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Pàrlamaid na h-Alba

Official Report

JUSTICE SUB-COMMITTEE ON POLICING

Thursday 19 September 2013

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JUSTICE SUB-COMMITTEE ON POLICING
10th 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:

Gillian Lafferty (Scottish Police Authority)

Ian Ross (Scottish Police Authority)

LOCATION

Committee Room 6

Scottish Parliament

Justice Sub-Committee on Policing

Thursday 19 September 2013

[The Convener opened the meeting at 13:16]

Complaints and Investigations

The Convener (Christine Grahame): Welcome to the 10th meeting of the Justice Sub-Committee on Policing. I ask everyone to switch off mobile phones and other electronic devices completely as they interfere with the broadcasting system even when switched to silent.

The only item on today's agenda is the second of three evidence-taking sessions on the handling of complaints and investigations under the new policing arrangements. The session will focus on the role and responsibilities of the Scottish Police Authority. To conclude our series of sessions on the topic, we will take evidence from the Police Investigations and Review Commissioner—known to us in a friendly fashion as the PIRC—on Thursday 3 October.

I welcome to the committee two witnesses from the SPA: Ian Ross, the chair of the complaints and conduct committee, and Gillian Lafferty, the head of complaints. Before I invite questions from members, Mr Ross would like to make a brief opening statement.

Ian Ross (Scottish Police Authority): Thank you for the opportunity to address the sub-committee today. As the convener said, I am the chair of the authority's complaints and conduct committee. With me is my colleague, Gillian Lafferty, who is the interim head of our complaints and conduct team.

The SPA considers complaints and conduct to be a fundamental area of our work. I give the committee our assurances that we take our new responsibilities in that regard seriously. From the outset, the board of the SPA made it clear that we wanted to create a complaints function and supporting processes that are transparent, timely and consistent for all parties. Our approach to complaints mirrors the SPA's overarching approach to governance. It is based around early and appropriate engagement and dialogue with other statutory parties, particularly Police Scotland and the PIRC; public accountability without the compromising of personal confidentiality; and a focus on outcomes, not just process. Good handling of complaints should enhance policing, not threaten it.

We have begun to establish a coherent and professional complaints-handling process and a robust reporting and scrutiny regime, both of which we recognise are integral to promoting public confidence in the system and in our police service. The first committee to be established within the SPA's governance structures—this was before 1 April—was the complaints and conduct committee. An interim dedicated complaints team was also in place before 1 April, and initial training was carried out with SPA members and staff working in the area. Work to establish appropriate policies and procedures around complaints handling and scrutiny of those processes began well in advance of 1 April, and was led by me.

Since 1 April, the complaints and conduct committee has met on three occasions, two of which were in open public session. We have established policies on unacceptable behaviour; actively engaged in addressing inherited, legacy complaints cases, some of which were complex and entrenched; scrutinised Police Scotland's complaints-handling process; established a memorandum of understanding with the PIRC; developed guidance to support the senior officer regulations; and maintained meaningful stakeholder engagement.

There is more work to be done. For example, we are working hard to refine a comprehensive performance reporting framework for both the SPA's and Police Scotland's complaints data. I can assure the committee that we are working to get that right.

I hope that that goes some way towards reassuring members that the SPA recognises the need for and is working to deliver a complaints function that is fit for purpose. I am happy to take any questions that members have.

The Convener: Thank you for your statement.

John Finnie (Highlands and Islands) (Ind): Good afternoon. Thank you for your opening statement, Mr Ross. I commend two things in it. First, you said:

"Good handling of complaints should enhance policing, not threaten it."

I also commend the practice of having open meetings.

I know that you have experience of previous systems and I would be interested in your comparison with them, particularly around the initial assessment of whether a complaint merits further action, which is an area in which there is potential tension. Can you give us some background to that, please?

Ian Ross: When we established our procedures and policies, we tried to pick up on the good practice that already existed. We looked at the

practice that existed in the legacy authorities and boards as well as the work that the Police Complaints Commissioner for Scotland had done previously in sanctioning solutions and holding to account. We also undertook quite a bit of informal consultation. We produced what we call interim procedures because we intend to review them in the light of experience. However, we believe that they reflect good practice.

A feature of those interim procedures is an early assessment of a complaint when it comes in, partly to make a judgment call about how it should proceed. It is particularly important to determine whether it is necessary for the complaint to proceed to investigation or whether it should be handled in another way. For example, it may not be a complaint; it may be a human resources matter or someone seeking information, in which case it could be a form of contact. We are acutely aware that a complaint should be handled appropriately from the beginning and put down the right pathway so that there is a consistent approach that is fair to the parties concerned—both the person who is being complained about and the person who is making the complaint.

John Finnie: Thank you for that. In the past, there was a perception that making the decision to investigate further was, in itself, a significant escalation. In the past, complaints would name an individual chief constable, and the potential still exists that, as the head, they will always be named. Having made the initial assessment and decided not to investigate a complaint, how can you reassure the complainer? Are they given a written explanation of why the initial assessment has suggested no further action?

Ian Ross: Part of the process is ensuring that we give the complainer full and effective feedback. We can talk only hypothetically but, if the decision was made not to proceed, it would be appropriate to give the complainer full, detailed feedback. As part of that, we would ensure that they were made aware that, if they were dissatisfied with that, there are other avenues that they could follow, which will now be available through the PIRC.

John Finnie: The fact that an initial assessment has determined that further investigation is not going to take place does not mean that no learning will come from the complaint.

Ian Ross: I am pleased that you have raised that point, as it is an important area. It is crucial that we adopt an approach through which we seek to improve performance and learn lessons, whether the complaint is about processes, points of detail and handling or communication. We are committed to that being central to the approach that we adopt. We must promote and establish good practice and be prepared to learn lessons. When complaints come in, some of which may go

to investigation, there may be points of learning all the way through the process that we will want to capture fully and share.

John Finnie: That is reassuring. Thanks very much.

Margaret Mitchell (Central Scotland) (Con): Thank you for your opening statement. You will be aware of a recent Court of Session ruling the nub of which was a finding against the decision in a historical case in which a police force investigated itself. Do you have any concerns about the fact that the SPA deals with complaints relating to the business of the SPA as a public body, including complaints about the chief executive, the board and individual members of staff?

Ian Ross: The simple answer is no, but it is important that I go beyond that and demonstrate why we are reassured. First, we operate within new or recent legislation and regulations that went through a process to ensure full compliance with a number of elements, particularly the European convention on human rights.

As for separating out the handling of complaints, any organisation, be it private or public, has to deal with complaints and there is nothing inherently unusual about an organisation dealing with complaints about itself, its members or its policies. The issue is how those complaints are handled, and the SPA has a separate and committed complaints and conduct team, which is led by Gillian Lafferty, and a dedicated complaints and conduct committee, which also has a degree of separation and whose activities are supported by training. It is important to maintain the sterile corridor that exists between them and people who are involved in other activities or involved at a senior level as officers.

The other critical issue is that we can make use of an independent investigator, whether it is the PIRC or, if it were felt to be more appropriate, someone else. We are fortunate to have the PIRC—indeed, we have made use of it and referred a number of points to it. That approach has worked efficiently and effectively.

Margaret Mitchell: You sometimes have to co-locate with personnel from Police Scotland. Given that you have to work so closely together and forge such relationships, do you have any concerns about the complaints handling arrangements and feel the need to monitor them?

Ian Ross: There is still some co-location, but it is fairly limited and is happening less and less. However, the complaints handling team is based in a physically separate and secure area. We felt such physical separation and limited access to be critical, not because we expected problems to arise but because we wanted people to be reassured.

Gillian Lafferty (Scottish Police Authority):

We certainly have our own processes and, as Ian Ross pointed out, we have clear corridors and separations for considering complaints, particularly with regard to members of staff. We have undertaken a lot of internal engagement, especially with HR colleagues, and we work closely with professional standards to ensure that our boundaries and respective roles are clear and—what is the word that I am looking for?

Margaret Mitchell: Distinct.

Gillian Lafferty: Thank you—clear and distinct. We also have clear boundaries for any areas that might need further discussion or investigation.

As Ian Ross pointed out, the complaints and conduct committee is a referral point in cases where, for example, my team has considered a complaint and reached a conclusion or recommendation. Such issues are ultimately for the committee to consider further before any final decision is made.

Ian Ross: The complaints and conduct team operates in a physically secure environment. I cannot just walk into its room as I have to be allowed in. It occasionally lets me in, which I obviously appreciate.

The Convener: The interesting question is why the team lets you in only occasionally. [*Laughter.*]

Ian Ross: I can tell you that everything is completely above board, convener.

The Convener: That was a very general response, but we will not press it any further.

Kevin Stewart (Aberdeen Central) (SNP):

Touching on the issue of legacy cases that you mentioned in your opening remarks, although I have not served on the complaints sub-committee of a police board, I have, as a police board member, regularly seen the sub-committee's minutes so I know that there are persistent complainers out there and I am quite sure that, as a new body, you will have had people raising cases from way back in the past. Can you give us some detail on that?

How will you deal with those persistent complainers? Do you have a plan of action that includes talking to those folks face to face, which often resolves difficulties, rather than having the poor practice that there probably was in some places before, when folks were written to or telephoned? That did not really get to the nub of people's difficulties. Will you go into detail on that, please?

13:30

Ian Ross: It is important to note that although some legacy cases may have those

characteristics, it is clear that there were on-going legacy complaints that transferred to us on 1 April and which we dealt with appropriately.

Kevin Stewart: Sure.

Ian Ross: It is important to deal with persistent complainers honestly, fairly and consistently. Just because someone is a persistent complainer, that does not mean that they do not have a valid complaint. The procedures exist to deal with that situation.

We look at the detail of the complaint, the heads of complaint and the allegations, and then deal with the complaint and process it as before. If the complaint recycled something that had been dealt with before—if the complaint had been raised and appropriately dealt with previously; perhaps it was even the subject of a referral to the previous body, the PCCS, and there was a complaint-handling review—we would refer to that, and the response would be clear and objective. Where there is some difficulty with a complainer and the nature of their complaint, we would still deal with it as an appropriate complaint. That is the critical thing.

We have in place an unacceptable actions policy, which was very recently agreed by the complaints and conduct committee. We used best practice from elsewhere, as we have done in a number of areas. We have talked to people such as the Scottish Public Services Ombudsman, engaging with him and with other organisations, and looked at examples of good practice and how certain situations would be dealt with. That is a new policy that we have just adopted.

The specifics of how an individual would be dealt with would be influenced by the circumstances. One would try to ensure that the approach was appropriate for the circumstances.

Kevin Stewart: Thank you.

You mentioned the unacceptable actions policy. I recently came across one such policy in a different body. When an individual is told that such a policy is being implemented, that can often be much more antagonistic and can cause even greater grief. How will you convey to a persistent complainer that you will use your unacceptable actions policy? Will that be done face to face?

Ian Ross: I am trying to suggest that one size does not fit all and that things depend on individual circumstances. I am very happy to share the policy with the committee. I will send it to the committee clerk so that the committee can examine it and see the basis of the approach that we have adopted.

I would never suggest that we would not meet someone face to face, but I would be hesitant to say that we would automatically do that because, although that might resolve a problem in the way

that you describe, it can sometimes have the opposite effect. It is important to have a little bit of discretion on the appropriate way to deal with a set of circumstances.

I emphasise that we do not suddenly rush to implement the unacceptable actions policy. I see that as something that would probably happen significantly down the road. The policy exists to be fair to all parties; it is not there to identify individuals and label them inappropriately.

Kevin Stewart: Would it be fair to say that common sense will come into play?

Ian Ross: I always like to think that common sense has an important part to play.

Kevin Stewart: I am a big fan of common sense, but it is sadly lacking in certain quarters. I wish you all the best in that regard.

The Convener: I have a supplementary question about your legacy cases. I note that complaints that raise allegations of criminal behaviour are passed to the Crown Office and Procurator Fiscal Service. How many legacy complaints did you inherit that are with the Crown Office and Procurator Fiscal Service, and how many are in train? Malicious complaints of criminal behaviour by an officer may have to be investigated. If you cannot tell me that information today, I would still like it. How many cases in which officers are maligned and almost suspended turn out to be unfounded? I am interested to know whether you have those figures.

Ian Ross: We have some complaints figures with us. I will ask my colleague Gillian Lafferty to summarise them, as she is much more familiar with them than I am. In general terms, our automatic response to any complaint that has an inference of criminality is to at least pass the complaint on to the Crown Office.

The Convener: Can you define “inference of criminality”? What would be the lowest level of allegation that would make you use that expression?

Ian Ross: If someone made an allegation that was considered to involve a criminal act, we would pass it on to the Crown Office.

The Convener: That is pretty low level—it could be anything, right down to breach of the peace. Does that apply whether someone is in or out of uniform?

Ian Ross: If there was an implication that the allegation involved breaking the law, we would pass it on to the Crown Office. It is in a much better position to make a judgment on that than we are.

The Convener: I appreciate that. I am just trying to get to the figures—the issue just popped

into my head when a colleague was talking about allegations that may be mischievous, persistent or malicious.

Ian Ross: Gillian Lafferty can give us some idea of the complaints figures. I do not know whether we can give you all the figures now, but if there are any that are outstanding, we will endeavour to give you those later.

The Convener: Yes, that would be useful.

Gillian Lafferty: We inherited 17 complaints from the former boards and police authorities. Of those 17 complaints, to date we have closed down four, with a further three awaiting consideration at the next complaints and conduct committee. A further two cases are currently being considered by the Police Investigations and Review Commissioner and one case is with the COPFS and is currently being considered. We do not have the outcome of that consideration yet—it is in the very early stages—but we would be happy to provide further details to you when we receive them.

The Convener: I realise that this is like asking how long a piece of string is, but it would also be useful to know how long the process takes. Obviously, if somebody has such an allegation hanging over them, speed—but also balancing the interests of justice—is of the essence. Is the process slow, expedited or what?

Gillian Lafferty: I cannot speak for other organisations but our aim would always be to move things through the process as swiftly as possible.

The Convener: I appreciate your aim—everybody would have that aim—but what about the facts?

Gillian Lafferty: At the moment, our aim is to acknowledge within three days complaints from complainants who are in contact with our office.

The Convener: No, no. I am talking about the criminal process—sorry, I am not being clear enough.

Gillian Lafferty: Sorry—I beg your pardon.

Ian Ross: I do not think that we are able to answer that. As regards the position, if I heard the statistics right, one complaint is currently with the Crown Office.

The direct complaints that we manage, handle and have full responsibility for are complaints against senior officers. We also have a responsibility, clearly, as regards complaints against the SPA and SPA staff. However, we also have a role in scrutinising how Police Scotland—through its professional standards teams—handles complaints.

Certainly, part of the data that is made available to us includes statistics that would give a summary of some of those points. However, criminal allegations against police officers below the rank of assistant chief constable are dealt with—in terms of their management—by Police Scotland through the professional standards teams.

The Convener: I appreciate that—but you can give us the other stuff to do with the senior ranks, which is of interest.

Ian Ross: That is right, and from the statistics, one such complaint is currently with the Crown Office.

The Convener: Thank you. There could be genuine allegations, but if someone really wanted to cause trouble, they could make an allegation that might make things quite hard for a senior officer over a long period. I am not taking sides, but obviously—

Ian Ross: Hypothetically, such a situation is possible and if we encounter one, we will seek to manage it appropriately. We have not yet encountered such a situation since 1 April.

The Convener: Right. Sorry about that, Kevin—do you have something else to ask?

Kevin Stewart: That is okay. I have just one other point about the local policing scrutiny bodies and their role in all of this. We are told that they will still get the statistics and information about the number and nature of complaints in particular local areas under the auspices of the Police and Fire Reform (Scotland) Act 2012. However, there seems to have been a little bit of a spat with Fife Council's police transition committee with regard to looking at what I think was a closed case. Can you perhaps go into detail on that? Do you think that it is wise for local bodies to hark back to closed cases?

Ian Ross: I think that a little bit of context might be useful here. Under the legacy situation with police boards and police authorities, it was not unusual—in fact, it was recommended—for the complaints committees or complaints working groups to carry out some form of dip sampling, where they would look at closed cases. However, the intention was that that would form part of the wider scrutiny role, so that they could get a full understanding of how a complaint had been handled. I think that there is some merit in that.

As regards the situation with Fife Council, I know that it has been suggested that the SPA said that that should not happen. I make it clear that at no stage did the SPA make any statement to that effect. We are not in a position to—it is not something that we have control over. I am aware that members of Fife Council have raised the issue. I have been involved in making a response

to them and have agreed to meet them—I will meet representatives of Fife Council within the next 10 days.

I think that the potential exists for local scrutiny to provide added value. As an organisation, the SPA will carry out a degree of that work, but it is clear that we are not in a position, from the point of view of resourcing, to do what was done previously. We are keen to explore how we can add value through working with local scrutiny committees, although there are issues that have to be resolved, because the landscape—legally and in another respects—has changed, particularly when it comes to any form of dip sampling of closed cases. I know that Police Scotland and the SPA are keen to explore how that might be taken forward, but there are issues that need to be resolved, particularly in relation to how that is done. There needs to be appropriate confidentiality and data management.

As far as the 2012 act is concerned, as you quite rightly say, there is an absolute commitment to data being made available. I think that that is extremely important. The question is how we can go beyond that. That is what we are exploring, and I am sure that the meeting that I have with Fife Council in just over a week's time will help with that.

Alison McInnes (North East Scotland) (LD): My question relates to the SPA's responsibility for the oversight of Police Scotland's handling of its complaints. I refer to a paper that was in front of the SPA's complaints and conduct committee on 22 August, in which it was reported to you that the recording processes were changing and that, following the creation of the Police Service of Scotland, it was

"the intention of the business area to implement recording off-duty criminal incidents as Prosecution reports instead of Criminal complaints."

It was also noted that

"the policy of recording off duty instances of officers/members of staff being issued Fixed Penalty Notices or Conditional Offers in relation to minor offences as Miscellaneous instead of a complaint"

had been adopted.

I would be interested to learn what discussions you had about those changes. What will their effect be? Will it be to take numbers out of the complaints system and, therefore, to artificially change the figures?

Ian Ross: There have certainly been issues with the adoption by some legacy forces of slightly different approaches. I know that Police Scotland is committed to ensuring that an absolutely consistent approach is adopted so that, when data is looked at, the data means the same.

As far as the specific question that you asked is concerned, I would probably have to come back to you with a bit more detail. I do not remember what level of discussion there was on that point, but I remember the discussion about ensuring that all areas and all divisions adopted a consistent approach that reflected what was agreed. As someone who was a member of a legacy complaints committee, my recollection is that some of the changes in question came in about two or three years ago and that all forces did not necessarily implement them in quite the same way. I think that that is the connection. However, I qualify that by saying that I would like to confirm whether I am being accurate and not misleading you in any way.

Alison McInnes: It would be helpful if you could get back to us on that because, regardless of how minor the offences are, it is important to be able to identify whether police officers have committed them. I would not like the figures to be obscured through the use of some sort of miscellaneous column.

Graeme Pearson (South Scotland) (Lab): Good afternoon. There are a number of areas that I want to cover with you, starting with the legacy transfer. How was that transfer achieved? Did the authority look at each case individually, satisfy itself about the content of the case and feel that it had taken appropriate responsibility for concluding it? Did you go through each case individually?

Ian Ross: Prior to 1 April, one of the exercises that we carried out was to ensure that we were beginning to get an understanding of quite what was out there. We engaged with all the legacy boards and authorities to begin to capture that.

In general, people were extremely helpful. There were one or two issues, but they were probably due to staff changes. We wanted to ensure that we had access to all the information and that we knew precisely how far a case had progressed, particularly in terms of the appropriate regulations.

13:45

We undertook a bit of liaison with other bodies with a similar interest, particularly the PIRC—formerly the PCCS. It was not in any way a negotiation over cases; it was more about ensuring that our understanding of what was out there was the same as its understanding. The critical thing was that, on 1 April, we were the responsible body, irrespective of who had been involved before. In some cases, things were at a particular stage in a process and, in general terms, we just took them on from that point.

We also felt that it was important that we had a full understanding of all the cases. A large part of the work that Gillian Lafferty and her team did was

about ensuring that they had a familiarity with an enormous amount of work. I am full of admiration for the work that Gillian and her team have done to come to terms with that. There may have been 17 cases—that is the quoted figure—but there was an enormous amount of material associated with them. Gillian may want to make some additional comments on that. At an early stage of the SPA's existence, we took stock—I would not call it an assessment—and were then in a position to judge how things should continue. We were, of course, also obliged to work within the regulations, including some of the transitional regulations. It is vital that, if scrutinised, we are seen to have ensured that we have delivered on that.

Graeme Pearson: The point of my question is that there was always the threat that someone could have delayed dealing with something because they knew that the authority was coming along, and you could have ended up being passed a case that was unsuitable for you to handle. However, you have at least had the opportunity to look at the work that was done in the eight different forces, and the fact that you have now accepted responsibility for the cases seems to indicate that you are dealing with cases that should be dealt with and need to be taken further on in the process. You are not going to come back to us in a year's time and say, "This should never have been passed to us in the first place." That would have been identified by this time.

Ian Ross: We respect the work that the legacy bodies have done.

Graeme Pearson: Of course.

Ian Ross: That comment is justified. Right from 1 April, we have been committed—as is demonstrated by the statistics that Gillian Lafferty has quoted—to moving forward and processing the cases in a way that is appropriate, consistent and fair to all parties. Four cases have been closed and three are at an advanced stage in moving towards closure. In some cases, we have dealt with a number of the allegations although the cases themselves have not been closed. We have been very efficient in dealing with the cases, some of which were complex and entrenched—to use a phrase that I used earlier—and went back a considerable time. That work has been done in line with the regulations and has been based on a full assessment and stocktake of the information that was made available to us.

Graeme Pearson: Thank you for that. We understand that senior officers—assistant chief constables and above—are subject to the regulations and that non-senior officers below that level are dealt with within the complaints and professional standards environment. Then there are staff, most of whom will be employed through the authority. Will the senior members of staff at

executive level be dealt with under a separate process, like the senior officers, or will they be dealt with in a process that is coterminous with that for other staff members, if I can put it that way?

Ian Ross: There are police staff and SPA staff, and the vast majority of civilian staff will be police staff who work within Police Scotland and are responsible to the chief constable. We have responsibility for SPA staff, who are not subject to the police regulations or the senior officer regulations but are dealt with through normal HR and conduct management. If there is a complaint, as opposed to an HR issue, it will be dealt with through the complaints and conduct procedures. There would be no difference in standards. It is important that there would be a consistent and transparent standard for the way in which a pre-assessment or, if appropriate, an investigation was carried out.

Graeme Pearson: I am grateful for your response. It is useful to have that information for the record, so that people externally understand the situation.

I will stay on that point. Within Police Scotland, some staff members are part of the executive board, such as the head of HR and perhaps some others. The other people who would sit round the table with them would be senior officers, subject to the regulations. If there is a difficulty—I hope that such a situation would never occur—about the complaints procedure for a staff member at that level, would you expect that to be handled internally by the chief constable or would it be remitted to the SPA to deal with?

Ian Ross: You are right—as far as I am aware, I do not think that any such situation has arisen. A decision has to be made about how to handle a case. I emphasise that I am talking hypothetically but, when dealing with a senior member of staff, you would probably make a judgment about whether the matter should be subject to an investigation and, if it was decided that it should be, you would have to decide whether it would be appropriate to handle the matter internally or to bring someone in from outside. In some situations, the answer might be that you could handle it internally, but in other circumstances there would be a benefit—perhaps from a perception perspective rather than in reality—in having it handled externally to ensure that there is that separation. If the person concerned was a member of police staff, that decision would clearly be one for the chief constable. I have no doubt that he would apply good sense, as he consistently does.

However, what would be appropriate—and I am sure would happen—is that we would look at the matter as part of our wider scrutiny of complaints.

Graeme Pearson: You are taking me on to my next question.

Ian Ross: It is often forgotten that the SPA has the important role of scrutinising the way in which Police Scotland carries out its handling of complaints. To be fair to Police Scotland, it has been very co-operative in assisting us when we have wanted additional information—perhaps to try to make things as open and public as possible and to ensure that we have full access. There have never been any difficulties. In fact, Police Scotland has been extremely open.

Over and above that, there is the role of the PIRC. If the commissioner wished, the PIRC could engage in the process, and it has a role in carrying out a general audit of the way in which Police Scotland carries out its complaints process. A number of independent elements could come into play.

Graeme Pearson: I am conscious of that and we have discussed the matter at the committee on previous occasions. You acknowledged in your opening statement that this is a new responsibility and I understand that a learning process is involved in coming to terms with the new landscape. How will the oversight of Police Scotland's internal procedures operate? How effective do you think that review and scrutiny will be? What will the process be? Are you still developing an understanding of how you will do that?

Ian Ross: Some things are in place. One aspect is about having access to a comprehensive set of statistics and another issue is the extent to which those can be made available to the public. We have had some very productive discussions with Police Scotland about that. We want as much as possible to be in public, but there are certain areas where it would compromise confidentiality or might cause another set of problems. It is about trying to get the right balance.

Over and above that, there are two additional areas in which we have not yet started on this work, although we have had discussions about how we will take it forward. There is what is almost a form of audit process in relation to complaints. We will perhaps look at a particular topic or area, carry out a visit, gather information and carry out scrutiny. I emphasise that some of that might be very positive, because the process is about identifying, recognising and acknowledging good practice. It is important that this is not seen as something that is only about negativity. We also want to identify and share a lot of the good practice that takes place. That is another part.

A third—and perhaps slightly overlapping—part is the geographical aspect, which slightly links into a previous question. It is important that we are

able to get a feel for what is happening across Scotland. That might mean looking in detail at aspects of complaint handling or trends in complaints in a particular divisional area. We do not have a timeline for that yet, but I certainly hope that we can begin to look at at least one division before the end of our first financial year.

Graeme Pearson: I welcome all that you have said in that response. From my perspective, I want to reiterate the importance that the public will place on the effectiveness of that scrutiny.

Going back to one of Mr Finnie's first questions, I want to ask about the assessment that the internal processes make about the nature of a complaint. The scrutiny exercise must be able to ensure that appropriate assessments are made at that very early stage. Given the changed landscape, all these new responsibilities and the complex relationship that you will have with the various agencies, do you feel that your committee will have both the capacity and the time to be able to reach down into the professional standards environment to ensure good health in that regard? On a connected side issue, will you have the vetting that will allow you to enter through doors that might otherwise be closed to you to ensure proper scrutiny?

Ian Ross: On that last point, all the board members have had a level of vetting, as that was a requirement before they could take up their posts. On complaints and on other issues, Police Scotland has been very helpful and has not been obstructive in any way in providing access to information.

Regarding the time commitment, I was keen to make the point in my introductory remarks that the SPA has a very real commitment to this area of work. We think that such scrutiny is important in itself, important for public confidence and important for giving reassurance to, for instance, this committee. It is vital that we are able to demonstrate that robustly. There are some things that we have yet to do—there is a timeline—but the initial work, along with the engagement that has supported that work, has been very reassuring and positive.

On the issue of assessment and judgment, an important point is the expertise and the professionalism that our officer team have. For example, people such as Gillian Lafferty have many years of experience of operating within the SPSO and the PCCS. It is important that people have a threshold of relevant transferable expertise. That expertise is also reflected in the members of the complaints and conduct committee. For example, one member is a judicial reviewer and several members have worked in the legal profession, in particular in the Procurator Fiscal Service, and are accustomed to dealing

with a range of complaints and other related matters. I chaired a complaints committee for five years and I have been a member of a police complaints committee for probably about eight or nine years.

Over and above that, there is a commitment to performance improvement and training. We have had training, we will have further training and training will be on-going. That will include contributions from stakeholder partners. We have regular contact with key stakeholders, such as Police Scotland, the PIRC, the Crown Office and others.

The Convener: May I just ask what is probably a very stupid question? Having prefaced my question in that way, I hope that that gets me out of the ditch. Does your oversight of Police Scotland's handling of complaints embrace complaints by police against other police?

Ian Ross: Yes. First, however, I do not think that chairs ever ask stupid questions—

The Convener: You are so sweet, but they do. I should say that I would not let Alex Salmond flatter me, so you have no prospect of doing so. On a more serious note, does your committee cover such complaints?

Ian Ross: Yes. There have been instances in which we have dealt with complaints of that nature.

The Convener: That ties into what you said, in response to Graeme Pearson's question, about assessing trends in complaints in an area. If, hypothetically speaking, a particular police division had a high number of complaints by police against other police—allegations of criminal activity, for example—could you get into that?

Ian Ross: Yes. The PIRC could get into that as well. In the stats and data that are made available to us, we are keen to be able to see whether there are any trends. It is important to have mechanisms that can identify trends, because they can indicate whether we need to delve more deeply into a certain issue. An issue that we probably need to be aware of and which has not necessarily been tested is what happens if we and the PIRC want to look at something at the same time; in such cases, we would probably have to give the PIRC's position appropriate respect.

14:00

The Convener: Is that a change from before? Does it help if the SPA is out of the police frame, as it were?

Ian Ross: One of the very significant changes in the new arrangements and reforms relates to capacity and expertise and the ability to commit

resources. Although that might just have been possible with one of the legacy forces, it certainly would have been challenging; the SPA now has a dedicated team whose job is to deal with complaints. There are also the functions of what was the PCCS which, on becoming the PIRC, has taken on an additional investigation role. Previously, there were probably very fine complaints working groups and committees out there, but it is unlikely that anyone would have been able to match the commitment of time and expertise required purely because of natural circumstances.

The Convener: But do you see where I am going here? This is, of course, purely hypothetical, but there could be mischief afoot or a personal thing going on with, say, one colleague saying something against another colleague and that might get lost in the mass of things. However, you are telling me that you and the SPA work independently of that. Are you able to say, "This seems different from what is happening elsewhere in Scotland; it smells and feels different, and I want to have a wee look at it"? Obviously, I am putting that in colloquial terms, as chairs and conveners occasionally do.

Ian Ross: I think that capability, capacity and expertise are significantly greater now.

The Convener: That is interesting. I am sorry, Graeme.

Graeme Pearson: No problem, convener.

The Convener: Isn't he nice? Isn't he sweet? I can flatter him.

Graeme Pearson: I have a final question for each witness. Mr Ross, you said in response to Margaret Mitchell's question about independence of investigation that it would be quite proper for the PIRC to come in and that it would have an element of independence in investigating a complaint against a Police Scotland officer. However, you then said that "someone else" could come in. Was that just a turn of phrase or did you have anyone else in mind who could operate in that regard? If so, who would that be?

Ian Ross: I will give you a couple of examples. In general, if we were dealing with a senior officer, we would be obliged to refer the complaint to the PIRC and, indeed, I do not think that there is anyone else to whom we would wish to refer such a complaint. In certain extreme circumstances, however, where the PIRC decided not to continue with an investigation and we felt that there was still a need to investigate—if there was a wider learning point or if the case itself simply did not fit the regulations—there might be an argument for looking at another way of investigating the complaint or some part of it. If we wanted something independent, we might look at what

else was out there. In my earlier response, I was probably referring to circumstances that did not involve a police officer and in which we were seeking some independent means of investigating a matter outwith the normal police regulations.

Graeme Pearson: In the previous regime, the ability to send in another Scottish police force to deal with the issue gave a measure of independence. That opportunity is no longer available with a single police force, and when you talked about bringing in "someone else" I wondered whether you meant seeking advice outwith Scotland or whether it was just a turn of phrase.

Ian Ross: It was one of those loose terms that I wish I had not used at the time. [*Laughter.*]

Graeme Pearson: I thought that it might have been, but I just wanted to clarify the matter.

Finally, what is the size of the complaints team? Are its members vetted? How will they operate in reality?

Gillian Lafferty: Two additional complaints officers work alongside me and both have been vetted to the relevant standard for the post.

Graeme Pearson: What do you mean by "relevant standard"?

Gillian Lafferty: My understanding is that there are various levels of vetting—

Graeme Pearson: There are. Do you know what your level of vetting is?

Gillian Lafferty: As far as I am aware, it is recruitment vetting. I am not certain at the moment.

Graeme Pearson: So, as far as security vetting at the senior level is concerned, you are not developed vetted.

Gillian Lafferty: Personally, no. Our members of staff have a wealth of experience in—

The Convener: I am sorry, Graeme, but what was that phrase you used?

Graeme Pearson: Developed vetted. That is a security vetting that allows access to sensitive documents and so on.

The Convener: We did not quite catch that, but it is now on the record.

Gillian Lafferty: My two staff members are experienced in both administrative processes and risk and assurance. They bring different dynamics to the team. They have undertaken training alongside members of the board and the complaints and conduct committee, and they continue to undertake further training in a number of areas that relate to complaints processes—for

example, freedom of information and data protection legislation. We can also draw quite extensively on experience within the organisation from our legal partners and colleagues, and the information management team.

Graeme Pearson: On your background, it was explained to us earlier that you are not a stranger to the issues that you will face. Presumably, your two colleagues are in a similar situation in the previous experience that they bring to the SPA.

Gillian Lafferty: They bring different types of experience, but they will also undertake training to particular levels. Moreover, they will always have me and members of the complaints and conduct team as a resource. It is a work in progress, and we are progressing very well. I am very pleased with the stage that we are at.

Graeme Pearson: You mentioned that you had 17 legacy cases and you outlined what had happened to seven of them. Are the others business in progress in the system?

Gillian Lafferty: Yes. I should have perhaps made it a bit clearer that four cases have been closed, three are nearing conclusion, two have been referred to the PIRC and one is with the Crown Office: so that is 10.

Graeme Pearson: Thank goodness that you have given the same numbers again.

Gillian Lafferty: Yes. Ten cases are being dealt with, but seven cases of the 17 are work in progress.

Graeme Pearson: That is helpful. Do you feel that your team is of sufficient size for the volume of work that you are progressing and that you expect to face in the coming years?

Gillian Lafferty: Yes. I can say with confidence that we are working through cases at a very steady pace. I am pleased with the progress that we have made so far in closing the legacy cases. We continue to receive complaints of a different nature, not just about senior officers but about members of staff and other organisations, which we deal with on a daily basis. We are successfully managing to progress that work timeously.

The Convener: If there was a complaint against you, your colleague or, indeed, the chief executive, how would that be dealt with? It is a proper question to ask: who polices the police, as it were? Who guards the guards?

Ian Ross: We work on the principle that such complaints could happen. If there was a complaint against me, for instance, we would ensure that there was appropriate separation and independence. If anyone was felt to be conflicted—clearly, I would be—even by association, we would make arrangements to

address that. That could mean that some people would not be part of the investigation.

That links slightly with Mr Pearson's earlier point, when I made my loose remark. One of the benefits perhaps of looking to an external person is that that can be used as a means of addressing a potential conflict that comes from the circumstances of a complaint or who it is aimed against.

I was just going to make an additional comment—

The Convener: Sorry, I want just to carry on with that point. There might not necessarily be a complaint against you, but a complaint might be about something for which you would have to declare an interest at some point in the process. Are you saying that you already have plans or thoughts in place to have somebody who is independent and outwith the SPA to deal with those kinds of complaint? I think that you alluded to that.

Ian Ross: No. We have not identified anyone, because it would depend on the circumstances. However, we have recognised that that type of situation could arise, so there is a procedure in place in which people would declare any interest. We have already had such situations. Members have withdrawn from the complaints committee because they felt that there was the potential that they might have, or be perceived to have, a conflict of interest. That procedure is well established and it is reflected in the way in which the agenda and the meetings are managed.

The Convener: Ian, did you want to add something?

Ian Ross: Yes, I wanted to mention the size of the complaints team. At the beginning, we did not know what team we would need in month 6, month 9 or month 12. We wanted to put in place what we thought was a robust team. It was always accepted that we would review the team in the light of experience, and there is a preparedness to make resources available to us to ensure that we have a team that can deliver the work that is required.

Graeme Pearson: I presume—if I understand it correctly—that, although this is a complaints team, its members are not themselves investigators and that their job is to ensure that there is executive oversight on behalf of the committee. They are almost an insurance policy to ensure that those who are given the function of investigators and reporters fulfil their responsibilities fully. That is what the team members will be involved in doing.

Ian Ross: The team members' primary role is to manage the investigation process, but I

emphasise that they also have the expertise to look at investigation reports.

Graeme Pearson: I do not doubt that. From one point of view, I welcome what has been said today. The function that you perform within this new authority is absolutely critical, if one is to have confidence in the new national police force.

The Convener: I appreciate that you are looking at process, but would it be fair to say that sometimes you cannot separate process and substance because they become interlocked? You might consider the police handling of complaints and at times get into their substance, as well as the length of time it took or how it was done. The substance may be part of whether it was handled properly or otherwise, or of whether it was a proper complaint in the first place. Is that a fair comment?

Ian Ross: When we are scrutinising a complaint, no area is a no-go area. There are areas for which we do not have legal responsibility, but there is an acceptance that constructive challenge and comment will be part of how we operate.

Graeme Pearson: Much has been said in the past year about the development of the national police force and the legislation that lies behind it. You two are at the sharp end of this development and have been given responsibility for all the arrangements, practical mandates and protocols on which you have decided. Do you feel that you are now in a proper position to deliver on the responsibilities that people like us expect you to fulfil, or do you look at what we have done and feel sad that we overlooked something? Have we armed you properly for the duties that you need to perform?

Ian Ross: In terms of the act as it applies to complaints and complaint management, I am very content with the provisions, and that includes the creation of PIRC and its powers and roles.

A question was raised about local scrutiny, and there is provision for access to data. We have to be a little bit creative about how we manage that. It can add value in terms of the involvement of local scrutiny committees, but we must make sure that we do it in a way that does not fall foul of the act. That can be done, but we must do a little more work on it.

Graeme Pearson: It is probably something that we have not covered with a great deal of energy this lunch time, but the ability of your committee to give confidence to local communities that things are truly happening will be significant in the future. If local oversight is not confirmed in that regard, we will end up with a disconnect between what you think you are achieving at national level and what communities believe is—goodness forbid—a

corrupt organisation overseeing them. That is the disconnect that you need to bridge in order to provide confidence.

Ian Ross: Let me make what I think is an important point—and this goes beyond complaints and conduct. Right from the beginning, we have been very keen to ensure that people do not see us as a centralist body—it is understandable that they might do that. Part of that is clearly how we conduct our business, and part is how we engage with local authorities and other partners.

Every local authority will have at least one board member who engages with it. In some cases, that also includes community planning partnerships—I sit on two community planning partnerships. I am the primary point of contact for Orkney, Shetland and the Highlands, and my colleagues play a similar role across Scotland. It is vital that the role is effective, and in part that involves complaints and conduct matters.

Graeme Pearson: Thank you.

The Convener: Thank you very much. I will conclude this meeting. That was a very useful discussion because we hope to discuss our work programme at the next meeting, which will be after one more meeting on the complaints procedure. We will then go on to look at local policing. It is not just a question of delivery on the streets but also a question of the interaction of the complaints procedure with the public.

Thank you both very much for your attendance at the meeting.

Ian Ross: Thank you.

The Convener: The Police Investigations and Review Commission will appear before this committee at our next meeting on 3 October and, as I have said, we will also consider our work programme, which flows from this work. It has been a good choice to work this way around, because we will then move on to local policing.

Meeting closed at 14:15.

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