.

Whilst the sensitive nature of complaints against senior officers makes specific detail difficult to recount the following examples will hopefully outline the concerns of members in relation to the manner in which the provisions and intentions of the 2012 Act have disadvantaged them in an unintended way:

Initial Notification of Complaints

In terms of the 2013 Regulations, Regulation 8, where a misconduct allegation comes to the attention of the SPA:

“The Authority must assess whether the conduct which is the subject matter of the misconduct allegation would, if that conduct were proved, amount to – a) misconduct; b) gross misconduct; or c) neither”

If the Authority establishes that either a) or b) above are established, then they must refer to the PIRC for investigation. Whilst it would appear on the surface of any examination of this provision that it would be an appropriate course, recent experience has shown that perverse and unintended outcomes can result. As an example, a number of anonymous communications have in the past been received by the Authority which made unspecific and very general allegations against senior officers. The provision outlined above was implemented in relation to the allegations but was coupled with legal opinion obtained by the Authority which indicated that they were not entitled to make any form of enquiry into the allegations other than to assess whether the allegations, if proven, may amount to misconduct. In essence this approach leads to allegations being assessed purely on the basis of what is written by the unknown author despite the senior officers offering full explanations in
relation to the allegations. The SPA are of the view, based on legal opinion, that such explanations cannot be considered by them at an initial stage. It is the position of the Association that this is patently unfair and has lead to senior officers being investigated for protracted periods of time on the basis of extremely vague allegations submitted by an unknown individual whose motives are unclear.

It is the position of the Association that any fair interpretation of the provision outlined above would be that initial enquiry should be undertaken by the Authority to establish whether there is any substance to the allegation prior to full investigation. This position is based on a number of examples which have been encountered where for instance allegations have been made anonymously that officers have failed to take particular courses of action. On the face of the allegations the officers could be deemed to have been in neglect of their duty and therefore have committed acts of either misconduct of gross misconduct. In a number of cases like this it was clear to the Association and indeed agents appointed on behalf of the officers concerned that simple telephone calls would have proven that the allegations were completely unfounded. The failure of the Authority to carry out such enquiries has led to significant publicity surrounding officers, irreparable damage to professional reputations and huge upset to their families. Such outcomes cannot be seen to be in accordance with the policy intentions of the Scottish Government and indeed the 2012 Act.

The unintended consequences of the actions of the SPA have on a number of occasions been exacerbated by the secrecy and apparent unaccountability of the PIRC in relation to the discharge of their investigative function under the terms of the Act. Whilst the Association and agents acting on behalf of officers have attempted to communicate clear evidence of the fictitious nature of allegations the policy and attitude of the PIRC have been invoked and lengthy and expensive enquiries have been undertaken only to show that the allegations have had no substance. Indeed the status of officers has been considered by the SPA merely on unsubstantiated or un-evidenced assertions by the PIRC that their patterns of duty or posting to certain roles would prejudice their investigation. This again cannot be seen to have been the intention of the Act or indeed to be in compliance with the European Convention on Human Rights in that the officer cannot challenge this in any way.

**Timescales**

Over the five years since the inception of the Act the Association has become increasingly concerned regarding the length of time taken by both the SPA and PIRC to complete what have been seen as relatively straightforward enquiries or assessments. In many of these cases months have passed with no apparent progress and indeed no explanation of why no progress has been made. In some instances officers have been the subject of significantly protracted enquiries whilst what should have been simple enquiries were undertaken. Despite repeated requests from agents acting on behalf of the officers for explanations none have been forthcoming based on the policy of the PIRC. In one instance these delays led to agents for an officer undertaking enquiries and noting statements in respect of the complaints which had been made. These enquiries were completed within the period of one week in contrast to the five months taken by the SPA and PIRC.
These lengthy timescales have also been the subject of significant public debate in relation to matters concerning the former Chief Constable who resigned before the resolution of the allegations against him despite enquiries having been ongoing for many months.

The Association would again suggest that the Scottish Government could not have intended such delays when designing the current processes under the terms of the 2012 Act and could not have envisaged the damage these lengthy enquiries would cause to the reputations of both the service and the officers involved.

Privacy

Whilst it is accepted that enquiries into allegations of wrongdoing on the part of the most senior police officers in Scotland will always cause a significant amount of public and press interest the level of intrusion currently being encountered could not have been anticipated at the inception of the new arrangements.

In a number of instances the Association and indeed individual officers have only become aware of investigations into their conduct when articles have appeared in the media. Whilst it is unclear where such information has originated it is clear that it does significant damage to the officers’ reputations and also to any concept of fairness of enquiries into the matters.

The Association have also become concerned regarding the practice of the PIRC and SPA to publish releases on their website at every stage of an enquiry into senior officers. This has included investigators contacting their office whilst with an officers’ agent to ask for information to be placed on the organisations’ website. When challenged regarding this practice, which merely served to bring the officer to the attention of the media on a regular basis the PIRC merely responded that it was their policy to do so. This again cannot have been the intention of the legislation at the time of inception. Indeed whilst the Regulations which relate to non-senior officers closely mirror the 2013 Regulations the interpretation of both Police Scotland and senior counsel on their behalf is that no information should be released until the conclusion of proceedings thus preserving the privacy of the subject officer. It is wholly unclear why a different standard should be applied to senior officers who are the subject of enquiry and indeed to those who raise concerns regarding the conduct of others.

Reputation

The Scottish Government and indeed the people of Scotland rightly expect the highest standards from senior police officers who carry significant responsibilities and pressure. In return, the senior officers should surely be entitled to expect that when complaints are received, they are dealt with in a manner which protects their personal and professional reputations for the future. In a number of instances this has not been the case and huge public discussion has taken place regarding the conduct of the officers only for enquiries to prove that there had been no wrongdoing on their part. Sadly the press and indeed the regulatory agencies who are very quick to publicise the commencement of an enquiry are not so fast to publicise the conclusion of the enquiry and thus the reputational damage remains.
Accountability

Whilst senior officers are rightly accountable for their behaviour and can be investigated as such it is singularly unclear as to the accountability of either the SPA or the PIRC as to the manner in which their investigations are conducted or the findings of any enquiry are considered. At the conclusion of any enquiry a report is submitted to the SPA for consideration without the subject officer being given sight of it or having any opportunity to counter assertions made therein. The Association would urge that a review requires to be undertaken of this accountability as disproportionate, lengthy and damaging enquiries appear to be undertaken with no route of challenge existing.

SCPOSA fully supports then need for an appropriate investigative and disciplinary system to exist in relation to senior police officers and assume that this was the intention of the Act. On the basis of the foregoing comments it is argued that this is not currently the case and that a review of the 2013 Regulations, made under the 2012 Act, requires to be undertaken.

Chair: Bernard Higgins, Assistant Chief Constable, Police Scotland
General Secretary: Andrew Barker QPM
24 May 2018