

Introduction

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

This edition of Learning Point covers reviews finalised by the Commissioner between April and September 2010. It is not intended to be an exhaustive account of all the decisions made during this period. Rather, the focus is upon the principles established by the Commissioner which have wider application than the individual case. A number of the themes identified in the previous edition also feature in this edition.

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1. Final responses to complaints

The last edition of Learning Point highlighted a significant number of cases in which the final response issued to the complainer did not reflect sufficiently the nature and extent of the enquiries undertaken into the complaint. The same issue has arisen in more recent reviews.

In PCCS/248/PF-SP, the Commissioner identified as a learning point the need for complainers to be given sufficient information to properly inform them as to how key conclusions were reached in the response to their complaints. PCCS/570/PF-D&G featured the same learning point.

In PCCS/00625/PF-TP, the complainer alleged that the police had victimised and harassed her son. In essence, the response to her complaint amounted simply to an assurance that police action had been appropriate. No attempt was made by the police force to justify this finding. The Commissioner determined that in order to provide a reasonable response to the complaint, it was

necessary for the force concerned to explain how it had reached the conclusion that its actions were justified.

In PCCS/0032/PF-SP the complainer alleged that the force concerned had failed to investigate the death of her husband. Again, the response to the complaint amounted merely to an assurance that the death had been properly investigated. The response did not address any of the issues raised by the complainer which, in her view, supported the complaint. This was despite the fact that the investigating officer had dealt with each of the complainer's concerns in detail in his report.

Similar deficiencies have been detected in a number of other reviews¹. In the vast majority of these, the information omitted from the final responses supported the position adopted by the forces in relation to the complaint.

Had the information been included, it would have allowed for a more convincing response and may well have resulted in the complainer accepting the force's findings.

Commissioner's comment

- **The Commissioner considers that this deficiency is easily remedied by adherence to the learning point described above.**

¹ See PCCS/00581/PF-SP; PCCS/00295/PF-CSP; PCCS/00597/PF-SP

2. Police powers

In PCCS/00274/PF-FC, the complainer alleged that police officers had, without good reason, threatened to arrest him for an alleged breach of the peace. The Commissioner found that the complaint had been dealt with reasonably. However, it appeared that in considering whether the complainer was committing a breach of the peace, the officers concerned had attached weight to the “annoyance” his behaviour was causing to witnesses. The Commissioner examined the relevant case law which provided that something “substantially greater than mere irritation” was required to establish the offence. Accordingly the Commissioner found that, in so far as the officers had proceeded on the basis that the mere annoyance of witnesses was a sufficient basis for the complainer’s arrest, there was no justification for this. The Commissioner therefore recommended that both officers be reminded of the current definition of breach of the peace (Note: this review was finalised prior to the enactment of section 38 of the Criminal Justice and Licensing (Scotland) Act 2010 which creates the offence of threatening and abusive behaviour).

A similar issue arose in PCCS/00248/PF-SP. There, the complainer alleged that an officer had been unjustified in dispersing guests who had attended a party at the complainer’s home. The officer’s actions followed complaints by a neighbour about noise. In the response to her complaint, the complainer was advised that under the Civic Government (Scotland) Act 1982 police officers in such circumstances have the power to enter premises and “disperse the party”.

Having examined the relevant provisions of the Act, the Commissioner found that there was no such power of dispersal within the 1982 Act. The Commissioner recommended that the force explain to the complainer the legal basis for the officer’s actions.

Commissioner’s comment

- **Where complaints question the use of police powers it is incumbent on police bodies to state explicitly and accurately the basis upon which those powers were exercised.**

3. The retirement of police officers

In PCCS/00121/PF-NC, the force concerned advised the complainer that no further enquiries would be undertaken into her complaint because the officer

against whom the complaint had been made had since retired.

Commissioner’s comment

- **The Commissioner highlighted that simply because an officer who is subject to a complaint retires before the complaint is resolved does not, in itself, justify the decision not to investigate it. For other reasons, the Commissioner found that the complaint had been handled reasonably.**

4. The investigation of complaints

In a number of recent reviews, the question has arisen as to the extent of enquiries which are required before a complaint can be said to be properly investigated.

In PCCS/594/PF-TP, the complainer accompanied his daughter to a police station where it had been arranged that she would be interviewed as a witness to an alleged criminal offence. Also present within the interview room were two police officers. The complainer made several complaints about what transpired within the interview room. As part of the investigations into these complaints, statements were obtained from the applicant and one of the police officers, but not from the complainer’s daughter. In the response to the complaint, the complainer was advised that it was not considered “reasonable or proportionate” to carry out any further enquiries into the matter.

In his report, the Commissioner questioned why the force had considered it proportionate to obtain statements from the complainer and one of the police officers, but not the complainer’s daughter. The Commissioner highlighted that any enquiries undertaken into complaints must be sufficient to allow a reasonable response to be issued to the complainer. In the present case, the Commissioner did not believe that the enquiries undertaken were sufficient to achieve this objective.

Commissioner’s comment

- **The Commissioner will be addressing the issue of proportionality in detail in his forthcoming statutory guidance.**

In PCCS/00527/PF-FC, one of the complaints resulted in statements being taken from the applicant and two police officers who were present when an alleged incident occurred. However, no statement was taken from the applicant’s wife who was also present. In respect of another of the complaints, the complainer

was advised that a full investigation had been undertaken into the circumstances. However, there was no evidence of this in the complaints file and the Commissioner expressed doubt that witnesses who had been named by the complainer had ever been approached for statements. In light of what appeared to be a fundamental failure by the force to investigate this complaint, the Commissioner issued a reconsideration direction under section 35(7) of the Police, Public Order and Criminal Justice (Scotland) Act.

5. Unreasonable demands

Most, if not all, police forces now have in place policies designed to deal with unreasonable actions and demands of complainers. The Commissioner recently dealt with two cases which touched upon this issue.

In PCCS/00306/PF-SP(B), the decision was taken not to communicate further with the complainer in respect of her complaints, but no steps were taken to notify the complainer of this. The Commissioner raised as a learning point the need to ensure that any decision to restrict contact with a complainer is communicated to him/her in writing, along with an explanation as to why this course of action is being taken. It is envisaged that this will be done as a matter of course as and when the force in question adopts an unreasonable actions policy.

In PCCS/00448/PF-SP, the Commissioner took the highly unusual step of recommending to a police force that it no longer deals with complaints made by the complainer of a specified description. The Commissioner took this step due to the sheer amount of correspondence the complainer had sent to the force; the substantial amount of resources already expended in dealing with the complaints; and the fact that the applicant continued to correspond with the force in connection with these complaints.

6. The recording of complaints

The last edition of Learning Point commented on failures to accurately record complaints made by members of the public. Similar failures have been detected in more recent reviews.²

In PCCS/00594/PF-TP, the Commissioner questioned the use of a particular “closure category” (“resolved by

² See PCCS/00306/PF(A); PCCS/00527/PF-FC; PCCS/00597/PF-SP

explanation”) to record the way in which a complaint was concluded. Although the force’s standard operating procedures contained no definition of “resolved by explanation”, the force indicated to the Commissioner’s office that the use of this closure category was dependent upon the complainer being satisfied with the explanation given. In the present case, it was clear that the complainer had not accepted the explanation. Although this may appear a minor issue, consistent misuse of closure categories will result in a misleading impression being given in complaints statistics about the true outcome of complaints.

Commissioner’s comment

- **The Commissioner would remind all police bodies of the need to accurately record all complaints as well as their outcomes.**
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7. Auditable records

The last edition of Learning Point also referred to a number of cases in which the Commissioner had found an absence of auditable records of the enquiries undertaken in relation to the complaints. Similar deficiencies have been identified in recent reviews.³

Commissioner’s comment

- **The Commissioner would remind all policing bodies of the need to keep adequate records of enquiries and other work undertaken in relation to complaints.**

8. Updating complainers

In PCCS/0032/PF-SP, the Commissioner raised as a learning point the need to provide complainers with regular, written updates in cases where enquiries become extended.

If you have any feedback on Quality Matters please email your comments to enquiries@pcc-scotland.org

Police Complaints Commissioner for Scotland
Hamilton House
Hamilton Business Park
Caird Park
Hamilton
ML3 0QA

³ See PCCS/0032/PF-SP; PCCS/00567/PF-D&G; PCCS/00179/PF-SP; PCCS/00597/PF-SP

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 reassurance 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.

From sanctions to solutions - Statutory guidance launch

On Tuesday 16 November, the PCCS launched statutory guidance on police complaint handling for consultation. The launch was held at Hamilton Town Hall and was well attended by most of the police forces, other bodies with police type powers operating in Scotland, and police boards and authorities.

The event was designed to introduce delegates to the background behind the consultation document as well as the parallel work of the Police Advisory Board for Scotland technical working group – conduct working party in taking forward proposals for new complaints and conduct legislation.

Chaired by the Commissioner, Professor John McNeill, delegates were provided with an overview of the guidance including details of the consultation exercise itself. The event concluded with a questions and answer session, the results of which have been noted and will be considered as part of the consultation process.

The PCCS now welcomes all comments and feedback on the Guidance. The consultation process will last for eight weeks, ending on 11 January 2011.

The consultation document can be found at http://www.pcc-scotland.org/quality_assurance/consultation_from_sanctions_to_solutions

Following the consultation, the responses will be drawn together and considered, before the final publication of the statutory guidance.

Holding to account - police board and authorities oversight audit

Further to the outline in the previous edition of quality matters explaining the purpose and progress of the police boards and authorities audit, this project is now well under way. Following receipt of the questionnaire responses from all eight boards or authorities, as well as the British Transport Police Authority who are being used as a benchmark, these have now been collated and an options paper devised for the Commissioner's attention.

After discussion with the Commissioner it was decided that **all** of the boards and authorities should be visited.

This would allow for:

- additional questions to be put to the boards or authorities where necessary,

- any questions or comments from the boards or authorities to be addressed,
- the next stages to be outlined, and
- the emerging issues from the questionnaire to be discussed.

These visits have all now been carried out. John Paisley and Linda Gaw from the Commissioner's office met with the most relevant representatives of the boards or authorities in respect of complaints and oversight.

It is hoped that the draft report will be completed for the Commissioner's attention within the next four weeks. The draft report will then be issued to the police boards and authorities for comment before publication.

Memorandum of Understanding with Her Majesty's Revenue and Customs

The parameters have now been agreed for a memorandum of understanding between PCCS and HMRC, and the drafting of this is now underway. This MOU will relate to non-criminal complaints about HMRC staff with police-like powers, who are operating in Scotland.

Memorandum of Understanding with Crown Office and Procurator Fiscal Service

A memorandum of understanding has now been signed between the PCCS and the Crown Office and Procurator Fiscal Service. The purpose of the memorandum is to confirm the steps that the PCCS will take when a complaint is received which includes an allegation of an act or omission which constitutes a crime; and to make sure that the PCCS does not prejudice any criminal investigation by the Crown Office, but still ensuring that the PCCS is able to carry out his statutory functions. The document will be circulated shortly to all relevant authorities.

Follow up audits

In December, the PCCS plans to begin a follow-up to the audit of Northern Constabulary complaints analysis and recording, http://www.pcc-scotland.org/quality_assurance/reports/northern_constabulary_complaints_analysis_recording This follow-up will examine the progress the force has made in addressing the agreed action plan response to the audit report's recommendations. specifically look at whether a formal audit process has been implemented to ensure complaints which are received at local command level are properly identified and recorded. It will also ensure that complainers are being responded to in a manner that gives a clear understanding of how complaints about the police are being considered and addressed. These areas were identified in the report as weaknesses of Northern Constabulary's analysis and recording of complaints.

The second follow-up will be to the Assessment of Accessibility of Police Complaint Handling, http://www.pcc-scotland.org/assets/0000/0532/Dec_09_User-focused_assessment_report_FINAL.pdf . This will take place in the first few months of 2011. The follow-up will look at the individual force commitments to improvement and will also look at whether the Scottish Police Service has become more responsive to complainer feedback and identified needs.

Police Complaints: Statistics for Scotland 09/10

The annual statistical returns from the Scottish Police Service have now been collated, analysed and reported to the Commissioner, along with feedback from the individual forces and relevant policing bodies.

The final report will be published in December, along with the reports for individual police forces.