

Introduction

As part of his commitment to secure efficient and effective complaint handling, the Police Complaints Commissioner for Scotland will issue a regular practice bulletin called "Learning Point" to all police bodies in Scotland. Depending on the number of learning opportunities presented by cases, future editions are expected to be issued on a quarterly basis.

Learning Point summarises those complaint handling reviews conducted by the Commissioner in which opportunities for learning across all police forces and other policing bodies have been identified. Although all reviews are published, the Commissioner considers that the issuing of regular bulletins will assist policing bodies across Scotland to learn from the recommendations he has made in individual cases. This will, in turn, encourage improvements to practices and procedures across the whole police service.

This edition of Learning Point covers reviews undertaken by the Commissioner in 2009/10. It is not intended to be an exhaustive account of all decisions made during this period. Rather, the focus is upon the principles established by the Commissioner which have wider application than the individual case.

1. Final responses to complaints

One of the main grounds for the Commissioner concluding that complaints were not handled in a reasonable manner in 2009/10 was the inadequacy of the final response issued to complainers. Often, responses by policing bodies failed sufficiently to reflect the enquiries undertaken by investigating officers or the findings made by them. In some cases, responses consisted of a basic rejection of the complaint with no attempt being made to justify the decision. The result was that in some cases responses were poorly reasoned and unconvincing.

In PCCS/00225/PF-NC, the complainer alleged that the police force concerned had failed to interview key witnesses. The final response to the complaint simply advised that the enquiries undertaken were deemed "sufficient at the time". There was no attempt to explain why the enquiries were deemed sufficient and no explanation as to why some witnesses had not been interviewed.

In PCCS/00437/PF-CSP, the complainer alleged that a police force had lost evidence which he claimed was important to his defence to a charge. In its response, the force advised the complainer that the precise circumstances of the loss could not be established. While this was true, the investigating officer had established the most likely explanation for the loss,

details of which did not feature in the response to the complaint.

In the same case, a response was issued to the complainer advising that following "lengthy enquiries" none of his complaints could be substantiated. However, no details were provided as to the nature of these enquiries and no specific explanation given as to how the force's decision had been reached.

In PCCS/00386/PF-SP, a complainer alleged that there had been a failure properly to investigate a criminal offence. Enquiries into the complaint established that the original investigation had not been conducted properly, but the response issued to the complainer made no reference to this finding.

Similar deficiencies have been highlighted by the Commissioner in many other cases.¹

Commissioner's comment

- **In light of these decisions, the Commissioner expects all policing bodies to ensure that final responses better reflect the findings of enquiries and are sufficiently detailed to address the substance of complaints.**

¹ PCCS/PCCS/00371/PF-FC; PCCS/00218/PF-NC; PCCS/00569/PF-CSP; PCCS/00491/PF-TP

2. Custody cases

Issues regarding the treatment of individuals while in police custody featured in a number of reviews. In one, PCCS/00437/PF-CSP,² the complainant alleged that while in custody officers failed to respond to calls he made via the cell buzzer system. The result of this, he claimed, was that he was forced to urinate on the cell floor.

The police force's enquiries into this complaint consisted of an examination of the custody record which established that the complainant had been visited on a number of occasions while in his cell. No interviews were undertaken of the custody officers on duty at the time.

The Commissioner found that these enquiries were inadequate as, while they established the number of visits which the complainant had received, they were incapable of establishing whether his calls for assistance went unanswered. Although the consequence of any such failure was comparatively minor in the complainant's case, the Commissioner considered that in other cases a failure to respond to calls for assistance might have serious implications for a prisoner. This would be the case, for example, where a prisoner used the buzzer system to report serious injury or illness.

The Commissioner recognised the pressures upon officers dealing with a large number of prisoners and also that the buzzer system is open to abuse. However, he considered that there were good reasons for the buzzer system, which would be undermined if calls by prisoners were routinely ignored.

Commissioner's comment

- **Given the potentially serious implications of such a failure, the Commissioner expects all complaints of this nature to be investigated thoroughly and that all material witnesses are interviewed.**

3. The use of force

Several reviews³ featured complaints about the use of handcuffs and the manner in which these were applied.

The Commissioner has reminded policing bodies in these reviews that proper consideration must always be given to whether the use of handcuffs is justified. The matters which ought to be taken into account before

reaching such decisions are set out in the Scottish Police Service's Officer Safety Training Manual.

The Commissioner has also reminded policing bodies, again in line with the Manual, that officers should record in their notebooks the reasons for deciding to handcuff suspects. Where the use of handcuffs results in a complaint about the police, the Commissioner has encouraged investigating officers to make explicit reference to "Use of Force" reports where these exist.

Commissioner's comment

- **The Commissioner considers that adherence to these practices will assist policing bodies to deal convincingly with complaints arising from the use of handcuffs, and of force more generally.**

4. Police Powers

In PCCS/00296/PF-CSP the complainant alleged that a police force had inappropriately used its common law search powers. Although the police had initially sought a warrant authorising the seizure of a computer within the complainant's home, the Procurator Fiscal's application to the sheriff did not include reference to this item. Consequently, the warrant granted by the sheriff made no reference to it. Despite this, officers seized the computer during their search. In its response to the subsequent complaint about this, the force concerned informed the complainant that the officers had used their common law powers to seize the computer.

Given that the search for and seizure of private property must be undertaken lawfully, the Commissioner concluded that the force concerned required to justify the use of its common law powers in this connection. Accordingly, the Commissioner recommended that the force explain precisely to the complainant how its common law powers had justified the search for and seizure of the computer.

A similar approach was taken by the Commissioner in PCCS/00528/PF-SP, a review arising from a dispute about occupancy rights under the Matrimonial Homes (Family Protection) (Scotland) Act 1981.

The complainant in that case was Executrix of the estate of her late mother who she claimed had altered her will to prevent her estranged husband from residing at the former matrimonial home. Although the complainant's sister was residing at the property, the estranged husband sought to assert occupancy rights to the property by attempting to change the locks.

² see also PCCS/00252/PF-NC

³ PCCS/508/PF-SP(A) PCCS/00296/PF-CSP

The complainer believed that her family had rights to the property but claimed that police officers had warned her she would be arrested if she refused to leave. The complainer later complained about this and was informed that the role of the attending officers had been to prevent a breach of the peace.

The Commissioner recognised the difficult situation the officers had faced but was also concerned that the complainer had been warned of her possible arrest in a dispute which the officers themselves had regarded as purely civil in nature. The Commissioner therefore recommended that the force explain fully to the complainer the legal basis for the warning given to the complainer that she could be arrested simply for refusing to leave the property.

Commissioner's comment

- **Both these reviews demonstrate the need for police bodies, in dealing with complaints of this nature, to justify fully to complainers the exercise of their formal powers.**

5. Misconduct

In circumstances in which complaints are rejected, police forces frequently inform complainers that no misconduct proceedings are to be taken against the officers concerned.

The Commissioner has dealt with this issue in a number of reviews. Generally, the Commissioner has recommended that complainers must be given as much information as is necessary to properly inform them of the reasons why misconduct proceedings are not considered justified.

The Commissioner's view, as set out in PCCS/00442/PF-SP and other cases⁴, is that merely advising complainers that such proceedings are "inappropriate" is not sufficient, without further reasons being given. Nor is it sufficient for a police body merely to advise that it is satisfied there has been no misconduct by the officers concerned, as was the case in PCCS/00569/PF-CSP.

In cases in which it has been decided that there is insufficient evidence to justify misconduct proceedings, the complainer should be informed of how this conclusion was reached.⁵

⁴ see also PCCS/503/PF-SP; PCCS/00162/PF-SP; and PCCS/508/PF-SP

⁵ PCCS/00395/PF-TP

Commissioner's comment

- **The recommendation by the Commissioner in this connection has been made with the sole aim of properly informing complainers as to the outcome of their complaints. In none of these reviews has the Commissioner expressed an opinion on the appropriateness or otherwise of misconduct proceedings.**

6. The use of appropriate adults

Complaints regarding the use of appropriate adults featured in two reviews.⁶ In PCCS/00296/PF-CSP the complainer alleged that a police force's vulnerable adult policy was inadequate because it failed to "acknowledge those with a psychological condition".

The Commissioner found that although the policy was sufficiently wide to cover those suffering from psychological conditions, it set a fairly high threshold regarding the severity of any condition. Essentially, the force's policy applied to those over the age of 16 who are deemed incapable of understanding the significance of police questions or their replies to these.

In his report, the Commissioner referred to guidance issued in 2007 by the Scottish Appropriate Adult Network (a body made up of representatives of the Scottish Government, local authorities and ACPOS) which suggested that appropriate adult services should cater for all persons over the age of 16 who suffer from a "mental disorder". This term is defined in the Mental Health (Care and Treatment) (Scotland) Act 2003 as "any mental illness, personality disorder or learning disability however caused or manifested."

The Commissioner concluded that, based on the information available at the time, the force's handling of this complaint had been reasonable. However, he recommended that the force review its policy relating to the use of appropriate adults in light of the 2007 guidance. As part of this review the force was asked to consider whether its current definition of "vulnerable adult" was suitable given the broader approach to the use of appropriate adults taken in the guidance. The same recommendation was made in PCCS/00218/PF-NC where this issue was also raised.

Commissioner's comment

- **In light of these decisions, the Commissioner encourages all relevant police bodies to conduct the same review of their procedures on the use of appropriate adults.**

⁶ PCCS/00296/PF-CSP; PCCS/00218/PF-NC

7. The recording of complaints

In 2007 the Commissioner assumed responsibility for the production of annual statistics on complaints about the police in Scotland.

One way in which the Commissioner will ensure the accurate recording of complaints is by examining this within complaint handling reviews and making appropriate recommendations when it is found that reporting practices have fallen short.

Throughout 2009/10 the Commissioner identified failures on the part of various police forces formally to record complaints made about them⁷. In both instances, these failures appear to have been due to simple oversight or insufficient attention being paid to the correspondence or statements in which the complaints were conveyed.

The Commissioner has also identified what he considered to be errors in the appropriate classification of complaints. In PCCS/00536/PF-CSP a complaint was recorded as one relating to “quality of service” when, in the Commissioner’s view, it consisted of a clear allegation of neglect of duty.

Although this error did not affect the outcome of the complaint, generally the mis-classification of complaints has the potential to give a misleading impression of satisfaction levels regarding particular aspects of policing.

In PCCS/00702/PF-CSP, the complainer alleged that the method used by a police force for recording complaints resulted in these being under-reported. The complainer, along with his wife and son had made complaints about the police arising from the same incident. However, the force had recorded that there was a single complainer rather than three.

In the Commissioner’s view, this approach was not consistent with the definition of a “complaint case” issued by Her Majesty’s Inspectorate of Constabulary for Scotland in 2007 (and repeated by the Commissioner in “Police Complaints: Statistics for Scotland”, published in 2009).

The Commissioner observed that there was no formal, national guidance on how complaints about the police should be recorded. He therefore recommended that the eight Scottish police forces develop such guidance. Given his role under section 42 of the Police, Public Order and Criminal Justice (Scotland) Act 2006, the Commissioner will also be involved in this process.

⁷ PCCS/00252/PF-NC and PCCS/00667/PF-SP

Commissioner’s comment

- **In the meantime, the Commissioner encourages all relevant policing bodies to adhere to the current definition of a “complaint case” when recording complaints about the police.**

8. Police Boards and Authorities

Although police boards and authorities deal with complaints about senior officers, they are also “appropriate authorities” under the 2006 Act and therefore are subject to the Commissioner’s oversight.

Accordingly, the Commissioner recommended in PCCS/00651/PB-CSJPB that boards and authorities have in place procedures for dealing with complaints about themselves.

Commissioner’s comment

- **The Commissioner expects all boards and authorities to implement this recommendation.**

Other issues

The dating of statements

The Commissioner has noticed that, unlike statements obtained from members of the public, operational statements submitted by police officers in connection with complaint enquiries are often undated; he recorded this fact in three cases.⁸ The Commissioner encourages all relevant police bodies to ensure that operational statements submitted during the course of complaints enquiries are dated.

Maintaining auditable records

In a number of his reviews⁹, the Commissioner highlighted failures by various police bodies to maintain auditable records of enquiries undertaken into complaints. These consisted mainly of failures to record the content of discussions with complainers and other witnesses.

While in general the Commissioner has no concerns as to the quality of record keeping, he raises the issue to ensure consistency across all cases.

⁸ PCCS/00601/PF-TP ; PCCS/00503/PF-SP; PCCS/00425/PF-SP

⁹ PCCS/00434/PF-SP; PCCS/00359/PF-SP; PCCS/00208/PF-D&G

Securing efficient and effective complaint handling

It is vital that the public continues to have confidence in the Scottish police service and UK-based policing bodies operating in Scotland. Policing, delivered at significant cost to public funds, often falls into medium or high risk operations where officers and/or staff work under significant pressure to complete their task. Inevitably there will be occasions when the interactions with, or services provided by the police to the public, will not be to their satisfaction and they will choose to complain about it.

These are the areas that the Commissioner is currently developing or engaging with stakeholders to continuously improve arrangements within their respective policing bodies.

The Commissioner believes independent audit and assessment is an essential component in fulfilling his functions and providing re-assurance to the public. In this issue of Quality Matters we will look at some of the work he has instigated in support of his audit policy.

Police Boards and Authorities – Holding to account

The Commissioner is currently undertaking an audit to ensure that the Police Boards and Authorities are fulfilling their statutory obligation to scrutinise arrangements about police complaints within their area. He is also seeking to establish what arrangements they have in place to consider complaints about the Boards themselves and about senior police officers.

A questionnaire was issued at the end of June and once information has been provided and reviewed, fieldwork will be carried out at a selection of Boards and Authorities.

Commissioner's comment

- **The Boards will receive a draft report and will be invited to reply with actions in response to any findings and recommendations, prior to its publication before the end of the year.**

User-focused assessment of the accessibility of police complaint handling within the eight Scottish police forces.

This audit was carried out during 2009, with the final report, including actions proposed by the forces published on the PCCS' website in December.

The Commissioner made a number of recommendations for each force relating to information available on their websites and about broader aspects of accessibility in relation to both existing and potential complainers.

The audit will be followed up shortly and each police force will be asked to provide an update on their progress, follow-up visits are planned for February 2011.

All police forces have been issued with an initial supply of the new national leaflet, "A Guide for Complaints about the Police" and, for the first time, accompanying posters.

Commissioner's comment

- **The leaflet and poster should be available/ displayed in all areas where the public may need to access them.**

Annual Statistical Return on Police Complaints

Work is underway towards the publication of the Annual Statistical Return for all police bodies in Scotland.

This is the second year that PCCS has been responsible for the production of this publication which records the type and number of complaints received by the police from the public in aggregate and broken down by individual police forces.

The report also catalogues how the complaint was disposed of by the force concerned.

Commissioner's comment

- **The Annual Statistical Return and associated individual force reports will be published in October.**

Recording of complainers' demographic information

New Centurion software was issued to all Professional Standards Departments in March 2010, allowing a more detailed record of complainer's demographic information (as agreed by the Commissioner and representatives of the ACPOS Centurion User Group in September 2009).

Commissioner's comment

- **This information will be requested as part of the Annual Statistical Return for 2010-2011, and this information should be collected and recorded when receiving complaints.**

Modernising the Police Complaints Process

The Commissioner continues to work with the Police Advisory Board for Scotland, Conduct Working Party in modernising complaint handling, performance and disciplinary procedures for the Scottish Police Service, that includes officers senior officers and staff.

The work is being carried out in three phases.

- The first phase involves identifying the aims and scope of work, a set of standards of professional behaviour, complaint handling and disciplinary procedures
- Phase two aims to produce draft proposals on new procedures and new/ amended regulations that will be circulated for consultation
- Phase three will be completed by the end of November 2010. The proposals will be amended in response to the consultation, and being passed to Scottish Government

Commissioner comment

- **The Commissioner intends to issue statutory guidance to accompany the new or amended regulations, as is provided for under section 45 of the 2006 Act.**

Other Policing Bodies Agreements

The Commissioner may enter into agreement with other policing bodies operating within Scotland to establish if complaints handling corresponds or is similar to the requirements within the 2006 Act.

The Commissioner has now formalised arrangements with British Transport Police, Civil Nuclear Constabulary, Ministry of Defence Police, UK Borders Agency and their Authorities as well as the Serious and Organised Crime Agency. Cross border arrangements

with IPCC and Crown Office and Procurator Fiscal Service have also been finalised for relevant complaints.

Commissioner's comment

- **Discussions are underway with HM Revenue and Customs with a view to establishing complaints handling arrangements for aspects of their operation that involve the use of police powers in Scotland.**

Benchmarking with other police oversight bodies

The Commissioner's team engages with other UK police complaints oversight bodies to maintain an awareness of developments in areas of mutual interest. The Police Ombudsman for Northern Ireland (PONI) Office is, or has recently undertaken work in the following areas.

Incivility

PONI has identified that during its first eight years in operation, 20 per cent of the complaints involved allegations about a range of police officer behaviour which they grouped together under the term 'incivility'. This term covers allegations such as the police officer being rude, showing a lack of respect, being abrupt or displaying a general lack of sensitivity in some situations. Al Hutchinson, the Police Ombudsman for Northern Ireland has stated that 'Irrespective of whether the complaint has been substantiated or not, collectively such complaints provide a picture of some people's perception of the quality of service provided and where problems appear to arise in the delivery of that service.'

The results are published available on the PONI website <http://www.policeombudsman.org/>.

Incivility allegations consistently feature within the top four within Scottish police complaints.

Local Resolution

A project started at the beginning of June 2010 in North Belfast aimed at finding a quicker and more effective way of dealing with less serious complaints against the police.

During the formative stages of the project, the PONI Project Manager and PCCS Quality Assurance Manager visited Strathclyde Police Professional Standards and B Division to see at first hand how recent changes in local resolution in Scotland are working.

Thanks to John Pollock, George Cleland and their teams for facilitating this visit. More information will follow on this project in a later edition of Quality Matters.