Justice Committee

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

Written submission from the Scottish Police Authority

Complaints and conduct

1. SPA's statutory role and responsibilities in complaints

The Scottish Police Authority is required to deal with any complaints received in accordance with statutory guidance and relevant legislation.

The SPA is responsible for handling complaints about:
- the SPA itself;
- staff members of the SPA; and
- senior police officers of the rank of Assistant Chief Constable (ACC) rank and above i.e. ACC, Deputy Chief Constable (DCC) and Chief Constable (CC).

The following legislation and other sources of guidance are relevant to the handling of complaints:

- a) The Police, Public Order and Criminal Justice (Scotland) Act 2006 as amended
- b) Police and Fire Reform (Scotland) Act 2012
- c) Ethical Standards in Public Life etc. (Scotland) Act 2000
- d) The Police Service of Scotland (Senior Officers) (Conduct) Regulations 2013
- e) The Police (Conduct) (Senior Officers) (Scotland) Regulations 1999
- f) The Police Service of Scotland (Senior Officers) (Performance) Regulations 2016
- g) Equality Act 2010
- h) From Sanctions to Solutions PCCS Statutory Complaints Handling Guidance
- i) Revisions to Sanctions to Solutions, following creation of PIRC on 01 April 2013
- j) SPA / Police Scotland Code of Conduct

Complaints about Senior Officers may be dealt with as ‘relevant complaints’ (as defined in the Police Public Order and Criminal Justice (Scotland) Act 2006) or as ‘misconduct allegations” (as defined in the Police Service of Scotland (Senior Officers) (Conduct) Regulations 2013) OR the Police (Conduct) (Senior Officers) (Scotland) Regulations 1999. They may also be dealt with as a grievance in accordance with the SPA / Police Scotland’s Grievance SOP.

The SPA is also required by statute to keep itself informed as to the manner in which ‘relevant complaints’ are dealt with by the Chief Constable, with a view to satisfying itself that the arrangements maintained by the Chief Constable for handling ‘relevant complaints’ are suitable. The SPA does this through:

- a) Dip sampling complaints received by Police Scotland’s local Divisions and national specialist services;
- b) Receiving automatic notification of complaints made against officers and staff of the Anti-Corruption Unit for further independent review; and
c) Receiving and reviewing reports into Police Scotland’s own complaints handling performance.

2. SPA Governance Approach to Complaints

When SPA was established in April 2013, a complaints handling team was set up, whose role was to interpret the Conduct Regulations and put in place written complaints handling procedures. Initially, a number of complaints received by SPA were ones which had been carried forward from legacy police boards. The original SPA Complaints and Conduct Committee oversaw this work, commissioned a dip sampling approach to Police Scotland’s complaint handling and also sought to ensure best practice in terms of accessibility by complainers. Complaints cases were presented to Committee for discussion and decision based on the paperwork collated by the Complaints Team. The Committee generally met on a quarterly basis.

During 2016, the Complaints and Conduct Committee ceased to operate following publication of a Governance Review of the SPA carried out by its former Chair. As a result, decisions in relation to complaint cases were delegated to the SPA’s Chief Executive Officer.

Following the appointment of a new Interim Chief Officer in November 2017, and a new Chair in December 2017, the requirement for rapid change and improvement in the SPA’s approach to complaints was identified and set in train which are captured below:

a) The re-establishment of the SPA Complaints and Conduct Committee in January 2018 as agreed by the SPA Board in December 2017. The Committee has met 12 times between January 2018 – September 2018.

b) The introduction of a lead Director to support the SPA Complaints and Conduct Committee’s activities and requirements, and a requirement for all Committee decisions to be supported by professional written advice and legal opinion, and for all decisions to be properly recorded.

c) Introduction of quarterly meetings between senior officials within SPA, Police Scotland, Crown Office and PIRC to identify and address any strategic or system-wide issues.

In addition, early discussions involving the PIRC, HMICS and the Scottish Government were initiated by the new Chair to explore how the handling of senior officer complaints might be improved.

3. Improvement activity

A number of improvement actions have been implemented to strengthen the SPA’s complaint handling procedures:

a) Additional training undertaken by the SPA Complaints Team.

b) A multi-party working group was convened to improve the complaint handling procedures across all complaints received about SPA or Senior Officers, including: misconduct allegations, ‘relevant complaints’, internal grievance type matters and whistleblowing. These are currently being consulted on with stakeholders.

c) Introduced Director-level triaging of complaints on at least a monthly basis.
d) Introduced a new reporting format to the Committee, to allow for more streamlined case assessment.
e) Achieved a substantial reduction in the number of complaints awaiting determination.
f) Implementation of a compatible complaints handling database system to improve recording, reporting, and decision-making.

Going forward all complaints received by the SPA will be assessed upon receipt, and will be considered in terms of the following principles:

- Objectivity
- Proportionality
- Balance
- Consistency
- Reasonableness
- Fairness
- Necessity
- Procedural Openness and Transparency
- Individual Confidentiality
- Timely

In dealing with relevant complaints the SPA will take into account the Guiding Principles set out in the PIRC’s statutory guidance:

a) Visible and accessible – a process that is open, transparent and available to everyone.
b) Independent – a system that incorporates an appropriate degree of independence.
c) Objective, impartial and fair – complaints must be dealt with objectively, impartially and fairly, with outcomes firmly based on evidence.
d) Quick and simple – a process that is efficient and can deliver effective results as quickly as possible.
e) User focussed and accountable – a process which takes into account the needs of the individual and is open to scrutiny.
f) Continuous improvement – a willingness to change and improve as a result of complaints and to share lessons learned.

4. Scale and context

The SPA complaints team are a team of three people, who process the complaints, undertake dip sampling, prepare management reports and prepare all paperwork for the SPA Complaints & Conduct Committee. They report into a Director, and are also supported by other professional advice within SPA such as the legal team and the HR governance team.

Between 01 April 2013 and 31 March 2018 (5 years), the following complaints data provides the context in which SPA has operated.
Number and types of Complaint cases made to SPA

<table>
<thead>
<tr>
<th></th>
<th>Year 1</th>
<th>Year 2</th>
<th>Year 3</th>
<th>Year 4</th>
<th>Year 5</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cases received by SPA</td>
<td>238</td>
<td>175</td>
<td>237</td>
<td>133</td>
<td>145</td>
</tr>
<tr>
<td>Cases which are not within SPA remit</td>
<td>188</td>
<td>157</td>
<td>205</td>
<td>103</td>
<td>97</td>
</tr>
<tr>
<td>Complaints cases within SPA remit</td>
<td>50</td>
<td>18</td>
<td>32</td>
<td>30</td>
<td>48</td>
</tr>
<tr>
<td>Complaint allegations within SPA remit</td>
<td>159</td>
<td>38</td>
<td>102</td>
<td>63</td>
<td>140</td>
</tr>
</tbody>
</table>

*NB: Each complaint case may be made up of multiple allegations*

a) Complaint Cases within SPA remit by origin of complaint

<table>
<thead>
<tr>
<th></th>
<th>Year 1</th>
<th>Year 2</th>
<th>Year 3</th>
<th>Year 4</th>
<th>Year 5</th>
</tr>
</thead>
<tbody>
<tr>
<td>Member of the Public</td>
<td>32</td>
<td>9</td>
<td>16</td>
<td>19</td>
<td>16</td>
</tr>
<tr>
<td>Internal, i.e. serving or former officer or staff</td>
<td>17</td>
<td>8</td>
<td>16</td>
<td>11</td>
<td>28</td>
</tr>
<tr>
<td>Anonymous</td>
<td>1</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>4</td>
</tr>
</tbody>
</table>

Over the five year period:
- Only 1 in 5 of the cases raised with the SPA are actually within the SPA’s remit, demonstrating that there is work to do across the system to raise understanding of respective roles and remits.
- Each case that has fallen within the SPA’s remit involves on average more than four allegations, giving a sense of the complex nature of many of the complaints raised.
- Almost as many complaints and conduct cases assessed by the SPA relate to complaints within policing (46%) as come from members of the public (54%).

5. Summary

Moving forwards, SPA will continue to develop its approach. There is a structural review underway within SPA to strengthen internal capacity to deal with a range of functions, including complaints handling. We have welcomed the review commissioned by the Cabinet Secretary and the Lord Advocate, and being carried out by Dame Elish Angiolini, and have commented previously to the Committee’s Post Legislative Scrutiny exercise about the need for change (excerpt attached).

The SPA has actively participated in a number of sessions with Dame Elish Angiolini and her secretariat to date. We look forward to the findings, but also continue to make improvements at our own hand to ensure that we have a complaints handling system which is fit for purpose within the confines of the current legislation and regulations.

Excerpt from SPA Written Submission to Justice Committee Post Legislative Scrutiny on Police and Fire Reform (Scotland) Act 2012
“Are further policy or legislative changes required to improve the effectiveness of the Police and Fire Reform (Scotland) Act 2012?

One of the SPA’s main statutory functions is to “maintain policing in Scotland” and our focus is therefore on building strength, stability and confidence in our police service. The SPA would therefore be concerned that uncertainty and disruption caused by opening up the Act at this time would be destabilising and could create risk within operational policing in Scotland. The SPA believes that it is neither necessary nor desirable to make changes to the Act at this time.

However, the SPA is of the view that there is a need to review the Police Service of Scotland (Senior Officers) (Conduct) Regulations 2013 which were introduced as secondary legislation following the passage of the 2012 Act. The SPA is concerned about how these Regulations have operated in practice, not least in relation to the handling of complaints about senior officers. In particular, we are concerned that the substance, interpretation and application of the current arrangements provide insufficient confidentiality for those who make complaints and for those about whom complaints are made; a lack of clarity in legislation as to whether an allegation is to be treated as a “misconduct allegation” (as defined in the Regulations) or a “relevant complaint” (as defined in the Police Public Order and Criminal Justice (Scotland) Act 2006); and a lack of clarity in the Regulations as to the extent of enquiries which the SPA is permitted to conduct into an allegation before deciding whether to refer it to the PIRC. Other than establishing the relevant bodies (SPA and the PIRC) the complaints handling procedures are governed largely by these Regulations and other relevant legislation rather than by the Act itself.

Over recent months the SPA has taken steps to strengthen and develop its own complaints handling procedures and has engaged in development and review work with other key parties with an interest in this matter. The SPA will continue to work to drive forward improvement within the current Regulations. However, our view is that the Regulations themselves are in need of review.

The SPA is open minded about where specific organisational responsibilities should best lie in the future. There are a number of other organisations with a role and interest in this area whose views and experiences should be sought; the PIRC, the Crown Office, HMICS, Police Scotland and the Scottish Chief Police Officers Staff Association. However the key point is that the operation of the current system has on occasions not well supported the SPA’s functions under the Act to “maintain the Police Service, to promote the policing principles set out in Section 32, [and] to promote and support continuous improvement in the policing of Scotland.”