



The Scottish Parliament  
Pàrlamaid na h-Alba

## Official Report

### JUSTICE SUB-COMMITTEE ON POLICING

Thursday 14 January 2016



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**JUSTICE SUB-COMMITTEE ON POLICING**

**1<sup>st</sup> Meeting 2016, Session 4**

**CONVENER**

Christine Grahame (Midlothian South, Tweeddale and Lauderdale) (SNP)

**COMMITTEE MEMBERS**

- \*John Finnie (Highlands and Islands) (Ind)
- \*Alison McInnes (North East Scotland) (LD)
- \*Margaret Mitchell (Central Scotland) (Con)
- \*Elaine Murray (Dumfriesshire) (Lab)
- \*Kevin Stewart (Aberdeen Central) (SNP)

\*attended

**THE FOLLOWING ALSO PARTICIPATED:**

Chief Superintendent Carole Auld (Police Scotland)  
Kate Frame (Police Investigations and Review Commissioner)  
Ian Ross (Scottish Police Authority)

**CLERK TO THE COMMITTEE**

Joanne Clinton

**LOCATION**

The David Livingstone Room (CR6)



## Scottish Parliament

### Justice Sub-Committee on Policing

Thursday 14 January 2016

*[Elaine Murray opened the meeting at 13:01]*

#### Temporary Convener

**Elaine Murray (Dumfriesshire) (Lab):** Good afternoon and welcome to the Justice Sub-Committee on Policing's first meeting in 2016. I ask members and others to switch off mobile phones and other electronic devices.

The convener has submitted her apologies due to ill health. Under standing orders, the oldest member present must chair the meeting for the purpose of choosing a temporary convener, which is why I have taken the chair today—no comments, thank you.

Can I have nominations for a temporary convener, please?

**Alison McInnes (North East Scotland) (LD):** Yourself.

**Kevin Stewart (Aberdeen Central) (SNP):** Just stay in the chair.

**Elaine Murray:** Only one nomination has been received. I ask the sub-committee to agree that I am chosen as the temporary convener.

**Members indicated agreement.**

## Complaints Handling

13:01

**The Temporary Convener (Elaine Murray):** Our main item of business today is an evidence session on police complaints handling. I welcome to the meeting Chief Superintendent Carole Auld, head of professional standards at Police Scotland; Ian Ross, chair of the Scottish Police Authority's complaints and conduct committee; and Kate Frame, Police Investigations and Review Commissioner.

Before we start, I remind members that we have only one hour in which to ask questions of witnesses because we need to be finished by 2pm, when the chamber reconvenes. I therefore ask members to make their questions as concise as possible.

**John Finnie (Highlands and Islands) (Ind):** Good afternoon, panel. I have a question for Chief Superintendent Auld. We have a submission from the Scottish Police Federation, which tells us:

"The 2014 regulations were intended to move misconduct investigations from adversarial to inquisitorial in nature."

Has that been achieved?

**Chief Superintendent Carole Auld (Police Scotland):** It is work in progress. Most certainly, the 2014 regulations require full revelation for the chair and the officer who is subject to misconduct proceedings. There are questions about how that plays out for complainers and witnesses, and for equality in our application of the regulations. There is some work to be done there.

Although this has yet to be established, in relation to a course of conduct complaint, there might be occasions when officers and witnesses are presented to two separate hearings. That is because the complaint might proceed under the 2014 regulations and we are currently managing three sets of regulations—from 1996, 2013 and 2014. That can be challenging for officers, witnesses and complainers alike.

**John Finnie:** The same submission also says:

"Superintendents with portfolios for conduct matters do not understand such important matters as what does and does not constitute misconduct."

That is quite a serious statement. Could you comment on that?

**Chief Superintendent Auld:** I have read the submission but without knowing the detail. There certainly has been training on the new regulations that were rolled out throughout 2013-14 and that training continues.

The professional standards department is fully engaged with divisions through superintendents who lead and support the super at division. The regulations are applied consistently across the force as best we can in professional standards, the regional hubs and divisions.

**John Finnie:** Have you had an opportunity to see the SPF's five bullet points, which include investigating officers' "grasp" of the regulations, process and limitations of powers, the use of "personal opinions" and "hearsay to infer guilt", a misunderstanding of the balance of probabilities and how

"Exculpatory evidence is often completely ignored by investigating officers"?

The concerns seem to go beyond those charged with deliberating at a hearing to include investigating officers. Has training been rolled out on the new regulations on that?

**Chief Superintendent Auld:** Absolutely. Officers are fully conversant with exculpatory evidence in criminal and civil proceedings. The SPF might want to bring forward some of those instances to the professional standards department—that is, to me. I would welcome that. The SPF has full, unfettered access to the PSD in relation to such scenarios. Unfortunately, it has brought no instances to my attention. I am sure that I will be able to take that up with the SPF in my role as head of department.

**John Finnie:** That would be helpful.

There is also mention of the counter-corruption unit and its relationship with the professional standards department. There seems to be a lack of clarity in the SPF with regard to where responsibility for various things sits in relation to those two departments. There is a series of comments about that. Can you speak further about that?

**Chief Superintendent Auld:** I can say only that, as members will be aware, the terms of reference for the review by Her Majesty's inspector of constabulary are a matter of public record. As I understand it, there are touch points within that review—

**John Finnie:** Sorry, I should say I am talking about something that is obviously historic and concerns events that took place before that review. I took it simply as something that related to on-going misconduct.

**Chief Superintendent Auld:** Absolutely. When the counter-corruption unit has an investigation that does not go down a criminal route, there is a handover to professional standards for our independent assessment of the full circumstances. Where necessary, a new investigation will be convened under the 2014 regulations.

**John Finnie:** So are you concerned when the SPF submission suggests that the counter-corruption unit acts

"with impunity and with scant regard for the rules of fairness and proportionality"?

**Chief Superintendent Auld:** I would have to see some examples of that and, unfortunately, before today, none has been brought to me.

**John Finnie:** Will you be seeking them now?

**Chief Superintendent Auld:** Absolutely; I just thought that it was not appropriate to comment in advance of today.

**John Finnie:** Mr Ross, can you explain the SPA's dip sampling role? Is it about more than process? Is it about the inquiry, too?

**Ian Ross (Scottish Police Authority):** We have a firm procedure in place that we piloted. Our intention is to carry out dip sampling in advance of each of our regular committee meetings and bring a report to it.

The process primarily involves our officers but board members can also be involved. They identify issues—either on a random basis or on a geographical or other basis if there is a good reason to consider specific complaint areas—and then go and look at the full entity that makes up the file that relates to that complaint. Some of that information comes off the Centurion system. I emphasise that the complaint is a closed one—it has reached a conclusion. The officers consider all the aspects of the complaint—the way it was handled, the evidence, the presentation of the information and the consistency of the conclusion with the information that is contained in the complaint. We are looking for reassurance that we can be happy with the way in which the investigation was conducted. There could be subsequent issues that we would want to consider further, although that has not happened yet. To some extent, it can lead to a further discussion but it is essentially an assurance exercise and an opportunity for us to ensure that we fully understand the approach that is taken by the professional standards department.

**John Finnie:** Given the potential for the three sets of regulations to apply to even a closed complaint, is there training for SPA members on the process?

**Ian Ross:** Yes. There is training not only for authority members but for authority staff who are involved in complaints. We have a range of developments in place. We are in regular contact with key agencies, we have six-monthly workshops for our complaints board members, we identify information and training themes that we want to develop, and, on an ad hoc basis, we organise additional briefings and information, for

example on issues that have developed, in order to ensure that our members have a full understanding of them. In relation to some of the regulations, I think that all our members have attended, as observer participants, some of the formal training sessions that Police Scotland and others organise.

**John Finnie:** I have two small questions. In relation to the first, I think that we touched on the issue when you last gave evidence. How does the authority deal with a complaint that is effectively a service complaint that names the individual chief officer? I presume that some complaints are really about the performance of the police service than the performance of an individual postholder.

**Ian Ross:** We take the same approach to any complaint. There is an assessment process. What you describe would essentially be part of what we would call the preliminary assessment, when we look at the complaint and at the information that is there. The critical issue is to try to identify the heads of complaint. If we can, we engage with the person who raised the complaint to ensure that we have a full understanding of it. We may also look for additional information—clearly, we do not carry out an investigation at that stage, but we may look for additional context to ensure that we have a full understanding of the complaint. Depending on the nature of the complaint, in all probability it would be taken to the complaints committee. A report is produced and the complaint is presented to the committee members, who form a view. That is in line with the appropriate regulations, whether it is a service complaint or a complaint about other aspects of conduct.

Depending on the view that the committee adopts at that stage, the process would move on to a further stage. There could be a referral to the Police Investigations and Review Commissioner—that happens, although it is not common—or it could be that it is clear that the complaint is unfounded. As part of the process, we acknowledge the complaint and give regular updates on its progress to the complainer and the people who are the subject of the complaint, so that they are very clear about the position. We move to some appropriate form of closure or further investigation with another party.

**John Finnie:** I have a question about what I think in my day would have been called vexatious complainers—I am talking about complainers who take unacceptable, persistent or unreasonable actions. The information that we have from the SPA is that two people have been subject to the policy to date. Are you able to say whether either strayed into the area of criminality? In other words, were there false accusations of criminality?

**Ian Ross:** To be honest, I do not immediately recall the detail. I caveat my response with that

important point. I think that that it was more about the tone that they adopted in their engagement and interaction with staff. A procedure has been laid down. The policy has been approved and it is subject to review.

I also make it clear that just because someone has been subject to the unacceptable actions policy does not mean that their complaint does not go through the full process. We still treat it as we would any other complaint. Just because someone conducts themselves in a way that we might objectively consider to be unacceptable, we still treat their complaint as a complaint—there is no difference in standard.

**John Finnie:** That is very reassuring. Thank you very much.

**Kevin Stewart:** I will start by looking at the number of complaint cases. There has been an increase of 22.6 per cent in the number of complaint cases across the whole of Police Scotland. There has been a reduction of 8.5 per cent in the number of complaint cases in the north, an increase of 25.1 per cent in the east and an increase of 43.3 per cent in the west. Has any analysis been done to see why there are such huge differences and why there seems to have been a decrease in the north, which is bucking the trend?

**Chief Superintendent Auld:** Yes, I can give you some context around the statistics. We are currently running—for the year end—at an overall increase of 25.4 per cent compared to the same financial period at the last year end. The figure that we are reporting to the force performance board today is an overall year-end total of 5,063 complaints, which is an increase of just under 1,000 compared to the same period last year.

When the committee previously considered complaints handling, my colleague explained the introduction of our new front-line resolution process, which has more than matured now. We are getting to a point at which there is 47 per cent front-line resolution. Perhaps I can give some context about what is a sophisticated model for complaints handling.

**Kevin Stewart:** That would be useful.

13:15

**Chief Superintendent Auld:** The model shows how complaints are received and handled. Every expression of dissatisfaction is recorded by the front-line resolution—FLR—teams. The numbers vary month on month. Regionally, some areas move up and some move down. Forty per cent of complaints—2,338 complaints—are dealt with at the lowest level and never get to the point of an investigation, although the officer is made aware

that there has been a complaint. Just under half of all complaints received in the financial year to date were resolved within three days by the FLR teams. Thereafter, any matter that requires a criminal investigation or further investigation for misconduct is moved to the east, west and north professional standards departments. Depending on the level of the allegation, inquiries are either retained or allocated out to division.

Specialist services are part of the process. Some of the recorded FLR statistics are captured by, for example, the contact, command and control division—C3—which is Police Scotland's communications arena. Complaints can come from around the country. Where the call is received is where the complaint is captured for the FLR team. There can be a statistical variance, but that is just one example of how the stats can be interpreted.

It is fair to say that the vast majority of the complaints that we capture through the FLR process for all expressions of dissatisfaction are dealt with in the three-day process and recorded on our Centurian system. Indeed, as our statistics have become more sophisticated, that has allowed us to get down to officer, departmental, regional and organisational learning for the force across the piece.

I accept that there will be variations. I can certainly look at the detail behind the statistics. There are a lot of variations in FLR data capture.

**Kevin Stewart:** The question as to why there are peaks and troughs is interesting. It would seem that there is an increase nationally but a decrease in the north. I am trying to find out whether there is a reason for that inconsistency. Do you have any inkling why there is such a difference?

**Chief Superintendent Auld:** We covered that matter previously when we talked about the consistent recording processes that have been in place since Police Scotland's inception.

**Kevin Stewart:** Do you think that the north was better at recording information than the east and the west?

**Chief Superintendent Auld:** The data capture that we are achieving across the country is consistent, bearing in mind that some of the legacy forces have been incorporated into the west. We have a number of areas where data capture, recording and how we deal with each complaint are consistent. Recorded complaints are levelling out across the country at between 550 and 600 a month. Last month, we saw a seasonal variation with a drop nationally to 503 complaints. We have looked back to last year's statistics for December, when we expected such a drop. At key points in the year, I see national variation, and

when we see dips or exceptional reporting, we will get behind the statistics in order to look at the variation.

**Kevin Stewart:** Is best practice in dealing with complaints being spread across the country? We know that some of the legacy forces were better at dealing with complaints than others.

**Chief Superintendent Auld:** The ability to consistently apply policy, regulations, recording and data capture is a massive advantage for Police Scotland as a national force.

**Kevin Stewart:** I understand that, but is past best practice now being undertaken right across the country?

**Chief Superintendent Auld:** It is fair to say that best practice is a continuous journey. I am looking to set up an organisational learning forum for the force that captures not only complaints but any matter that we might identify from procedural reviews, PIRC recommendations and internal investigations, so that we can spread strategic and organisational learning across the force. That new piece of work is on-going.

**Kevin Stewart:** Mr Ross, what do you think about those differences? Do you think that there is consistency and that best practice is being driven throughout Police Scotland?

**Ian Ross:** It is something that we look at and discuss at all our complaints committee meetings, particularly as we move to the application of a consistent approach throughout Police Scotland. Initially, there was a period when there were differences during the move from the approaches that had historically been in place in the legacy forces, and we had some fairly detailed discussions about the statistics that you have cited. We wanted to drill down and understand what sat behind those. However, we have a degree of reassurance that we are now getting a consistent approach and, in particular, consistent recording so that complaints are recorded in the same way across Police Scotland. There appears to be no particular underlying reason for the differences that you highlight.

It is important to focus not just on the complaints and allegations but on the outcomes from those complaints, which is another thing that we look at in great detail. We will continue to look for trends and the time series that is there. We are beginning to see a settling, which Carole Auld referred to. We will continue to undertake that work into the coming year and beyond, but at present the trend seems to be settling as one would expect and is in line with the reassurances that we have received from Police Scotland.

**Kevin Stewart:** Do those trends and the information that is being captured show any



particular areas that people are complaining about more? When I say “areas”, I am talking not about geographic areas but about issues that are leading to more complaints from members of the public.

**Ian Ross:** There are certain areas that we have focused on, not necessarily because they have been highlighted by members of the public but because of their presence and their influence on certain officers. An example that you may recall, which we discussed before, is officers being placed on restricted duties, particularly those relating to information management. We regularly seek updates on such topics and talk about them in great detail both in our public sessions and in our private sessions with Police Scotland. We seek to ensure that we have a full understanding of what sits behind such issues—the reasons for them—and what steps can be taken to address them.

That is an example of a topic that we look at. We also look at the trends and statistics that relate to it. However, we do not look at particular points that have been raised by the public to the same degree, and I would not highlight any particular issue.

**Kevin Stewart:** Given that you have all this data, it is immensely important that we drill down to find out whether there is any particular area in which there are difficulties. I want to be reassured that the data that you are capturing is being used to its utmost to find out whether there are any problem areas.

**Ian Ross:** We see it very much as part of our key role that, as well as dealing with certain complaints ourselves, we scrutinise the way in which Police Scotland, through professional standards and in other ways, carries out that function. That is the reason why it is a standing item in public and private sessions at our committee meetings. It also fits in with the dip sampling. For instance, if we felt that an issue had arisen either because of a type of complaint or because of a geographical aspect of a complaint, we would factor that into the dip sampling that we would carry out. That is part of our planned intention.

**Kevin Stewart:** Mr Finnie has talked about vexatious and persistent complaints. From my experience, I know that a lot of those situations arise because of very poor communication with the complainer in the beginning, which leads to a huge escalation. Do you think that the front-line resolution response is helping to resolve folks’ concerns at an early stage? I know that you are not going to resolve them on every occasion.

**Ian Ross:** Certainly in my experience we have had detailed reports on front-line resolution and extremely positive feedback and analysis have

taken place. It is also helpful for the person who is making the complaint because, at a very early stage and in a slightly more informal way, they get the reassurance that they are seeking.

The critical thing, of course, and we have sought reassurance on this point, is that if anyone is not satisfied at that stage, they can then still escalate the complaint and it can go through the normal process. We are reviewing it and we will continue to review it. We are impressed by the commitment and the approach that has been adopted with front-line resolution.

**Alison McInnes:** Ms Auld, in response to Mr Finnie, you said that the 2014 regs were meant to encourage openness and transparency. Pulling against that in another direction is what the SPF calls a “fear of overzealous consequences”. Are you comfortable that there is a correct balance of proportionality in relation to misconduct and minor misconduct issues?

**Chief Superintendent Auld:** Absolutely. It is a complex arena but, if we look at the front-line resolution and the numbers of complaints that we are dealing with at that level, we see that they make up just under half of all complaints received.

We are then into the middle ground of early interventions, which are a programme of work that professional standards engages with along with the divisions. We meet officers who have had four or more complaints over a 12-year period, even if no action or no improvement action has been required. We make the officer and their supervisor aware and we look at what we can do to support that officer in learning from what has happened, which is the thrust of the new regulations as I understand them.

After that, we get to misconduct and gross misconduct and—to answer that question about overzealousness—at that top end of the scale, we have had four hearings under the new regs. The fact that that is out of an overall total of 5,063 complaints raised since 1 April last year perhaps gives committee members some feeling of the structure of how we push the organisational learning and officer learning out to the lowest possible level. We do that in an open and transparent way for all our officers and complainers and witnesses alike, who rightly demand no fear or favour in the investigation of their complaint.

**Alison McInnes:** There is clearly a spectrum, from minor misconduct and contractual issues through to professional standards and criminal procedures, but can you reassure us that, at the lower end of that spectrum in particular, the focus is on learning outcomes rather than punitive outcomes?

**Chief Superintendent Auld:** Absolutely. The regs, as Mr Finnie has quite rightly pointed out, also give us the performance aspect. There is no doubt that there is work to be done in the force on encouraging the support end of the divisional front end to support officers through warnings of intended improvement notifications. Anecdotally, I am aware of warnings of intended improvement notifications being provided to officers when misconduct has been set aside and we are looking at how we can continue to record that.

However, it is fair to say that on a lot of occasions a complaint does not require an improvement notification; it requires supportive learning for the officer. We have a six-stage form that is completed for every single complaint that comes into the organisation. In section 5, the officer completing that form, whether it is for front-line resolution or all the way up to misconduct matters, must record what the organisational or individual learning is. That all comes in consistently to me within professional standards and we will look at any emerging trends or themes that require to be addressed at the highest level, strategically through the organisational learning function that is soon to be established across the force and through supporting the superintendents at divisional level. That brings us that national consistency across the force.

**Alison McInnes:** Thank you. When we last considered these matters, we were aware of the complex legacy complaints that were still around. The SPA has said to us that five are still outstanding. Is that right, Mr Ross? Perhaps you could give us an indication of when those are likely to be concluded. You inherited them in 2013. It has been quite some time.

**Ian Ross:** Yes. We do not have complete control over some of the reasons why those complaints have not been concluded. It is a bit difficult for me to say an awful lot about them because, clearly, we have to respect confidentiality, but the vast majority of legacy complaints have been dealt with and are concluded.

A small number of individuals are involved in the ones that are still outstanding, which are extremely complex in nature. A number of factors are outwith our control and it probably depends on the conclusion of some other matters elsewhere. However, I can certainly assure you that we are extremely keen to bring those complaints to a conclusion. Of course, we are very keen to ensure that the appropriate learning comes from a full analysis of the complaints as well.

13:30

**The Temporary Convener:** Margaret Mitchell is next. If you cover something that we have already covered, we will let you know.

**Margaret Mitchell (Central Scotland) (Con):** Okay. I apologise for my late arrival.

When the sub-committee met the then PIRC, Professor John McNeill, he put it on record that

“no one has sought to prevent me from carrying out my function.”—[*Official Report, Justice Sub-Committee on Policing*, 3 October 2013; c 233.]

Is that still the case?

**Kate Frame (Police Investigations and Review Commissioner):** We have been challenged in one investigation in particular that we have undertaken. Although that investigation has been challenging, I would like to put on record the fact that, to date, PIRC has undertaken 91 investigations.

When Professor McNeill appeared before the sub-committee, I think that PIRC was in its very early stages. We have obviously matured and have undertaken a number of investigations since then. Professor McNeill indicated that the early period was going to be a period of assessment to identify whether any additional powers might be required, and that if additional powers were required and there was a weight of evidence to suggest that we had been hindered or hampered in any investigation, we would undertake discussions with the Scottish Government about that.

The investigation that I speak about, which I must obviously discuss in general terms, has caused us to reflect. We are constantly reviewing the terms of the legislation and the powers that are available to us in light of practical experience, and I think that it might be worth the Scottish Government considering as an option precognition on oath of witnesses when they are not being as co-operative as we would like.

**Margaret Mitchell:** That could be the subject of a member's bill in the next session.

I understand that the Police, Public Order and Criminal Justice (Scotland) Act 2006 does not authorise the commissioner to publish a report on a Crown Office-directed investigation. There is a pertinent point here that we will not touch on but, in general terms, how are lessons learned and made transparent? How is the public interest served?

**Kate Frame:** You are right that in Crown-directed investigations I produce a report that goes to the Lord Advocate. He then has the opportunity to consider the information that has been placed before him and to determine whether a fatal

accident inquiry is appropriate or whether criminal proceedings are appropriate. In those circumstances, the evidence would be tested in court and brought forward for further consideration.

**Margaret Mitchell:** Would the lessons learned from such an investigation be made public? It is the lessons that are learned in circumstances in which the report is not to be made public that I am interested in.

**Kate Frame:** The evidence would be rehearsed in court. You will know that at the end of a fatal accident inquiry the sheriff will issue a determination that identifies salient matters.

**Margaret Mitchell:** I do not know whether anyone has touched on this but, in its submission, the Scottish Police Federation is highly critical of the “adversarial approach” that is taken by PIRC in its investigations. Could you comment on that and the procedures and processes involved? Personally, I find the fact that PIRC takes an adversarial approach quite comforting.

**John Finnie:** Really?

**Margaret Mitchell:** Yes, I do.

**John Finnie:** I do not think that it is at all helpful to say that.

**Kate Frame:** I can tell the committee that the PIRC investigators approach all investigations with an open mind. The purpose of our investigations is to establish all the available evidence and to present the facts in an impartial manner. All our investigations are evidence based. That is reflected in the reports that we produce, some of which, as you will appreciate, are supportive of the police position, while others are critical of it. They are presented in a balanced fashion.

**Margaret Mitchell:** I suppose that I would read “adversarial” as meaning “robust”, and I think that it is good that PIRC takes a robust approach. We have a single police force. When it comes to looking at complaints, various aspects are involved and there are various aspects that seem to me not quite right. I wonder whether anyone has touched on the SPA investigating its own board members and its own procedures.

**The Temporary Convener:** Kevin Stewart has a question under the same heading, but I will come back to you.

**Kevin Stewart:** I know that John Finnie has said exactly this, but I disagree with what Margaret Mitchell said on that.

I want to note some points that the SPA has made about PIRC. It said that it is

“fast losing confidence in the effectiveness and genuine independence of the PIRC”.

That statement is very concerning.

**The Temporary Convener:** It is the SPF, not the SPA.

**Kevin Stewart:** The SPF—I beg your pardon.

In another paragraph, the committee briefing says that

“SPF members have reported examples of being interviewed for hours on end without rest”

and that one apparent witness reported that, during a seven-hour interrogation, they were allowed to use a toilet only if they were accompanied by a PIRC investigator. Such oppressive and dehumanising activities risk fatally undermining PIRC and should have no place in any fair investigatory process. Do you think that that kind of scenario is the right way to conduct business with witnesses?

**Kate Frame:** As Carole Auld has already alluded to, that information was submitted to the committee by the SPF last week. I have asked the federation to provide specific information to support that perception. To date, I have not received that information.

**Kevin Stewart:** I take it that when you receive it you will investigate that allegation.

It would be useful, convener, for this sub-committee to get the final report on that. The allegation is very serious and what is described does not sit particularly well with me. We need to explore the allegation further and find out the outcome of any investigation.

**Kate Frame:** I, too, look forward to receiving the information from the Police Federation. As you will appreciate, it is not possible to be prescriptive about the length of interviews. The intention is to undertake them as quickly as possible but, on occasions, when a matter is complex, or when a number of matters are covered, interviews will take a considerable length of time. I can assure the committee that PIRC investigators are well aware of the need to have comfort and refreshment breaks, not only for the witnesses but for the interviewers. It is not practice to accompany a witness during one of those breaks.

**The Temporary Convener:** John Finnie has a supplementary.

**John Finnie:** Yes—it also relates to concerns that were raised earlier, which were partly addressed by Chief Superintendent Auld. It would be good for the committee to get a report back from Police Scotland on interviews.

Is there a link between the two issues? If—I say “if”—your investigators come from a background where such practices were seen to be the norm, they may not understand that that is not what the

public are looking for. The public understands that public officials, not least police officers, who have considerable power, should be subject to rigorous testing. However, the wording that is used in the guidance in relation to the 1996 regulations is that the overriding consideration is fairness to the subject constable. That is a basic human right. I hope that you will robustly pursue that.

**Kate Frame:** I can assure the committee that witnesses who are interviewed by PIRC are treated in a professional manner and with dignity, and that they are treated fairly.

**John Finnie:** I will be direct. You will understand that, in some quarters, people will be very concerned that you are asking for additional powers in relation to precognition.

**Kate Frame:** I think that I suggested that the committee may wish to reflect on that, and that the Government would be the body responsible for providing those powers.

**John Finnie:** Yes, but that is what you want. We will not discuss a particular case, but I am one of the people who asked whether you had sufficient powers. I would be concerned if you did not have sufficient powers to do what the public expect of you, but I do not want you to have more powers if individuals who are subject to your attention—

**Kate Frame:** Let me rewind to what I actually said, Mr Finnie. When the former commissioner appeared before you, it was early days. At that time, he assured you that the powers that were in operation and that he was operating with were sufficient. I also pointed out that we have undertaken 91 investigations, one of which proved to be testing. There is, as yet, no weight of evidence to suggest that we have been hindered in any of our investigations.

**John Finnie:** So you do not need additional powers.

**The Temporary Convener:** I think that the PIRC statement on that is on the record. Perhaps you can feed back to the committee, before it ceases to exist at the beginning of March, any additional information that you may have on either of those issues. We would be very grateful for that.

I think that we should allow Margaret Mitchell to finish her questioning, as we interrupted her.

**Margaret Mitchell:** My question is on the SPA's role in investigating complaints against board members. The procedure does not seem ideal. What is your comment on that?

**Ian Ross:** We do not investigate complaints; we deal with and process complaints. There have been a small number of complaints, including complaints against SPA officers, SPA policies and

procedures and some SPA board members, and the approach that we take is the normal complaints process. If any board member was the subject of a complaint, there would be a conflict of interest. They would declare that and absent themselves from any involvement in the complaint. That has happened, and a consistent and robust approach is taken. The preliminary assessment goes forward, a decision is made and the board follows whatever that decision is. We have not had a set of circumstances in which a large group of board members has been conflicted, but it is not impossible for that to happen. If it did, we would have to ensure that the complaint was dealt with in such a way that there was no conflict of interest that could even be perceived as compromising the process.

**Margaret Mitchell:** Do you have any information on the number of complaints, what they related to and whether the outcomes were satisfactory?

**Ian Ross:** I do not have those figures with me, but I will endeavour to get hold of them and supply them to the committee.

**Margaret Mitchell:** That would be helpful.

**The Temporary Convener:** Kevin Stewart has a question. Is it on something that we have already discussed?

**Kevin Stewart:** I want to continue the questioning on PIRC—

**The Temporary Convener:** The problem is that we have only quarter of an hour left and we have not asked any questions about data protection.

**Kevin Stewart:** I will be very brief.

The SPF says:

"We consider that the PIRC has a great deal of work to do to build confidence with the police service that it is capable of dealing with police officers, whether as witnesses or suspects, fairly."

How is PIRC going to build that confidence among police officers?

**Kate Frame:** The lack of confidence that the SPF has spoken about recently is very much a matter of perception, and it is unhelpful. I have a dedicated team who are working hard to meet the demands of their role. I have confidence in them and in the work that they are doing. They have received positive feedback from the Lord Advocate and Police Scotland, and each of the 62 recommendations that have been made in investigation reports has been accepted by Police Scotland, which should build some confidence. In addition, some of the evidence that we have gathered in investigations has already been tested in court and has been commented on favourably.

**Kevin Stewart:** I understand all that. However, you initially talked about perception. How are you going to get rid of that perception? What work will you undertake to ensure that folks' perception that they are being treated unfairly disappears?

**Kate Frame:** We will continue to robustly and professionally deal with witnesses and suspects. You talk about police officers being interviewed as witnesses. In advance of their being interviewed by PIRC staff, they receive a leaflet that sets out PIRC's role, the basis on which they can be interviewed and the fact that they will be treated in the same way as members of the public in how the law is applied. I find it surprising that officers who apply that process to members of the public appear to have some difficulty in understanding its application to themselves when they are subject to interview.

13:45

**Kevin Stewart:** I really think that you need to reflect on some of these things, because the approach that is being taken seems to me to be confrontational. What is required is a clearing of the air by all parties involved and a discussion about the process.

Mr Finnie hit on the issue earlier. What is required is fairness with the same attitude being taken towards police officers as is taken towards members of the public who may appear as witnesses. That needs to be reflected on. As a sub-committee, we probably need to come back to the matter.

**The Temporary Convener:** We can certainly do so at some point, but it is necessary for the Scottish Police Federation to provide the evidence to Police Scotland and PIRC so that investigations can take place. Unfortunately, the SPF is not here, of course, but there may be a mechanism through which we can encourage it to pass on information about particular cases to enable those investigations to take place.

I want to ask about data protection, which the SPF brought up during our previous meeting on the issue. It was concerned that fairly significant numbers of police officers were falling foul of data protection legislation and were automatically having to be referred to the Lord Advocate. Police Scotland suggested that it might be able to provide figures, but the SPF's view is that little has changed over the past couple of years in respect of police officers being accused of data protection offences.

**Chief Superintendent Auld:** I hope that I can provide members with some assurance on the on-going work on information management-related offences and investigations.

The committee received evidence previously on the number of officers who are on restricted duties. A fairly significant number of officers are still on the restricted duties list, albeit that the percentage is smaller than it was in February 2015, when evidence was provided. There has been a roll-out of training on lawful systems usage for all officers and police staff across the whole of Police Scotland. I think that we are now at the 18,000 mark for the number of officers who have been given awareness training in person and through electronic moodle training—that is the terminology that is used for all the online training that has to be rolled out across the force.

It is significant that there has been a full review of data protection, particularly around investigations in which the Data Protection Act 1998 features. We refer into the Scottish Police Authority through our quarterly conduct committee meetings, and we review the restricted officers list regularly to ensure proportionality. In the vast majority of DPA offences, that offence accompanies an index offence where an officer or member of staff has misused systems in relation to an on-going investigation—perhaps of an assault or some other matter—and has unlawfully accessed systems.

Obviously, under the Lord Advocate's guidelines, we must refer all criminal allegations to the Crown. That conflicts slightly with regulation 9 of the new 2014 regulations, which suggests the threshold of a reasonable inference of criminality, which I would argue is a lesser threshold than the no-discretion position in the 2002 Lord Advocate's guidelines. We have reviewed all the investigations, and the proportionality issue around the DPA relates only to offences in the period in which the officer is under investigation; it does not relate to the nosy officer scenario, as my SPF colleague described it last year. That has been absolutely eradicated. Some 10 years ago, when the systems were rolled out, officers were encouraged to use them. That does not feature in our DPA investigations. I can give members that assurance and confidence.

**The Temporary Convener:** Mr Ross, the SPA stated in its submission that it

"pays particular attention to information regarding officers placed on restricted duties due to alleged Data Protection breaches."

Are you satisfied with the information that you receive?

**Ian Ross:** We have been looking at that issue for some time and we continue to seek reassurance and a full explanation of the reasons for officers being on restricted duties. We also look at the statistics. There has been a slight decrease and we will continue to examine that. We understand the reasons behind it, and we

understand some of the duties. We also understand the need for compliance with the Lord Advocate's guidance. We will continue to monitor that closely.

**The Temporary Convener:** Alison McInnes has a further question.

**Alison McInnes:** I just want to distance myself from what Kevin Stewart said. I do not think that we have the evidence to make statements as strong as those that he has made. It is absolutely vital that we recognise the independence of PIRC.

**Kevin Stewart:** We have to look at the allegation that has been made. We will need to come back to it. It may well be that that allegation is unfounded; if it is, we will have to deal with that. However, we would fail in our duty if we did not follow up on such a serious allegation.

**The Temporary Convener:** This is an evidence session, not a debate between members. Certainly, I think that we have a commitment from the witnesses that they will provide us with the information, if they get that information.

I have one small question. It has been put to me that the system that we operate for complaints against the police is a bit complicated when it comes to the complainer understanding who investigates what. Is there a case for complaints, other than those that can be resolved at the front line, to be directed to PIRC and from there to the appropriate organisation? Would there be any merit in that?

**Kate Frame:** There may be some merit in one organisation assuming that responsibility. It would have to be balanced against the level of bureaucracy involved in redirecting some of the work back to other organisations.

**The Temporary Convener:** How do the police and SPA representatives feel about that? There is always suspicion when people investigate themselves. Would that approach be helpful?

**Ian Ross:** It is important to make the point, particularly in relation to investigations into the SPA's chief officer, its officers or the board, that we do not investigate ourselves. We have a system in place whereby, as the employer, we conduct part of the complaint process, which I think is quite logical. We take the complaint through the preliminary assessment, at which stage we take the appropriate next steps. I do not think that it is illogical that an employer should have a role in the management of a complaint process. Of course, it is vital that that process is seen to be transparent, fair and robust.

Another important point relates to people being able to access the complaint process. We have put a lot of time and effort into that, and I think that we have made significant progress, although there

is room for further improvement. When people make contact in a situation in which the word "police" appears, the difficulty is in making sure that you can assist them to identify who should deal with their complaint. The SPA has put a great deal of effort into making sure that that process is as smooth and as clear as possible, because there have been issues in the past with signposting and people targeting their complaint at the right body. The picture is improving, but there is room for further improvement.

**Chief Superintendent Auld:** The Scottish Public Services Ombudsman has favourably commented on Police Scotland's position on front-line resolution. For me, where complaints sit is a moot point. I would be comfortable however they are captured. That is the rationale that we use in our approach. Almost half of the actionable complaints are resolved at FLR. Notwithstanding that, we capture those as complaints and record them on the six-stage complaint form, which is accessible and transparent for audit purposes from the perspective of both the SPA and PIRC. That is done so that we can retrospectively examine matters such as our rationale and our learning about the findings and outcomes.

Only 1.6 per cent of individuals whose resolutions are achieved through FLR come back to the organisation to seek clarity on points. The expeditious nature of the concept, wherever it may sit, is something that I am comfortable with. However, I absolutely take Mr Ross's point that a complaint would have to be pushed towards Police Scotland, particularly in criminal matters for the specialist technical knowledge that is needed to answer a quality-of-service complaint, or whatever it may be.

**The Temporary Convener:** Thank you. I invite further questions.

**Margaret Mitchell:** I will be brief. I have a general question. Obviously, dealing with complaints takes up an enormous amount of time, which comes at a cost. Are you aware of the Apologies (Scotland) Bill, which will be discussed at stage 3 by the Parliament next week? It would people to express regret, acknowledge that something had happened, say that they were sorry and undertake to look into the incident. Would that be helpful in aiding earlier resolutions that would be more satisfactory to the general public?

**Chief Superintendent Auld:** Forgive me for not being sighted on all of that, but I would most definitely be interested in it. We express apologies in complaints—we do that at the moment although it is not legislated for. It would be most helpful for us to be involved in the discussion on the bill.

**Margaret Mitchell:** Does anyone else want to comment?

**Ian Ross:** I am also unfamiliar with the detail of the bill, but I agree with the principle as you have described it.

It is important, if a mistake is made, to make that very clear and to express that to the complainer in a full and appropriate manner. The SPA does that.

**Kate Frame:** Similarly, in the complaint-handling reviews that PIRC deals with, we regularly see Police Scotland make apologies in recognition of their errors.

**The Temporary Convener:** Margaret is just flagging up stage 3 of her bill. [*Laughter.*]

As there are no further questions from members, I thank the witnesses very much for their attendance.

*Meeting closed at 13:56.*





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