



HM Inspectorate of Prosecution in Scotland

# **Inspection of the management of criminal allegations against the police by COPFS**

## **Terms of Reference**

February 2021



## About our inspection

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### Aim

1. The aim of this inspection will be to assess the management of criminal allegations against the police by the Crown Office and Procurator Fiscal Service (COPFS), with a view to providing assurance to the Lord Advocate, the public and other stakeholders that such cases are dealt with effectively and efficiently.

### Background

2. COPFS is the sole prosecuting authority in Scotland. It receives reports about crimes from the police and other reporting agencies and then decides what action to take, including whether to prosecute. All criminal allegations against the police are reported to COPFS. Where it is alleged that a crime was committed by a police officer while on duty, a report is made to and investigated by the Criminal Allegations Against the Police Division (CAAP-D), a specialist unit within COPFS.
3. Established in 2013, CAAP-D was created to provide consistency of practice and decision making across Scotland in relation to on duty criminal allegations against the police. It was also intended that a national specialist unit dealing with such complaints would reflect the wider changes in the policing landscape in 2013, including the creation of a single national police service and the establishment of the Police Investigations and Review Commissioner (PIRC).
4. In cases where the accused is not an on duty police officer, a report is normally only made to COPFS where the police or other reporting agency assesses that there is sufficient evidence to establish that a crime has been committed and that the accused person is responsible. However, where the accused person is an on duty police officer, police conduct regulations require that all allegations inferring criminality be referred to COPFS for independent investigation, regardless of whether there is a sufficiency of evidence. These bespoke arrangements for managing allegations against police officers reflect their privileged place within our society and the power and authority they exert by virtue of their role. Where criminal wrongdoing is alleged, it is essential that complainers have recourse to a criminal justice process which is fair, effective, timely, transparent and independent.
5. In 2019-20, CAAP-D received 286 on duty criminal allegations against the police.
6. On receipt of a criminal allegation against the police, COPFS may direct that further investigation be carried out by PIRC or by the police service's Professional Standards Department. Whichever course is taken, the investigation remains under the direction and control of COPFS.
7. Where it appears to CAAP-D that, following investigation, there is a sufficiency of evidence, a report is submitted to Crown Counsel<sup>1</sup> for their instructions on whether criminal proceedings should be instituted. Decisions are made in accordance with the Scottish Prosecution Code – there must be sufficient credible, reliable and admissible evidence, and proceedings must be in the public interest. If the decision is to prosecute, the case is transferred from CAAP-D to the relevant local Procurator Fiscal for prosecution.

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<sup>1</sup> The collective term for the Law Officers (Lord Advocate and Solicitor General) and Advocate Deputes.



8. Where an allegation of criminality is made against an off duty police officer, a report will usually only be made to COPFS where it is assessed there is sufficient evidence to establish that a crime has been committed and that the accused is the perpetrator. Off duty allegations are therefore usually treated in much the same way as if the accused was any member of the public, and are dealt with by the local Procurator Fiscal, rather than CAAP-D. Such cases may, however, be referred to CAAP-D in particular circumstances, for example, if information emerges that the criminal conduct alleged extended to when the accused was on duty.

### Previous scrutiny

9. HM Inspectorate of Prosecution in Scotland (IPS) previously reviewed how criminal allegations against the police are managed by COPFS in 2008.<sup>2</sup> The purpose of that inspection was to examine the quality of investigation and prosecutorial decision-making. The inspection concluded that overall compliance with policies, procedures and targets was high, but that there were inconsistencies in the referral of cases from local fiscal offices to the Crown Office. There was also concern about the high rate at which complainers and witnesses withdrew from cases. IPS noted that some time had elapsed since policy regarding criminal complaints against the police had been reviewed and concluded that, 'the time may be ripe to consider a fundamental review of policy and practice in this area.'
10. Since 2008, there have been significant systemic and institutional developments in how criminal allegations against the police are reported and investigated, both within and outwith COPFS. At the time of our 2008 inspection, on duty criminal allegations were dealt with by Area Procurators Fiscal, roles which no longer exist within COPFS. Instead, all on duty allegations have been dealt with by CAAP-D since 2013. In addition, the Police and Fire Reform (Scotland) Act 2012 led to the creation of Police Scotland, the Scottish Police Authority and PIRC, all of whom now play a role in the police complaints handling process.

### Angiolini review

11. In 2018, the Rt. Hon. Dame Elish Angiolini DBE QC was commissioned by the then Cabinet Secretary for Justice and the Lord Advocate to conduct an independent review of the handling of complaints against the police in Scotland. The review considered the effectiveness of law and practice in relation to complaints handling, investigation and misconduct issues, and made recommendations for improvements to ensure the complaints handling system is fair, transparent, accountable and proportionate. While the review would include consideration of the investigation of criminal allegations against the police, the review's Terms of Reference excluded the separate role of the Lord Advocate in investigating criminal complaints.
12. The final report of the review was published in November 2020.<sup>3</sup> It makes a number of recommendations for improving the handling of complaints against the police which are now being taken forward by the Scottish Government and the other organisations to which they were directed. We intend that our inspection of the COPFS management of criminal allegations against the police will address the area excluded from the review's Terms of Reference. The review provides useful context to our inspection, and highlights some issues regarding the role of COPFS in relation to criminal complaints which we will explore in more detail. Our intention is that our inspection will complement the work carried out by Dame Elish Angiolini, rather than duplicate it.

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<sup>2</sup> IPS, [Report on complaints against the police](#) (January 2008).

<sup>3</sup> The Rt. Hon. Dame Elish Angiolini DBE QC, [Independent review of complaints handling, investigations and misconduct issues in relation to policing](#) (November 2020).



## Scope

13. Our inspection will examine how COPFS manages criminal allegations against the police. We will consider the work of CAAP-D in relation to on duty allegations, but we will also consider how off duty allegations are handled. This reflects the fact that the boundary between off and on duty behaviour can sometimes be blurred, and the high level of public interest in, and the need for assurance about, how all criminal allegations against the police are managed. Our inspection will consider how criminal allegations against police staff as well as police officers are handled. It will include those working for Police Scotland as well as other police services operating in Scotland, such as British Transport Police.
14. In carrying out our inspection, as in all of our scrutiny activity, we will consider our Inspection Framework and its key themes. The framework provides a structure within which we ensure a consistent and professional approach to our work. Based on the European Foundation for Quality Management (EFQM) Excellence Model, the framework has six themes:
  - outcomes
  - leadership and governance
  - process
  - people
  - resources
  - collaborative work.
15. *Outcomes.* We will examine how well criminal allegations against the police are managed by COPFS and the extent to which positive outcomes are being achieved for service users and the public more generally. This will include consideration of the quality and timeliness of decision making, performance against internally set targets, whether cases progress efficiently, and communication with complainers, the accused and reporting agencies. We will also consider the impact of Covid-19.
16. *Leadership and governance.* We will assess the leadership and governance arrangements within COPFS for the management of criminal allegations against the police. This will include consideration of the policies which govern the service's approach to criminal allegations against the police, and how management and performance information is used to support the delivery of an effective service.
17. *Process.* We will assess COPFS processes and procedures for the reporting, investigation and prosecution of criminal allegations against the police and whether they are effective and efficient. We will consider whether these processes are well understood and implemented. We will also consider the extent to which COPFS seeks to improve its handling of criminal allegations against the police, either by itself or in partnership with others.
18. *People.* We will assess how staff handling criminal allegations against the police are trained, developed, managed and empowered to deliver their work.
19. *Resources.* We will examine the resources available within COPFS to manage criminal allegations against the police and how well those resources are used. This includes staffing resources as well as IT and information management.
20. *Collaborative work.* We will assess how well those handling criminal allegations against the police within COPFS work with their internal and external partners to deliver an effective service. This will include consideration of the relationship between COPFS and reporting and investigating agencies, including Police Scotland, the Scottish Police Authority and PIRC.



## Methodology

21. Following an initial period of scoping and planning our inspection, we will seek evidence from a range of sources. This will include:
  - reviewing strategies, policies, procedures and other documentation relating to the management of criminal allegations against the police
  - reviewing management and performance data
  - observing relevant meetings
  - reviewing a sample of recent cases reported to COPFS in which a person serving with the police is alleged to have committed an offence while on duty
  - reviewing a sample of recent cases reported to COPFS in which a person serving with the police is alleged to have committed an offence while off duty
  - interviewing key personnel within COPFS who are involved in the investigation and prosecution of criminal allegations against the police
  - interviewing relevant stakeholders and partner organisations, such as Police Scotland, the Scottish Police Authority, PIRC, other police services operating in Scotland (for example, British Transport Police), staff associations representing those working with the police, and criminal defence solicitors. We will also seek the views and experiences of complainers by engaging with victim support organisations.
22. In carrying out our inspection, particularly in the planning and evidence gathering stages, we will consider our duty of user focus, as set out in the Public Services Reform (Scotland) Act 2010. This will help us ensure that the views and experiences of service users, and those who represent them, shape our work.
23. Our inspection will be delivered in compliance with the law and guidance relating to the Covid-19 pandemic. It is likely that all of our evidence gathering will be done remotely. This is facilitated by inspectorate staff having direct remote access to COPFS systems, while interviews will be carried out by video or teleconferencing. Our approach will be kept under review to ensure that it reflects the latest government guidance, with a view to safeguarding the health and wellbeing of our own staff as well as that of those who participate in our inspection.

## Reporting

24. Our inspection commenced in December 2020. A report of our inspection will be submitted to the Lord Advocate in accordance with section 79(2) of the Criminal Proceedings etc. (Reform) (Scotland) Act 2007 and will be published on our website in Spring 2021.
25. For further information about our inspection, please contact us at [IPS@gov.scot](mailto:IPS@gov.scot).

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### **About HM Inspectorate of Prosecution in Scotland**

HM Inspectorate of Prosecution in Scotland (IPS) is led by HM Chief Inspector of Prosecution who is appointed by the Lord Advocate to inspect the operation of the Crown Office and Procurator Fiscal Service (COPFS). The functions of HM Chief Inspector are set out in the Criminal Proceedings etc. (Reform) (Scotland) Act 2007. The 2007 Act makes clear that in the exercise of any of the functions conferred by the Act, HM Chief Inspector is independent of any other person. COPFS is the sole prosecuting authority in Scotland and is also responsible for investigating sudden deaths and complaints against the police which are of a criminal nature.

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