PCCS

Police Complaints Commissioner for Scotland

Review of Miscellaneous Files

Lothian and Borders Police

August 2008

Executive summary

Background

In May 2008, whilst reviewing the manner in which a complaint about Lothian and Borders Police had been handled, it became evident that the force used a process whereby files containing complaints about the police were managed as Miscellaneous Inquiry files.

The Commissioner advised the Chief Constable of Lothian & Borders that he would conduct a review of MI files to satisfy himself that the force has in place suitable arrangements for the handling of relevant complaints.

Prior to the implementation of the Police Public Order and Criminal Justice (Scotland) Act 2006, the police service in Scotland referred to such matters as complaints *against* the police. In line with the broad definition of complaints set out in the Act, such matters are now referred to as complaints *about* the police and that term is used throughout this report.

Outcomes of the review

MI files are used by Lothian and Borders Police to record matters within the remit of the Complaints and Conduct Department which are in their view not complaints about the police.

The force provided full access to the relevant MI files for the period 1 April 2003 to 31 March 2007. MI files relating to the management function of the Complaints and Conduct Department (CCD) were dip sampled but not reviewed for the purposes of this report: 48 of these MI files were selected for further examination.

- 804 of the 1,476 MI files recorded in that period were examined, amounting to 54.47% of the total number of MI files recorded. The remaining files not examined related to other management issues of the force.
- the 804 files selected were read in full to establish whether the files were recorded properly, subject to enquiry, and closed in an appropriate manner.
- Of the 804 files reviewed, 133 or **16.54%** should have been recorded, in the first instance, as complaints about the police. Of the 133 files so identified 16 MI files contained allegations reasonably inferring criminality (criminal complaints), whilst the remaining 117 MI files had non-criminal complaints in respect of officers of the force.
- Of the 16 MI files with complaints setting out a reasonable inference of criminality seven of these files had been referred to the APF for direction. However there is no audit trail to show whether the other nine of these cases were in fact drawn to the attention of the Procurator Fiscal.

Overall the force recorded 1,929 new complaint cases during this period. Had the 133 MI files identified by this review as complaint cases been recorded by the force

that figure would have been 2,062. This represents an under-recording of 6.89% of complaints about the police over the four year period reviewed.

A significant number of the MI files recorded by the force were forwarded to an operational division for enquiry. Prior to April 2007, the force did not require divisions to report on the outcome of such files and many were closed at the CCD when the letter of complaint was forwarded to the division concerned.

In some instances the division advised the CCD on how the matter had been resolved, this information forming part of the MI file papers. However on others, no outcome was recorded. 16 MI files were selected at random as 'dip samples' and the divisions concerned were asked to advise how these files had been concluded. The force traced outcomes for 13 MI files but could not trace the outcome for the remaining three.

Areas of concern

Use of the term complaints about the police

The review found many instances in the MI files where the force correspondence to complainers or their representatives used the term complaint about the police (CAP). This clearly gave the recipient the impression that the matters raised were being dealt with by the force as a complaint about the police when in effect they were being progressed by the force in a different manner.

Inferring criminality

The review showed that of the 16 MI files identified as containing complaints and/or allegations about officers, which contained a reasonable inference of criminality; seven of these files had been referred to the Area Procurator Fiscal (APF) for direction and in each instance the APF was satisfied that no further enquiry was required on behalf of the Crown Office Procurator Fiscal Service(COPFS). However there is no audit trail to show whether the other nine of these cases were in fact drawn to the attention of the Procurator Fiscal and recorded as a CAP.

Quality of Service

On a number of occasions the review found that the force mis-recorded complaints about the police in MI files as 'Quality of Service' complaints.

Forces receive correspondence or contact from members of the public or their elected representatives on a daily basis which indicates dissatisfaction with the service received from the police. The issues raised range from police policy or procedure, how a force delivers policing, or the outcome of the service provided by the force.

Prior to April 2007, the term quality of service was undefined by the police service in Scotland, although the term 'complaint about the police' was. This review found a

number of MI files containing complaints about the police which clearly related to '*one or more on duty members of a police force'* which had been recorded and enquired into by the force as quality of service/MI files rather than as complaints about the police.

Third party reporting

The examination of MI files and the relevant force policy revealed that a complaint about the police made by a person on behalf of another was not generally accepted by the force. They were advised that they were not a 'competent complainer' and that the person in question should make their own complaint. This applied even where criminal allegations were made about on duty officers. There is no evidence on the relevant MI file to show if contact was made with the potential primary complainer to establish the veracity of the complaint. There is also no evidence on the relevant MI file to show whether the APF was advised of the criminal complaint made. On occasions, the correspondent also set out clear complaints about how they had been treated by the police. These complaints were not dealt with by the force.

Conversely, complaints about the police made by solicitors, elected members or support groups were responded to and action taken.

Sub judice

The review identified a number of files where the force responded to a complaint by stating that it considered the matter to be 'sub judice'. The MI files showed that the force did not accept the complaint made or progress matters further and the file was closed with a letter to the complainer advising that, should they remain dissatisfied at the conclusion of the judicial process, they could raise the matter again with the force.

In many such instances criminal allegations were made relating to the evidence to be given by officers in court. These complaints were not recorded and it appears from the material contained in these files that the APF appears not to have been advised of the complaint. The MI files also contained complaints about matters which were unlikely to be tested in court eg the use of handcuffs in routine detentions: these were treated in the same vein.

During the review the superintendent in charge of the CCD has revised this policy. Such complaints are now recorded as a complaint about the police and the APF is advised of the complaint. Where the force cannot progress the complaint at that time, the complainer is advised and the CAP file remains open until the matter can be progressed. This is a positive, and welcome, development.

Informal resolution / conciliation - minor misconduct

Effective informal resolution/conciliation (IRC) allows complaints to be dealt with speedily to the satisfaction of all parties. The force has been a leading exponent of this method of resolving complaints and the process has much to commend it. This review established that, where a complaint could potentially be resolved or

conciliated, the relevant operational division or department was invited to do so by the CCD. If IRC was achieved, the MI file was closed. The matter was not recorded as a complaint about the police even where clear officer mistakes or failures were identified and action taken.

The review found that the force has in place an order which directs officers to record for statistical purposes all complaints about the police whether conciliated or not. Whilst it has indicated that the guidance in this area is being re-written, the review found many instances in the MI files where the existing instructions in this respect, were not complied with.

Learning from complaints

Investigating complaints about the police is an important function of policing. Each complaint represents a perceived failure in service and an opportunity to improve service delivery. Of particular concern was an absence of any recorded learning from complaints. Whilst there were MI files where officers had been counselled, given advice or had had a performance review note raised, there was no obvious attempt to learn from complaints. It seems unlikely that, in all the complaints raised and recorded in MI files during the period reviewed, there was no opportunity to look at what had gone wrong and make recommendations or suggestions to prevent a repetition of the event or improve the service delivered.

The investigation and management of complaints about the police can be resource-intensive. Even where no fault is found in the police action, failing to learn from complaints means potentially repeating mistakes, inviting new complaints and thus more expenditure, a price of failure that can be clearly quantified.

The Commissioner has a statutory duty to secure suitable arrangements for the handling of complaints about the police, and in addition to other duties, to secure arrangements maintained for that matter are efficient and effective. This is an ongoing duty and the Commissioner will look to see how the police service in Scotland is learning from complaints about the police.

Conclusions

This review was predicated on a concern by the PCCS that certain complaints about the police were not being recorded or managed by the force as such, and that robust processes and procedures associated with complaints about the police were not being applied as they should have been.

Overall, the most notable issue was the decision making process, where minor and trivial, and not so minor and trivial complaints about the police were not recorded as complaints. It would seem on that occasions matters were recorded based on a perception of the likely outcome rather than in line with the recognised definition. In some MI files the force has handled the matter well and responded appropriately to the complainer: in others flawed policy impacted on how such matters were recorded and whether the force investigated them or not.

The PCCS review of MI files used by the force found that:

- there was a significant under-recording of complaints about the police due to MI files being used to record the receipt and investigation of complaints about the police;
- the force used the term ‘complaint about the police’ when dealing with complainers but noted their complaints in a MI file and did not record or investigate them as complaints about the police;
- some MI files containing criminal complaints about the actions of officers lacked clarity as to whether these complaints were reported to the APF;
- on a number of occasions the force mis-recorded complaints about the police in MI files as ‘Quality of Service’ complaints;
- the force did not generally record or investigate third party complaints, unless the third party was a solicitor, an elected member or a support group;
- the force did not record or investigate complaints they deemed to be ‘sub judice’;
- that MI files were used to record complaints about the police subject to informal resolution or conciliation, the force did not record them as complaints about the police;
- complaints about the police being under recorded by the force for the period under review;
- there was no evidence that the force took learning opportunities from the complaints about the police received and recorded in MI files.

It is easy to criticise after the fact, and without the constraints applicable at the time. However what is important here was how complaints made by members of the public were responded to. This review has found that the force could have done better.

Events have now overtaken how complaints about the police were recorded and managed and whilst there are criticisms in this report on how the force used MI files to record and manage complaints about the police there is a clear opportunity to recognise and acknowledge previous performance and to embrace the new and improved standards recognising the learning opportunities that complaints about the police provide to the police service in Scotland.

Following on from this review the Commissioner will meet chief officers from all Scottish forces to ensure that each force examines actual practice against written procedure and will encourage the police service in Scotland to ensure that learning opportunities are captured and shared with the service.

Recommendations

Recommendation 1
That Lothian and Borders Police conduct a full review of the manner in which miscellaneous inquiry files are used by the force and issue clear guidance on that matter to the force, satisfying the Commissioner that it has done so by 1 October 2008.

Recommendation 2
That Lothian and Borders Police conduct a review of MI files for the period 1 April 2003 to 31 March 2007, follow up these as appropriate and reassure the Commissioner by 1 December 2008 that any complaints about the police erroneously recorded in these files have been the subject of proper enquiry and that in all the circumstances the outcome of such enquiry was appropriate.

Recommendation 3
That Lothian and Borders Police conduct a full review of MI files for the period 1 April 2007 to the date of this report and satisfy the Commissioner by 1 October 2008 that the matters contained therein do not relate to complaints about the police, and that any mis-recording of complaints about the police has been corrected.

Recommendation 4
That Lothian and Borders Police ensure that by 1 October 2008 that all MI files containing complaints about the police where there was an reasonable inference of criminality on the part of a police officer or other member of the force were referred to the Area Procurator Fiscal for direction and guidance.

Recommendation 5
That Lothian and Borders Police conduct a full review on the manner in which complaints about the police are recorded and handled by the force and issue clear guidance on that matter to the force, satisfying the Commissioner that it has done so by 1 December 2008.