

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 reviews are normally 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 October 2010 to March 2011. 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.

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1. Final responses to complaints

The often poor quality of written responses to complaints has been highlighted by the Commissioner previously, and continues to be a cause for concern. Inadequacies in written responses form a substantial proportion of those complaints which the Commissioner finds have not been dealt with reasonably. In the majority of cases, the deficiency involves a failure to reflect sufficiently the findings of the enquiry officer, thereby rendering the response incomplete and unconvincing.

Such deficiencies are apparent in cases involving relatively minor complaints¹, but also in those arising from serious incidents. In PCCS/0181/09/PF-SP, for example, the complaints concerned the death of the complainer's son. Although the enquiries into some of the complaints were thorough, the written responses

were generally cursory and not of a standard which the Commissioner would expect in such a case.

Conversely, in other cases the Commissioner has found written responses to have provided a false impression of the nature and extent of enquiries undertaken into the complaint. In PCCS/0063/09/PF-L&B, for example, the response clearly suggested that all five officers involved in the search of the complainer's home had provided accounts denying the complaint. In fact, only one officer had provided an account, meaning that there was one source of evidence in support of the complaint and one source disputing it. This was an entirely different scenario from that portrayed in the response issued to the complainer. *The Commissioner recommended further action to remedy these deficiencies.*

In light of his continuing concerns in this area, *the Commissioner intends to write to the Chief Constables of the forces concerned highlighting again the need for properly reasoned written responses, reflecting the established facts.* There is little purpose in carrying out thorough enquiries into complaints and thereafter providing complainers with vague, unconvincing and sometimes inaccurate written responses.

Commissioner's comment

“ The Commissioner is aware that UK-wide policing forces such as British Transport Police routinely provide complainers with copies of investigation reports produced in respect of their complaints. Subject to an appropriate “harm” test, the Commissioner considers that the same approach should be adopted by Scottish police forces.

¹ eg PCCS/0060/09/PF-CSP

2. Police powers

In PCCS/0370/PF-SP, the complainer's son was the subject of a "home detention curfew" which was subsequently revoked by the Scottish Prison Service. A "curfew recall notice" was issued to Strathclyde Police and some time later officers attended the complainer's home looking for her son. The officers received no response but formed the impression that there was someone within the property. However, after forcing entry to the property they found no-one inside. The officers thereafter left a copy of the recall notice on a table, secured the property and then left. Later that day, the complainer's home was the subject of a break-in.

The complainer alleged that Strathclyde Police had delayed implementing the recall notice to such an extent that, by the time they did so, her son was no longer living with her. In dealing with this complaint the Commissioner identified that according to Strathclyde Police's standard operating procedures no power to force entry attached to revocations of home detention curfews. He therefore found the officers' actions to have been unwarranted.

Commissioner's comment

“ The Commissioner urges all police forces to ensure that officers are aware of the extent of their powers in respect of curfew recall notices.

3. Custody cases

A number of the cases dealt with by the Commissioner recently concern the treatment of persons while in police custody.

In PCCS/377/09/PF-D&G, the complainer had been assessed as highly vulnerable, prone to spontaneous aggression and as posing a risk of self-harm. In the circumstances, the duty custody officer requested that two female officers place the complainer in an "anti-suicide suit". Efforts were thereafter made by the female officers to place the suit on the complainer but, when these failed, they were joined by male officers. The male officers then restrained the complainer while the female officers removed her clothing. The complainer later complained about the removal of her clothing and the involvement of the male officers in this.

Neither the ACPOS custody manual nor the force's standard operating procedures provided any guidance as to the circumstances in which the full removal of a prisoner's clothing may be justified. The Commissioner considered that in the absence of such guidance there

was a risk that decisions to remove fully a prisoner's clothing could be made on a purely arbitrary basis. *A recommendation was therefore made that the force concerned, in conjunction with ACPOS, devise general guidance in this area. The Commissioner also recommended that the force assesses whether its current training arrangements for custody staff satisfy the provisions of the ACPOS custody manual; and, depending on the outcome of this, establish a suitable training programme.*

In PCCS/636/PF-CSP, the complainer declared when taken into custody that he suffered from a range of health problems, had suicidal tendencies and took various medication. Based upon this information, his vulnerability was classed as "high". The complainer requested the assistance of a doctor but this was declined on the basis that nothing had been identified to justify contacting the police surgeon, and also that no medication would be prescribed to the complainer in any case until such time as he was sober. The complainer subsequently complained about the failure to provide him with medical assistance.

According to the force's custody procedures, where it is suspected that a prisoner has suicidal tendencies a police surgeon will be called immediately. The Commissioner considered that even though doubt was later cast upon the accuracy of the information provided by the complainer as to his health, a doctor ought to have been called during his time in custody.²

Commissioner's comment

“ The Commissioner would urge all forces to ensure that custody staff are fully aware of the content of the ACPOS custody manual, as well as the relevant standard operating procedures.

Although not strictly speaking a "custody" case, the Commissioner recently issued a report concerning a complaint made by an alleged rape victim whose statement had been obtained by two male officers. The Commissioner established that neither officer was a "Sexual Offences Trained/Liaison Officer" ("SOTO/SOLO") at the time and therefore, in terms of the relevant ACPOS guidance, should not have been involved in taking a detailed statement from the complainer.

Commissioner's comment

“ The Commissioner recommended that the force concerned ensure that all officers involved in obtaining statements from alleged victims of serious

² Similar issues were raised in PCCS/0634/PF-CSP

sexual offences are appropriately trained. The Commissioner would urge all other forces to do the same.

4. Misconduct

Some time ago, the Commissioner recommended in a number of cases that *police forces inform complainers of the reasons why no misconduct proceedings are to be taken against officers subject to complaints.*³

More recently, the Commissioner has recommended that *forces inform complainers of the outcome of any misconduct proceedings taken in consequence of a complaint.*⁴ Such recommendations reflect the need for greater openness and transparency in the police misconduct process; they also serve to avoid the anomaly that exists whereby a complainer may be permitted to attend a misconduct hearing but be denied information as to any disposal made.

Commissioner's comment

“ New misconduct regulations will be introduced in the near future and the Commissioner will be advocating strongly for a provision requiring the disclosure of such information as a matter of course.

5. Police statements

In any complaints investigation it is important to ensure that the evidence given by witnesses is provided independently, and to safeguard against collaboration and collusion.

In PCCS/269/09/PF-BTP, the statements given by two officers who were the subject of complaint were almost identical. Although there was no evidence that the statements were untrue, the Commissioner found it difficult to avoid the conclusion that there had been some coordination as to their content. In order to discourage such practices, *the Commissioner recommended that the explanatory notes attached to the notice of investigation served on officers be amended to make it clear that any statements submitted must be prepared independently of any other officers involved in the enquiry.*

Commissioner's comment

“ The Commissioner would urge other police forces to take similar steps in this connection.

6. Provision of information to the Commissioner's office

Increasingly, the Commissioner is finding that the information provided by police forces at the commencement of the review process is incomplete, and that further requests for information require to be made by his office. In some cases, particularly those in which more than one request for further information has required to be made, this has led to significant delays in the review process.

Commissioner's comment

“ The Commissioner intends to raise this issue directly with the Chief Constables of the forces concerned.

7. Maintaining auditable records

As noted in previous editions, the Commissioner frequently encounters cases in which there are no records of enquiries which the force concerned maintains were undertaken. Recent notable examples of this include PCCS/0028/09/PF-SP; PCCS/0184/09/PF-FC; and PCCS/0063/09/PF-L&B. Failure to produce such records results in doubt being cast on whether the witness provided the account at all, and will generally result in the Commissioner recommending that a formal statement be taken.

Commissioner's comment

“ The Commissioner would again remind police forces of the need for written records to be kept of accounts given by any witnesses interviewed during the course of a complaints enquiry.

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

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³ Eg PCCS/0442/PF-SP; PCCS/0395/PF-TP

⁴ Eg PCCS/0570/PF-D&G; PCCS/606/PF-L&B; PCCS/38/07/PF-CSP

Statutory Guidance

On 21 March 2011, the Commissioner published "From Sanctions to Solutions", Statutory guidance on police complaint handling in Scotland. The guidance was produced in tandem with the work on modernising police complaints being carried out by the Police Advisory Board for Scotland's technical working group - conduct working party.

One aim of the statutory guidance is to help shift the culture of police complaints from one of blame, to a culture of learning for the organisation. The guidance sets out a new six stage process whereby complaints are assessed at an early stage and depending on the nature of the complaint it will follow one of two routes – local complaint handling, or specialist investigation. Whichever route the complaint follows, there is a strong emphasis on proportionate complaint handling.

Local complaint handling is another main feature of the guidance. Complaints will be dealt with quickly and effectively through local complaint handling, often within the first or second contact. Learning from complaints will be circulated and used to improve complaint handling across the organisation.

All police forces in Scotland have been issued with a small supply of hard copies of the guidance. It is also available for download at:

http://www.pcc-scotland.org/quality_assurance/2011reports/statutory_guidance-from_sanctions_to_solutions

Moving forward, the Commissioner is currently in discussion with the Scottish Police College and ACPOS regarding the development of a training package to help the Scottish Police Service implement the statutory guidance effectively.

Section 45 of the Act states that persons to whom the guidance is issued must "have regard to that guidance in carrying out the functions to which the guidance relates."

Commissioner's comment



The Commissioner therefore intends to evaluate all forces' complaint handling standard operating procedures in light of the statutory guidance

to ensure that they complement the guidance.

Rules and conventions on recording and assessment

Following a recommendation in one of the Commissioner's complaint handling reviews, (that the eight Scottish police forces, under the auspices of ACPOS, develop formal, national guidance on the recording of complaints about the police) work is now being taken forward by Chief Inspector Audrey MacLeod, Head of Professional Standards at Central Scotland Police. She is currently working with the PCCS Quality Assurance Officer to review the suitability of the current ACPOS definitions of heads of complaint and the practicalities for the Scottish Police Service in recording complaints. A report will be submitted later in the year to the Commissioner and to ACPOS for consideration.

Holding to Account

On 1 March, the Commissioner issued his report "Holding to Account" an audit of police board and authorities capabilities regarding complaint handling and oversight. The audit looked at the organisational arrangements that boards have in place to fulfil their duties in relation to scrutiny and governance of complaints.

The Commissioner made thirteen recommendations which included:

- identifying best practice, such as publishing procedures for complaint handling,
- recommending that where possible complaint sub committee meetings should be held in public, and
- requesting boards and authorities address the differing levels of knowledge and expertise across their members, by introducing a training needs analysis for those who are appointed to handle or oversee complaints.

Commissioner's comment



The Commissioner welcomes that the boards and authorities are currently working together through the Convenors' forum to determine the most efficient and effective way of implementing all of the recommendations made.

The report, including all of the Commissioner's recommendations, is available on the PCCS website at: http://www.pcc-scotland.org/quality_assurance/2011reports/holding_to_account

External talks and seminars

In order to help drive up public confidence in police complaint handling, the Commissioner's staff carry out talks and presentations to community groups, and other public bodies and organisations.

On 2 March 2011, two of the Commissioner's staff visited the main east coast office of Citizens Advice Scotland to talk to staff about the police complaints system and the work of the Commissioner. There was a great deal of interest in the process, and the question and answer session was particularly lively. The feedback received was positive all round.

Staff also gave a presentation to 5th and 6th year pupils at Hamilton College this month on the police complaints system and the role of the Commissioner.

Additionally, the Commissioner's staff attend external conferences and seminars where best practice in complaint handling is shared. In March three members of staff attended a conference run by the Independent Police Complaints Commission on the topic of proportionate investigations. This was particularly interesting given the timely publication of the Commissioner's Statutory Guidance, where proportionality is one of the key themes.

Two members of staff attended at the Scottish Police Federation conference earlier this month, where they were available to talk to officers and staff regarding police complaint handling and the role and work of the Commissioner. There was much interest in the new complaint handling system and the statutory guidance, with many of the representatives taking away a copy of the guidance for reference.

User focussed assessment of accessibility of police complaint handling – a follow up

Further to the user focussed assessment carried out by the PCCS in 2009, the Commissioner's office wrote to each force to request an updated action plan showing how the force has implemented the Commissioner's recommendations.

The updated action plans were received from all forces and analysis has been carried out on the information received. It is hoped that a final report will be drafted for the Commissioner's approval by the end of April 2011.

Northern Constabulary complaint analysis and recording – a follow up

A follow up audit of Northern Constabulary's complaint analysis and recording based on the recommendations made by the Commissioner in his 2009 report has now been carried out.

In the original audit report the Commissioner made 7 recommendations. Northern Constabulary provided the Commissioner with a response outlining the work that has been done to implement the recommendations and included additional documentation in support of this.

Following an analysis of the information supplied, two of the Commissioner's staff visited the force earlier this month and carried out further detailed enquiry and analysis before producing a report into their findings for the attention of the Commissioner. The report will be sent to the Constabulary before being published on the PCCS website in May 2011.

Memorandum of Understanding with Her Majesty's Revenue and Customs

Work is still on-going between the PCCS and HMRC to agree a memorandum of understanding on the Commissioner's oversight of complaints about HMRC staff with police type powers in Scotland. It is hoped that this work will be completed in the near future.

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