



**OFFICIAL REPORT**  
AITHISG OIFIGEIL

# Justice Sub-Committee on Policing

**Thursday 15 March 2018**

**Session 5**



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**JUSTICE SUB-COMMITTEE ON POLICING**

**4<sup>th</sup> Meeting 2018, Session 5**

**CONVENER**

\*John Finnie (Highlands and Islands) (Green)

**DEPUTY CONVENER**

\*Margaret Mitchell (Central Scotland) (Con)

**COMMITTEE MEMBERS**

\*Daniel Johnson (Edinburgh Southern) (Lab)

\*Rona Mackay (Strathkelvin and Bearsden) (SNP)

\*Ben Macpherson (Edinburgh Northern and Leith) (SNP)

\*Liam McArthur (Orkney Islands) (LD)

\*Stewart Stevenson (Banffshire and Buchan Coast) (SNP)

\*attended

**THE FOLLOWING ALSO PARTICIPATED:**

Duncan Campbell (Police Scotland)

Deputy Chief Constable Rose Fitzpatrick CBE QPM (Police Scotland)

Superintendent Andy McDowall (Police Scotland)

**CLERK TO THE COMMITTEE**

Diane Barr

**LOCATION**

The David Livingstone Room (CR6)



**Scottish Parliament**  
**Justice Sub-Committee on**  
**Policing**

*Thursday 15 March 2018*

*[The Convener opened the meeting at 13:02]*

**Decision on Taking Business in**  
**Private**

**The Convener (John Finnie):** Feasgar math, a h-uile duine, agus fàilte. Good afternoon, everyone, and welcome to the fourth meeting in 2018 of the Justice Sub-Committee on Policing. We have no apologies.

Agenda item 1 is a decision on taking business in private. Are members content to take in private our discussion on the sub-committee's work programme?

**Members** *indicated agreement.*

**Counter-corruption Unit (Durham**  
**Constabulary Reports)**

13:03

**The Convener:** Agenda item 2 is an evidence session on Durham Constabulary's report on Police Scotland's counter-corruption unit. I refer members to paper 1, which is a note by the clerk, and paper 2, which is a private briefing. I welcome Deputy Chief Constable Rose Fitzpatrick; Duncan Campbell, interim head of legal services with Police Scotland; and Superintendent Andy McDowall from the professional standards department of Police Scotland. Thank you for the written submissions. We will go straight to questions.

**Daniel Johnson (Edinburgh Southern) (Lab):** I begin with the central contention, which is the status of the work that was undertaken by Durham Constabulary. The first paragraph of the letter that Police Scotland wrote to Durham Constabulary on 28 July 2016 asks Durham Constabulary to agree to undertake

"an independent investigation relative to the non-criminal complaint allegations identified by IOCCO."

We have a more recent letter from the Investigatory Powers Tribunal, which sets out its query about the nature of that work. The tribunal said that you had not, in accordance with its order, referred the matter to the Durham force for investigation and asks for your response. I understand that you provided a response. However, given the language of your initial letter and the understanding of the Investigatory Powers Tribunal, it is understandable that Durham Constabulary is confused, and perhaps upset, about the ambiguity relating to the nature of the investigation and indeed whether it was an investigation. What would you say to that summary and analysis of those understandings and the communications that there have been on the matter?

**Deputy Chief Constable Rose Fitzpatrick CBE QPM (Police Scotland):** The first thing that I would say is that I am very grateful to Durham Constabulary for its thorough and professional report, which was produced for us under its terms of reference. The letter that you refer to asked Durham Constabulary to undertake an independent investigation

"relative to the non-criminal complaint allegations",

and that was set out in the terms of reference. It should not be a surprise that, in something as important and complex as this, at particular times we should all want to ensure that we were operating in accordance with the terms of

reference and, particularly importantly, that we were operating effectively under the law in Scotland.

When the chief constable of Police Scotland first asked me to become, in effect, the decision maker in this matter—that was in January 2017, and he formally appointed me to the role in February 2017—I engaged straight away with Mr Barton to discuss the complaints investigation and to establish whether progress was being made and whether there were any issues that I could assist with. When he made it clear that there were some issues for him around the terms of reference and in particular the regulations under which he was conducting his investigation, which are the Police Service of Scotland (Conduct) Regulations 2014, I of course listened carefully to that.

It is not unusual in complex matters for there to be a difference of professional view about the best way of progressing, but we were clear that he and Durham Constabulary had been asked to undertake an independent investigation only into the non-criminal complaint allegations and that our conduct regulations require other stages to take place should there require to be an investigation into the conduct of individual officers.

As the sub-committee will be aware, we had a number of discussions about that. Mr Barton helpfully came up to discuss that with me in person on 30 January 2017. I listened carefully to what he said and I felt that it was my responsibility to take legal advice. The committee will have seen the senior counsel's opinion that we received. That made it clear that, because we were operating under the 2014 conduct regulations, we needed to go through the process that is set out in those regulations. In effect, we needed to carry out an assessment in order for me to make a decision on whether there should be a conduct investigation and, if so, who should be appointed to undertake it.

Both of those investigations were conducted independently. Durham Constabulary's investigation was clearly independent of us and its conclusions were arrived at independently, and then there was the separate conduct investigation, which was undertaken by the Police Service of Northern Ireland, and again its conclusions were arrived at independently.

**Daniel Johnson:** You raised the matter of the regulations, about which we had a considerable degree of discussion when Chief Constable Barton was in front of us. I refer to the *Official Report* of that meeting and the discussion on the preliminary assessment. I understand the importance of that, given the different way in which complaints are made in Scotland compared to the process in the rest of the United Kingdom, but the evidence

about the preliminary assessment was somewhat worrying. Darren Ellis said:

"I was initially told that a preliminary assessment had been completed. I was then told that one had not been completed. Then I was told that one had been completed and lost, and, after that, I was again told that one had not been completed. Over six to eight weeks, I tried to identify the starting point and what Police Scotland considered to be the views of the four complainants and the IPT, because an assessment of that would dictate the play. I do not believe that that work was ever done".—[*Official Report, Justice Sub-Committee on Policing, 22 February 2018; c 18.*]

Further to that, in responding to Chief Constable Barton about whether or not they knew even at that point, Darren Ellis said, "We do not know." Given the importance of that preliminary assessment, which you acknowledge, is that not a deeply worrying state of affairs and a worrying report, in relation to the lack of clarity and the prospect that such an assessment had not been carried out? What would you say to that?

**Deputy Chief Constable Fitzpatrick:** I would say that a preliminary assessment is a very important part of the process that leads from a complaints investigation and determines whether there will be a conduct investigation thereafter. As you rightly say, Durham Constabulary was asked to do the work in July and August 2016. I believe that Mr Ellis and his team were appointed to progress the work further in November 2016 or certainly late in 2016. When they had completed their report and provided it to us in May 2017 that triggered, under regulation 10 of the conduct regulations, what is known as a preliminary assessment.

I considered the conclusions of the complaints inquiry and the result of the investigation, which had identified that there were a number of officers whose conduct, if proven, might amount to misconduct, and I agreed with that assessment. I agreed with those conclusions in my preliminary assessment and my decision was that a number of the officers should be the subject of a conduct inquiry to determine whether, on the basis of the evidence that that inquiry would look at, they should subsequently face misconduct proceedings, for example. That was the point at which the regulations provide for the preliminary assessment to be carried out, as the bridge between the complaints allegations and any subsequent misconduct investigation.

**Daniel Johnson:** Just to recap, we had confusion and perhaps disagreement about the status of the work that Durham Constabulary was carrying out; we had a difference of opinion about the interpretation of the regulations, as we have heard from Mr Barton; and we had, at best, a lack of clarity in Durham Constabulary about whether a preliminary assessment, which we all agree is a

very important step in the process, existed. It strikes me that those are three fundamental and important issues on which there was a fundamental difference of understanding between Police Scotland and Durham Constabulary over what we can all agree is a serious and important matter. Does that not speak to a very worrying situation? How would you explain that and what lessons have you taken from that situation?

**Deputy Chief Constable Fitzpatrick:** It clearly is a really important issue for all of us. We have been clear that our failings in 2015, which were the subject of the report of the Interception of Communications Commissioner's Office and the IPT judgment and order, were severe. We were also clear that our responsibility was to provide Durham Constabulary with all the support that it needed to conduct its independent complaints investigation.

When I took up the responsibility of being the decision maker towards the end of January 2017, I met with Mr Barton. We spoke on many occasions about a number of issues around the progress of his investigation and, as I said, he raised the issue of the terms of reference. We were all very conscious of our responsibilities to ensure that the process was undertaken under the conduct regulations. From my point of view, I had a responsibility to ensure that, if Mr Barton required any issues to be resolved or if he needed any material, we could resolve those along the way. I hope that you will see from the exchange of letters that we were able to do that as we went.

The issues were very complex and important. I did not find it surprising that Mr Barton and Durham Constabulary should want to progress in the way that they thought fit. I was certainly conscious of my responsibility to ensure that we were progressing clearly in line with the conduct regulations. When the moment came to determine the issue about Durham Constabulary being able to move from a complaints investigation straight into a conduct investigation, I felt clearly that I had a responsibility to take proper legal advice about that, and you will see that we took senior counsel's opinion.

13:15

We then agreed to progress on the basis of the original terms of reference and under the 2014 conduct regulations. The letter that we received with Mr Barton's report on 12 May acknowledges that point. He said:

"My team found your colleagues to be helpful and professional, and for that I thank you—please pass on my thanks to them. My report is not as prompt as I would have liked—there were necessary delays taking legal clarifications on the status of my enquiry. I'm glad to say that was ultimately resolved".

He went on to say:

"I have, I trust helpfully, referred further to this issue in the 'Lessons learned' chapter",

which is a chapter in his final investigation report.

I think that we all acknowledged that there was a professional difference of view on the issue. Ultimately, we resolved that and agreed to proceed on the basis of the terms of reference and the interpretation by senior counsel of the conduct regulations as they operate in Scotland.

**Daniel Johnson:** Frankly, I am struggling to reconcile what you are telling me with what Chief Constable Barton said. From the way that you have just put it, it sounds as if you left things in a very amicable way in which all parties understood one another. However, in his evidence, Chief Constable Barton characterised Police Scotland, and in particular the legal department, as acting in an "overly legalistic" and "risk averse" way. The conclusion that one would draw from that is that procedure was getting in the way of looking after the wronged police officers. If everything was so amicable and nothing was wrong, why did Chief Constable Barton give the evidence that he gave to this committee?

**Deputy Chief Constable Fitzpatrick:** I have reflected the fact that we had a significant difference of professional view, which was resolved by the taking of legal advice and an agreement that we proceed on the basis of the original terms of reference that Durham Constabulary was given and the two sets of legal advice that we had received from senior counsel. Mr Barton's letter of 12 May reflected that. I have spoken about and read from his letter the point about the lessons learned part of his report.

The committee will be aware that we have been keen to ensure that all of the lessons are learned from each of the individual independent reports that we have had, from the IOCCO report and the IPT judgment and order through to Her Majesty's inspectorate of constabulary in Scotland's 39 recommendations in its assurance review of the CCU, right through to the Northumbria Police, Durham Constabulary and PSNI reports. There has been learning for us in all of those that sits alongside the actual findings of the investigations.

A huge amount of work has already gone on, certainly on the 39 recommendations from the HMICS review. We are clear that, where there are things to be learned about the processes, such as those with Durham Constabulary, we will take those on. I do not for a moment suggest that, in our many conversations and exchanges of letters, Mr Barton did not raise points with me where he felt that we could provide something to him or perhaps provide a little more support to his team. As soon as I became aware of those issues, we

resolved them as we went along. As I say, it was a complex matter that went on for a long time, so I am not surprised that, given that all of us were determined to proceed in the right way, there were differences of opinion. As I believe you can see from Mr Barton's final letter to us, ultimately, they were resolved by the way that we agreed to proceed.

**The Convener:** Deputy chief constable, you are the disciplinary authority for Police Scotland. On receipt of the IOCCO report, could you have decided that there would be no conduct proceedings?

**Deputy Chief Constable Fitzpatrick:** I suppose that, technically, that would have been the case. I was not the disciplinary authority then. In fact, I was asked by the chief constable to be the disciplinary authority in this particular case only in early 2017. I know that the IOCCO determination, which was received in November 2015, was followed by complaints from four complainers in, I believe, March 2016. Those complaints were referred to the Crown Office. At that point, therefore, we had complaints that we were bound to ensure were investigated. My understanding is that, when the complaints were received, they were referred to the Crown Office to establish whether there was any criminality in the allegations. It was determined that there was no criminality, but at that point I understand that it was agreed with the complainers that the complaints would be pended until the IPT hearing, which took place in July, followed by the IPT judgment and order in August. It was at that point that the complaints were referred to Durham Constabulary, which was asked to conduct its independent complaints investigation.

**The Convener:** What was the status of the individuals who were interviewed in the investigation or inquiry that you asked Durham Constabulary to do? Were they witnesses, suspects or accused?

**Deputy Chief Constable Fitzpatrick:** Under a complaints investigation, there would have been complainers—there were four complainers in this case—and witnesses, in relation to establishing the substance of the complaints and the recommendations relating to the complaints. There are issues around conduct investigations. Such investigations are clearly defined in the conduct regulations, which put in place particular processes and procedures and, in some cases, safeguards in relation to officers who may become what we call subject officers—in other words, officers who are subject to a conduct investigation.

**The Convener:** The legal opinion talks about that and the position of challenge, were that to happen. Conversely, given the direction that you had given Durham Constabulary, was there the

potential for anyone who was interviewed to have been compromised if they were subsequently to become a subject officer or an accused?

**Deputy Chief Constable Fitzpatrick:** That was never raised with us by Durham Constabulary. There will always be cases in which, before a determination is made, people may be spoken to, but it then becomes clear subsequently that perhaps they need to become a subject officer—that is, their conduct needs to be investigated because it is considered that there may be a possibility of misconduct or gross misconduct. It is the preliminary assessment that makes that decision. In this case, as a result of its investigation, Durham Constabulary identified a number of officers in relation to whom, in its view, a decision needed to be taken as to whether their conduct needed to be investigated. That was the preliminary assessment point that led to the conduct investigation.

**The Convener:** Just for completeness, did Durham Constabulary interview the people whom it subsequently said could be subject to disciplinary proceedings?

**Deputy Chief Constable Fitzpatrick:** I do not believe that it did.

**The Convener:** What, if anything, should this committee read into the fact that ex-DCC Richardson did not co-operate with the Durham Constabulary inquiry?

**Deputy Chief Constable Fitzpatrick:** I really cannot say, I am afraid. The inquiry was independent and I had no role; the organisation would have provided details of retired officers to Durham Constabulary.

**The Convener:** Nonetheless, in this instance you are the disciplinary authority and Mr Richardson had been the disciplinary authority. Would you not have anticipated full co-operation from your predecessor?

**Deputy Chief Constable Fitzpatrick:** Durham Constabulary was conducting two parallel non-criminal complaints investigations, one on our behalf and the other on behalf of the Scottish Police Authority. Any issues concerning senior officers would have been part of the senior officer complaints investigation, which came under the auspices of the SPA.

**The Convener:** Nonetheless, Mr Richardson could have been a witness or, if he was a serving officer, subject to investigation. Do you have no view on his unwillingness to co-operate?

**Deputy Chief Constable Fitzpatrick:** I am simply saying that, if approaches were made to him, I am not aware of what the conversation was. I am really not in a position to comment.



**Stewart Stevenson (Banffshire and Buchan Coast) (SNP):** I want to be clear on the sequencing. We have Chief Constable Barton submitting his investigation conclusions on 12 May 2017; that is the end of one chapter, it seems to me. The next step, as you have described it, is your role in doing a preliminary assessment as to whether a misconduct inquiry would have to happen. In coming to your preliminary assessment view, what input—separate from its submission of a report—would there have been from Durham Constabulary? Would you simply have gone back to clarify points, or was Durham Constabulary out of the picture, with no role in the preparation of the preliminary assessment beyond the fact that it had submitted a report that you would be drawing on?

**Deputy Chief Constable Fitzpatrick:** I am very fortunate that I have a conduct expert to my left, but I will try to answer that myself and then hand over to Superintendent McDowall, who will put me right on anything that I may leave out.

Durham Constabulary's independent complaints investigation was complete and entire in itself. It came to the conclusion that a number of the complaints were upheld, that some were partially upheld and that others were not upheld. It took the view that there was a prima facie case involving a number of officers, which, if proven, might lead to a finding that their conduct was in fact misconduct and in breach of the standards of behaviour that we expect of professional police officers.

My decision making was formed with support—in this case, that support was an assessment of the particular matters that came out. We separate out the complaints issue, we look at the individual officers, and then I make a decision on the basis of what is provided to me—in this case, the Durham Constabulary report—as to whether there is a prima facie case that requires to be investigated. Durham Constabulary spoke about eight officers originally. Looking at the case in detail, I determined that, for seven of those officers, there was a prima facie case, that their conduct, if proven, could amount to gross misconduct, and that, therefore, an independent misconduct investigation should take place. That was based on the Durham Constabulary report.

**Stewart Stevenson:** In relation to how you came to your conclusion, you used the phrase “with support”, and that is really what I am focused on. What was that support? Where did it come from? Did it involve going back to Durham Constabulary to say, “You have come up with this charge sheet,” and to get further information, so that the preliminary assessment could be as complete and reasonable, in all sorts of ways, as would be necessary? I just want to know whether, after 17 May, Durham Constabulary was no longer

part of the decision-making process, or whether it was still advising you.

**Deputy Chief Constable Fitzpatrick:** I did not go back to Durham Constabulary other than to thank it for its report. I do not know whether any of my colleagues in our conduct world felt that it would have been appropriate or helpful to do that at that stage.

**Superintendent Andy McDowall (Police Scotland):** Mr Stevenson, there is not much more that I can add to the deputy chief constable's interpretation of how we formulated that regulation 10 preliminary assessment. The Durham Constabulary report was conclusive, and it was the information contained within that report that allowed us to formulate an assessment so that we could progress matters under the conduct regulations, as required. It was the Durham Constabulary report that the regulation 10 preliminary assessment was based on.

**Rona Mackay (Strathkelvin and Bearsden) (SNP):** I do not want to labour this too much, but can I ask you a bit more about the terms of reference? I feel that I need clarification, and I am still quite confused by it all. Chief Constable Barton said that it was three to four months into his investigation when he was told it would not be an investigation, that he did not have full investigatory powers and that it would instead be an inquiry. Is that when you took over, Deputy Chief Constable Fitzpatrick—after the preliminary work had been done and you decided to take legal action? I am puzzled as to why the original remit from the chief constable of Police Scotland did not take that approach at the outset.

13:30

**Deputy Chief Constable Fitzpatrick:** As I said earlier, I did not become the decision maker until the end of January 2017—I was appointed officially on 14 February 2017. The terms of reference were set out in a letter to Durham Constabulary from the chief constable of Police Scotland on 4 August 2016. Durham Constabulary began work at that point and I first engaged with Mr Barton in January 2017 when the work had been under way since August.

**Rona Mackay:** That is what I am trying to determine. Was it after you had sight of that work that you decided that a different procedure needed to take place? Was it at that point that you said, “I need to take legal advice”?

**Deputy Chief Constable Fitzpatrick:** Those were simply my initial conversations with Mr Barton. I spoke to him at the end of January, we had a meeting on 30 January 2017 and we had an exchange of letters about the terms of reference. Until then, I was not aware that there was an issue

or a difference of view about the terms of reference and the extent of his inquiry; of course, as soon as he raised that with me, I had to listen very carefully. Then I determined that I needed to take some legal advice on the application of the conduct regulations in Scotland to the particular circumstance, and that is when I did that.

**Rona Mackay:** When you were liaising with him, how long was it before you realised that you would need to take advice?

**Deputy Chief Constable Fitzpatrick:** We had a number of conversations and we had an exchange of letters in February. Then I received senior counsel's opinion on 21 March 2017. It was sequential: we talked about the terms of reference, we realised that we had a different professional view about the issue and we discussed it. I believe that Mr Barton said that he took legal advice—my recollection is that he mentioned that to me—and we also took legal advice. Importantly, I was very conscious of my responsibility to be open-minded about the views that he had come to, but also to make sure that we were proceeding on a very sound legal basis. If I am very honest, no legal advice was taken at the time in relation to the 2015 issues, when IOCCO and IPT determined that we had acted unlawfully, and I was very keen to make sure that we were operating on a sound legal basis, and hence taking legal advice.

I actually took two different sets of legal advice because, during those conversations and as we were getting the first set of senior counsel's opinion on the Scotland regulations, Mr Barton made a specific proposal about how he might proceed under the regulations. I asked for that to be put to senior counsel to look at specifically because, again, I wanted to be open-minded about whether that was an appropriate—or, indeed, a better—way to proceed. I took legal advice on that, so that we could go down that road if that was appropriate for all concerned.

However, the second set of senior counsel's advice, on that very specific point, was that we could not be advised to go down that route—that, in fact, the Scotland regulations would not allow us to do that while keeping within the regulations, which have the force of law. I felt that it was my responsibility to make an informed decision, based on two sets of legal advice that was very specific on those points.

**Rona Mackay:** I take it that you stand by that decision today, and that you believe that you did the right thing by taking that advice.

**Deputy Chief Constable Fitzpatrick:** I believe that I did, yes.

**Margaret Mitchell (Central Scotland) (Con):** Good afternoon. Mr Barton said:

“When I was given the inquiry, it was made clear to me by the chief constable that we were being asked to do an investigation. That means that we can investigate, access all the documents and interview people, so that we can make a recommendation on whether or not there may be misconduct.”—[*Official Report, Justice Sub-Committee on Policing*, 22 February 2018; c 2.]

As part of that, he said that he wanted to interview senior officers and, before that, he wanted to see a chain of emails from those senior officers. He was not allowed to do that; the reason given for that was legal privilege. Would you like to comment on that, Mr Campbell?

**Duncan Campbell (Police Scotland):** Good afternoon, Mrs Mitchell. Thank you for the opportunity to comment on that. I was interviewed by Mr Ellis in December 2015 and January 2016, as part of the investigation. I was asked to provide factual information, which I did. That essentially related to my interaction with this committee's predecessor committee between December 2015 and January 2016. I was also asked to provide a chronology and a copy of information that passed between me and the IPT in the period immediately following the hearing on 22 July.

Mr Ellis also asked me to provide additional information around the factual material. I indicated to him that I took the view that the material that he was looking for was legally privileged and that I would need to get the chief constable's permission before privilege was waived; that privilege was vested in my client, who was the chief constable. The matter was not immediately pursued further with me. When it was subsequently pressed, I offered the chief constable advice about his entitlement to waive privilege as he saw fit. I also indicated to him that, if he was minded to do that, he might wish to avail himself of independent legal advice on whether to waive privilege. I did not withhold any material that Mr Ellis asked for and which I was in a position to provide to him.

**Margaret Mitchell:** What aspect of the chain of emails did you think was covered by legal privilege? Was it every single bit of the emails between those senior officers?

**Duncan Campbell:** I have seen Mr Barton's evidence in that regard. I am not in a position to comment on emails passing between senior officers. I was only able to comment on material that was held in our own file, which concerned matters that were put to me for advice.

**Margaret Mitchell:** Should you not have made that distinction? Should you not have said, “On the basis of the emails I hold in my file, my advice is that legal privilege kicks in, but of course you can see any of the emails in a chain of correspondence that the senior officers have had”?

**Duncan Campbell:** That was not the inquiry that was made of me by Mr Ellis. I do not know whether he made that inquiry of anybody else, but he did not make that inquiry of me.

**Margaret Mitchell:** He was quite clear that he asked to see the emails that people sent to each other. I think that that was fairly reasonable. Given that the remit was, as Mr Barton said, to

“investigate, access all the documents and interview people, so that we can make a recommendation”,

Mr Ellis had to see everything. Mr Barton also said quite clearly that

“It is legitimate for a senior police officer or a member of the Scottish Police Federation to sit down with their solicitor and to be absolutely sure that those conversations are sacrosanct.”—[*Official Report, Justice Sub-Committee on Policing*, 22 February 2018; c 11.]

That is a given. That is not what we are talking about here.

**Deputy Chief Constable Fitzpatrick:** I may be able to help. That issue came up with Mr Barton in our discussions in January and February—in fact in February, as I recollect; we also had an exchange of letters about it. I have just noted that, from my letter of 22 February 2017, I was able to confirm to him that we were waiving legal privilege in relation to the briefing documents that he required for his investigation.

Another issue related to access to a telecommunications product. As I said, when in the course of our conversation Mr Barton raised one or two issues with me that he felt that we needed to progress, I was able to resolve them, as far as that was possible. I think that that has a bearing on the point that you were just asking about, Mrs Mitchell.

**Margaret Mitchell:** It most certainly has. It took three months—the issue goes right to the heart of the criticism that the legal department was risk averse, that it was not open and that it was not transparent. Given the benefit of the analysis that has been made and the fact that the correspondence was subsequently released—albeit three months later—would you care to reflect now as to whether you might do things differently in future?

**Duncan Campbell:** The correspondence that I sent to Mr Ellis was sent sooner than the date that Deputy Chief Constable Fitzpatrick refers to in terms of the briefing note.

As far as being risk averse is concerned, my role in providing advice to Deputy Chief Constable Fitzpatrick and to colleagues in the professional standards department is to be risk aware, rather than risk averse—in other words, to be aware of the risks that would arise if certain courses of

action were followed and to offer advice on that premise.

**Margaret Mitchell:** Your advice was to not release.

**Duncan Campbell:** No. With respect, my advice was not against releasing—it was not to not release. My advice to the chief constable was, “It is your privilege and it is for you to determine whether to waive it. It is not for me to waive the privilege on your behalf”.

**Margaret Mitchell:** So what took three months? If you looked at it and the request was made, I would have thought that you would have passed on that information. Did it take you three months to come to that conclusion? Who made the decision ultimately that the information would be released?

**Duncan Campbell:** It was not a decision that was taken by me. I initially reflected the situation back to Deputy Chief Constable Livingstone, the day after I had seen Mr Ellis. I explained to him that, in part, a request had been made for access to privileged material. It was suggested to me that that might be quite an unusual request and that I should reflect that back to Mr Ellis, which I did the following day.

**Margaret Mitchell:** Why did it take three months to release these emails? They were subsequently released.

**Deputy Chief Constable Fitzpatrick:** As I said, when we had our discussions at the end of January and in February, this was one of the issues that Mr Barton raised with me. I was able to confirm to him that, having had a discussion with the chief constable, we would be happy to provide the briefing documents that he was requesting.

**Margaret Mitchell:** Perhaps I can put this another way: is there a problem with communication? It took three months, but you have still not told me why. This investigation should have been going smoothly, and these emails should—as it turns out—have been released. They were subsequently released, but why did it take three months to do so?

**Deputy Chief Constable Fitzpatrick:** I came to the issue at the end of January and the beginning of February. I was appointed as decision maker on 14 February, and I was able to confirm to Mr Barton on 22 February, as a result of his raising the matter with me, that we would be providing him with the material.

**Margaret Mitchell:** Are you saying that you only came to this late and that, in other words, it was somebody else’s problem?

**Deputy Chief Constable Fitzpatrick:** I am saying that as soon as I became aware of the matter, I sought to have it resolved, as it was.

**Margaret Mitchell:** Are there lessons to be learned?

**Deputy Chief Constable Fitzpatrick:** There are indeed. As I have said, the lessons that are set out in Mr Barton's report and our discussions with him along the way form the basis of a significant amount of organisational learning for us not only in relation to the original matters of the IPT and IOCCO, but subsequently.

**Margaret Mitchell:** With respect, we have had such platitudes before. You have come here today, fully aware of the evidence that was given two weeks ago about this gap, and you are seeking to reassure us that things have moved on and that everything was quite amicable at the end. However, that is not the case. No criminality was found, and I am afraid that what we are hearing today merely sounds inept.

I want to ask about data protection and the request for the addresses of the retired officers, which was refused. Whose decision was that, and what was the reason for the refusal?

**Deputy Chief Constable Fitzpatrick:** Shall I take that?

**Duncan Campbell:** Yes.

**Deputy Chief Constable Fitzpatrick:** As we know, every organisation has responsibilities with regard to data, and they are set out in data protection legislation. As retired officers are effectively members of the public, we have a responsibility for their data, including their personal details. Again, Mr Barton raised with me the point that this seemed to be taking some time—

**Margaret Mitchell:** Can I stop you there? We were told at our previous meeting that

"lawyers in Police Scotland said that we were not allowed to know where those retired officers lived".—*[Official Report, Justice Sub-Committee on Policing, 22 February 2018; c 11.]*

We are talking not about a member of the public or somebody with an interest, but about the person in charge of the investigation. As it is really a legal question, I feel that I have to ask Mr Campbell about it.

**Duncan Campbell:** I first became aware that access to retired officers was an issue when I was shown the letter from Mr Barton dated 7 February, which I think is before you. I was shown the letter either that day or possibly the next. When you look at the *Official Report* of Mr Barton's evidence on 22 February, you might form the impression that I or one of my colleagues had already given some advice or instruction that home addresses were not to be released.

13:45

I hope that I can reassure you that that was not the case. We had not had any involvement in the matter until receipt of the letter of 7 February. I discussed it with Deputy Chief Constable Fitzpatrick; the next day—I think—we discussed a number of matters, which were reflected in her letter of 13 February and one of which was the way in which we proposed to resolve the issue of access. We wanted to facilitate access, but to ensure that we did so in a lawful and proportionate way.

**Margaret Mitchell:** You say that you did not give legal advice, but was Mr Barton told by someone else that it was legal advice? If so, that was erroneous, given that two months later he got the information about where the retired police officers lived. How was the matter resolved?

**Deputy Chief Constable Fitzpatrick:** In my letter to Mr Barton of 13 February, there was an undertaking to resolve it—in fact, by that stage, it was in hand. We were doing what we were required to do in relation to personal information, which was to contact the individuals and ask them whether they were happy for us to provide that information—that is, their contact details—to Durham Constabulary.

**Margaret Mitchell:** Finally, on professional standards, Mr Barton said that he moved as fast as he could,

"and the only times that we paused were when we asked for preliminary assessments. At any time in our inquiry, the officers in the professional standards department could have done a preliminary assessment. If they had done that, they could have switched the process, even under their arcane rules, into an investigation, and they chose not to do that".

Mr Barton then makes the main point when he says:

"We gave them ample opportunity on a number of occasions to switch to a full investigation. We were balked in speaking to some people because we were not given the addresses and we were balked because we were not allowed to see what were assessed as being legally privileged documents, although they were not. I just wanted to comment on timeliness."—*[Official Report, Justice Sub-Committee on Policing, 22 February 2018; c 14-5.]*

There seems to have been a five-month delay in this process. Do you wish to respond, Mr McDowall?

**Superintendent McDowall:** I must confess that I am somewhat perplexed as to how we could suddenly jump from a complaints investigation straight into a conduct investigation. We have already discussed the regulation 10 preliminary assessment process, and as the conduct portfolio lead for Police Scotland, I would point out that the regulation 10 process follows on from an appointment of an investigating officer by the

deputy chief constable to investigate misconduct matters. Legally in Scotland, we are not allowed to investigate police misconduct unless that process has been undertaken. As I mentioned to Mr Stevenson, the basis on which we formulated the regulation 10 preliminary assessment was the concluded—and conclusive—Durham report. We could not have appointed an investigating officer without having gone through that legal regulatory process.

**Margaret Mitchell:** I remain unconvinced by these explanations, and I am somewhat concerned that, despite areas being put into in the public domain at the committee's previous meeting, we still do not have any answers. Perhaps you will reflect on that as we move forward.

**Ben Macpherson (Edinburgh Northern and Leith) (SNP):** Good afternoon. Going back to the legal opinions, I believe that Deputy Chief Constable Fitzpatrick said that decisions were made on 30 January with regard to the terms of reference. Was that when the decision to seek senior counsel was made?

**Deputy Chief Constable Fitzpatrick:** I am afraid that I cannot recall exactly when the decision was made.

**Ben Macpherson:** Would it have been thereabouts?

**Deputy Chief Constable Fitzpatrick:** My first meeting with Mr Barton was on 30 January and we were talking about those issues at that point.

**Ben Macpherson:** In following up that meeting, I want to ask two real questions. First, why was senior counsel rather than internal legal advice sought? What was the position in that respect? Secondly, was Mr Barton content and in agreement with the process of seeking senior counsel?

**Deputy Chief Constable Fitzpatrick:** First of all, I wanted to take the best possible advice to make an informed decision about this. Internal legal advice will, of course, be part of that, but senior counsel's advice will relate to very specific points, and I think that it is common for most organisations and many police services to seek senior counsel's advice on particularly important or complex matters. I am not suggesting for a moment that I could not have had in-house advice—in fact, I was receiving that advice where that was appropriate—but it is called “senior counsel” for a reason and I wanted to make sure that we were getting the best possible focus on the matter.

I certainly discussed that with Mr Barton. I made him aware on both occasions—and when he came back with his specific proposal, too—that we were

taking advice, and I was very frank in discussing the content of that advice with him. I know that Mr Barton told the committee that he took legal advice himself and ultimately, as our exchange of letters suggests, and as he mentions in his final letter to us after his report was received, we agreed to differ. However, we agreed to proceed on the basis of the legal advice that we as Police Scotland had received.

**Ben Macpherson:** But there was no objection from him at the time about your instructing senior counsel.

**Deputy Chief Constable Fitzpatrick:** I do not think so—I do not recollect that at all. We had a number of conversations about the matter. We knew the points on which we differed professionally with regard to our interpretation of the Scottish regulations, and I hope that I was very open with him about what I intended to do.

**Ben Macpherson:** I ask the question simply because of Mr Barton's position that Police Scotland was—to use his phrase—“overly legalistic” in the process. I know from having instructed senior counsel in a previous role that it can take longer and that that perhaps led to the time delay. Moreover, it is often the case that different legal opinions are sought from different advocates. Was that ever considered?

**Deputy Chief Constable Fitzpatrick:** I am trying to think whether I specifically considered that—I do not think so. As you have suggested, I was quite mindful of time; I asked for senior counsel's view to be taken, but I did not specify which senior counsel it should have been. I am not a lawyer myself. In fact, because the two matters were taken so closely together, it was for the benefit of time that we decided to take opinion on the general point and on the very specific proposal.

**Ben Macpherson:** Paragraphs 51 and 52 of the first legal opinion, in particular, state the risk in senior counsel's view of judicial review. Was Mr Barton receptive to that risk and did he understand it?

**Deputy Chief Constable Fitzpatrick:** He must have been receptive, because we ultimately agreed to proceed on the basis of my decision to follow the legal advice that I had received. I was very clear that this was not some abstract matter and that Police Scotland had already been judicially reviewed on a very similar issue, so this was not about having some abstract discussion of what might happen.

**Ben Macpherson:** And the decision to take legal opinion and the opinion that was given were not questioned or dismissed by Mr Barton.

**Deputy Chief Constable Fitzpatrick:** We discussed it, and I did not find Mr Barton to be dismissive at all. I hope that he did not find me dismissive, either. We were two professionals who both appreciated the importance and complexity of this particular issue; we were both very determined to do right by the issue and the people involved, particularly the complainers, and to take things forward in an effective way. We agreed to differ. As I understand it, we both took legal advice and then agreed to proceed on the basis of the legal advice that we had received.

**Ben Macpherson:** The debate over the interpretation of the 2014 regulations prolonged the investigative process, and it has been stated that that had an adverse effect on the individuals involved. Do you accept that?

**Deputy Chief Constable Fitzpatrick:** I have accepted that, and I had the opportunity—for which I was grateful—to apologise in person to three of the four complainers on 1 March and in a letter to all four complainers on the same day not only for the failings that occurred in 2015 but for the subsequent impact on them and their families. I am mindful of that, and I know that Mr Barton was very mindful of it. The discussions that we had when I formally took this on in February and March led Mr Barton to conclude his investigation and his report was with us on, I believe, 12 May.

**Ben Macpherson:** Being mindful of all of that, what steps do you think will need to be taken to avoid any confusion with regard to the application of the 2014 regulations to any future inquiries or investigations that need to be carried out?

**Deputy Chief Constable Fitzpatrick:** As a result of the discussions that we had, particularly with Mr Barton and the Durham Constabulary investigation team, not only did we get a very thorough, diligent and professional report from them, which enabled us to progress the processes, but, as you will recall, we went on to develop terms of reference for the PSNI to carry out the conduct investigation. I felt that it was important that we were very clear about those, and we both understood exactly the legislative framework that we would be operating under. The PSNI was happy with that. My personal learning was to take my discussions with Mr Barton on the terms of reference and the difference of view that had arisen into the very early discussions with the PSNI to ensure agreement on its terms of reference.

**Ben Macpherson:** So despite the admitted delay and the potential damage that that could have had, there has been a constructive outcome to this with regard to future investigations.

**Deputy Chief Constable Fitzpatrick:** Indeed. We have a lot of lessons to learn. As I have said,

we had already put that into practice in asking the PSNI to do the work that it has done.

**Daniel Johnson:** I seek a technical clarification on the nature of this disagreement. My understanding is that, in Scotland, we separate the complaint from the subsequent investigation, and Police Scotland's contention is that the investigator in the investigation cannot have had any previous involvement in the handling of the complaint, as that would undermine the requirement in the police regulations for the investigating officer to be impartial. Am I correct in understanding the crux of this disagreement?

**Deputy Chief Constable Fitzpatrick:** I understand, too, that that was the crux of the disagreement. That is what formed the basis of the legal advice. As I think I said in answer to Mr Macpherson, this was not an abstract issue for us; we had previously been judicially reviewed on the point and had had to concede it.

**Daniel Johnson:** That was helpful. Thank you.

**Liam McArthur (Orkney Islands) (LD):** A little like other members, I am struggling a bit to reconcile the evidence that we had on 22 February from Chief Constable Barton, which was of the moment and reflecting back on what had happened. At that stage, he still felt moved to make some more serious criticisms than the more reassuring tone that you have sought to strike today. That is probably material for the committee in so far as it tends to suggest that, when it comes to lessons learned, you are more reassured than Chief Constable Barton and his colleagues are. I will leave that hanging there for the moment.

On the basis of the evidence that we have had, a couple of things have leapt out at me. It is staggering that access to retired officers was not identified as a potential issue and resolved, not in terms of each case, but in terms of handling, and agreed with Durham when the investigation was initiated. I cannot understand why that almost came as a surprise and out of left field after Durham had been asked to undertake an investigation. Is it not standard procedure? At some stage, there will undoubtedly—almost inevitably—be a request to make an approach to retired officers. How would Police Scotland respond? I can understand why you might need to seek permission but, for the life of me, I cannot understand why you would not anticipate that arising in the early stages—not just at some point, but in the early stages—of the investigation.

**Deputy Chief Constable Fitzpatrick:** You have quite rightly identified an area of learning for us in terms of preparation for these things. It is something that we took into our discussions with PSNI about what it would need in order to facilitate its subsequent independent conduct investigation.

**Liam McArthur:** Again, in passing, some of what Chief Constable Barton was referring to when he talked about an attitude and a lack of transparency was reflected in the level of redaction in the reports that were handed to us. I entirely understand and respect the requirement to redact reports of this nature, but it seemed that the extent of the redaction, including of information that was in the public domain, spoke to an approach that Chief Constable Barton was moved to suggest was overly secretive.

I turn to the issue of the pastoral care. There has never been any disagreement around the fact that the four individuals concerned were gravely wronged, as Chief Constable Barton said. You have said that you were determined to do the right thing by the complainers. As I understand it, the IOCCO reported to Police Scotland in July 2015. Chief Constable Barton then suggested that the first contact that was made by Police Scotland with the four was in February 2016. Having been made aware of IOCCO's concerns, why on earth did it take Police Scotland seven months—or whatever it was—to approach those affected? DCC Fitzpatrick, I appreciate that this predates your involvement but, again, I find that absolutely staggering.

**Deputy Chief Constable Fitzpatrick:** I am afraid that I do not know why it took so long. While we are on the subject of learning, having been asked to become the decision maker in this officially on 14 February, although I was in discussions with Mr Barton in late January—and we agreed whole-heartedly on this—I was determined to offer to meet the complainers as soon as possible and to offer them what I described in my letters to them as a whole-hearted and unreserved apology. I touched on this briefly earlier. That apology was not only for the failings in our processes and procedures around the communications data that the IOCCO and IPT had identified in 2015, but for the impact on them and their families at the time of those acts and since then. I was very grateful that three of the complainers agreed to meet me and I completely understood that the fourth did not choose to do so.

14:00

**Liam McArthur:** My understanding is that the apology was welcome and acknowledged for being as fulsome as you suggest but, just to get this clear, you were apologising for what happened and the impact that it had. Was it also an apology for the lack of on-going engagement and seeming concern for the wellbeing of the existing and retired officers throughout this process?

We have heard from colleagues of yours. In a number of evidence sessions, Deputy Chief

Constable Designate Livingstone has made great play of the priority he attaches to the wellbeing of officers and of staff. That was glaringly absent throughout the process, and its absence is potentially on-going. I do not know the outcome of the discussions that you have had but I presume that the impact is also on-going. Certainly the complainants do not feel that the matter has been resolved for them, so I assume that Police Scotland is committed to continuing to work through whatever might bring about a resolution, subject to the willingness on the part of the complainants to engage.

**Deputy Chief Constable Fitzpatrick:** One of the striking things for me—and I think that this is the case for anybody who sits down with someone—when I spoke individually to the three complainers who agreed to meet with me on 1 March 2017, was to listen to them and to hear what the impact on them had been. Of course, I intended to apologise to them, and I did apologise to them directly and individually, but I also heard about the impact on them and on their families.

The work on wellbeing that Mr Livingstone has spoken to the committee about certainly needs to include our processes and procedures for serving officers, whatever their status and whatever the circumstances of our relationship with them in the future.

**Liam McArthur:** To be clear, that meeting on 1 March is not an end point. Notwithstanding the fact that the apology that was being sought was offered at that stage, is there an on-going commitment to engagement if that is felt to be necessary by those involved?

**Deputy Chief Constable Fitzpatrick:** Yes. Absolutely, if indeed it is. As you will know, a number of the complainers have retired, but we still have a responsibility to any of them who have not retired.

One of the most significant points of learning for us was probably the fact that there was a very long gap, which you have identified. With Durham Constabulary's help, I was able to meet the complainers at the beginning of March and that was an important part of what I felt was my responsibility at that time.

**The Convener:** DCC Fitzpatrick, given the profile and seriousness of the issue, which Police Scotland has acknowledged, a lot of people will be astonished that the outcome is that you have learned things but no one has been culpable in any way. You have a range of disposals. You could reprimand someone or you could caution them. You could send them for additional training. There has been none of that. Where are the individuals who have been involved in this?

Concern has been expressed to this committee that, although these people have been acquitted—and I readily accept that—they are now in more promoted posts. The reason I raise that is because there are genuine concerns about reputational damage and the signal that that sends out. Can you comment on why, after all this, no one even gets spoken to?

**Deputy Chief Constable Fitzpatrick:** That is not quite the case.

**The Convener:** What disposals were used then, please?

**Deputy Chief Constable Fitzpatrick:** Seven officers were the subject of the PSNI's independent conduct inquiry. The PSNI investigation report found that a number of allegations were proven, on the balance of probabilities, but there was no evidence of wilful acts of misconduct. It also described how, although there was no evidence of wilful actions, there was clearly recklessness, and that chimed entirely with the IOCCO and IPT findings that we had been reckless as an organisation. The PSNI found that some of those individuals had been reckless in their own individual behaviour and it also identified failures in leadership systems and processes.

Of the seven officers, four were subject to what we call improvement action, which is a disposal aimed at focusing on why they had behaved in that way and them taking action to make sure that it did not occur again. The PSNI also determined that three individuals were peripheral—that is my word—to these issues, and no further action was taken. For four of the individuals, therefore, action plans were put in place to make sure that their future actions are not likely to lead to adverse outcomes.

**The Convener:** How many of the seven have subsequently been promoted?

**Deputy Chief Constable Fitzpatrick:** I am afraid I do not have that information, convener. I am happy to provide it to the committee if it would help.

**Liam McArthur:** Just following up on that, earlier we discussed the lack of access to officers who are now retired. I presume that any improvement actions cannot be applied to those that have retired. Did the PSNI report shed any light on that?

You have talked about reckless behaviour and a lack of leadership. One would assume that something more than improvement actions would be required in the event of reckless actions, so did the PSNI have anything to say about the behaviour and involvement of retired officers and whether, had they still been in the force, more

serious measures might have been necessary and appropriate in the circumstances?

**Deputy Chief Constable Fitzpatrick:** Yes, it did. The PSNI observed that it had not been able to engage with officers who had retired because, of course, the conduct regulations fall when an officer retires from policing. The PSNI observed that, on the basis of what it knew, it felt that other action might have been appropriate. Of course, it also observed that it had not been able to engage with or interview those officers. At that stage, that was a judgment as opposed to something that it could say to us was a matter of fact.

**Liam McArthur:** Is that then something that you can take learning from, even if you can take no action because of the status of the officers as being retired? Are there lessons to be learned from that going forward?

**Deputy Chief Constable Fitzpatrick:** Yes, to the extent that it is important to learn from all of these things. The issue here of course was the conduct regulations, which differ from those in England and Wales and under which there is no way of compelling individuals who have retired to engage with a conduct investigation. In fact, the conduct investigation has no locus for them at all because they are no longer serving as police officers. That particular point is a regulatory issue and not something that we have control over.

**Liam McArthur:** Given the role of this Parliament in looking at where regulation is and is not working, would you support our looking at that? Is it a deficiency in the way that the regulations are structured that, by dint of retiring, an officer can escape any sort of sanction, not for criminal offences, but for serious misdemeanours on their part?

**Deputy Chief Constable Fitzpatrick:** There is a range of views about that in policing. The 2014 conduct regulations have been in place for more than four years. There is learning about the regulations, just as there has been organisational learning for us all the way through in other matters in relation to CCU and comms data and so on. I think it is very wise to keep these things under review.

**The Convener:** Can you tell us why you cannot publish the PSNI report?

**Deputy Chief Constable Fitzpatrick:** Again, I look to Superintendent McDowall to keep me right on this, but my understanding of the conduct regulations is that, under the arrangements that exist in England and Wales, for example, hearings—in particular, on conduct matters—may be held in public, whereas that does not apply in Scotland. There is a presumption in the conduct regulations that misconduct proceedings—that is, on the conduct of the misconduct—will be in



private and that people therefore have an expectation of privacy.

**The Convener:** My question is specifically on the report and why it is not possible for it to be published, even in redacted form. I express some surprise, because I would have expected that, as the disciplinary authority, you would have a full grasp of the small number of regulations that comprise the conduct regulations.

**Deputy Chief Constable Fitzpatrick:** I am sorry if the committee thinks that I do not have—

**The Convener:** I am only going by your comment that it was your understanding. I would have thought—

**Deputy Chief Constable Fitzpatrick:** My understanding is that there is an issue around the misconduct process, and the proceedings being in private. I was going to ask Mr McDowall, as my left-hand man here, to put me right if I had misinterpreted the regulations.

**Superintendent McDowall:** Absolutely. The police misconduct proceedings in Scotland are private proceedings. That is not similar to England and Wales. As a result—I do not think that this refers just to the specific matter of the PSNI investigation—it is important that we maintain consistency, not just for regulatory compliance but for all other misconduct regulations, which are not put into the public domain.

**The Convener:** Was the information that there were to be no proceedings shared with the complainers?

**Deputy Chief Constable Fitzpatrick:** I wrote to the complainers on 30 June with the result of the complaints investigation. The letters were very lengthy.

**The Convener:** That was the Durham Constabulary report. What about the PSNI report?

**Deputy Chief Constable Fitzpatrick:** That is right. I am trying to look now—*[Interruption.]* On 15 January, when we were speaking to the subject officers and letting them know the outcome of the conduct investigations into them—I am sorry; that took me a moment, because there have been so many letters on this—letters from me were hand delivered to each of the four complainers. Therefore, the complainers heard the outcome on the same day as the officers who had been subject to the misconduct investigation.

**The Convener:** Are you able to share how they responded to your decision not to institute proceedings?

**Deputy Chief Constable Fitzpatrick:** I think that that is a matter for them, convener.

14:15

**The Convener:** On the point about the retention of material and the recent exchanges on that, Police Scotland used quite an unusual phrase, if you do not mind me saying so, when it referred to any material on Police Scotland databases that did not “reflect the truth”. Can you explain what that means, please?

**Deputy Chief Constable Fitzpatrick:** Yes; I hope so. The committee will be aware that the original material that led to the IOCCO breach was one set of material; ultimately, the IPT judgment governs the disposal of that material. I understand that four of the complainers, three of whom were serving officers at the time, had some concerns, quite rightly, about other material about them that might be held on any of our databases—for example on our human resources database, or our professional standards database. When we talk about material that does not reflect the truth of these matters, that means any material that the complainers feel does not effectively represent the truth.

The IPT order governs the material that relates to the authorisations and the communications data. In speaking to the three complainers, as I did on 1 March 2017, I wanted to assure them of the fact that, if there was any material that they felt did not reflect truthfully what had happened, we would be very open to removing that material from any of our databases, such as our intelligence, HR, complaints or other databases.

**The Convener:** The complainers used the words “delivering our remedy”. Do you think that Police Scotland has delivered a remedy for people who have been wronged?

**Deputy Chief Constable Fitzpatrick:** There are two aspects to that. One is the effective remedy, which is referred to by the IPT; it was determined that that could come about only by an independent investigation into what has happened. Effectively, we have had two independent investigations. I know from speaking to the complainers when I met them on 1 March last year that they feel very gravely wronged in this matter, so for me there is that separate issue about what people feel personally is an effective remedy. Again, I cannot answer for the complainers on that, because I know that that is a very personal view.

**The Convener:** Do you think that it is legitimate that they continue to feel wronged?

**Deputy Chief Constable Fitzpatrick:** Absolutely. As I said to them when I met them, and as I have repeated in my letters to them, I feel that we failed them absolutely as an organisation, and that we continued to fail them by not being in

contact with them. I continue to offer them my whole-hearted apologies for that failing.

**The Convener:** What reassurance can you give the people of Scotland that we will not see a repetition of this abuse?

**Deputy Chief Constable Fitzpatrick:** I have spoken about organisational learning. I think that it is very easy to use the phrase “organisational learning”, but I also think that it is legitimate to ensure that those lessons are actually implemented and that they effect change.

As the committee is aware, HM inspectorate of constabulary carried out a very early assurance review of our CCU arrangements, which has led to substantial change. The 39 recommendations that HMICS made have all either been completed or, in the case of three, are finally proposed for closure. In fact, HMICS is back with us to conduct a further review of our progress in implementing those recommendations. There is independent assurance around whether we have moved on from those days.

**The Convener:** Thank you. The committee will seek an update from the inspectorate on that work. Are there any further questions?

**Margaret Mitchell:** May I comment on one thing? It concerns the information that should be withdrawn. You said that it was about regulation, and that it did not fully reflect the truth. We were told quite bluntly that it had been made up. Unless you speak very plainly and say, “A spade is in fact a spade, we are holding up our hands to that and we will address it”, the lack of openness, transparency and accountability in how senior management—we are not talking about the rank and file—are getting on with their jobs on a daily basis, will mean that we will be here on a regular basis. At a senior level, openness, transparency and accountability must be at the very heart of what you do.

**The Convener:** Do you wish to respond, DCC Fitzpatrick? We are very keen that there is maximum engagement with the inspectorate on following up those 39 recommendations.

**Deputy Chief Constable Fitzpatrick:** Indeed, convener. I will respond to Mrs Mitchell’s point. We have asked Durham Constabulary, and it has very kindly agreed, to provide independent assurance on the process of removing material that, as I said, does not reflect the truth on all of our databases.

**The Convener:** I thank you all very much for your evidence. We now move into private session.

14:21

*Meeting continued in private until 14:30.*

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