



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

JUSTICE SUB-COMMITTEE ON POLICING

Thursday 5 September 2013

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JUSTICE SUB-COMMITTEE ON POLICING
9th Meeting 2013, Session 4

CONVENER

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

COMMITTEE MEMBERS

*John Finnie (Highlands and Islands) (Ind)

Alison McInnes (North East Scotland) (LD)

*Margaret Mitchell (Central Scotland) (Con)

*Graeme Pearson (South Scotland) (Lab)

Kevin Stewart (Aberdeen Central) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Superintendent Niven Rennie (Association of Scottish Police Superintendents)

Deputy Chief Constable Neil Richardson (Police Scotland)

Calum Steele (Scottish Police Federation)

CLERK TO THE COMMITTEE

Joanne Clinton

LOCATION

Committee Room 6

Scottish Parliament

Justice Sub-Committee on Policing

Thursday 5 September 2013

[The Convener *opened the meeting at 13:18*]

Complaints and Investigations

The Convener (Christine Grahame): I welcome everyone to the ninth meeting of the Justice Sub-Committee on Policing and ask those present to switch off mobile phones and other electronic devices completely as they interfere with the broadcasting system even when switched to silent. Apologies have been received from Alison McInnes and Kevin Stewart. However, the members of the committee who are in attendance are robust. We shall see, though, whether they keep up with that description—and I should say that we will go on to 2.15 if necessary.

The only item on the agenda is the first of three evidence sessions on the very important issue of the handling of complaints and investigations under the new policing arrangements. This session will focus on complaints and investigations involving Police Scotland and the majority of its police officers. Complaints about senior officers are dealt with by the Scottish Police Authority, which will give evidence at our next meeting, on 19 September. In our final session on this topic, which will be held on 3 October, we will take evidence from the Police Investigations and Review Commissioner, known to us all as PIRC.

I welcome to the meeting Superintendent Niven Rennie from the Association of Scottish Police Superintendents; Deputy Chief Constable Neil Richardson, designated deputy chief constable, Police Scotland; and Calum Steele, general secretary of the Scottish Police Federation. Although we will focus on rank-and-file police officer complaints, the witnesses should not feel inhibited—I am sure that they are not—about commenting on the other system.

John Finnie will begin the questioning.

John Finnie (Highlands and Islands) (Ind): Good afternoon, gentlemen, and thank you for your submissions.

We now have a new system, but I have had experience of two previous systems: the discipline and misconduct systems. Can you comment on the transitional arrangements between the misconduct system and the current system?

Deputy Chief Constable Neil Richardson (Police Scotland): I am happy to kick off.

The transition is one of the areas of activity for Police Scotland and the legacy forces that have gone reasonably well. Clearly, it is not without its challenges and questions, and I am quite sure that such challenges will continue to arise in the months and years to come. However, a clear partnership approach was adopted to this issue and individual elements came around the table to draw on the good practice that existed in the eight forces and the on-going work that was being undertaken by the Association of Chief Police Officers in Scotland to ensure that lessons from the past were picked up with the opportunity that was presented with the move to a single service.

I think, therefore, that the experience has been relatively smooth. Checks and balances are in place in a number of areas, and I meet the staff associations regularly to compare notes and identify and—I hope—intervene early on any issues that might be emerging. However, the volume of complaints and activities has remained relatively consistent and no warning bells have been ringing in the broader environment.

In short, my general observation is that things have gone pretty well.

Calum Steele (Scottish Police Federation): I would to a large extent echo Mr Richardson's comments. The amendments made to the legislation for 1 April were largely technical to reflect the move from eight forces to one. In the next few months, we will move to a whole new set of conduct processes as a result of which we will be focusing a lot of our attention on changing our approach to misconduct and such investigations.

There will be one particular benefit for the new Police Service of Scotland. We—and indeed the headlines—often tend to look at complaints about the police in terms of identifying bad behaviour and practice but, with the single service, we will be able to identify particularly good practice and approaches to addressing what might be seen as shortcomings. As Deputy Chief Constable Richardson has pointed out, the fact that we can do that on a whole-service basis with all the associations and the service's management getting together regularly is definitely a good thing. Previously, we might have been following either good or bad practice around the eight forces and having to deal with what might almost be described as a ripple effect of issues that would start in one area and over time make their way to another. What we have now is certainly an opportunity to do things right first.

Superintendent Niven Rennie (Association of Scottish Police Superintendents): I do not have anything to add to those comprehensive comments. The opportunity to meet the deputy chief constables to discuss individual concerns is

welcome and has been a very good development since the introduction of Police Scotland.

John Finnie: The move in 1996 to the misconduct regulations was supposed to remove the previous quasi-judicial approach and allow a more managerial—I think that that was the term—approach to such matters. However, police officers still perceive the regulations as fairly draconian because of the severe penalties that can be handed out. I suppose that such penalties are appropriate, but is there sufficient understanding of the complaints system, particularly where there are allegations of criminality and where there is an obligation on Mr Richardson to forward information to the Procurator Fiscal Service?

Deputy Chief Constable Richardson: There is an understanding, but it is also fair to say that there is a sense of frustration that we regularly have to answer questions about the time the process takes. After all, this will be an unsettling and difficult period for anyone subject to allegations. That situation continues and, in all probability, will do so as we move forward. In terms of the understanding of the process, who has primacy and how that plays out, I think that there is a well-recognised appreciation of that.

Superintendent Rennie: Some people have difficulty with the fact that it is still possible to have two bites at the cherry. An officer can be found not guilty in court and still appear at a misconduct hearing. On some occasions, that may be appropriate, but there have been occasions on which we have had concerns when individuals have found themselves in that situation.

John Finnie: Given what I said about the intention behind the move from a discipline system to a misconduct system being to have a more managerial approach, is it possible that a lighter touch could be taken to complaints about service delivery issues? For instance, I know, as a former councillor, that if someone were to complain about a council vehicle that was parked on the pavement, the council might say to everyone, “Can you be a wee bit careful?”, whereas the police might want to charge someone with a minor road traffic offence. Would it be possible to have a more measured response to some of the lower-level issues?

Deputy Chief Constable Richardson: My single priority with the transition was to achieve consistency of practice across the country, because even in areas in which there were standard national guidelines, there were still differences in application. I have been pretty strong and as consistent as I have been able to be on that very point.

I do not want to use the misconduct process as a tool. In a sense, I am encouraging officers to act

on their own initiative. I completely recognise and accept that they operate on their own, with no supervision, in difficult circumstances and that they need to make judgments. I cannot encourage officers to take risks and make judgments on their own initiative if I slam people with a misconduct book every time they make an error. I am acutely aware of that, and I have said on a number of occasions that I will deliberately separate the two. When it is obvious to me that an error of judgment has been made or that something has happened that indicates that someone might benefit from some corrective advice, a chat with their line manager or something along those lines, that is exactly what we will provide—we are doing that.

There is probably scope to continue that standardisation. Although there is probably more to be done in that regard, I think that we are making pretty good inroads.

Calum Steele: Yes, I think—in fact, I know—that Mr Finnie is absolutely correct. In a past life, someone with whom I used to work once said that if the police were a restaurant and a complaint was made about the food, the waiter would end up being sacked, as they were at the point of delivery. That summed up the attitude of a lot of people to how wrongdoing was perceived—the fault always lay at the final point of contact.

If I may, I will briefly return to the previous question about whether the processes are properly understood. I do not believe that they are generally well understood. That is not to say that they are not well understood by the service—I believe that they are—but I do not think that there is a widespread appreciation of the difference between misconduct and criminal inquiries or criminal investigations. For example, I regularly meet individuals who believe that when a police officer retires—as they are entitled to, having knocked their pan in for 25 or 30 years or more—any complaint that is outstanding terminates at that point. Criminal inquiries go on regardless. We see that in all walks of life, and the suggestion that comes up now and again that police officers are retiring to avoid being investigated is the result of a widespread misunderstanding of what the differences in the processes are.

John Finnie: I would like to ask a final final question, if I may.

The Convener: Of course.

John Finnie: It is for Mr Richardson or Mr Rennie. I commend the practice that one of your constituent forces had in the past of publishing the number of letters of appreciation that came in as well as statistics on allegations of misconduct by officers. The fact that letters of appreciation greatly outweigh the number of allegations of misconduct sometimes gets lost.

The Convener: I think that MSPs could do with that as well. Some days we get letters of thanks, but they are thin on the ground.

John Finnie: I am sure that you take the point that I am making. The vast majority of officers go about their duties extremely diligently. If someone takes the trouble to write a letter, that is worthy of recognition. That would act as a counterbalance to some of the negative publicity that is associated with the rare occasions on which officers err.

The Convener: I do not think that our witnesses will disagree with that.

Deputy Chief Constable Richardson: No—absolutely not.

The Convener: We will move on, then.

13:30

Margaret Mitchell (Central Scotland) (Con): I seek comments on the SPA's decision to instruct local commanders not to provide information about local police complaints to local authority police committees.

Calum Steele: I am aware of the recent publicity surrounding that issue. From recollection—it was not that long ago—I am pretty convinced that the Scottish Police Federation had concerns during the development of the Police and Fire Reform (Scotland) Bill about where the locus or responsibility would lie for supervision or examination of complaints. Given the specific roles that are now allocated to local authorities and to the Scottish Police Authority, we are strongly of the view that it is entirely appropriate that local authorities should be given information about service complaints and issues that genuinely fall within their massive area of responsibility, such as developing the local policing plans. However, I do not believe that it would be appropriate to throw open wholesale the examination of complaints about conduct or misconduct by police officers because, at the end of the day, that is not the local authorities' role or function under the Police and Fire Reform (Scotland) Act 2012.

Although certain things that happened in the past might be nice to have, I do not believe that they are necessarily essential. One example that might or might not be relevant just now is that it is possible that someone who was on a local police board or authority might, some years later, turn out to have been investigated by the police for a number of deeds of misconduct and could find themselves involved in criminal proceedings in court. We would need to consider whether it would be appropriate for such an individual to scrutinise the actions of the individual police officers who had investigated them.

Margaret Mitchell: There is a distinction to be made between the particular case in Fife—in which there could well have been an unjustifiable intrusion, although I do not know the details—and the blanket instruction from the SPA not to provide even a bland figure about the number of police complaints in a local authority area. I believe that that tips the balance in the wrong direction, especially given that, as I understand it, the SPA in effect investigates itself. Is that a reasonable assertion?

Calum Steele: Given that I answered the previous question, I will respond to that, too. There is always the question of who guards the guards. We have raised that previously and it was picked up on very sensibly by Mr Pearson.

Graeme Pearson (South Scotland) (Lab): That was a change.

The Convener: He said it before any of the rest of us could.

Calum Steele: We laboured the issue about the position of the SPA at the start of the reform process, but we will always get that issue with any hierarchical structure that goes to an end point. There will always be someone at the top of the scrutiny chain who is responsible for scrutinising themselves—we cannot have independence ad infinitum. As to whether it would be appropriate for local authorities to be made aware of the general number of complaints, I would have no objection to that, although I do not know whether it would be useful or helpful.

Superintendent Rennie: It is for the SPA to answer on that policy but, from my association's point of view, one big issue about forming a national force was the need to continue to engage with communities so that there is community confidence. Providing that sort of information to communities can do nothing but increase confidence and transparency, so we would have no objection to its being provided.

Deputy Chief Constable Richardson: The SPA is to give evidence on the issue, and it is probably more relevant for it to offer specific answers to those questions. However, without wishing to defend the SPA, I understand that, particularly on the Fife issue about access to information on specific complaints, its position is simply that nothing is written in stone. We are more than happy to discuss the issue and refine our position if it appears necessary or desirable so to do.

There are a couple of issues. Again, I approach the matter from the position of having been involved in the restructuring of arrangements on the basis of a mandate for considerable change. It is not reasonable to maintain and sustain old ways of working as well as new ones. For example,

under the old arrangements, local authorities would routinely dip-sample complaints to satisfy themselves that there was a level of rigour and professionalism associated with them. If we were to continue that process, that would need to be maintained and managed, which would have a resource implication that, frankly, is no longer in tune with the arrangements and structures that we now have in place.

Given the new arrangements, we must review the SPA's responsibility for safeguarding the public interest as far as complaints are concerned. There is a point of principle. Complaints, in my view, form part of a number of indicators of the quality and level of service that is being delivered in communities. A community, therefore, might legitimately ask for a suite of information in order to gauge whether the services that they are getting are of the appropriate standard. That is not unreasonable.

Again, that forms part of an on-going discussion with regard to local scrutiny committees. I might have this wrong, but my understanding of the SPA's position is that it will be refined, as we move forward, in discussion with relevant interested parties.

Margaret Mitchell: That is useful because, obviously, the police view on that will influence the SPA when it comes in. It is fair that a bland number is given, as there must be a balance between providing a snoopers' charter and indicating how many complaints there have been. If the numbers have gone up drastically every time you meet, there is clearly a problem. That is an exaggerated example, but such a system will enhance clarity and accountability.

I want to ask you about yesterday's landmark decision by the Court of Session, which went against Strathclyde Police in stating that its handling of a complaint did not comply with the European convention on human rights. Are you completely confident that all the new arrangements are ECHR compliant? We have already looked at the SPA, which will investigate itself.

The Convener: That is one for you, Mr Richardson, as you are quoted in *The Herald* as saying:

"We are confident the structures and processes around complaints ... introduced ... are robust and do not require to be reviewed."

Please expand on that.

Deputy Chief Constable Richardson: Indeed. My view of how things have gone relates, as I said, to the fact that the whole system was structured around human rights and the need for the public to value what we do and how we do it. The public must be comfortable and confident that

the system is acceptable, because policing by consent depends on that.

The safeguards that were put in place in creating the PIRC seek to deal with the legacy arrangements. In the past, if there was a police pursuit in an individual force, we would ask another force to investigate on our behalf, so there was a level of separation. Again, that was generally acceptable and was regarded as such for many years.

When the eight forces became one, that approach was no longer possible. We could have considered going down south, but the difference in the legal systems, procedures and whatnot meant that that was not desirable, so the PIRC took on that role and many others.

The concerns that have emerged from the Ruddy judgment were at the forefront not only in our minds all the way through, but in the minds of Government, PIRC and Crown representatives. We have reached a sensible set of arrangements that, at this stage of the game, seem to be working quite well, and there is nothing to give me any cause for concern that the human rights position has in any way been compromised as a consequence of the change.

Margaret Mitchell: Having lodged a motion for a members' business debate opposing a proposal to put complaints in with the Scottish Public Services Ombudsman, I am delighted to see that the PIRC has been set up and that independence is enshrined in that role. However, I still have concerns about the SPA.

Given that it has taken nine years for the Ruddy judgment to be handed down, are we facing a potential slopping-out scenario in which other cases will be brought now that a precedent has been set?

Calum Steele: The answer to that is really, "How long is a piece of string?" I qualify what I am about to say by noting that I am not legally qualified. There are potentially some difficulties ahead. The Ruddy judgment is massively important in its own right, and it will have a lot of implications for the Police Service. There is no point in pretending that it will not, as the fact that the judgment questions the credibility associated with the independence of investigation means that the system will continue to be examined in considerable detail.

What we have gained through the creation of the PIRC may well be a happy accident, but I reinforce my point that I am not legally qualified. If the judgment in its own right raised questions over even the independence of a police force in investigating another police force, I wonder how much credence would be given to a police force or a police officer in investigating themselves, even

under the supervision of an independent body. I will be interested to see how that plays out.

With regard to the judgment taking nine years to come, you can blame the police for a lot, but we cannot be blamed for the slowness of the judicial process.

Graeme Pearson: It is early days yet for that.

The Convener: Mr Steele makes an interesting comment. The press cutting that we have from *The Herald* says:

"The creation of the new Police Investigations and Review Commissioner in April this year offers a more robust and independent complaints handling process. However, lawyers"—

well, lawyers will be lawyers—

"believe it still falls short of being ECHR-compliant because some initial complaints are still handled by police officers."

You have also made that comment. Does anybody want to comment on that?

Superintendent Rennie: There are different categories of complaint. We need to take care in how we deal with the more serious complaints. General misconduct and low-level complaints can be dealt with quite quickly, and being quick in responding to a complainer and giving them that satisfaction is important. However, we must ensure that we have an element of independence in dealing with more complex complaints so that our investigations stand up to scrutiny.

The Convener: I think that a lawyer might dispute the definition of "complex" and the impact that an incident has on somebody's life. What might not be complex or a big deal to senior officers might be a big deal to the person on the front line and might have a big impact on their life. That is an issue.

Graeme Pearson: I acknowledge that it is a very difficult area to address. However, as Calum Steele alluded to in an earlier submission, it is important for confidence in the police that we do that. There is ignorance about how the system works, so there is a deal of work to be done. Primarily, it is Mr Richardson's work to advertise to the public and to officers how the system works and what they can expect of it. I was on the receiving end of the complaints process in my previous employment and I know the impact that it can have on officers' lives for a considerable period. The vagueness with which the process is administered can add to the anxiety of individual officers.

Let us return to the point that Margaret Mitchell raised about this particular case. The nub of the matter seems to be that the initial police investigation was conducted by an officer from the same force. There is now only one force, and it

appears from the flow chart that the initial report relating to a complaint will be similarly compiled. What gave you confidence in that? What did you hang your hat on to say, "We're now in a better position"?

Deputy Chief Constable Richardson: Sorry—with regard to what?

Graeme Pearson: I am talking about the future handling of complaints and ensuring that no one can challenge the independence of the process.

Deputy Chief Constable Richardson: I would not say that nobody could challenge it. People will be entitled to their—

Graeme Pearson: No, but you say that you have looked at the current set-up and you are confident. What elements of the new process made you confident?

Deputy Chief Constable Richardson: What we have that we did not have before is the opportunity to develop consistency and a single line of approach. That is achievable with a single service, but it was not achievable with eight forces. We had an ACPOS oversight committee that tried to share good practice and ensure some level of consistency. However, as we know, the reality was that things played out very differently and the parameters around where and when an individual was suspended looked very different in every force. The same was true regarding restricted duties and across the board.

We now have a series of single, standard national mechanisms in place, which go up and include partner bodies. We have a criminal allegations against the police division—CAAPD—which is headed by Kate Frame and deals with all Crown Office and Procurator Fiscal Service referrals that have a criminal element to them.

We have a single template for reporting and are going through an education process so that officers who are involved in this domain across the country are familiar with and aware of what is required. Next, we will have a meeting to discuss operational statements, which represent another area in which the situation is mixed across the country and needs to be standardised.

13:45

There is still work to do on a number of things that are related to the process in a more general sense. However, we have an opportunity now to do that work, and things are starting to become more consistent in a number of areas. That is a reason for confidence and optimism.

In addition, stakeholder engagement is now far simpler. Yesterday, I met John McNeill and representatives from the Crown Office, Her

Majesty's inspectorate of constabulary for Scotland and all the key stakeholders to discuss the reality of the business that is flowing through and where we can, if necessary, make adjustments. A number of actions flowed from that meeting that I think are sensible and will help us to take on the learning that we have gathered during the five and a bit months of Police Scotland's existence, and to refine the processes. The experience that we have gathered in that time shows that, compared with the situation previously, there is reason to be optimistic about how we can pick up on good practice and make it happen straight away.

Graeme Pearson: I do not think that we can take this issue much further at the moment. It is always difficult to deal with something that is merely a media report that summarises some, but maybe not all, of the facts. I do not think that consistency, good practice or learning were the points at issue in that particular article; it was about the person who did the first report. That will be something that we need to have a second look at. However, given that you are confident, I wish you good luck with the confidence in the future.

I want to deal with some mundane but practical issues that will help public understanding. We were lucky enough to see a flowchart that set out how police complaints will be dealt with in future. It indicates that the second stage of the handling is the recording and initial assessment, before a decision is made about whether the complaint should be categorised as non-serious, serious or criminal. Could you rehearse for us what post will make that assessment? How will that be handled in the years ahead? Who will do that?

The Convener: That is a good question. However, before you answer it, could you give examples of what would be considered to be a non-serious allegation, a serious allegation and an allegation that would be seen as being in between those two? That would be helpful.

Graeme Pearson: I was going to ask that next. *[Laughter.]*

The Convener: I am so sorry.

Graeme Pearson: That is alright.

The Convener: I thought that we were working as a team.

Graeme Pearson: We are.

Deputy Chief Constable Richardson: A minor complaint might concern the sorts of things that generally fit into the quality-of-service bracket—for example, a situation in which an officer who is attempting to quell a situation is perceived by a member of the public to have acted in an overbearing or overzealous fashion. That might be seen as potentially a matter of misconduct but, in

the overall scheme of things, it is probably a relatively minor one.

The serious end would involve complaints about what I would term corruption—for example, officers using their office for means that are outwith our expectation or acceptable norms. Such examples span the sublime to the ridiculous—from officers accepting money from serious organised crime groups to officers accepting a free bag of chips that has been offered because they are wearing a uniform. Broadly, those complaints fit into the serious category.

The Convener: What about the grey area? When would somebody's overzealous behaviour, which you have suggested might be relatively minor, tip into a more serious category? Could you give us a flavour of that?

Deputy Chief Constable Richardson: It is difficult to answer that because the matter comes down to a subjective judgment, and all the cases are different.

In all cases that involve suspension or restricted duties, there is a single point of reference, which is me. There are staff within the complaints and conduct world, and they are headed by a chief superintendent. There are various people who will make formulations, sometimes using a strict matrix that enables us to consider various tipping points. Following that, reports go up to—currently—Val McIntyre, the chief superintendent of our professional standards department, who makes a recommendation that then comes to me. For anybody whose duties they want to restrict or anybody who they suggest should be suspended, ultimately it is me who takes the decision.

In a similar way, Val McIntyre, as the head of this business discipline, takes personal ownership of many of the judgments about what fits into which categories. Sometimes that is subjective and you could look at the same circumstances and take a different view about whether a complaint is serious, minor or whatever. However, as far as I am concerned, it is more important to provide consistency to ensure that the process that goes towards achieving the outcomes is common. Mistakes might be made or there might be a difference of view, but that can be picked up in a monitoring process, which we also carry out.

With that approach on an on-going basis, I am more likely to be able to reach a point of confidence whereby I can say, "I understand these categories" and I can, in turn, report that to the Scottish Police Authority, which is still trying to find its feet in relation to some of these discussions but is very active. Indeed, at the last Scottish Police Authority meeting, one action was to set up a workshop and training day so that we could bring it up to speed with some of the things that I am

talking about and give it an opportunity to think through how it can engage with the process in its capacity to provide scrutiny. In that way, it could give us checks and balances and, frankly, give me some level of assurance that somebody is checking my homework.

Graeme Pearson: That is useful. We have identified that you, by the hands of your various servants, make the decision about where the boundaries lie. Do you anticipate that, although there will never be a definition of the categories, as the experience of a single force develops you will be able to explain to the public where the boundaries lie between each one?

You gave an example of a non-serious complaint and a complaint about accepting a gift, which is certainly criminal. It is the bit that the convener was interested in—about how we distinguish between non-serious and serious—that will be the challenge. As the process develops in the coming year, might you be able to give some insight into how the knowledge gained from that is utilised within the force?

Deputy Chief Constable Richardson: Clearly, the more cases that we process, the clearer the distinctions between the categories become to the organisation generally. The fact that new conduct regulations are coming through also provides an opportunity. We are in the process of planning a fairly considerable training exercise that will affect hundreds of officers in the service. That training provides an opportunity for us to instil some clarity on these issues within the organisation.

Graeme Pearson: The public would find it helpful if they could refer to a site that indicates where some of the boundaries lie. If a member of the public is on the receiving end of something, they will initially always see it as serious, but if they read some guidance and see where the boundaries lie, it might help with the handling of future cases.

I will move on to—

The Convener: Before you do so, does anybody else want to come in? Mr Rennie looks as if he wants to comment.

Superintendent Rennie: Having recently left a division where I was in charge of conduct—my comment also adds to my previous answer—I highlight that the vast majority of complaints that we receive at a divisional level are often ones whereby you can explain that the officer has made a mistake or point out the legislation that applies. Such complaints all tend to fall into the less-serious category.

The point that I was trying to make is that it is appropriate for those complaints to be dealt with at a divisional level by a local inspector. We

occasionally have to go out and say, “Sorry, we got it wrong,” but generally an explanation of why an officer acted as they did is sufficient to satisfy the complainer’s misunderstanding.

Graeme Pearson: Again, for public knowledge, in which circumstances will those events be recorded?

Superintendent Rennie: Every complaint is recorded. We also send a letter back to the complainer.

Graeme Pearson: I have another practical question. We received a summary of the various allegations that are pending by division, type and so forth. Although the various divisions are listed, at the bottom of the list is something called “Special Services”. For the public record, can you explain what special services are? Unfortunately, “Special Services” collect a number of complaints in some categories. I am sure that, in the public’s mind, there will be some devious answer, but to me the explanation seems to be reasonably mundane. Can you tell us what “Special Services” are?

Deputy Chief Constable Richardson: I do not have the document that you refer to.

The Convener: We will give you a copy—it is a Scottish Parliament information centre briefing. It is a private paper, so it was not in the public domain, but it is now in the public domain because of the question that Graeme Pearson asked. We were not functioning under some kind of special service here.

Deputy Chief Constable Richardson: Given that the table in the document shows territorial areas, I assume that “Special Services” are specialist services. That means officers who do not affiliate themselves to a geographical division but who are nonetheless in the public domain.

Graeme Pearson: So that means all forms of support agencies.

Deputy Chief Constable Richardson: That is correct.

Graeme Pearson: It could include specialist services from the criminal investigation department and dog branch, for example.

Deputy Chief Constable Richardson: Exactly.

Graeme Pearson: I just wanted to clear up any doubt in people’s minds about what “Special Services” might be.

This sphere is complex and has become all the more challenging with the establishment of the SPA, Police Scotland and the PIRC. My question is to Mr Richardson, who has the responsibility. Are the boundaries between each organisation’s responsibilities becoming clear? Will we shortly

understand exactly where Police Scotland, the SPA and the PIRC fit in the complaints and discipline process? We should not forget the Crown Office, too. Are you clear about how that will work?

Deputy Chief Constable Richardson: Those questions are extremely timely, because those points were discussed at the reference group meeting yesterday, which I mentioned I was at. In one or two areas, the experience of the process playing through over the past number of weeks has raised questions about activity that is taking place but is actually the responsibility of another agency.

A couple of things are happening. I will remain positive because there is reason to be so. The clarity will settle down, and examples will enable that. Having memorandums of understanding and all that stuff is all well and good, but clarity materialises only when we get into the thick of doing the business.

First, some of the experiences are helping to bring to the surface issues that will enable the discussion to take place. Secondly, I have confidence that we are meeting to discuss things instead of becoming entrenched behind our organisational barriers, which could easily have happened in the name of independence.

John McNeill chaired a meeting with the Crown and a number of us round the table to address the issues. Pretty constructive debate is happening and actions are flowing to enable us to deliver clarity and to look for ways to make any adjustments that need to be made, without compromising the Crown's responsibility for criminal complaints and so on.

We are ensuring that we understand the interactions. There are no clean lines and there never will be. We are talking about a Venn diagram—

The Convener: A what?

Deputy Chief Constable Richardson: A Venn diagram.

The Convener: I do not know whether I can be bothered to find out what that is.

Deputy Chief Constable Richardson: You would recognise it—it has overlapping circles.

The Convener: Oh aye—like pies or Olympic hoops?

Deputy Chief Constable Richardson: Indeed.

The Convener: I understand.

Graeme Pearson: Others call it a fudge machine.

Deputy Chief Constable Richardson: Such issues will always exist, but we can recognise how we operate in such a space.

The Convener: I have just clarified that Margaret Mitchell not only knows what a Venn diagram is but taught it.

Graeme Pearson: Excellent.

The Convener: I should have gone to her first.

Graeme Pearson: I do not seek to tie Mr Richardson down to a day, week or month, but does he expect clarity to come into place fairly quickly? I press the issue because, while there are doubts in the process, that has an impact not only on officers who are complained against, who will be partly on the receiving end of frustration and pensive thought, but—what is more important—on the service to members of the public, who could be damaged by how their complaints are handled if the authorities do not have clarity of purpose.

It would be unacceptable to leave a member of the public damaged for the rest of their lives and feeling that they were abused or let down by their handling just because you were all going through a learning process. Do you see the clarity arriving fairly quickly? Are you virtually there now?

14:00

Deputy Chief Constable Richardson: I think that there are two sides to that. One is that the clarity will emerge, so we have agreed that before the end of the year we will pull together a joint session at which we will be able to work through operating examples and dig underneath existing memorandums of understanding to get the clarity that we are talking about. I think that that is fine.

To come back to your point, I share your concern and anxiety about ensuring that we do not let anybody down in any of the domains, but I am reasonably comfortable that the arrangements that are in place are unlikely to do that. Criminal investigations will have primacy—there is no question about that. In some of the inquiries that we are dealing with at the moment, the work is happening and is not being delayed or slowed down. We need to sharpen up on the sequencing of things, which is more of a process issue, but I am not seeing glaring weaknesses in the activity around progressing an investigation.

Graeme Pearson: Can I ask one more question, convener?

The Convener: I dare not say no, or you will be peeved.

Graeme Pearson: I have a question on legacy. There were on-going misconduct and complaints cases in the previous eight forces that had still to be completed. I presume that they were handed

over to Police Scotland. Again, do you have the confidence that the current powers and opportunities that you have at your fingertips are sufficient to enable you to resolve pending issues, whether it is identified that misconduct has occurred or that a case should be closed? Has the system handed those legacy cases over to you in a state that you can deal with?

Deputy Chief Constable Richardson: I would say yes. I think that what happened was that the forces knew that the transfer was coming and, to be fair to them all, a considerable amount of energy was put in to try to shut down as many cases as they could so that the transferred amount was minimised. We are still dealing with some of those legacy issues, but there is not a high number of them and to the best of my knowledge they are being progressed without any specific difficulties that are a consequence of the change. Some of them are difficult issues, but they would be anyway.

Graeme Pearson: I suppose that I was worried that you would be in a position whereby you did not have the authority any longer to deal with some cases because of a fault in the way in which legislation had transferred those matters to you, or that you felt that you would face some kind of challenge if you tried to conclude the cases, for good or evil.

Deputy Chief Constable Richardson: No.

Graeme Pearson: You are happy.

Deputy Chief Constable Richardson: I am content.

The Convener: I want to move on, but I want to clarify something quickly first. Section 45(5) in chapter 7 of the 2012 act states:

“A local commander must provide to the local authority such ... statistical information on complaints made about the Police Service in, or the policing of, its area”.

From what you said, I take it that you were not talking about actual files, with data being exposed. Do I therefore take it that “statistical information” is being provided? You are nodding. What would happen if the statistical information was so small that, by its very nature, it disclosed the party involved? What is that statistical information? Is it just numbers, or is it numbers plus something else—for example, information about “Special Services”, which Graeme Pearson pursued?

Deputy Chief Constable Richardson: What we are talking about here is statistics—it is numbers. It would be virtually impossible—

The Convener: Classifications?

Deputy Chief Constable Richardson: Pardon?

The Convener: Are there classifications of the nature of complaints?

Deputy Chief Constable Richardson: Yes. It is a breakdown specifically relating to locality.

Graeme Pearson: Would it be similar to a breakdown of numbers for each area?

Deputy Chief Constable Richardson: Yes, although it carries a lot more detail than that.

The Convener: Does it?

Deputy Chief Constable Richardson: Yes. There is a breakdown in a consistent template so that all the areas get the same information at the moment.

The Convener: What does “at the moment” mean? You went a sort of funny way with your head when you said that—as if the system was not going to continue.

Deputy Chief Constable Richardson: Well, it might be enhanced as we go forward because of areas’ specific requirements. That is part of the evolution.

The Convener: You are on telly. The body language matters.

Deputy Chief Constable Richardson: It would be nigh-on impossible to identify individuals. If it came down to it, we would seek to ensure that the information was appropriately anonymised.

The Convener: Thank you. That was just a point of clarification.

John Finnie: I have a question for all the panellists. Mr Richardson talked about a meeting being held next week. It is hugely important that the public and your staff have confidence in the complaints process. Consistency has also been mentioned. The situation may have changed—I appreciate that knowledge is time limited—but my experience of assisting officers in six forces was that they all operated entirely different systems, and never more so than in the issuing of operational statements, which have been mentioned, too. Will clarification of that be obtained, and will that clarification say that the statements are ECHR compliant, for instance? It is very important that the officers who are affected understand that the process is just as fair to them as it is, quite rightly, to the public.

Deputy Chief Constable Richardson: From my perspective, the answer is yes. My colleagues on my right and left would expect me to ensure that that was covered.

At the moment, there is a lack of appreciation among officers of what their operational statements are needed for and whether they are likely to compromise their position if they

subsequently feature in a complaint or whatever. Those are legitimate questions. However, if they compromise the content of the operational statement in the first place, it becomes self-defeating. For example, the PIRC, in progressing an inquiry, might seek to minimise the impact on the service by not taking officers off their duties for interviews and simply asking for operational statements. However, if those statements are so bland that they do not give the PIRC the information that it requires to progress its inquiry, that is a waste of everybody's time. We seek to create an appreciation and understanding of what an operational statement is in this new world.

John Finnie: There is a balance with self-incrimination, of course.

Deputy Chief Constable Richardson: Of course, that comes into it as well. Before operational statements are used, we need to have a discussion with our colleagues to ensure that we are absolutely clear about how the system will play through, what safeguards exist and what safeguards do not exist. That discussion will start next week.

John Finnie: Will you look to the staff associations to disseminate that information to their members, or will something be issued that is badged by all three?

Calum Steele: It is almost as though you were at the meeting that we all attended a few days ago, as that is the very thing that we talked about. As you are aware, the issue of operational statements is massively complex. It is influenced significantly—I was going to say not helped, but perhaps that in itself would not have been helpful—by the Cadder judgment and what that meant for self-incrimination. It is only right that any employer should be able to ask their employee what they have been doing, but because of the nature of the police service and the expectations placed on it I do not think that there is the easy fix that some individuals might expect because of the real issues that have been identified.

You must not forget that there are millions of contacts between the police and members of the public annually and that the number of complaints is small by comparison. Although every group that investigates complaints has a propensity to focus on the negative, we recognise that the bulk of what police officers do on a day-to-day basis results in no adverse comment or criticism whatever. When there are such comments or criticism, we must ensure that the officers are treated fairly because individuals who complain about the police will take the view that if we do not treat the police officers fairly we cannot expect our staff to treat the public fairly.

John Finnie: Convener, can we secure information on developments regarding that issue? It is a pivotal part of the process. The system whereby officers are asked to account for their actions during any period can be seen to influence how the complaints process works.

The Convener: Do you wish to comment on that, Mr Rennie?

Superintendent Rennie: I think that it has been well covered. We welcome the fact that we have been involved in the discussion. Our role is to protect our members.

Margaret Mitchell: I will ask about the timescales for handling police complaints. The standard operating procedures say that receipt of a complaint should be acknowledged within three days, that the complaint should be dealt with within 56 days and that there is a six-stage process. Are the procedures working well?

Deputy Chief Constable Richardson: As with all these things, every case is different. We manage to deal with some complaints within those timescales but others are pretty complex and take longer. The truth is that the picture is mixed. There is a desire to bring the time down and I know from discussions with Kate Frame that there is a desire for a consistent timeframe for the initial investigation phase in misconduct and criminal inquiries that is a lot less than 56 days. I am trying, but I cannot quite remember what that figure is—I think that it might be 30 days. However, we must also ensure that the investigation is carried out properly and thoroughly, in line with other demands and so on. A balance has to be struck and it is still too early for me to make too many commitments in that respect. I want to let things run and then review the situation to see whether we can improve it.

Margaret Mitchell: Have any inquiries taken longer than 56 days and, if so, is there a procedure for dealing with such situations?

Deputy Chief Constable Richardson: What usually happens in the lead-up is that we get reports indicating that the inquiry is going to go over and setting out the reasons why; we then have discussions about what that extended period will look like. We leave nothing open-ended; we do not, for example, say, "Just submit the report whenever you can." The cases are monitored, managed and pushed but any that go over usually do so for a range of pressing reasons such as, for example, the availability of witnesses. I do not have any statistics but I can say that we do not have a long list, with cases routinely going over.

Margaret Mitchell: Have you learned anything from some of the complaints that have been received that would improve the service? If so, how would you communicate that?

Deputy Chief Constable Richardson: That is part of what might almost be described as a quality assurance process that happened in the legacy forces, but we are now building it in and expect learning points from cases to be fed through. We will get an on-going opportunity to sit down and review practice and policy based on experience.

Margaret Mitchell: What do you mean when you say that you expect any learning points to be fed through?

Deputy Chief Constable Richardson: Each investigating officer's report will contain recommendations and a narrative. If any learning points emerge from the process that would benefit others and might relate to, for example, a change in procedure or practice, I expect the inquiry officers to feed them in. Once they are fed into the mechanics of the professional standards department world, I would expect those overseeing the reports to feed them up to me and Val McIntyre's management group to ensure that they can be discussed.

In truth, we now have a very small number of people who carry pretty broad responsibilities, and Chief Superintendent Val McIntyre carries that responsibility across Scotland. Only one superintendent carries the misconduct responsibility, and they will have a high level of expertise and experience in that discipline. The same is true in a number of other areas, and those people make up the management team. They will have opportunities to pick up on good practice from the past four months' experience and feed that into the management process.

Superintendent Rennie: The local aspect is also important. The local management team, which monitors complaints, will look for trends in the types of complaints received and the behaviour of individual officers. As a result of the good practice coming from that, all staff will know about the throwaway line that is developing and will be able to address issues quickly and more locally.

Margaret Mitchell: Does the fact that those learning points go to the management team ensure that any good practice is disseminated Police Scotland-wide?

Deputy Chief Constable Richardson: There will be decisions and judgments to make, but it certainly gives us an opportunity that I do not think existed before Police Scotland was created.

Margaret Mitchell: No, I do not think that it did.

The Convener: Perhaps this is a daft observation and I should stop myself right now but it seems to me that the local police's relationship with and behaviour towards the public will differ

and that what might be considered unacceptable conduct at a very low level in one area might not be considered as such in another. Do you see my point? The kind of familiarity and chatty way of dealing with the public that might happen in rural areas, for example, might not be seen as fitting elsewhere. I am really asking whether there is still flexibility in relationships with the police in different areas. Is that a daft thought, or is it something that happens?

Deputy Chief Constable Richardson: It is a perfectly reasonable question. At the moment, a high percentage of quality of service complaints and minor complaints are sent to divisions to progress anyway. They are centrally managed, so we collate them and know how many there are and what progress has been made with them, but the active management of those complaints takes place at the local level. If there were local geographic nuances that needed to be factored in—

The Convener: Yes, that is what I am getting at.

14:15

Deputy Chief Constable Richardson: They will be picked up, because it will largely be the local officers who are progressing engagement with the complainers and individuals anyway.

The Convener: So it was not so daft. You know what I am getting at. There are relationships that some people might consider unacceptable but which are okay in a particular area and are not a breach of professional conduct.

Superintendent Rennie: It goes slightly deeper than that. For example, the public sometimes have a good perception of police officers with whom they have regular contact, but when they are stopped by road police and charged with speeding they take a different attitude to those officers. That can often lead to complaints, because it is not how they expect a police officer to speak to them.

The Convener: I understand that.

Superintendent Rennie: Our mailbag is full of such complaints.

Calum Steele: The point is perfectly well made. One thing that is not standard on this earth is human beings, and if you try to apply a standard approach to human beings you will never get happy outcomes. If the service tries to ensure that every single set of circumstances that any individual officer approaches is dealt with in a particular way, woe betide us, because we will not do well. It used to be said that to err is human and to forgive is not force policy. I certainly hope that we have overcome that kind of attitude, which can still exist in a number of areas, despite the best

efforts of Mr Richardson and the whole police service after 1 April.

Graeme Pearson: We have talked about all the circumstances of reporting. In a non-criminal case that is deemed to require a misconduct hearing, who will chair that hearing under the new process and how will the chair be chosen?

Deputy Chief Constable Richardson: There will be a pool of people who are appropriately trained and who are experienced. Nobody will go straight in to chair something without having been a co-chair for a number of such hearings, and we will ensure that their skills are appropriately maintained. The realities of geography mean that we must ensure that there is a spread, and there will be certain hubs across Scotland, but effectively there will be a small rotating pool of individuals to draw on. They will be selected through the normal selection processes for senior officers; we do not have many people at chief superintendent level anyway.

Graeme Pearson: So a chief superintendent would chair a misconduct hearing, and there will be a group of them around the country from whom you can choose.

Deputy Chief Constable Richardson: Yes, but it may not be exclusively chief superintendents. We may have superintendents doing it too.

The Convener: We would like to be kept up to date on progress with your Venn diagrams. Things may move backwards and forwards and we accept that this is a transitional period, but as things settle down we would like you to keep the committee informed. We would also like you to assist us when we take evidence in a fortnight's time, and thereafter a fortnight later. We have only another two sessions at the moment, but nothing is set in stone. Thank you.

Before everyone disappears, I remind members that the next meeting will be on 19 September 2013—same time, but not necessarily same place.

Meeting closed at 14:18.

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e-format first available
ISBN 978-1-78351-571-4

Revised e-format available
ISBN 978-1-78351-585-1

Printed in Scotland by APS Group Scotland
