

JUSTICE AND HOME AFFAIRS COMMITTEE

Wednesday 6 December 2000
(*Morning*)

© Parliamentary copyright. Scottish Parliamentary Corporate Body 2000.

Applications for reproduction should be made in writing to the Copyright Unit,
Her Majesty's Stationery Office, St Clements House, 2-16 Colegate, Norwich NR3 1BQ
Fax 01603 723000, which is administering the copyright on behalf of the Scottish Parliamentary Corporate
Body.

Produced and published in Scotland on behalf of the Scottish Parliamentary Corporate Body by The
Stationery Office Ltd.

Her Majesty's Stationery Office is independent of and separate from the company now
trading as The Stationery Office Ltd, which is responsible for printing and publishing
Scottish Parliamentary Corporate Body publications.

CONTENTS

Wednesday 6 December 2000

	Col.
DIVORCE ETC (PENSIONS) (SCOTLAND) AMENDMENT REGULATIONS 2000 (SSI 2000/392)	1942
PETITION	1944
POLICE (SELF-REGULATION)	1947

JUSTICE AND HOME AFFAIRS COMMITTEE

36th Meeting 2000, Session 1

CONVENER

*Alasdair Morgan (Galloway and Upper Nithsdale) (SNP)

DEPUTY CONVENER

*Gordon Jackson (Glasgow Govan) (Lab)

COMMITTEE MEMBERS

*Scott Barrie (Dunfermline West) (Lab)

*Phil Gallie (South of Scotland) (Con)

*Christine Grahame (South of Scotland) (SNP)

Mrs Lyndsay McIntosh (Central Scotland) (Con)

*Kate MacLean (Dundee West) (Lab)

*Maureen Macmillan (Highlands and Islands) (Lab)

Pauline McNeill (Glasgow Kelvin) (Lab)

*Michael Matheson (Central Scotland) (SNP)

*Euan Robson (Roxburgh and Berwickshire) (LD)

*attended

WITNESSES

Chief Constable Andrew Brown (Association of Chief Police Officers in Scotland)

Douglas Keil (Scottish Police Federation)

Chief Superintendent Nicol MacMillan (Association of Scottish Police Superintendents)

Deputy Chief Constable Tom Wood (Association of Chief Police Officers in Scotland)

CLERKS TO THE COMMITTEE

Andrew Mylne

Lynn Tullis

SENIOR ASSISTANT CLERK

Alison Taylor

ASSISTANT CLERK

Fiona Groves

LOCATION

The Chamber

Scottish Parliament

Justice and Home Affairs Committee

Wednesday 6 December 2000

(Morning)

[THE CONVENER *opened the meeting at 09:31*]

The Convener (Alasdair Morgan): Let us get started. It is half-past 9 and we are well and truly quorate. It would be helpful if members could turn off any noisy communications devices. We have an apology from Lyndsay McIntosh, and Euan Robson will be late, if he comes at all.

If, next year, there is to be only one Justice and Home Affairs Committee—which I would not bet on—it will meet on Wednesday mornings; it will not alternate between Tuesday and Wednesday. However, there is a motion for debate on 14 December that proposes setting up two Justice and Home Affairs Committees. That motion has not been lodged yet, but a little birdie has told me what might be in it. We can talk about that later.

Do we agree to take item 5 on today's agenda in private? It concerns the format of our investigation into the police.

Members *indicated agreement.*

Divorce etc (Pensions) (Scotland) Amendment Regulations 2000 (SSI 2000/392)

The Convener: Item 2 concerns the statutory instrument that members have in front of them. Members should also have a note on the instrument by the senior assistant clerk.

Christine Grahame (South of Scotland) (SNP): The Subordinate Legislation Committee's report on this issue makes extraordinary and interesting reading. I completely concur with that committee when it asks whether it is not ultra vires for secondary legislation to amend primary legislation, which the regulation apparently endeavours to do. I also concur with the committee when it asks whether the relevant date—which was long established by the Family Law (Scotland) Act 1985—should have been confused in the way that it has been by the regulation.

The Executive now admits that it got it wrong and that there should have been no charging by the Department of Social Security—which seems to explain why there were two different dates. The Executive also says that it will introduce an amendment. Do we know whether that amendment will delete the second date and leave the law as it was? Will the relevant date remain the one in the Family Law (Scotland) Act 1985, that is, the date of separation or the date of service of the summons or the writ?

Phil Gallie (South of Scotland) (Con): The Executive wants to bring its amending regulation into effect on 8 December. We have a little time before we need to nod this through, so it might be worth while delaying our decision until our next meeting. We want to ensure that the Executive produces the change that it has promised.

The Convener: This is a negative instrument, so we do not even get the chance to nod it through because it has already come into force, on 1 December. However, if members wish, we can write to the minister—and we do not have to wait before doing so—and express our feelings, whatever they might be.

Christine Grahame: If other members consider that the regulation, in the form presented, was ultra vires in endeavouring to amend primary legislation, I suggest that we write as suggested in the note from the clerk. We may want to add our own comments, too.

The Convener: We have received a reply from the Executive, which said that it believed that the regulation was intra vires. The Subordinate Legislation Committee thinks that it is ultra vires.

Short of going to a court, I am not sure that we will get any resolution of that. The whole thing appears to be a bit of a mess, betraying a degree either of rushing or of overstretch. A regulation has been produced that was clearly flawed because of a misunderstanding over whether the DSS was going to charge. I do not know how you can misunderstand whether people are going to charge: either they will have said that they are going to charge, or they are not going to charge. Will we write to the minister and express our disappointment that the regulation appears to have been so flawed that it will have to be amended within a week of its coming into force?

Christine Grahame: I would like it to be noted that I do not accept the Executive's explanation that all it is doing is changing a calculation date. In my view, it is ultra vires for secondary subordinate legislation—which, as it stands, seems to provide a substitute for a relevant date—to amend primary legislation.

The Convener: All right. Will we proceed on that basis?

Members *indicated agreement.*

Petition

The Convener: Item 3 is petition PE102 by James Ward, which has been before us on more than one occasion. It concerns his sequestration.

Phil Gallie: After reading the document "Recall of sequestration" and Mr Ward's petition and comments, I am a little concerned. The document acknowledges that sequestrations can be applied under false circumstances, and that was the basis of Mr Ward's original complaint. Even if we leave his case aside, there could be many such cases, and the fact that people have to go to recall rather than appeal leads to concerns about the expenses entailed.

We are talking about people who have virtually no funds at all, and who must be down on their luck, or on their uppers, whichever way you look at it. Those people have first to find a local solicitor, in order to seek the recall, and that solicitor then has to find an Edinburgh agent, at even more cost. The whole thing is extremely costly, so I feel that Mr Ward has hit on a strong point. I would like that point to be made to the minister.

Christine Grahame: In the *Official Report* of our meeting on 27 September this year, at column 1803, I suggested that we ask the minister whether jurisdiction could be changed for recall of sequestration. I gave the example of a plumber in Forfar having to go to the Court of Session for recall. Our letter to the minister did not address that, although I blame no one for that. I wonder whether we could now write to Jim Wallace asking why such matters are exclusively within the jurisdiction of the Court of Session and whether there could be a dual jurisdiction so that the sheriff courts could deal with them too. The Forfar plumber could then at least petition for his recall in a local court. As well as being more convenient, that would help him with expense.

The Convener: I agree with both of you. The "Recall of sequestration" document, which intends to be helpful, has spelled out what a complex and expensive business this is. Paragraph 1.2 says that

"the process is not straightforward"

and paragraph 4 says:

"This makes it an expensive process right away".

As Phil Gallie says, we are talking about an expensive process for someone who has already been sequestrated. For him or her, anything over a couple of quid will be expensive. When the document says expensive, it means really expensive. Christine Grahame suggests that considering such cases in a lower jurisdiction, if possible, would make things a bit easier for

people. There are certainly questions to be answered. Are members happy that we write to the minister along the lines that have been suggested?

Phil Gallie: I would be happy with that, convener. But there is another point worth making. The person who may have been responsible for a mistake is the person who makes the judgment. Mr Ward's letter of 26 November to Mr Wallace says that, on legal issues,

"decisions are taken by the Accountant in Bankruptcy",

which clearly involves

"a conflict of interest for Justice."

There is a question to be asked there, which comes back to the European convention on human rights. I am not raising that today, but I suggest that there is a question mark over a judicial process in which one person is judge and jury.

Christine Grahame: I am not happy to go along the route of challenging the Office of the Accountant in Bankruptcy, which sits only when a party has been declared bankrupt. My concerns are with the proceedings that lead up to an individual being declared bankrupt, and with what happens if there is some flaw in the sequestration of an individual, some flaw in the procedure or some issue to do with the grounds on which a petition for recall is made—which I do not have to hand just now. We have to allow such matters to be dealt with in the sheriff court. At the moment, the petition and all the papers have to go to the Court of Session for the recall. The process is cumbersome.

Gordon Jackson (Glasgow Govan) (Lab): I am not unsympathetic towards what Phil Gallie says: I appreciate his point. I am happier with Christine Grahame's point about dealing with recall locally. Having an appeals system for bankruptcy is not without its problems. It is difficult to make a law for some people and not for others, but people go bankrupt in different situations. There is the man who genuinely does not have two pennies and has fallen on hard times; but there is also the man who, for various reasons, is playing the system and quite deliberately avoiding payments and using bankruptcy. We repeatedly read stories in the papers about people who have been bankrupt umpteen times: they are playing the system.

Appeals procedures, because of the nature of court work, are lengthy and cumbersome. If people are made bankrupt, and then use the appeals procedure to block their assets being administered for the benefit of those who should have them, that can go on for months. On the one hand, you have the genuine case that Phil Gallie is

interested in; on the other, you have people who use the appeals procedure to play the system and stop creditors getting the money that they should be getting. The way round that may be to consider allowing recall at a local level. That would solve the problem of the Forfar plumber having to go to Edinburgh, and it would stop people playing the system. However, I would say to Phil that the issue is not quite as simple as it would be if there were only the genuine people.

The Convener: I think that we agree that we want to ask whether the recall procedure could be handled locally and, therefore, more inexpensively. Should we also ask whether there is the potential for a conflict of interests in certain circumstances, as Mr Ward suggested?

Members indicated agreement.

Police (Self-Regulation)

The Convener: Item 4 on our agenda concerns our inquiry into the self-regulation of the police, for which we have various background papers. We have a Scottish Parliament information centre briefing on the police, and a report by Her Majesty's inspectorate of constabulary for Scotland, entitled "A Fair Cop?"

We have witnesses with us today: Chief Superintendent Nicol MacMillan of the Association of Scottish Police Superintendents; Chief Constable Andrew Brown and Deputy Chief Constable Tom Wood from the Association of Chief Police Officers in Scotland; and Douglas Keil of the Scottish Police Federation. Is that correct? The cast list has changed several times since I first saw it.

Chief Constable Andrew Brown (Association of Chief Police Officers in Scotland): That is correct.

09:45

The Convener: I thank witnesses for coming before the committee. We decided some time ago that self-regulation of the police was something that we wanted to look into. Depending on what we hear from you today, we may decide to narrow the focus of our inquiry somewhat. At any rate, we will be able to decide which specific aspects are of more interest to us than others.

I shall ask each witness to make a brief presentation to us, after which committee members will ask questions. Can you decide among yourselves who is going to lead off? I do not know whether rank takes precedence in this case.

Chief Constable Brown: I do not think that it is rank that will decide who goes first. We have decided which areas we will each cover, and it is probably best if I start.

We are grateful that the committee has asked us to come along today. I intend to comment a bit on the generality of how the service is regulated and, within that, say something about accountability, performance indicators and best value. Then I shall conclude by saying a little more about complaints against the police.

The Police (Scotland) Act 1967 consolidates all matters relating to the police service in Scotland. It lays down provisions for the organisation of forces and common police services. The act empowers the Scottish Executive to make regulations as to the governance, administration and conditions of service of police forces. Of course, the service is subject to the general law, whether that be health and safety law, employment legislation or equal

opportunities. Although they are charged with the responsibility of enforcing the criminal law, members of the service are subject to the rule of law themselves.

In addition, new enactments often prescribe additional police responsibilities, thus regulating the procedures of the police service. We are also subject to Scottish Executive circulars on a range of issues. They are advisory in nature but are, I believe, very influential, and any decision not to follow the thrust of a circular would have to be well founded. Indeed, non-compliance would draw a severe criticism.

In the same way, the Lord Advocate's guidelines regulate what we do in relation to criminal investigation, because the service works at the instance of the Lord Advocate through the offices of the various procurators fiscal in investigating crime. Guidelines on a variety of matters are issued by the Lord Advocate and local directions are issued by procurators fiscal. For example, such guidelines cover how we deal with the police use of firearms, report writing or media releases.

We are also accountable to our own police authorities, which have statutory responsibility to provide funding for the police service, to keep themselves informed about the manner in which complaints are dealt with, and to appoint senior officers to the force. They also have a right, if they so wish, to call for reports from the chief constable on specific issues. There is, therefore, a significant degree of accountability in that area.

Under the Police (Scotland) Act 1967, Her Majesty's chief inspector of constabulary has a statutory responsibility to visit and inquire into any matter concerning and relating to the operation of Scotland's police forces, to submit an annual report on Scottish police forces to Scottish ministers, and to keep informed on how complaints by members of the public against police officers are dealt with. Each of the eight forces is subjected to a primary inspection by HMI once every three years. In the intervening period, HMI will visit to ensure that the recommendations made during that time are progressing. In addition, an annual performance review is submitted for each force.

During visits to forces, the inspectorate will make a point of visiting complaints departments. That is usually done by Her Majesty's lay inspector of constabulary. As part of the new inspection programme, which has been in force for about 18 months, there is an increase in the emphasis on thematic inspections, in which the inspection focuses not on a police force or one police organisation but on the status of a specific issue. Recent examples of such inspections are the report "A Fair Cop?", which you mentioned in your introduction, convener, and a report on complaints

and issues of race, which is to be published early next year. HMI also has responsibility to issue certificates of efficiency for police forces.

The Accounts Commission for Scotland and Audit Scotland are also involved. Audit Scotland is the major driving force in promoting best value and it links up with Her Majesty's inspectorate of constabulary and with the Scottish Executive. Under section 15 of the Police (Scotland) Act 1967, certain authorities have the power to call for reports from forces. Those authorities are the First Minister, the sheriff principal and the police authority, and such reports are very occasionally called for.

Elected members also have a role in society to represent members of their constituencies, and they frequently write to the service. We like to think that we try to give a full response to such correspondence.

The police service makes fairly extensive use of performance indicators. The Scottish Executive, the Association of Chief Police Officers in Scotland, the Accounts Commission for Scotland and HMI have all collaborated to produce a Scottish police service performance manual. There is a desire across the agencies to develop effective use of performance indicators that are both qualitative and quantitative. There is a recognition that the concept of centrally set targets may be effective in some areas. One example might be the national drugs targets set last week by the Scottish Executive. For some years, along with our local authority colleagues, we have been operating to national targets in roads policing, which has successfully reduced fatal and serious road accidents.

Chief constables are also responsible for operational priorities in their own areas, and they set targets for their own forces on specific matters. Those may be, and almost always are, agreed by police authorities, and would certainly be published in the policing plan. Chief constables refer to those targets in their annual reports and Her Majesty's chief inspector of constabulary will examine those when he or she visits.

Although there is a case for centrally set targets in some areas of concern, we ought to remember that most issues that we deal with are local ones. However, there is an equally strong case for setting some targets against the prevailing local conditions. Flexibility exists and I believe that it ought to continue.

We are increasingly making use of lay advisers. The report into the investigation of Stephen Lawrence's murder suggested the use of lay advisers, which is developing in Scotland at the moment. Lay involvement entails members of the community observing, monitoring and scrutinising

aspects of police performance, but those people have no responsibility for the delivery of those results. As such, they are totally independent. Forces are currently developing plans at different levels.

We are also controlled to some extent by the regime of best value. Forces are moving ahead with service reviews and the results of a thematic inspection by HMI are awaited. Those results should be available reasonably soon and will no doubt help to determine the future direction of best value in Scotland. Committees of the Scottish Parliament also provide another layer at which the service is accountable and at which we have to answer for our actions.

Finally, the chief constable's annual report must be published each year. It contains statistics about the performance of the force during that year. As members can see, the police service in Scotland is subject to a fairly wide range of regulation, some of which is statutory in nature and some of which is less formal but, I believe, no less rigorous.

Having painted that background, I shall go on to say a little about complaints against the police, where views on self-regulation may be most acute. Complaints against the police are governed by the Police (Conduct) (Scotland) Regulations 1996, as amended by several amending orders. Those regulations variously provide the rules by which chief officers and police authorities deal with complaints. The manner in which complaints against the police are addressed has been the subject of some pretty powerful and, at times, emotive debate. Most recently, the publication of the report on the inquiry following the death of Stephen Lawrence and the Scottish Executive action plan in response to that have generated increased public and political interest in the subject.

Complaints against the police with even the slightest inference of criminality on the part of any police officer are required by regulation to be referred to the regional procurator fiscal, of which there are only six. In practice, any such complaints are independently investigated at force level first and then reported to the relevant regional fiscal. The fiscal may direct the police to conduct further inquiries, but inevitably the fiscal will conduct an independent inquiry by precognosing the witnesses. Thereafter, the papers are sent to the office of the Solicitor General for Scotland for further consideration. Those arrangements guarantee a degree of independence in all complaints that imply criminality. However, there may not be a full public appreciation of the role of the regional fiscal in that matter, and there may therefore not be a full appreciation of the independence that exists in the process.

Complaints against the police alleging

misconduct on the part of police officers are the responsibility of the deputy chief constable in forces. Some such allegations may be assessed as being resolvable through explanation or conciliation or may otherwise be capable of resolution locally; others may warrant formal and independent investigation. All investigations are conducted by a senior officer no lower in rank than inspector.

HM inspectorate of constabulary's report identifies the basic tenets of independence, impartiality, effectiveness and accessibility as the life-blood of any complaint investigation. It also indicates that impartiality is not necessarily jeopardised by an officer carrying out an inquiry and points out that, no matter how independent or impartial the investigation, it is of no value if it is not effective.

HMI has a responsibility under the 1967 act to keep itself informed about how complaints by members of the public are dealt with. On a day-to-day basis, that generally involves members of the public who remain dissatisfied with investigation into their complaints by the police force communicating with the inspectorate. The inspector will then review the investigation—very often the lay inspector will do that—and feedback will be given both to the complainer and to the force. In some cases, the force will be directed to carry out further investigation. It is important to note that HMI does not reinvestigate. That independence serves as a useful tool in regulating the investigation of complaints. That said, there is limited awareness of the important role of Her Majesty's lay inspector of constabulary in reviewing the investigation of complaints against the police.

Members have already heard about "A Fair Cop?", a report by the inspectorate on a thematic inspection into how complaints are dealt with in the force. That report contains 18 recommendations and many suggestions about points of good practice. It is a fairly recent report and those matters are still being discussed by ACPOS, but I draw the committee's attention to the fact that the report concludes that:

"the overwhelming majority of complaints against police officers are investigated with thoroughness, impartiality and integrity."

Police authorities also have a statutory responsibility to take an oversight of the complaints process. Several Scottish police authorities have set up sub-committees for that purpose. There is some recognition that that role could be more meaningful.

I have avoided statistics until now, but I shall end my contribution with a few that will put things into perspective. In the year ending 31 March 2000, there were 2,263 complaints or allegations

made against police officers in Scotland. Of those, 1,247 were referred to the procurator fiscal, who took proceedings in 17 cases. It is important to repeat that the slightest hint of criminality will be reported to the fiscal. During the same period, 78 police officers appeared at force misconduct hearings. For 16 of them, it was found that there was no case to answer; the others were dealt with within the regulations, which have disposals ranging from dismissal to caution.

The police service considers the regulations to be fair and rigorous. However, it is recognised that that may not reflect the public's perception. It is accepted that, if a system is to enjoy public confidence, it must be seen to be fair and transparent. We look forward to the Scottish Executive's consultation paper on the matter, which is soon to be published.

The service in Scotland has no objection to the introduction of an independent element. Indeed, there is no philosophical objection to the whole of the process being undertaken by an independent body. However, we question the viability of such an independent authority. It may be that the public perception can be addressed by the appointment of an independent review body of some nature, to which unsatisfied complainers could appeal and which would also have inspectorial powers. It may also, in passing, give us an opportunity to adopt procedures for dealing with vexatious complainers. Such procedures do not currently exist.

10:00

In conclusion, the police service is regulated in a variety of ways and it is important that we do not upset the balance of responsibility that exists within the tripartite arrangements in Scotland. I have addressed a range of matters, but understandably, the one that comes most readily to mind in addressing self-regulation is complaints against the police. On that subject the issues are more perceived than real; nevertheless, perceptions must be addressed. The Scottish police service is not precious on that matter. I am conscious of having taken a moment or two, convener, but I felt that it was important to address a range of issues.

The Convener: Thank you. Do your colleagues have anything to add? Could they keep it as brief as possible?

Chief Superintendent Nicol MacMillan (Association of Scottish Police Superintendents): I am conscious that Chief Constable Brown has covered a variety of areas, so there may be a risk of repetition. The Association of Scottish Police Superintendents, however, deems it important that, given the opportunity to come here today, I raise some

matters with the committee on its behalf.

First, I reinforce what Chief Constable Brown said about the legislation on complaints against police officers. Every police officer in the country is fully accountable to the criminal and civil laws, which are exercised for them in the same way that they are for every other person.

We are aware that the complaints system, as was highlighted by Chief Constable Brown, is of particular interest. I do not wish to repeat what has been said, but—with the committee's forbearance—it is important to point out that complaints against the police are governed by detailed legislation and Government guidelines. They apply whenever it is alleged that an officer has committed a crime or breached the police code of conduct. The procedures are applied to allegations made against police officers who—this is important—are on duty at the time of the allegation.

For clarity, I will cover the complaints process in some detail—without going on at great length—especially with regard to criminal complaints. That is an area about which there is a lack of public understanding, which leads to many of the perceptions that Chief Constable Brown mentioned. I wish to make it clear that the way in which the Scottish legal system handles complaints of criminal conduct is completely different from anywhere else in the United Kingdom. In essence, as Chief Constable Brown said, any complaint inferring criminality is reported to the regional procurator fiscal. While I assume that everyone here knows that there are distinctions between—

The Convener: May I interrupt you? Can you define criminality?

Chief Superintendent MacMillan: Yes. It is any act that infers a breach of the criminal laws of this country.

The regional procurators fiscal, or staff acting on their behalf, conduct and control investigations. When one realises that there are only six regional procurators fiscal in Scotland and that they all work to the same system of investigation, it is clear that there is a focused approach to the investigation of such matters.

The role of the regional procurators fiscal in investigating complaints against the police is of particular importance when we look at the independence of the system, which is the biggest issue. A complaint or allegation that a police officer committed a crime in the course of his duty will be made either to the police or to the procurator fiscal. In either case, it will be investigated in the first place by the police, as directed and controlled—that is important—by the regional procurator fiscal, and the results will be

reported to the regional procurator fiscal.

Regional procurators fiscal are bound by their own rules to conduct a separate and independent investigation into complaints. They can do that personally or using their staff. In general, all material witnesses, including the alleged victim, will be further interviewed in the course of the independent investigation, which will take place entirely apart from the police. If, after full inquiry, the regional procurator fiscal considers that there is substance to the complaint, he will submit full statements to the Crown Office, and Crown counsel will consider criminal proceedings against any police officer whose conduct is the subject of complaint. On the other hand, if the regional fiscal considers that the complaint is without substance, he may decide to take no further action.

Once the matter has been referred to the Crown Office, the decision to prosecute is taken personally by either the Solicitor General or the Lord Advocate. Whatever decision is taken by the Crown, it will be communicated to the complainant and to the chief constable.

I do not wish to go over non-criminal complaints, which Chief Constable Brown covered, other than to say that in misconduct hearings, it is of note that the rules of evidence, while bearing some similarity to those of criminal trials, have significant differences in our internal workings. First, the evidence is judged on the balance of probabilities, rather than beyond reasonable doubt. Secondly, in our misconduct hearings there is no legal requirement for evidence to be corroborated. That gives scope to deputy chief constables in enforcing and reinforcing the rules and regulations in our police forces.

Given that the committee is conducting an inquiry into the self-regulation of the police—and you have heard about the myriad regulations that bind us—it is appropriate that the committee is made aware that not all misconduct issues come to light through a complaint by a member of the public. The police service is a disciplined body, and officers are subject to the police code of conduct at all times, whether on-duty or off-duty. Officers may be reported by their peers or supervisors, as well as by members of the public, for breaches of the code. Indeed, the large majority of misconduct investigations arise from matters in which members of the public have no direct involvement. There is a great degree of self-regulation using the powers that are made available to us. In general terms, the police service is serious about ensuring that the highest possible standards of policing are maintained, and that ethics and integrity are constantly at the forefront of every officer's thoughts and actions.

On behalf of the ASPS I was going to reinforce the independent oversight of the complaints

procedure, but Chief Constable Brown has covered that matter, so I will comply with the convener's request to be brief. Her Majesty's inspectorate of constabulary is familiar to us all. We have the independence of the regional procurators fiscal and the Crown—a point that I reinforced—in the large majority of cases. However, there is an area for which police authorities have direct responsibility, which was touched on by Chief Constable Brown.

Police authorities have responsibility, under the Police (Scotland) Act 1967, to oversee complaints procedures. The ASPS wishes the committee to note that there is considerable potential for improvement and standardisation throughout the country, with a view to providing a higher level of independent oversight of complaints procedures. It is acknowledged that democratically elected councillors, with statutory powers to scrutinise the operation of police forces, are uniquely placed to assure the public that the police are not policing themselves, but are complying strictly with the regulations by which they are bound.

I know from my position as a chief superintendent in complaints and discipline that the implementation of that duty varies greatly in the different force areas. In some, the process is such that every complaint is scrutinised by members of the police authority, while in others, the scrutiny of the complaints procedure is little more than superficial. It is an area that we acknowledge has potential for considerable improvement.

In closing, the ASPS wishes to point out that the Scottish police service is bound by regulations. It is our view that the service has a robust, thorough and accountable system of dealing with complaints against the police. However, we acknowledge that sometimes the public perception is different. We are happy to contribute in any way that we can to inform the debate and to change that perception. It is my view that there are great dangers in reacting to perceptions, albeit I am acutely aware that perceptions do become reality. If changes are to take place—and we have heard about consultation papers from the Executive—they must take account not only of perceptions, but of the reality of the situation. It is the view of the ASPS that changes must be considered only if they will genuinely improve the process, while maintaining the fairness that already exists for the complainant and the police.

Douglas Keil (Scottish Police Federation): I agree with the submissions made by Chief Constable Brown and Chief Superintendent MacMillan. I will not repeat what they said; rather I will confine my brief opening remarks to a few general comments about complaints against the police.

The Scottish Police Federation has a high opinion of the current system, and believes that it is thorough, robust, accountable and fair. However, it is not perfect. We have some concerns about the length of time that it takes to complete some cases. We have some emerging concerns about the Police Appeals Tribunal, and we have long held concerns about false and malicious complaints made against police officers. From a public perspective, however, we feel that we have a good system.

We acknowledge also that there is a perception—as with other professions such as lawyers and doctors—that police officers investigating themselves is unfair and open to abuse. We are sure that in the vast majority of cases that negative perception is based on a lack of knowledge and understanding of the current system, and the elements of independence and public accountability that already exist. While that perception is important, great care must be exercised before radical reform is recommended.

The Scottish Police Federation could only support changes to our system that would improve fairness to the person making the complaint and to the officers complained about, and that would improve public confidence in the system. However, none of those three measures should be advanced at the expense of either of the other two. As we have heard already, the Minister for Justice has proposed consultation on an element of independence, and we look forward to participating in that consultation. We support the current elements of independence in the system, and are not opposed to the principle of a further independent element, but as has already been said this morning, we feel that effectiveness is the real issue and should be the ultimate objective, not independence. I am happy to answer questions from the committee.

The Convener: Thank you, gentlemen. One of the things that we must decide when we are looking at self-regulation is whether we look only at the complaints procedure or at the much broader subject. Part of today's exercise is to help us to decide that. Although the complaints procedure is the negative side of the coin, you have all majored on it, so I will start by addressing it. Chief Constable Brown quoted statistics about complaints, but HMI was strong on the fact that some of the statistics are fairly meaningless. It said that

"Most counting rules appear to be flexible"

and

"No meaningful comparison of complaint statistics across forces is possible".

I suspect that that means that the total is also fairly meaningless.

It was also said that any complaint involving possible criminality had to be reported to the procurator fiscal. I am looking at case studies 6 and 8 on pages 26 and 27 of HMI's report "A Fair Cop?" One is about a solicitor who

"wrote on behalf of a client who complained of being assaulted in a police station by being struck over the head with a baton . . . The allegation was not reported to the procurator fiscal nor was it recorded as a 'complaint'."

The other case study states:

"A motorist complained that a police vehicle had been driven in a dangerous manner . . . There was no report to the procurator fiscal and the incident does not appear as a 'complaint'."

Regardless of whether those allegations were in any way justified, it seems that the system that has been described, in which complaints of possible criminality automatically go to the procurator fiscal, is not functioning. Do you share the inspectors' concern about the standardisation of complaint reporting across all the police forces?

10:15

Chief Constable Brown: I cannot comment on the individual cases that you have cited, although I accept that they are in the HMI report and therefore a matter of public record. I and my colleagues are saying that the rules require that complaints should be recorded. I am not trying to deny what happened: if they were not recorded, they were not recorded. I also acknowledge the issues that were raised by HMI, concerning the way in which statistics are compiled. Different approaches are taken in different places, and one of the recommendations of the HMI report is that ACPOS should establish a common method of recording complaints. That work is continuing.

Douglas Keil: The Scottish Police Federation told HMI that the absence of a definition of the word "complaint" was a problem. However, the two examples that you cited are peculiar, as, in my experience, such instances would be reported to the procurator fiscal. In our evidence, we told HMI that there needs to be a clear definition and an across-the-board understanding of what a complaint is.

The Convener: Are you suggesting that HMI is picking out unusual examples rather than typical ones?

Douglas Keil: Yes. Such examples are atypical, in my experience. The first example—as you have identified—is unquestionably a complaint of criminality. It is a mystery to me why that complaint was not taken to the procurator fiscal.

Chief Superintendent MacMillan: I shall reply on behalf of the Association of Scottish Police Superintendents. You have pointed out items that

were highlighted in the HMI report, the inclusion of which commends the integrity and scope of the report. The inspectors dug deep and found instances of the police service not complying fully with the rules. Those instances were very much a minority, as is made apparent by the report.

It is excellent that people are taking the time to read the report. It is a warts-and-all report and the association stands behind it as an accurate reflection of the current state of the parties in the Scottish complaints system. In every system, one or two examples can be found of things not happening in the way in which they should have. We make no excuses for that. I find it abhorrent that such examples have been found in the Scottish police service, and I am sure that the report reinforces the conviction in the mind of every police officer that they should never occur again.

There was a lack of definition concerning what a complaint is, but the situation has moved on. On the back of the thematic inspection, the service has not waited for committee meetings or for the Scottish Executive: it has moved on. It has got together through ACPOS's conduct and discipline sub-committee—of which Mr Wood, the deputy chief constable from the Lothians, is the chair—and has taken on board every recommendation of the inspection, almost without exception, to some extent. The recommendations have different implications for different forces—that is the way in which they have worked out—but the spirit of the report has been whole-heartedly taken on by the Scottish police service.

The situation regarding the rules for counting complaints has also moved on, and the Accounts Commission has decided to use the number of complaints per 100 officers as a performance indicator for Scottish police forces. That has necessitated—over and above the requirements of the HMI report—the police getting their act together to establish a definition of a complaint and to start counting complaints according to the same information. Although that is well down the line, it is hoped that that will happen Scotland-wide by 1 April, so that forces will be ready to take up the reporting rules that are set out by Audit Scotland. Working to the same definition will put us all on the same footing and the existing anomalies identified by the HMI report should be sorted out.

Christine Grahame: I am rather sorry that you did not give the example of the two cats, convener. That case study struck me as interesting—the escape of the two cats was the subject of a full complaints procedure and the supervisory officer received counselling for the failure to ensure the safety and security of the two cats while exercising a search warrant.

On a more serious note, I accept what Mr Brown says about things having moved on since the report was issued. As you said in your opening remarks, there is no uniformity between constabularies—or even police stations—in respect of the complaints procedure. That is highlighted in the suggestions for pursuing the transparency of complaints.

I want to focus on the simple complaints made by the public. Mr Brown referred to Lord Advocate's guidelines and local directions by procurators fiscal. Can you give an example? Do they apply to every constabulary equally?

Chief Constable Brown: Yes. The Lord Advocate would issue guidelines to the service Scotland-wide. They may relate to a variety of issues, such as the police use of firearms, the way in which reports are submitted to the procurator fiscal service and how we deal with the media.

To go back to the previous question and to balance the case studies, I would draw the committee's attention to HMI's declaration that, in the vast majority of cases, complaints are dealt with thoroughly and professionally.

Christine Grahame: Sometimes such cases are recorded and go through every hoop—as did the case of the two cats—while others are not logged or treated in that manner. I was referring to the need for uniformity.

You said that the First Minister or the sheriff principal can call for a report. Can you give me an example of an issue that might command a report? Would the chief constable provide such a report?

Chief Constable Brown: The most recent and high profile example would be the case of the murder of Scott Simpson in Aberdeen. The then secretary of state called on the chief constable of Grampian police to submit a report on the investigation of that crime. The chief constable of Grampian was required to submit a report to the secretary of state. That was a comprehensive report.

Christine Grahame: Is that in the public domain?

Chief Constable Brown: It was not in the public domain.

Christine Grahame: What would happen to the report after that?

Chief Constable Brown: The Scottish Executive and the First Minister—at that time it was the secretary of state—would make a judgment on the force's performance in respect of the case. In that particular case there was considerable debate between senior civil servants and the force executive about the detail of the

report, before it was accepted. On the back of that, the then secretary of state called for an independent report, which was submitted by Mr Graham Power. That report was a public document.

Christine Grahame: I would like to come back to the role of HM inspectorate of constabulary. It reviews a complaint if the complainant is dissatisfied. How often is that taken up?

Chief Constable Brown: I cannot give you figures on that. I can talk about the issue in general. If a complainant is dissatisfied with the way in which a complaint has been dealt with, they will contact Her Majesty's chief inspector of constabulary for Scotland, who will review the handling of the complaint. HMI's responsibility is to examine how the complaint has been dealt with, but it is not HMI's role to reinvestigate—it has no such powers. HMI may call on the police force to carry out further inquiries. That happens regularly, although not frequently.

Christine Grahame: The information that we have in front of us says that a copy of the report goes to the chief constable. You are a chief constable, so have you ever received copies?

Chief Constable Brown: Yes.

Christine Grahame: How many?

Chief Constable Brown: I have been in Grampian police for two and a half years and I have received three such requests. That figure is off the top of my head, but is pretty accurate, I think.

Chief Superintendent MacMillan: By way of clarification, roughly 40 to 50 dissatisfied customers go to HM inspectorate of constabulary each year. It is interesting that you have picked up on this. The roles that people have within HMI are such that the lay inspector personally deals with the scrutiny of a complaint. The lay inspector will get full copies of all the papers—which could be sent by the police force or which the lay inspector could get by visiting the police force and taking the files. He or she will then go through them in detail and prepare a written report for HM chief inspector of constabulary. Only then will a final decision be taken, either to accord with what the police force has done, or—as Mr Brown has said—to indicate to the chief constable that more work may need to be done. Although the lay inspectors do not have investigatory powers, they do have the power to ask us to reopen and reconsider a case.

Neither the police force nor HM inspectorate of constabulary has stood still. HMI now not only writes to the chief constable about dissatisfied customers and about the outcome of its investigations, but writes separately—to more or less close the loop—to the police authority. HMI

writes directly to the police authority to tell it that there has been a dissatisfied customer—whom it identifies—from its force area. It sends copies of the correspondence to the original complainer and to the joint board. In most forces, the joint boards have added an item to their agendas in which the chief constable or deputy chief constable reports to the joint board on dissatisfied complainers against the police. We are rigorous in the way that we do that. It has been a good move on the part of HMI to ensure that there is no suppression within the police. From a police perspective, we welcome that.

Christine Grahame: Is the complainer told what the direction to the chief constable is?

Chief Superintendent MacMillan: Yes.

Christine Grahame: May I therefore ask the chief constable how forceful that is?. I see that HM inspectorate of constabulary can direct only and that it has no other power.

Chief Constable Brown: It is very forceful. It is not backed by legislation, but I would never consider refusing to carry out further instructions or requests from HMI. The consequence of doing so would be that we would not resolve the issue. A difficulty that HM chief inspector of constabulary faces is that he or she does not have the authority to tell a complainer that the matter is not worth pursuing: the inspector must pursue it as far as the complainer wishes. It would be for the inspector to say whether he or she would want that power. From my perspective, the best solution is to provide a degree of satisfaction. That will not occur if I do not respond positively to HMI's requests.

Phil Gallie: I would like to ask the chief constable about the figure of 2,263 that he gave for the number of complaints. About 60 per cent of those were reported to the procurator fiscal, who found that only 17 had substance. Does that perhaps suggest that the regulation leads to an over-zealous approach? If we compare the police as an employer with other employers with internal disciplinary procedures, is the number of cases passed to the procurator fiscal not over the top?

Chief Constable Brown: I would not describe it in that way: I would say that we take a very careful approach to ensure that it can never be alleged that matters are being covered up or not properly dealt with. It is a consequence of seeking to be open and transparent. It is something that we need to live with and that the fiscal service needs to live with. It leads to considerable work for the service, but I do not regard that as improper.

Phil Gallie: Thank you. With respect to the procurator fiscal's involvement, Douglas Keil suggested that he is concerned about the length of time it took to have complaints resolved. Going to

the fiscal probably extends considerably the length of time and increases anxiety in individual police officers. There might be other consequences, to which I will refer in my next question. However, does the combination of the length of time, the procurator involvement, and perhaps a lack of procurator resources, create a problem?

10:30

Chief Constable Brown: I would not presume to comment on the resources of the Crown Office, Mr Gallie, but you have a point. On the one hand, officers who are at the receiving end of complaints sometimes have to wait a considerable time for them to be dealt with. On the other hand, a complaint from a member of the public implies some criminality and ought to be thoroughly and robustly investigated so that it can be properly dealt with. It should be seen to have been properly dealt with. I suppose that that is our dilemma.

There is no question but that the service in general—the other associations can speak for themselves—would welcome a method for dealing with those matters more quickly. The Crown Office is considering how it deals with complaints against the police and will report internally in the near future. I do not know what that report will contain, but its contents will be shared with the police service and it will, no doubt, involve cross-service debate.

Phil Gallie: Thank you for that answer. As the convener suggested, we will discuss how to take this forward. Your answer will help us to decide which line to go down.

When police officers are reported to the procurator and have a charge laid against them, does their position and the fact that they have to uphold law and order bring about suspension in some cases or in every case?

Chief Constable Brown: It brings about suspension in some cases; it depends on the detail of the charge, on the circumstances surrounding it and the accessibility to other people and to information. No single rule is applied, but you can take it for granted that the more serious the charge, the more likely it is that suspension will occur.

Phil Gallie: Off the top of your head, could you give us a rough estimate of the percentage of the 1,247 cases that have passed to the procurator that have resulted in suspension?

Chief Constable Brown: I cannot, and I am not sure whether my colleagues can. Mr MacMillan deals with complaints every day—perhaps he is in a better position to answer than I am.

Chief Superintendent MacMillan: I cannot speak for Scotland as a whole, but in Strathclyde

police, with a force of 7,000, five officers are suspended from duty. Over the past two years, it has fluctuated between four and 13. It is a duty that is taken on board by deputy chief constables. I speak with knowledge from across Scotland. With the utmost seriousness, in many respects it is a draconian power to take someone away from their employment. The Scottish Police Federation represents the majority of police officers and I am sure that I reflect Mr Keil's position when I say that suspension has a huge impact on people's private lives.

One individual was suspended from duty for an assault for which he was subsequently found not guilty. He was immediately reinstated, but while he was suspended he lived a lie for three months. To hide the fact from his family, he left his house every day half an hour before he was normally due to start work, sat in his car and went back at night. We underestimate the effect of suspension. Sometimes we hear calls for suspension. It is to the forefront of every deputy chief constable's mind. Deputy chief constables do not use the power lightly but, in my view and that of the association, they use it appropriately.

Phil Gallie: Given the low number of charges that the procurator brings, I acknowledge some relief at that reply.

Maureen Macmillan (Highlands and Islands) (Lab): How easy is it for the public to complain? You say that there are many vexatious complaints, and I am sure that some people in criminal circles make a career from police complaints, but ordinary members of the public who have had only one experience with the police and who were not too happy with the courtesy and attitude of the police when they dealt with them may not know about the police code of conduct. I know one or two people who have been in that situation. How are they informed about the code? Are leaflets available? Are they only in police stations? May we see a leaflet? Many people would be diffident about complaining even when they had a genuine complaint. How can they be encouraged to complain? The system must be open to everybody, even if that means a lot of work for the complaints officer.

Chief Constable Brown: I do not want the committee to believe that I think there are an enormous number of vexatious complainers; there are some vexatious complainers and some persistent complainers, who are difficult to deal with.

HM inspectorate of constabulary clearly makes the point about accessibility and has some recommendations about the ability to report complaints against the police at places other than police stations. I assure the committee that leaflets are available throughout the country to inform

people of their rights, the procedures and what will happen to complaints against the police. I suppose that the issue comes back to the perception about which we have all spoken. We think that some pretty robust procedures are in place, but not everybody knows about them. That is an issue that we need to overcome.

Chief Superintendent MacMillan: I will leave behind the leaflet about complaints against the police for you to read.

Maureen Macmillan: I would like to see that.

Chief Superintendent MacMillan: It outlines all the details about complaints against the police and the role of HM inspectorate of constabulary.

It is important to distinguish between complaints about the actions of individual police officers—which we in the force term complaints against the police—and complaints about policing, such as one about a lack of police officers in an area. When you are in the police service, you become comfortable with that distinction, but public perception has not always had such clarity. A complaint about a lack of police officers in an area is a complaint about policing, and is distinct from complaints against the police, as bound by the regulations.

Maureen Macmillan: I understand the difference. I was referring to incidents that I know of. A young lad was on the cash desk of a filling station where there was a robbery. His parents felt that the police treated him like a suspect, when he was innocent. People often moan and complain to one another about the police, but those complaints are not often talked through with the police. It would be good if there were a way of doing that.

Chief Superintendent MacMillan: The police service has moved on recently—in the past 10 years or so. We are a modern police service and it is much more acceptable on the policing side to have people challenge what we do. The fact that we are relaxed about being called to appear before the committee today to advance our views shows that.

Police officers on the street are happy to discuss matters. The methods of investigation are similar to the complaints processes. We try to get to the truth of the matter. Sometimes, that means that police officers must take stringent actions. Sometimes, the questioning can be a bit vociferous. Sometimes, people feel as though they are suspects. I cannot discuss individual cases, but the investigator must strike a balance in getting to the truth.

We would hope that it would always be taken that, later on, the investigator would go back and talk to the individual and explain the reasons for their actions. Conciliation, as Mr Brown

mentioned, is very important to the service. That is not something that we were always good at, but we have improved enormously in recent times.

Maureen Macmillan: When complaints are investigated, how closely is the complainant kept informed about what is happening?

Chief Superintendent MacMillan: I must stress that if a complaint is dealt with locally at the outset—there is scope in the regulations for the deputy chief constable to put a process in place to allow a local inspector to deal with a complaint on minor matters—it is often done to the total satisfaction of the complainer. If it is not dealt with locally and is pursued more formally, the complainer will receive a letter informing them of exactly what is happening. If it is a criminal complaint, the letter will include the information that the matter has been reported to the procurator fiscal and it will highlight the exact role of the procurator fiscal.

There is a criticism in the HMIC report about the number of times a complainer is seen by police officers as the investigation develops. We think that that is a strength—continually updating people about the progress of their complaint both verbally and in writing. During that process we can assess the level of satisfaction about the way in which the complaint has been dealt with. That is another process that is employed throughout Scotland. At the conclusion of an investigation, we revisit the complainer to tell them what we have done. We ask the complainer if there is anything else that they can think of that we should do. That is then taken on board.

The level of satisfaction among people who have lodged complaints is very high. The dissatisfaction with the complaints system comes from many people who have not been through the formal process. It comes down to perceptions. We welcome interaction with the complainer and we update them at every turn.

Michael Matheson (Central Scotland) (SNP): I want to go back to Mr Keil's comments about how complaints are dealt with. The convener highlighted some examples in the HMIC report that were not referred to the procurator fiscal service and did not go through the complaints system.

You mention that there seems to be a problem with the definition of a complaint. There is a need for such a definition. Do you have any suggestions as to how to define a complaint?

Douglas Keil: HMI took that on board. There are some definitions of complaints in the current regulations, but there is an absence of a general definition. We proposed a simple dictionary definition and I think that that has been introduced—Mr MacMillan will correct me if I am wrong. Mr Wood and his ACPOS committee might

have addressed that.

There should be cross-force understanding of what a complaint against the police is. Mr MacMillan mentioned that there is a distinction between a complaint about the actions of an individual officer and those of a force. Previously, that was not understood clearly across Scotland. Perhaps Mr MacMillan can tell us whether a common definition has been established. At the time the report was being drawn up, there was no common definition.

Chief Superintendent MacMillan: The HMIC report says:

"Official complaints are made in many different ways but in terms of the regulations they are defined as being either:

a report, allegation or complaint from which it may reasonably be inferred that an act or omission, or an alleged act or omission, of a constable of the force concerned amounts or may amount to misconduct; or

a report, allegation or complaint from which it may reasonably be inferred that a constable of a police force may have committed a criminal offence."

That is the usual legalistic speak. The Accounts Commission has streamlined that slightly and has produced a more acceptable form of words. I do not have that revised definition with me. The definition means that any allegation against the actions of an individual officer on duty—specifically the actions of an officer—constitutes a complaint against the police. The definition is wide reaching.

Michael Matheson: Has that been taken on board by forces across Scotland? Is it a uniform definition by which they all stand and to which they all operate?

Chief Superintendent MacMillan: It is. The recording processes for that should be in place by 1 April 2001. The difficulty that arose was that to comply fully we would need technology to be in place. It could not be done overnight. Every force will be moving down that line by 1 April.

10:45

Michael Matheson: He can correct me if I am wrong, but I believe Mr Keil said that any changes in the system had to improve the system for the individual who is making the complaint, provide some protection for police officers who had had complaints made against them and improve public confidence in the process. Is there an appropriate balance between those three areas under the present system? If not, which of them is deficient?

Douglas Keil: Mr Gallie mentioned my comments about delay in the system. Delay is extremely frustrating and difficult for a police officer who is subject to an investigation. While there is concern about that, there is also

understanding. We know that every complaint made against a police officer is investigated rigorously. If we could dedicate the same time and resources to investigating complaints made against the public as we do to those made against police officers, we would all be delighted.

In one way or another, police officers can have a significant impact on people's lives, so there is also an understanding that we should be careful about how we operate and that the whole system needs to be dealt with properly. Having said that, a police officer is in a unique position. He is not an employee under employment legislation; he is the holder of an office. He does not have access to an employment tribunal. We are dealing with a peculiar category. As the body that represents 98 per cent of all police officers in Scotland, we are concerned that, at any point in the development of a new system, we should think about that unique position.

As I said at the outset, we have an extremely fair system. It is perhaps not as well understood as it should be, but from the point of view of the person making the complaint, it is a good system. What has brought about the current debate is public confidence in the system. If anyone is thinking about changing the system in any way, it should be done by addressing the three different elements: the person making the complaint; the individual officer who is the subject of the complaint; and the general confidence in the system. I do not feel able to rank those in terms of importance—they are all important.

Gordon Jackson: We have largely been discussing how complaints are handled, but the subject of self-regulation was raised because there is unease about the principle of it. It is an issue for solicitors as well. I have spent most of my life dealing with the police, sometimes making complaints against them, sometimes—in the Crown Office—deciding whether to prosecute them and, on rare occasions, defending them, but I have never known whether we should have a totally independent complaints procedure. I would like your comments on that, with the following in mind.

It seems to me that there are two, almost contradictory, reasons why we should have such a procedure. The first is that no matter how well we put systems in place, the public will always believe that the police are covering themselves. It is impossible to change that perception, however unfair it might be. If the initial responsibility is with the police, the public will say that the police will look after one another. The opposite end of the matter is that, often, because the police are anxious to avoid that perception, they are too tough on one another. That might have been the point that Phil Gallie raised.

I have acted for police officers who have been suspended for over a year and who have been to hell and back. I take Nicol MacMillan's point: it is hellish for a policeman to await trial for a year and a half while suspended from duties. Often, there was no basis for prosecution at all; the system merely wanted to be as transparent as possible and the police were being over-zealous. I wonder whether an independent system might—in a funny way—deal with both ends of the matter, however contradictory they might seem.

Chief Constable Brown: You have described the problem well. Finding the answer is much more difficult. The service is unbending in its approach to any form of criminality, which will always be reported. However, it is not only the police service that is strict on those matters. If the matter has gone to court, the prosecution service will be strict as well. We must keep making the point that another line needs to be dealt with.

As I said, the police service has no philosophical objection to the idea of an independent body dealing with such matters. However, the problem is who would be on that body. How many people would be needed? How would the body be funded? How would its members be trained? We could come up with answers to those questions, but we still would not know what the body might cost. Where would the added value be? That is the key question. I believe that the police service investigates complaints against itself robustly, although, on occasion, something will fall through the net—that will always happen, no matter who is dealing with the complaints.

I accept that public perception will be that it is improper for an organisation to investigate itself. However, I believe that, if we find a middle road, that might go some way towards dealing with that perception. Members of the public read stories in newspapers that cover both sides of the border and assume that the situation is the same in forces throughout the United Kingdom. However, the systems are entirely different. The independent element of the procurator fiscal gives enormous strength to the Scottish position.

The proposition that I put to the committee is that ACPOS and the other associations would have no difficulty with the inspectorate reinventing its role with different clothes on. The inspectorate's role is to pick up unsatisfied complainers, review the complaints and direct chief constables to do more if necessary. That role could be reinvented in an independent authority that would have those powers and more; it could have an inspectorial role that would involve dip sampling and auditing of forces. I have no objections to that, but I do not have an idea of the shape that the organisation would take or how many people would be in it. I ask the committee to think seriously about what

added value there would be in the process, with which HMI has declared itself satisfied. We need to ensure that we have some form of audit that deals with the perception that the process is not fair.

Gordon Jackson: I do not want to nag about this, but I would like you to comment further on public perception. Obviously, there are great problems in my constituency. I have a superb relationship with the senior police officers there—in fact, with all the police officers there, for whom I have nothing but the highest regard. However, 500 people might attend a public meeting on police in the area. Such a meeting can be hostile—it is, as the superintendent would say, a greetin meetin. I suspect that if I polled people in Glasgow, particularly people who deal with the police in various ways, on whether they had confidence in the police investigating complaints, the answer would be a big-time, resounding no. I do not suggest that that is fair, but I think that it is important that that perception be minimised. The nature of policing communities is such that that perception will never go away completely. For that reason alone, would it not be worth while to introduce an arrangement that is more apparently independent? Ironically, that might be less tough on the police than the present system is.

Douglas Keil: We, too, have made that point. The easy way out for us would be to advocate total independence and to wash our hands of the whole thing. It is perhaps unfair to refer to the public and mean every member of the public, but I know precisely what Gordon Jackson is talking about—there is a widely held belief that it is wrong for the police to investigate themselves. I think that if we had no more to do with investigations, and even if they were conducted by a former Post Office investigator or someone from the military, the public would still feel that the police were closing ranks and were not prepared to own up to wrongdoing.

I hope that we will not take the easy way out. Mr Brown has listed some of the potential problems with a wholly independent system, of which cost is probably the major one. I do not know who would have the necessary skills and experience to carry out investigations. Who would appoint them, to whom would they be accountable and what powers would they have? Would there be one independent body to carry out all investigations, even into the complaint about the lady and her two cats that was mentioned? The task would be massive for any other organisation to take on.

As I said, when the consultation paper is produced, we are prepared to consider an additional element of independence. Beyond that, the only way in which public perception can be altered is if information is given to people on how

the system works. It is perhaps the responsibility of us all to ensure that that happens.

The Convener: I will switch tack momentarily to discuss the broader issue of policy and how police policy interacts with what Government wants, particularly in relation to the recent fuel protests. Certainly, there was a perception—I am thinking about events south of the border, where the second set of protests did not get off the ground to the same extent as did the first—that the second time round the various police forces took a different approach to dealing with convoys of lorries. One can believe that that was because individual chief constables decided to do something differently, or because they came together to formulate policy, or perhaps even because they talked to the Home Secretary. We did not have an opportunity to see whether the approach of police forces in Scotland would have been any different. Will you comment generally on how receptive police forces are, or should be, to the Government's desires, regardless of whether those desires are expressed privately or in newspaper columns?

Chief Constable Brown: You have raised several issues. I will deal with the last one first, which relates to the tripartite arrangement on delivering policing. That involves the Scottish Executive, the police authorities and the chief constables. The chief constables remain operationally independent. That does not mean that we do not listen to our local members—we would fail to do so at our peril. Neither does it mean that we do not engage with ministers and senior civil servants.

There were several lengthy meetings on the fuel dispute, which were attended by a range of agencies and were chaired by a senior civil servant. The meetings dealt with issues that emerged in connection with the 60-day deadline—I will talk about the first two days later. The Scottish police service's response was to put together a group of people, which became the Scottish police information centre. We had officers from almost all forces, planning what we would do. We had a common policy and approach on how we would police the rolling convoys, on how to deal with blockades if they occurred and on how to relate to local authorities in the event of rationing.

11:00

Only with regard to forecourts did we feel a need for statutory support for some of the work that we might have had to do. Luckily, it did not come to that. There was an entirely co-ordinated approach to the second phase of the protest. The same approach was taken throughout, from the starting points of the convoy in Inverness and just north of Aberdeen to the eventual procession in Edinburgh,

although there were slight differences of opinion within local authorities on whether the procession was conducted within the terms of the Civic Government (Scotland) Act 1982. None the less, the progress of the convoy was facilitated in a way that caused minimum disruption and allowed the demonstrators to make their point.

In my view, the operation was fairly successful. Much of that was the result of good liaison with the demonstrators themselves. We had talked to them about their plans and about our expectations, making it clear to them in advance what would happen if certain things took place, and we outlined some of the scenarios. We cannot know whether it was all that work that allowed the event to pass off without enormous disruption on the Monday and Tuesday or whether it would have passed off without disruption in any case. Let us assume that the planning was worth while—I believe that it was.

In the first two days, events seemed to arise from nowhere. Police forces had to respond in whatever way they felt to be right at the time. We were of the opinion that we needed to take a long view, not necessarily a short view with a robust approach. We felt that we needed an approach that offered the best chances of reaching a conclusion with minimum disruption over a lengthy period. I cannot prove to you that what we did succeeded in achieving that—we had two days of disruption in the north-east and there was a further day of disruption in Tayside, but that was it. We had engaged with the people who were demonstrating and we outlined what was acceptable and what was unacceptable in the circumstances. Our belief was that a robust, hard-nosed approach on the first day might have broken relationships to the point where it would have taken longer to have come to a conclusion. We could argue that point all day, but that was the position.

I believe that the purpose of your question, convener, was to find out whether we get together to have common policies. Yes, we do—we had a policy for that dispute. We have also developed a Scottish strategy for dealing with race matters, for example. We have a range of strategies, to which all police forces are signed up. Those strategies are formulated week on week, through ACPOS working groups.

The Convener: You said that you had formed an impression—or conveyed a notion—of what was acceptable and what was unacceptable for the first two days. As a result of your contacts with the Executive, had the definitions of what was acceptable and what was unacceptable changed by the time the second situation arose?

Chief Constable Brown: We had certainly learned some things from the first time. Through

extensive research, we had found out that not many remedies were available to us in law. We could raise the issue of careless driving, which carries the appropriate penalties. We could also have dealt with the situation through common law on breach of the peace. In truth, however, criminal law is not well set up to deal with 30 or 40 lorries and their drivers. Even if it was, the nation does not have the lifting equipment that would be required to take them away.

During that time, we learned that it was necessary to have a good relationship with the people concerned. Our assessment was that they had strong feelings, but that they were, to a great extent, business people who had a long-term objective of staying in business and who were amenable to suggestions about how they should conduct themselves. That assessment proved to be correct.

Christine Grahame: I have two brief supplementary questions—one is more for Mr MacMillan or Mr Keil and the other for Mr Brown.

My first question is about the complaints procedure, which we went through at great length at the beginning of our discussion. I refer to page 32 of “A Fair Cop?”, which says that

“during the inspection it was revealed that many front line police officers know little of the police complaints procedure and do not know how to find out more. If the level of ignorance among police officers encountered by HMIC was representative then it is not unreasonable to assume that to the average citizen the police complaints procedure must be an area of even greater potential misunderstanding.”

The witnesses tell us that things have moved on since the report was produced, but I would like their comments on that statement.

My second question is to do with self-regulation, on which Gordon Jackson raised some excellent points, as usual. At the end of the report, there are models of systems that are in place elsewhere. Have the chief constable or any of the other witnesses given any thought to those models and do they have comments on them?

For example, the New South Wales procedure has three separate bodies that can deal with complaints as well as an ombudsman who can give directions. In that procedure, different levels of complaint can be dealt with in different ways. That might cure the nub of the problem, which is that, no matter what the witnesses tell us about self-regulation, people outside do not believe them. I say that as a lawyer and therefore as someone who is in many respects in exactly the same position. Although I have sympathy for much of what the witnesses are saying, lawyers will never overcome the problems associated with self-regulation and I suggest that those problems will not be overcome in relation to self-regulation in the police service unless something that is seen to

be independent of the profession is implemented.

Chief Superintendent MacMillan: I will respond to the first point on lack of awareness of the complaints process among police officers, which the report rightly identified. I believe that the problem varied from force to force. In my force, an oversight of exactly what the complaints process comprises—it is quite different from internal misconduct procedure—is part of the training for every probationary constable. That is now replicated in many other areas.

Over time—and it will take time—every police officer in Scotland will have knowledge about the complaints procedure. We do not sit back; we react when people point out our failings. That is certainly the case for my department, although perhaps that is a luxury, given that my department is the largest and may deal with these issues more often than other departments do. We also provide an input on complaints processes into courses at the Scottish Police College at sergeant, inspector and chief inspector level and into specialised courses. The subject is covered in depth, particularly for the ranks of inspector and chief inspector, because people at that level are more likely to have complaints landing on their desks as deputy sub-divisional officers or as officers who assist in command units, depending on where they serve.

Those steps are being taken on a Scotland-wide basis and the knowledge is being widely spread. Mr Keil may have something to say on this issue, as the federation, through its membership, which covers the great bulk of people in our organisations, also puts out information both on how officers may find themselves on one side or the other of the complaints process and on the internal misconduct process. We are spreading the word and, although the report rightly highlighted the issue, I do not think that the problem occurs in every force—lack of awareness is more apparent in some areas than in others.

Douglas Keil: I have a brief response. It is true that the vast majority of police officers might not know intimately the detail of the complaints system, but they would know what constitutes misconduct and what does not. I suppose that officers would not be exposed to the mechanics of the process unless they were behind the eight ball by way of being the subject of a complaint.

It is important to put this in context. Of the millions of contacts that police officers have with members of the public in Scotland each year, there are relatively few occasions on which people make complaints. Police officers are not involved with the issue every day and as a result they would not have a close knowledge of how the whole system works. However, they are clear about what constitutes misconduct.

Christine Grahame: So you are not unhappy about what the report says. Are you quite content with the way things are?

Douglas Keil: When I read the report, I took it to mean that people were not closely aware of precisely how the whole system operated.

Christine Grahame: The report says that they “know little” of—not that they were not closely aware of or not intimate with—the police complaints procedure. If the police do not know about it, how are the public to find out about it?

Douglas Keil: A member of the public seeking to make a complaint against the police would not find it difficult to know how to go about it. That is a different thing from every police officer knowing precisely what the discipline system is.

Christine Grahame: I have to disagree with you. The report does not mention going into such detail, it simply says that officers “know little” of the system. Front-line police officers seem not to possess even a broad idea of what happens in the police complaints procedure, either to a police officer or to a member of the public. I take that to refer to bobbies on the beat, although you refer to higher ranks. There is room for misunderstanding between the public and the police.

Chief Superintendent MacMillan: Perhaps I did not clarify that properly. We are making an input into the training of probationary constables. That is in addition to the training that they received previously, which concentrated on an overview and in-depth insight into misconduct issues and the police code of conduct. We now give probationary constables an overview of the whole complaints process. There is a difference between the complaints process and the code of conduct. The definition that HMIC uses refers to the whole complaints process and is a million miles away from what police officers would be bothered with. They want to know what their powers are, what the code of conduct is and how they should go about their business. It is only when, in one interaction with a member of the public, officers have not acquitted themselves well and find themselves to be the subject of a complaint that they make an effort to find out what happens in the process. That is human nature. We have sought to fill that gap. The report was right to highlight the issue, but I do not see it as a huge problem.

Phil Gallie: I want to go back to the point that Maureen Macmillan made and consider the number of complaints that are made and processed. On how many occasions does the procurator fiscal refer back to you the detail of malicious complaints and ask you to investigate further, perhaps with a view to bringing a criminal prosecution against a complainer? Does the current system place constraints on you, given the

public reaction that there might be to such an action?

Chief Constable Brown: The answer to that is very seldom. It is one thing to be satisfied that there is no case to answer, but it is a fair leap to deciding that there is evidence to show that the complaint was made maliciously. That is very difficult to prove and there are few prosecutions for it. Mr MacMillan can give us some figures.

Chief Superintendent MacMillan: I can speak for Strathclyde police. In the past year and a half, three cases of false accusation against police officers have been referred back to us. In those cases, there was overwhelming evidence—investigations were conducted and people were taken to court, prosecuted and dealt with severely. The procurator fiscal service is alert to the problem. The committee might like to investigate the subject in future in relation to the self-regulation of the police. The fiscal service is perhaps best placed to examine the reasoning behind it.

There is no doubt that the huge majority of complaints, for whatever reason they are made, are found to be without substance. There is a reluctance to prosecute when false accusations are made. From my association's point of view—and it is my personal view as well—it is right that we take that stance. Otherwise, the public would not have confidence in the system. We have talked about public confidence already; public confidence would be undermined if prosecuting malicious complainers became the norm.

The Convener: I would like to ask about the national police forces, the Scottish crime squad and the Scottish Drug Enforcement Agency. HM chief inspector of constabulary makes certain recommendations when he feels that a situation is not ideal. Anyone would guess that the existence of an organisation that is not within the structure of any existing police forces may lead to problems of accountability. How will the chain of responsibility of those organisations develop, especially in relation to complaints?

11:15

Chief Constable Brown: The chief inspector refers to that and he recommends that the service should consider the issue. The organisations that you refer to are not disciplinary authorities in themselves; he suggests that that needs to be looked at. I have no difficulty with that proposition. Currently, if allegations of misconduct are made against a member of staff of the Scottish Police College, the Scottish Drug Enforcement Agency or the Scottish Criminal Records Office, the allegations are referred back to the chief constable of the force from which he or she was seconded. I do not think that that works badly, although I

concede that things might be better focused if allegations against people were dealt with by the senior officers of the organisation for which the people worked. The ACPOS sub-committee on complaints will be considering that issue, because HMI has raised it.

The Convener: Is there not a danger that the organisations are too small and that people know each other too well for allegations to be dealt with effectively?

Chief Constable Brown: Allegations would not necessarily be investigated by a member of the organisation concerned, although the outcome may be dealt with by its senior officers. These things are not yet decided, but the option remains for allegations to go back to the parent force, should that be deemed necessary. There needs to be some flexibility—HMI may be referring to a current lack of flexibility. Management within the organisations could deal with some trivial or minor things, but that does not happen because the procedures do not allow it.

Maureen Macmillan: A chief constable has expressed concern to me about self-contained units, in which there is room for corruption. I do not really want to use that word but, in the worst-case scenario, it could occur—if a unit is self-contained, there is no good way of keeping an eye on it.

Douglas Keil: These issues will undoubtedly arise in the review that Mr Wallace has recently announced of common and collaborative police services. A problem at the moment is that the people who head the Scottish Police College and the Scottish Criminal Records Office are not entitled, in the regulations, to take an interest in matters of discipline. If there is to be significant reform of all those small groups, disciplinary matters could feature in the review.

The Convener: I thank the witnesses for their attendance and their full and frank answers. I apologise to Deputy Chief Constable Wood who, because of a late substitution on the list of witnesses, was not given a name-plate and was not able to come to the front to participate. If you have anything to add, deputy chief constable, your microphone will work.

Deputy Chief Constable Tom Wood (Association of Chief Police Officers in Scotland): Thank you, convener. I have a cold and my voice is a bit dodgy, so it is probably just as well that I did not have a speaking part. I think that all the points have been covered fully. I have enjoyed the debate.

The Convener: Thank you all, gentlemen.

11:19

Meeting continued in private until 11:27.

Members who would like a printed copy of the *Official Report* to be forwarded to them should give notice at the Document Supply Centre.

No proofs of the *Official Report* can be supplied. Members who want to suggest corrections for the archive edition should mark them clearly in the daily edition, and send it to the Official Report, 375 High Street, Edinburgh EH99 1SP. Suggested corrections in any other form cannot be accepted.

The deadline for corrections to this edition is:

Friday 15 December 2000

Members who want reprints of their speeches (within one month of the date of publication) may obtain request forms and further details from the Central Distribution Office, the Document Supply Centre or the Official Report.

PRICES AND SUBSCRIPTION RATES

DAILY EDITIONS

Single copies: £5

Meetings of the Parliament annual subscriptions: £500

The archive edition of the *Official Report* of meetings of the Parliament, written answers and public meetings of committees will be published on CD-ROM.

WHAT'S HAPPENING IN THE SCOTTISH PARLIAMENT, compiled by the Scottish Parliament Information Centre, contains details of past and forthcoming business and of the work of committees and gives general information on legislation and other parliamentary activity.

Single copies: £3.75

Special issue price: £5

Annual subscriptions: £150.00

WRITTEN ANSWERS TO PARLIAMENTARY QUESTIONS weekly compilation

Single copies: £3.75

Annual subscriptions: £150.00

Standing orders will be accepted at the Document Supply Centre.

Published in Edinburgh by The Stationery Office Limited and available from:

The Stationery Office Bookshop
71 Lothian Road
Edinburgh EH3 9AZ
0131 228 4181 Fax 0131 622 7017

The Stationery Office Bookshops at:
123 Kingsway, London WC2B 6PQ
Tel 020 7242 6393 Fax 020 7242 6394
68-69 Bull Street, Birmingham B4 6AD
Tel 0121 236 9696 Fax 0121 236 9699
33 Wine Street, Bristol BS1 2BQ
Tel 01179 264306 Fax 01179 294515
9-21 Princess Street, Manchester M60 8AS
Tel 0161 834 7201 Fax 0161 833 0634
16 Arthur Street, Belfast BT1 4GD
Tel 028 9023 8451 Fax 028 9023 5401
The Stationery Office Oriel Bookshop,
18-19 High Street, Cardiff CF1 2BZ
Tel 029 2039 5548 Fax 029 2038 4347

The Stationery Office Scottish Parliament Documentation
Helpline may be able to assist with additional information
on publications of or about the Scottish Parliament,
their availability and cost:

Telephone orders and inquiries
0870 606 5566

Fax orders
0870 606 5588

The Scottish Parliament Shop
George IV Bridge
EH99 1SP
Telephone orders 0131 348 5412

sp.info@scottish.parliament.uk

www.scottish.parliament.uk

Accredited Agents
(see Yellow Pages)

and through good booksellers