



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

JUSTICE SUB-COMMITTEE ON POLICING

Thursday 5 February 2015

Thursday 5 February 2015

CONTENTS

	Col.
INTERESTS.....	1
DECISION ON TAKING BUSINESS IN PRIVATE	2
HANDLING OF POLICE COMPLAINTS	3

JUSTICE SUB-COMMITTEE ON POLICING
2nd Meeting 2015, Session 4

CONVENER

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

COMMITTEE MEMBERS

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

*attended

THE FOLLOWING ALSO PARTICIPATED:

Superintendent John McKenzie (Police Scotland)
Lindsey McNeill (Scottish Police Authority)
Chief Superintendent Niven Rennie (Association of Scottish Police Superintendents)
Ian Ross (Scottish Police Authority)
Calum Steele (Scottish Police Federation)

CLERK TO THE COMMITTEE

Joanne Clinton

LOCATION

The David Livingstone Room (CR6)

Scottish Parliament

Justice Sub-Committee on Policing

Thursday 5 February 2015

[The Convener opened the meeting at 13:15]

Interests

The Convener (Christine Grahame): I welcome everyone to the second meeting in 2015 of the Justice Sub-Committee on Policing. I ask everyone to switch off completely mobile phones and other electronic devices as they interfere with broadcasting, even when switched to silent. We have received apologies from Margaret Mitchell.

I welcome our new member of the sub-committee, Elaine Murray, who is energetic and volunteering, if I recall correctly. Our first item of business is to invite Elaine to declare any interests relevant to the sub-committee's remit.

Elaine Murray (Dumfriesshire) (Lab): I have nothing to declare that is relevant to the sub-committee's remit.

The Convener: Before I move on, Alison McInnes has something that she wants to say.

Alison McInnes (North East Scotland) (LD): Thank you. Last June a senior police officer told this committee that the non-statutory stop and search of under-12s would stop forthwith. This week it has been revealed that, contrary to the assurance given to this committee, that practice continued unabated and by November it was at a higher level than in June, when the officer said that it was indefensible. That lack of regard for the authority of the Parliament is surprising. I ask for an urgent meeting of the committee to recall the assistant chief constable to account for that contradiction.

The Convener: As you know, Alison, that news came too late in the day for this meeting. A panel of witnesses had already given up time in their diaries to come here today. Does the committee agree to deal with the matter at our next meeting, which will be our first meeting after recess?

Members *indicated agreement.*

Alison McInnes: I am obliged.

Decision on Taking Business in Private

13:17

The Convener: Under agenda item 2, I invite the committee to agree to take in private item 4, which is on our work programme.

Members *indicated agreement.*

Handling of Police Complaints

13:17

The Convener: Item 3—the handling of police complaints—is the main item on our agenda. I welcome Superintendent John McKenzie, professional standards, Police Scotland; Ian Ross, chair, complaints and conduct committee, and Lindsey McNeill, director of governance and assurance, Scottish Police Authority; Chief Superintendent Niven Rennie, president, Association of Scottish Police Superintendents; and Calum Steele, general secretary, Scottish Police Federation.

I do not need to say this, but I will: we cannot go into individual cases, but we can talk about the generality. As you know, there has been a letter from Linda Fabiani on an issue of which I was aware, but the discussion should be on the broader context.

Kevin Stewart (Aberdeen Central) (SNP): We have seen that there has been an increase in the number of complaints that Police Scotland has received. Has the transition to a single service led to that increase? Beyond that, are some of the complaints historical complaints about the previous forces?

The Convener: Self-nominate if you want to be called, by indicating to me. I must get the titles right—Superintendent McKenzie.

Superintendent John McKenzie (Police Scotland): Thank you. I will take the first part of the question first. The Police Investigations and Review Commissioner figures indicate a 7 per cent increase. It is too simplistic to say that that is just because of the move to Police Scotland. We have to consider two significant factors when looking at why there has been that 7 per cent increase.

The first factor is that the definition of a complaint changed in April 2013. There was a definition in the Police, Public Order and Criminal Justice (Scotland) Act 2006 of a relevant complaint, which was a written expression of dissatisfaction. That has widened to include oral, electronic and written expressions, so it has become easier for members of the public to make complaints, which is a good thing.

The second factor is that PIRC's statutory guidance used to refer to complaints called front-line resolutions. Prior to April 2013, many forces did not record front-line resolutions on their annual statistical return. Those are complaints when members of the public come in and the sergeant at the desk gives them an explanation there and then. The member of the public says, "Thank you

very much" and moves on. Those were sometimes not recorded on the Centurion database.

Those two elements changed in April 2013 and, as a result, have contributed to the increase of that 7 per cent.

The second part of the question was whether there had been any historical complaints. Some complaints came from the legacy forces as we entered into 2013, as would be expected, but there was nothing significant and no great change in what would have been expected from that crossover period during March into April 2013. I do not have the specific figures for the committee but that is my understanding.

Kevin Stewart: Before you take in Mr Ross, convener, can I ask—

The Convener: I was going to let you go on.

Kevin Stewart: Having served on a police board for a very long time, I am aware of a number of vexatious complainers. Has Police Scotland inherited some of that? Have some of the folks who stopped complaining returned to it because of the birth of Police Scotland and the demise of the previous eight forces?

Superintendent McKenzie: That is a good point. There have certainly been examples of vexatious complainers who have continued to complain as we moved into the single force. Police Scotland has also found that vexatious complaints that were dealt with by the legacy forces have been brought back to Police Scotland in a different form and further attempts have been made to get an investigation, but they have been managed through assessment.

Kevin Stewart: Would they account for a significant amount of the increase or is that basically due to the change in the legislation that makes it easier to complain?

Superintendent McKenzie: The increase is down to the change in the definition and, more significantly, the change in recording practice for the existing front-line resolution complaints.

The Convener: You said that complaints are assessed.

Superintendent McKenzie: Yes.

The Convener: Who does the assessing?

Superintendent McKenzie: Under Police Scotland, since September 2014, there have been three central assessment hubs in Scotland: in Glasgow, Edinburgh and Aberdeen. They are resourced with sergeants and inspectors. Complaints come in from members of the public who contact Police Scotland through various means. The unit assesses the complaint to determine what category it is, and will also make

initial telephone contact with the complainer so that there is a quick turnaround and people know that they have a point of contact and that the complaint is being taken seriously.

Of the complaints that come into Police Scotland, 39 per cent are dealt with through initial telephone communication: understanding the problem and being able to give an explanation over the phone, or calling the member of the public back with an explanation. The assessment unit makes the decision and, thereafter, the most appropriate department to investigate the complaint is determined, whether it be a local division, the professional standards department or a specialist crime department. In significant and serious circumstances of criminal allegations, there might be occasions when we go direct to the Crown and a referral is made to PIRC. There are a number of routes for dealing with complaints.

The Convener: If a complaint is made in one division, does a different division do the assessment? What I am getting at is whether the assessments are done by a disinterested group and whether that is clearly seen to be the case.

Superintendent McKenzie: The professional standards department assesses all complaints. Prior to September of last year, complaints could be assessed by the home division. That no longer happens. From September last year, complaints began to be assessed by the professional standards department, so there is transparency at that point.

The Convener: Can I let Mr Ross in?

Kevin Stewart: Please do.

Ian Ross (Scottish Police Authority): Part of our wider role is to scrutinise how Police Scotland's professional standards department handles complaints, and the very point that you have raised has been discussed by the complaints committee on a number of occasions. As for an explanation, I can confirm that the issue is very much linked to one or two legacy forces that had not taken this particular approach.

The other factor that comes into play is the promotion of openness in making a complaint. That sort of thing is difficult to measure, but it is all about signposting and raising awareness that people who have complaints should actually make them.

The SPA's statistics suggest that the position is very similar to that which existed prior to the creation of Police Scotland and the SPA. However, we also inherited a number of legacy complaints, most of which have now been addressed. Those complaints tended to be complex; indeed, that was one of the reasons why they continued into the new format.

I can confirm that we, too, have an unacceptable actions policy, which we have used on a very limited number of occasions. The key and critical point, however, is that that does not mean that if someone makes a valid complaint it is not taken through the full procedure, and I am sure that the same applies to Police Scotland.

Superintendent McKenzie: Absolutely.

The Convener: I have a little list of others that I want to let in at this point, and then I will come back to Mr Stewart. In any case, the questions are all on the same thing.

John Finnie (Highlands and Islands) (Ind): My question is first and foremost for Mr Steele, and perhaps Mr Niven, and relates to changes to the discipline—with a small d—regime. In 1996, a significant effort was made to remove quasi-judicial terms and bring about a more managerial style of dealing with these things. However, that cultural change did not quite materialise. Is having a more managerial rather than, shall we say, militaristic approach still an aim?

Calum Steele (Scottish Police Federation): It is more than that. In fact, the new conduct regulations that we hoped to bring in with the birth of the new single service have now come into being, and they are certainly designed around an intention to have earlier resolution and to be more managerially based. One of the great leaps of faith that police officers have had to make as a consequence of that change is that they are now dealing with a more managerial set of regulations, whereas before their experiences had tended to be more adversarial. In that sense, there has been a coming together of cultures. That said, it is important to point out that although I in particular and my colleagues across Scotland were heavily critical of the old approach to police misconduct—and certainly how our members were dealt with in the early stages—the current relationship in the Police Service of Scotland instils confidence. Of course, only practice will show whether that confidence is well deserved.

The Convener: Does anyone else wish to comment?

John Finnie: I was wondering whether Mr Rennie—

The Convener: He is just about to comment.

John Finnie: I would like to ask an additional question of him. Chief superintendent, given your members' role in adjudicating matters, how has their relationship with the federated ranks altered? Has it altered at all?

Chief Superintendent Niven Rennie (Association of Scottish Police Superintendents): I do not think that the relationship with the federated ranks has altered in

any great way. I agree with Calum Steele that the whole desire in the regulations is to deal with things at the lowest possible level and ensure that people get learning rather than punishment from situations. Unfortunately, what we are starting to see, particularly at our level, is a greater desire to investigate and more people being brought under the spotlight, and the time that is being taken to progress investigations is far too long. The result is that all of this is adding to the burden that is being carried by the smaller number of superintendents and chief superintendents in the country, who are already under great working pressure, and we are now seeing examples of people's health suffering. The desire to deal with things at the lowest possible level—and to deal with them quickly—does not seem to be materialising, particularly as far as my members are concerned.

John Finnie: I can see how that would add to an already heavy workload. Was any assessment carried out of the implications of the change in regulations for the superintendent ranks?

Chief Superintendent Rennie: If it was, it certainly predated my time as a member of the executive.

John Finnie: So that might need to be revisited.

Chief Superintendent Rennie: Indeed.

John Finnie: My next question, which is for all the panel members, relates to what might be termed as service complaints—in other words, complaints that are about the police service in general, rather than an individual. Given that some people might want to blame the chief constable when their real issue is with the police service, I wonder whether Mr Ross can tell us how such matters are moved from the individual to the organisational level. How do you deal with someone who gets in touch with you and says, "I want to complain about Sir Stephen House"?

13:30

Ian Ross: That certainly happens, in that the figurehead is often identified as the person to complain about. However, as part of our procedures an early assessment is carried out, and it is not uncommon for it to be more appropriate to refer the contacts that we get at that stage to Police Scotland to be dealt with because the focus of the complaint is not in fact a chief officer but somebody else or some aspect of policy. We have put particular emphasis in the past six months on trying to ensure that, through the initial point of contact, whether the website or other forms of information, we highlight that point and make people more alert to it. Recent evidence suggests that we have probably had fewer contacts as a consequence of that, because

people have probably identified that the SPA is not the organisation that would necessarily deal with their complaint.

As I said in answer to an earlier question, though, our approach is that if people have an issue, we want them to raise it; and then we can take it through the due and appropriate process.

John Finnie: Thank you. If the outcome is that there are points to be learned, how is that fed into the wider policing arrangements? Perhaps it is too early for you to comment on that.

Ian Ross: Generally, the focus is on early resolution and learning points. Irrespective of the nature of the approach, we are always very keen to ensure that learning points are identified and applied. That is also part of some of the discussions that we have with Police Scotland on a regular basis.

The Convener: I will come back to you later, Mr Finnie, if you like.

Superintendent McKenzie: May I make an additional comment?

The Convener: Of course.

Superintendent McKenzie: The complaints about quality of service that are about the organisation rather than individuals can be split into a number of categories. From a learning opportunity perspective, we have within the PSD a portfolio lead in terms of learning and retention. Our aim is to prevent as many complaints as possible and to learn what we can from complaints in order to enhance the service to the public. Work is on-going to understand any issues that people have with policy and procedure in terms of complaints about quality of service.

The Convener: That is an excellent explanation, but I got a bit lost in trying to understand it. Can you give examples of what you mean by complaints about quality of service and of learning from them? Give some ordinary examples that punters like me can understand.

Superintendent McKenzie: Okay. A number of complaints come in about vehicle recovery schemes: people's cars being uplifted from the side of the road. There is a lack of explanation or understanding of the law and the guidelines on the removal of vehicles. People make complaints because they fail to understand and because there is sometimes a financial penalty for getting their car back. In response to that, we have tried to provide a better explanation of VRS on the website and to provide additional information to individuals about what they can expect when recovering their cars. That is one example of how we hope to reduce the number of complaints by providing additional information to members of the public.

The Convener: That was helpful.

Elaine Murray: My question arises from my personal experience of dealing with constituents who have complaints against the police. Previously, I wrote to the chief constable, and I usually got a fairly timeous, detailed response from the chief constable or a senior officer that addressed the points that my constituent had raised. That continued after Police Scotland was formed. However, my recent experience is that nothing comes back until I get a copy of the letter that goes out to the constituent and which says, "I understand that you had a complaint about the police and that it has been resolved satisfactorily." I feel that there is a lack of democratic accountability there. There is also evidence that local commanders have stopped providing information about complaints to local authorities. Has there been a change to the way in which elected representatives can take up complaints against the police on behalf of their constituents?

Superintendent McKenzie: I am quite content to address those two points.

The Convener: Excuse me, but we are just doing a little survey here. I have had the same experience as Elaine Murray. My constituent was told about the resolution and I was simply told that the complaint had been resolved. Having made contact with the police, I would have expected at least to be cc'd into the response to my constituent.

Kevin Stewart: Perhaps we could ask whether complaints are being handled differently in different parts of the country.

The Convener: Yes.

Kevin Stewart: Normally, my response comes directly from the divisional commander, who, in Aberdeen, is Chief Superintendent Adrian Watson.

John Finnie: Likewise, I do not have issues with that at all.

The Convener: There we are: there are different experiences.

I wrote to the chief constable because it was an issue that only the chief constable could remedy, although there are other ways of dealing with the matter. I wish to make that plain.

Perhaps you could answer that point, Superintendent McKenzie.

Superintendent McKenzie: I apologise if you have not been provided with a copy of the explanation letter to the individual. As an elected member who is raising concern, it is only appropriate that you receive, or are at least copied into, the response, so that you have a clear understanding of what the engagement has been and what explanation was given to your

constituent. I will take that back and will try to address it.

It is interesting to hear that there are different experiences in different areas. Everybody should have the same experience, and elected members should get a copy of the letter. If that is not happening, I apologise. I will address that after the meeting.

I am aware that, when Police Scotland commenced in 2013, there were a number of issues around the provision of information to local authorities. That comes down to the roles and responsibilities that used to exist in the legacy arrangements through police boards and those that now exist through the SPA. The SPA is provided with statistical information on complaints, as are local commanders. They are all provided with the same type of information so that there is consistency across Scotland.

The information that exists is broken down into local areas, and it is on the SPA website. Information is given to local commanders about complaints, and information is provided to local authorities.

Alison McInnes: I wonder whether either of the SPA witnesses could give us a bit more detail about the improvement action plan that you agreed with the PIRC. Could you talk us through some of the action points?

Ian Ross: I will start, and I will then pass across to Lindsey McNeill.

The PIRC carried out an audit. It visited us in May last year, I think, and then it produced a report in July, in which a number of improvement areas were identified.

There were some areas of our own approach where we needed to do more work. Significant steps were already planned to address those. Almost in advance of the production of the PIRC report, we had the beginnings of our improvement plan, and we added to it in the light of the PIRC report. I can confirm that, bar one item on wider governance issues, we have completed all the outstanding points in the improvement plan.

The PIRC has revisited us in the past couple of weeks, and we are waiting for its follow-up report. I have not seen it yet, so I cannot comment on it, but as of the summer of last year, we have been able to confirm a permanent structure, with our two complaints officers, a new complaints manager and, critically, a governance and assurance director, who is Lindsey McNeill. We now have a permanent and much more mature structure, which has made an enormous difference to our ability to engage. There were unsatisfactory areas in the early part of last year, for a range of reasons—they were particularly to do with staff

resource and resilience—but I am very confident about the position that we are now in, and I am hopeful that the PIRC report, in following things up, will reflect that.

Lindsey McNeill may wish to add some points of detail.

Lindsey McNeill (Scottish Police Authority):

One of the key areas that we had to consider, working in conjunction with the PIRC, was the publication of our detailed complaints-handling procedures. Following consultation with the PIRC, those procedures have now been published on our website, so they are freely available.

There were other issues with the information that we made available on the website, to do with things such as accessibility, but we completed all the related actions before the PIRC's visit three weeks ago.

Alison McInnes: The PIRC also recommended that you should review your handling of legacy cases so as to identify and act on any lessons learned. Have you been able to follow that through?

Ian Ross: Yes, we have. I think that that is how the recommendation was written, and that is what we did. However, the recommendation was also about the learning experience in relation to the difference between how we would handle complaints and how the legacy forces handled them.

We inherited a number of legacy complaints—about 17, I think—five of which remain. It is fair to say that the fact that all five relate to the same complainant reflects the complexity and involved nature of the case. I am satisfied with where we are now. In general, quite a number of the inherited cases were highly complex, and we moved a number of them on very quickly. Five cases remain, which all relate to the same complaint. I hope that they will be concluded in the near passage of time.

Alison McInnes: So the end is in sight for the five cases that are left.

Ian Ross: As someone who has a number of years' experience of working on complaints, I am always hesitant about saying that the end is definitely in sight, but I am very confident about our engagement and the fact that we are seeking to reach a conclusion.

Alison McInnes: It helps no one for complaints to be drawn out over such a long period.

Kevin Stewart: It would be useful for us to know who serves on Mr Ross's complaints and conduct committee.

Ian Ross: I am happy to answer that. I chair the committee. Moi Ali, who is one of my colleagues, is on it, along with Brian Barbour, Lisa Tennant—

Kevin Stewart: Can you give us an idea of the background of those folk? Are they from local authorities?

Ian Ross: I was about to mention that Morag McLaughlin, who was an area procurator fiscal, is also a member of the committee. Paul Rooney, who used to be a member, also had some procurator fiscal experience. He has moved on and Lisa Tennant has come in. Lisa had some involvement with complaints in another sector—in the solicitors area, I think. Moi Ali was the Judicial Complaints Reviewer, so she has very relevant experience. Brian Barbour has experience in the private sector of dealing with audit and complaints handling. I am a former member of a police board and, in that setting, I chaired a complaints committee for about five or six years. All the members come with different but relevant experience.

I emphasise that, in addition, there has been on-going development. There was induction training, and there has been subsequent training. In fact, a workshop is taking place today, at which a number of bodies are contributing to the further development of members. We tend to hold such workshops every six months. On top of that, we have a range of other engagements in relation to member development.

Kevin Stewart: Although I was a member of Grampian police board, I never served on a complaints sub-committee. One of the things about the way in which the system worked in Grampian that some folk saw as an advantage was that although information on complaints was collected on a Grampian-wide basis, officers were able to tell folk locally what complaints had come in and what had been going on. At the tail end of 2013, the sub-committee was told that local commanders were no longer telling local authorities about complaints against officers. What is the position now? Police Scotland said that such reports were coming through.

I must be honest and say that I do not know whether it is an advantage or a disadvantage for local review bodies to know what is going on. In some cases, the involvement of others who stick their noses in when that is not required can massively complicate a complaint. What is the position in that regard?

Ian Ross: The position is that local authority scrutiny committees can, of course, raise issues around complaints. As John McKenzie described, the statistics will be made available to them. The issues that are raised are very much driven by the scrutiny committees. I attend meetings of a couple

of those committees—all SPA board members have a link with local authorities across Scotland so that we have total coverage. I have made it very clear to the committees that I have visited that if that was an issue that they wished to raise, we would make sure that information would be made available to them. I know that the scrutiny committees of a number of councils have had reports on complaints—the City of Edinburgh Council is one example that I am aware of.

What has changed is that, in the past, there might have been some dip sampling and detailed examination of historical cases. The only body that can do that now is the Scottish Police Authority. That is really because of the statutory right to have access to that particular type of information. However, a local scrutiny committee can, of course, raise statistical data and discuss broader issues, and I would encourage it to do so.

13:45

Kevin Stewart: From having served on a police board previously and now being in your current position, do you see much difference? Has the system improved compared with what was in place previously? Are you conducting more of the dip sampling that you mentioned than was conducted previously?

Ian Ross: The reality is no. We were not able to start the dip sampling, particularly at a divisional and local authority level, as early as we would have wished. That is one thing that has suffered because of resources.

I am happy to confirm that, before the end of June, we will have carried out our first divisional visit to look at historical practices, which will include dip sampling. However, I do not think that that is entirely satisfactory. My original intention was for that to happen around a year ago. That was one of the challenges that we had to address. However, I am pleased to say that we have now moved forward.

Kevin Stewart: Does Superintendent McKenzie have any view on the locus of local scrutiny bodies?

The Convener: You did not indicate that you wanted to come in, Superintendent McKenzie, but please proceed if you want to.

Superintendent McKenzie: Mr Ross has highlighted the statutory restrictions in relation to local scrutiny boards. To be fair, there is not much more comment to make beyond that.

The Convener: Does John Finnie want to come in? He is looking dazed, so I will jump in with a question while he is quiet.

I am looking at the PIRC report entitled “Police Complaints: Statistics for Scotland 2013-14”. What stands out for me from that report is the comment that

“The total number of cases alleging criminality and therefore having to be referred to the Crown Office and Procurator Fiscal Service fell by”

almost 40 per cent

“to 225 ...of which just 6.7% led to proceedings being taken.”

It is the 6.7 per cent that concerns me. A lot of people were referred to the Crown Office and Procurator Fiscal Service but no proceedings were taken in their cases. I want to know why that was the case and how long those people had to wait. If I was an officer who had been referred to the Crown Office and Procurator Fiscal Service, I would be very worried and ill—I would have huge concerns. At the end of the day, there were no proceedings in more than 93 per cent of the cases. Can somebody shine a light on that for me?

Superintendent McKenzie: I can comment on that, and I am sure that both the ASPS and Scottish Police Federation representatives will make additional comments.

Your point is very valid. The timescale that it takes to move from an allegation of criminality to an end result—

The Convener: It is not just about the timescale; it is also about there being no proceedings in 93 per cent of cases. A lot needs to be looked at.

Superintendent McKenzie: Absolutely.

On the 6.7 per cent of cases in which proceedings were taken, from a Police Scotland professional standards perspective, we do not have a great deal of discretion over what we report to the Crown if there is an inference of criminality. That is the difference, compared with cases involving a member of the public, in which there has to be corroborative evidence for us to report to the fiscal. For a police officer, if there is an inference of criminality, those in the professional standards department will report the matter to the Crown. The Crown is the independent, transparent body that will allow—

The Convener: We know all that stuff.

Superintendent McKenzie: We have a 28-day period in which to report criminal allegations to the Crown Office and Procurator Fiscal Service’s criminal allegations against the police division. Unfortunately, the timescale is outwith the hands of those in the professional standards department.

The percentage of cases that move to proceedings is again for the Crown to comment

on, but it is clear that we have a process in which we in the professional standards department categorise criminal complaints and ask whether we believe that there is a sufficiency of evidence for a case. Again, the final decision sits with the Crown.

The Convener: I appreciate that there has to be a higher test for police officers. I hear that, and I see Mr Steele nodding. However, if that is the case, surely there is an obligation—perhaps not on you, but maybe on the Crown Office—to expedite these matters, given the higher test for serving officers, which we would all agree that there should be.

Chief Superintendent Rennie: It is important that there is proportionality, that our procedures are scrutinised and transparent, and that we deal with things properly, particularly when there is an allegation of criminality.

Your comments are quite right. On many occasions, we wait far too long for the result to come back when it appears obvious from the outset that, although we are going to the Crown Office for confirmation, we feel that there is no real criminality. Very often thereafter, we start a misconduct investigation during which we find new allegations of criminality and the case is then referred back to the Crown Office. The investigation ceases while that happens and we wait again. Without going into specific cases, I can tell you that we have a member who has been suspended for more than two years, and that has been his experience throughout that time. That all makes the process far more lengthy than it needs to be.

The Convener: There must be solutions to the problems. How does one ensure that there is justice for the individual while there is also a thorough investigation? What needs to be changed?

Chief Superintendent Rennie: Procedures at the Crown Office perhaps require to be addressed to speed up the process and get early decisions in some cases.

Calum Steele: I do not agree with Niven Rennie's comments on the Crown Office in any way, shape or form.

The issue of proportionality is key. There is an understandable concern among our members about information that is gleaned through powers that are available for criminal investigations even though the criminal investigation in its own right may be based on a very thin allegation and, as Niven Rennie said, we all know that it is not going to go anywhere when it gets to the Crown Office. The police service is able to use powers that are not available to any other employer to put together a misconduct case, and that is not proportionate or

fair. In particular, some of the issues relate to the use of Regulation of Investigatory Powers (Scotland) Act 2000 provisions in Scotland for intrusive surveillance and the like.

Proportionality is key in all of this, and—I do not want this to sound like a corporate statement—fairness, integrity and respect would be a good starting point. I am not saying that the individuals who are involved in the investigation do not do their job professionally; of course they do. They would not be in those departments otherwise. However, proportionality is the key.

The Convener: So it is not all the Crown's fault.

Calum Steele: Not always.

The Convener: What should we or you be looking at to resolve the situation?

Superintendent McKenzie: There are two issues. First, comment has been made about the Crown, and when the figures show that cases have been with the Crown for two years there is a requirement for the Crown to consider whether there are procedural issues to be addressed in relation to how it deals with criminal complaints about police officers. That is a major issue that has to be addressed.

The second issue, which has been touched on, is that there must be proportionality in misconduct investigations. We have a locus in misconduct investigations and we have ownership of the timescale for misconduct investigations. Misconduct investigations cannot be undertaken until the completion of the criminal process, and if there is a further inference of criminality when a misconduct investigation is being carried out, we have to highlight that to the Crown. We have no other option.

I appreciate that examples of extensive timescales will be highlighted, but we could highlight examples of a quick turnaround. We could also highlight cases in which someone has been reported for criminality, an assessment has been made when the case has returned and there has not been a misconduct investigation. It is unfair to make the general comment that we move directly to a misconduct investigation, because that is not the case—an assessment is undertaken.

The Convener: I understand the two issues. We may have to look at the length of time that is taken. It is not within our remit to call the Crown Office to account, but we can ask about that on another occasion.

What I am concerned about is the fact that proceedings are taken in only 6.7 per cent of cases. There is something wrong when 90-odd per cent of complaints result in no proceedings being taken even if there have to be extra referrals when

you pursue a misconduct proceeding and find something else and have to refer the case back to the Crown Office, which results in a delay. The tests for going to the Crown in the first place appear to be wrong. I appreciate what you said about the need for a higher level of integrity if someone is a police officer, but it seems that there is something terribly wrong with the level.

Do you want to come in on that point, John? You are looking at me as if you do.

John Finnie: If I had not been looking dizzy, I would have asked about criminal matters. Mr Steele is right to say that proportionality is everything. We need to understand the constraints under which every police officer who receives an allegation of a criminal nature against another officer has to respond.

I want to ask about data protection, which is one aspect that seems to be growing. I am not referring to any specific case. We will see more use of data by operational officers using hand-held devices, for example. It seems to me that a zealous approach has been taken to the application of data protection legislation in relation to police officers for a considerable length of time. We all want the highest standards of integrity to apply, but if there are challenges at present, there are likely to be even more in future because of the growing availability of data and the ready accessibility to it outwith buildings. Will the witnesses comment on that, please?

The Convener: Mr Steele can go first, because I have a feeling that that point might be connected to RIPSA, although I am not sure.

Calum Steele: My view is that the approach to data protection in the police service and to reporting criminality to the Crown Office is perverse. The police service has little discretion in that respect, because the Lord Advocate's office directs that any influence or any breach of data protection must be reported to the Crown Office.

I believe—if I have not previously said this here, I have said it in other public arenas—that if one were to look at the data footprint of every police officer in Scotland, one would see that they would all, at some point, have fallen foul of the provisions in the data protection legislation in a way that would result in their being reported to the Crown Office and Procurator Fiscal Service.

We police officers are, by our very nature, nosy people, and we are encouraged to be so. When new information technology intelligence or instrument recording systems are put before us, we are encouraged to play with them and to probe around to find out how they work.

In the past, before we became—

John Finnie: You are not building up to a confession here, are you? We are very anxious.

The Convener: Do not stop him—this is interesting.

Calum Steele: In the past, before we became so reliant on computers to access data, we had registries—in fact, I dare say that we still have them in many police stations. We went and looked things up. If someone had not dealt with a particular kind of incident before, they would go and have a look at how someone else had dealt with it previously.

Someone who undertook that sort of activity nowadays would potentially be considered to be falling foul of data protection legislation. The whole approach is just wrong. It should be about the misuse of data rather than the accessing of data. There is no indication of wholesale abuse in that regard.

Chief Superintendent Rennie: I want to highlight one point. The investigations take some time, and the people who are under investigation have restrictions placed on them that often prevent them from accessing particular data, which restricts them in the jobs that they do. From a managerial point of view, we have officers who may be particularly able but whom we cannot use in a specialism because restrictions have been placed on them. Ultimately, they will probably be exonerated in any event. The issue runs wider than just the prosecution—there are implications for the service that is delivered to the public too.

The Convener: Before I bring in Alison McInnes, can you tell us how many of the 225 referrals to the Crown Office that you mentioned were to do with alleged data protection breaches? Is that a substantive issue, or is it a red herring?

Superintendent McKenzie: I do not have those figures, unfortunately, but I can tell you that a third of the officers in Police Scotland who are on restriction just now are on restriction as a result of reports of data protection breaches.

The Convener: You could provide us with a breakdown of the 225 referrals.

Superintendent McKenzie: Yes.

The Convener: Yes, you can—that information would not be sub judice, because it concerns what the officers have been reported for. In particular, I would like a breakdown of the sections, so that we can see whether data protection issues form all, or part, of a referral. We would like to know.

Superintendent McKenzie: Yes, I could provide that.

John Finnie: Could I pose two quick questions, please?

The Convener: I was going to let in Alison McInnes, because we seem to have opened up an issue here.

Alison McInnes: My question is a follow-up on that point.

The Convener: Okay. John Finnie can ask one question and then Alison McInnes can ask one question before we have the other questions.

John Finnie: It is a question to Mr Ross that ties in with the reference that he made to his role as chair of a complaints committee. It is about vexatious complaints. Is that something that will be followed up?

The second part of the question, if I may—

The Convener: No—you have one question.

John Finnie: But it links with the first part.

The Convener: That is sneaky, but on you go.

14:00

John Finnie: As a counterbalance to your role in relation to complaints, Mr Ross, in a previous life you rightly promoted the letters of appreciation that came in from the public. Although we are talking in quite negative terms, many people speak very highly of the police. Is that something that could be pushed as well?

The Convener: I will park that one just now and go back to what we were dealing with.

Alison McInnes: We were talking about access to information. Unauthorised access to information and databases is a misuse, and I am slightly concerned about Mr Steele's approach. It is precisely because people are nosy that restrictions are put in place to stop unauthorised access to data. Is that not a training issue that needs to be much more understood within the police service?

Calum Steele: I will give an example that will contextualise or explain what I was referring to. In a past life, I was fortunate to serve on the very beautiful isle of Harris. I am known to have a lot of affection for and affinity with the Hebridean people, who are largely law-abiding individuals. Not much happens there in the way of criminality.

That being said, I spent five and a half years in Inverness before I went to Tarbert on Harris and I had a lot of knowledge of the activities of criminals in and around the Inverness area. Although I might have had responsibility for a policing beat in and around the Hebrides, I had much to offer my colleagues in Inverness by being able to look at the incidents that were taking place there.

It might well have been that, on a daily basis, depending on what was happening, I had nothing to offer because the incidents that I was being

asked about did not spark a light in my mind about who might or might not have been responsible, but that did not mean that the potential for benefiting those whom I had left behind did not exist. The same thing happened when I left Harris and went to police in Dingwall in the Highlands.

There are always opportunities for police officers to be nosy. There is nothing wrong with being nosy. There is nothing wrong with looking at the activities of individuals for whom we might have had responsibility.

Genuine criminal misuse of the information that is being passed around is when nominal records that have got nothing at all to do with policing activity are used, but many members fall foul of looking at incidents that they are told they should not be looking at because they have nothing to do with their beat or area, and that is the wrong test.

Alison McInnes: Does Mr Ross have anything to say on that?

The Convener: Does anyone else want to comment?

Ian Ross: I am happy to try to respond on the specifics of data use or to answer Mr Finnie's question. I can respond to both, if you wish.

Alison McInnes: Both, please.

Ian Ross: On Mr Finnie's question, we neither use nor recognise the title "vexatious" because it has a range of other implications; it is about unacceptable actions and behaviour. As I said earlier, that is probably more about the manner of someone's interaction and the way in which they conduct themselves, particularly with other people and our staff. The critical point is that, if people make representations that involve a complaint, we will still assess that complaint.

However, we sometimes find that a complaint that has already been dealt with and finalised is recycled in an unfortunate manner that involves the use of unfortunate language. That is when we begin to initiate such a process. It is rarely done, but it has been done.

On the issue of data, I can confirm that in its private sessions the complaints committee looks in great detail at the issue of officers who are suspended and officers who are on restricted duties—that is a standing item. We touch on the subject in the public session, but we discuss it in private because that allows us to have a much more detailed and open discussion. That is discussed at every complaints committee meeting.

I can also confirm that the issue of data management is raised with chief officers who are present at the complaints committee meeting. One of the points that we raised was the basis on which such decisions are made. We wanted to

ensure that there was a consistency of approach. The designated deputy chief constable reported to us orally on that point and gave us a satisfactory response.

The Convener: Chief superintendent, you look as if you want to come in.

Chief Superintendent Rennie: No, I was just listening intently.

The Convener: Do not give me those looks or you will get your deserts.

Superintendent McKenzie: I have a small point to reiterate. The legislation and the Lord Advocate's guidance are clear. The problem is not with the disclosure of personal information; it is with the obtaining of personal information. We go back to the conversation that we had earlier about inference of criminality. Our approach means that there is no discretion. Mr Ross has highlighted the importance of consistency. To achieve a consistent approach, we have no option other than to report to the Crown.

On the view that there are wholesale data issues in Police Scotland, when we look at the number of officers who are on restricted duties because of data protection and compare it with the number of officers in Police Scotland, we can see that we are talking about a very small number. However, there are lessons to be learned and additional training opportunities to be taken to reiterate our existing standards. We have to continue to work on that. We have a lack of discretion when it comes to the inference of criminality.

The Convener: It would be useful for the committee to write to the Crown to let it take note of the evidence that we have taken from you and to ask it to comment. We would not necessarily need to call Crown representatives to the committee, but if there is something wrong at the Crown process end—I am not saying that there is—that will give the Crown the opportunity to return to it.

John, did you have another question?

John Finnie: It was about letters of appreciation and whether there is any way of promoting the good practice that takes place in the overwhelming majority of cases. We are talking about a small and unrepresentative problem.

Ian Ross: I echo the point that a number of people have made. The performance, conduct and commitment of police officers in Police Scotland are overwhelmingly in the best interests of the people of Scotland. That is my consistent and absolute experience.

John Finnie raises a good point. We rightly focus on the complaints side of the business

because it is important and it must be handled well, and there are high expectations of the behaviour and conduct of police officers. As a consequence, something has been slightly lost in the transition. I know that John Finnie is talking about the Northern Constabulary and the Northern joint police board, and how there was an opportunity to highlight good practice. I am happy to take that idea away and to raise it with the board.

On a number of occasions, the board has congratulated and applauded Police Scotland and individual officers for things that they have done, but it is not a formal process. I just want to put that recognition on the record.

The Convener: Sometimes even MSPs get thank you cards. They are so rare that we have them framed.

I thank the witnesses very much. I look forward to getting more details on the business of criminal proceedings and the fact that proceedings are taken in only 6.7 per cent of cases, particularly the number of cases that are connected with data protection in some way.

14:08

Meeting continued in private until 14:16.

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

Available in e-format only. Printed Scottish Parliament documentation is published in Edinburgh by APS Group Scotland.

All documents are available on
the Scottish Parliament website at:

www.scottish.parliament.uk

For details of documents available to
order in hard copy format, please contact:
APS Scottish Parliament Publications on 0131 629 9941.

For information on the Scottish Parliament contact
Public Information on:

Telephone: 0131 348 5000
Textphone: 0800 092 7100
Email: sp.info@scottish.parliament.uk

e-format first available
ISBN 978-1-78534-873-0

Revised e-format available
ISBN 978-1-78534-891-4