

Inspectorate of Prosecution

Report on

Complaints Against the Police

JANUARY 2008

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1 Introduction

- 1.1 The Inspectorate of Prosecution in Scotland (IPS) was created in December 2003. It is the independent Inspectorate for the Crown Office and Procurator Fiscal Service (COPFS), which is the sole prosecuting authority in Scotland and also responsible for investigating sudden deaths and complaints of a criminal nature against the police. The Inspectorate was put on a statutory footing by the Criminal Proceedings etc (Reform) (Scotland) Act 2007, Part 5 (sections 78 and 79) and given statutory powers and responsibilities.
- 1.2 The principal functions of the IPS are to inspect, or arrange for the inspection of, the operation of COPFS and to report to the Lord Advocate on any matter connected with the operation of COPFS which the Lord Advocate refers to the IPS. The overall aim is to contribute to improvements in service delivery of COPFS, contribute to the accountability of the COPFS and enhance public confidence in the system of public prosecution in Scotland.
- 1.3 The IPS carries out wide ranging inspections of the 11 separate Areas of the COPFS in Scotland together with Crown Office (Headquarters) functions. In addition it carries out thematic works either singly or more commonly in conjunction with criminal justice partners.
- 1.4 The IPS is committed to observing agreed policy on the principles of inspection including taking a customer focus, pursuing the purpose of improvement, being evidence based and publishing all reports.

This is the fifth thematic report prepared by the Inspectorate.

All reports can be viewed on the Inspectorate's website at www.scotland.gov.uk/topics/justice/ipis.

- 1.5 This report stems from a previous Crown Office spending review target which was

“To achieve a 100% approval level of the quality of investigation and decision making in a random selection of complaints against the police cases examined annually by the Inspectorate at 31 March 2006.”

- 1.6 This Crown Office spending review target was picked up in the planning process for the Inspectorate during 2007.

- 1.7 In the event the remit was –

“To examine the quality of investigation and decision making in a random selection of complaints against the police including compliance with Crown Office policy and procedures in investigating such complaints as laid down in the various policy documents approved by the Lord Advocate and, if appropriate, to make recommendations”.

- 1.8 To limit the timescale the 4 Area Fiscal Offices in Strathclyde namely Glasgow, Ayrshire, Lanarkshire and Argyll and Clyde, which collectively make up Strathclyde, were selected for this task. These 4 offices receive over 50% of all the COPFS work for Scotland.

2 Methodology

- 2.1 Policy and procedures relating the complaints against the police were reviewed. A questionnaire was devised that addressed all appropriate targets and specific instructions detailed in the guidance available to staff.
- 2.2 Details were sought on complaints against the police cases reported in Strathclyde during 2006. This included cases reported to the Area Procurators Fiscal in Glasgow, Lanarkshire, Ayrshire and Argyll & Clyde.
- 2.3 Inspectors visited the identified offices, reviewed case papers and completed the questionnaires which were later analysed with the use of Excel spreadsheets.
- 2.4 A total of 369 cases were reviewed across the whole of Strathclyde, 207 from Glasgow, 98 from Lanarkshire, 38 from Ayrshire and 26 from Argyll and Clyde¹.
- 2.5 Details of the most recent Departmental achievement of targets relating to complaints against the police can be found in Appendix 2.

¹ Given that the compliance rate was so high from the other Areas only 26 cases were reviewed at Argyll and Clyde

3 Background

3.1 In the Crown Office Strategic Plan for 2006-08 the Crown Office states

“We recognise the importance of the role of Area Procurators Fiscal in providing an independent system for the investigation of complaints of criminal conduct against Police Officers.

We will work with ACPOS (Association of Chief Police Officers in Scotland) and Area Procurators Fiscal to identify further ways of streamlining the way we deal with the investigation and reporting of complaints against the police so that there are earlier outcomes for both complainer and the officers complained against.”

3.2 COPFS deal with complaints against the police which are of a criminal nature ie where the complaint alleges that a crime may have been committed by a Police Officer(s) in the course of their duty. Complaints which are not of such a criminal nature are investigated by the police themselves and Her Majesty's Inspectorate of Constabulary had until recently a role in reviewing how such complaints had been investigated by the police if the complainer was still dissatisfied. This role has now been taken over by the Police Complaints Commissioner for Scotland who can review how the police have handled these complaints. Consideration of complaints alleging criminality is, however, the sole preserve of COPFS. It can occasionally not be obvious whether or not the conduct complained of would amount to a crime.

3.3 In England this role was recently taken over by the independent Police Complaints Commission which deals with complaints against the police both of a criminal and non-criminal nature. We look further at how these complaints are dealt with in England at 4.18.

3.4 This report is not concerned with the question as to who should carry out the

function of investigating complaints against the police which are of a criminal nature. It concentrates rather on the system as it is and how it is operating in practice.

- 3.5 The Crown Office has repeatedly reviewed its own practices and procedures in dealing with complaints against the police.
- 3.6 In 1992 a review was carried out in Crown Office of the system which resulted in the issuing on 18 June 1993 of a Crown Office Circular which became part of the Book of Regulations (the main in house method of disseminating instructions to the Procurator Fiscal Service) giving detailed instructions on the handling of such complaints. Although not published as such these instructions were summarised in the Departmental Report for 1997/98 which was a published document.
- 3.7 In May 1999 the European Convention on Human Rights was incorporated into Scottish domestic law by virtue of the Scotland Act 1998 and the Human Rights Act 1998 and imposed a new statutory duty on the Lord Advocate, Solicitor General, Crown Counsel and all the staff of COPFS to act in a way which was compatible with convention rights. This duty included dealing with complaints against the police. The main Convention requirements are that such a system be **Prompt, Impartial and Effective**.
- 3.8 As part of the then work to ensure compatibility with the European Convention, Crown Office reviewed its instructions on the handling of complaints against the police and an update to the circular was issued in 1999. We reproduce that amended instruction in full at Appendix 1 to this report. This remains to date the standard instructions to COPFS staff on how complaints against the police should be dealt with.
- 3.9 The handling of complaints against the police was previously (2000) considered by a Crown Office internal review by the then Quality and Practice

Review Unit (the "in house" predecessor of the IPS) which considered various issues and published a report in 2000 with a number of recommendations. This report was for the benefit of internal management and was not published.

- 3.10 In 2002 the guidelines were again considered by the then Deputy Crown Agent and all 6 of the then Regional Fiscals (at that time the Regional Fiscals had responsibility for investigating complaints against the police). No further amended instructions were issued.
- 3.11 Accordingly in Scotland COPFS deals with the more serious allegations against the police. In doing so COPFS is independent of the police and complaint cases are treated seriously, to do otherwise would risk losing public confidence.

4 Process

- 4.1 The same rules apply to the prosecution of Police Officers as with any other person. Thus there has to be sufficient admissible evidence to justify commencing proceedings. On the question of sufficiency this includes the normal requirement which is that there must be "corroboration", that is evidence from at least two separate sources to establish the essential facts of the case which are the commission of a crime and the identity of the perpetrator. In addition such evidence as there is must be admissible and reliable and prosecution must be in the public interest.
- 4.2 "Public interest" encompasses a range of considerations including the nature and gravity of the offence, the impact of the offence on the victim and other witnesses, age, background and personal circumstances of the accused, the age and personal circumstances of the victim and other witnesses, the attitude of the victim, any motive, age of the offence, any mitigating circumstances, the effect of a prosecution on the accused, the risk of further offending, the availability of a more appropriate civil remedy, the powers of the court to impose a sanction and finally public concern.
- 4.3 For administrative prosecution purposes Scotland is divided into 11 areas presided over by an Area Fiscal. Within these Areas are a number of District Fiscals depending on the size and geography of the Areas. As previously indicated the Crown Office issues various policy instructions to Procurators Fiscal by way of a "Book of Regulations" and other material.
- 4.4 The Book of Regulations in Chapter 2.25 deals with complaints against the police and states that:
- *"The Area Procurators Fiscal have a duty to investigate all complaints which are made against Police Officers where the complaint alleges that a crime may have been committed by a Police Officer or Officers"*

in the course of their duty. This duty is exercised in a way which is entirely independent of the police and in carrying out this duty the Area Procurators Fiscal must be seen to provide a completely impartial and thorough system of investigation."

- 4.5 It is therefore the responsibility of the Area Procurator Fiscal (AF) to investigate such cases. This does not mean that every case must be personally investigated by the Area Fiscal but it does mean they must have control and supervision of such work with final decisions and recommendations usually made by the Area Fiscal.
- 4.6 In practice many Area Fiscals, depending on the size of their area, do in fact do a large amount of the work personally. In some of the larger areas there has been a tendency in recent years towards creating specialised units dealing with complaints against the police with a team of legal and other staff dedicated to this task. Even here, however, the Area Fiscal is normally supplied with the investigators' reports before final decisions are made.
- 4.7 The serious approach to complaints against the police cases continues over into the Crown Office itself where reports on complaints against the police are considered by Crown Counsel who are a group of advocates or solicitors appointed by the Lord Advocate to prosecute in the superior courts and to carry out various administrative functions in the Crown Office. Reports submitted by Area Fiscals are considered by Crown Counsel and "instructions" issued on what is to happen. In practice, complaints against the police are treated seriously enough to warrant consideration by a Law Officer, usually the Solicitor General whom failing the Lord Advocate.
- 4.8 Not every case, however, needs to be reported to Crown Office, this will be discussed later.
- 4.9 Inevitably, complaints against the police tend to begin with a complaint to the

police themselves and the Lord Advocate has given instructions to the police as to how such complaints should be handled by them as well as giving instructions to Procurators Fiscal as to how they should investigate such complaints.

- 4.10 Mirroring the serious approach by the prosecution complaints against the police cases are dealt with by the police at senior level, the reports being sent to the appropriate Area Procurator Fiscal by the Assistant (previously Deputy) Chief Constable or above.
- 4.11 Although complaints tend to go to the police first they can occasionally come direct to the Procurator Fiscal from a complainer or their Solicitor.
- 4.12 Appendix 1 sets out in full the instructions to be followed by the Area Procurators Fiscal in exercising their duty in relation to complaints against the police. (*Intimation of complaint to Procurator Fiscal of Complaint against the Police.*)
- 4.13 Regulation 7 of the 1996 Police Conduct Regulations requires that where there is an allegation or complaint from which it 'may reasonably be inferred' that a Constable has committed a criminal offence in the course of his duty, the Assistant Chief Constable should report such to the Area Procurator Fiscal as soon as possible.
- 4.14 The gist of the combined instructions is –
- 1) Reports should be referred (by the police) within 14 days and at the same time the Assistant Chief Constable should advise the Area Fiscal if a case has been or is to be reported against the complainer.
 - 2) If the Area Fiscal receives a report which does not disclose an allegation of a criminal nature, he should inform the Assistant Chief

Constable accordingly and advise him that the complaint may be investigated as a disciplinary matter. In these circumstances the complainer should be informed in writing by the Area Fiscal that the complaint concerns a matter of misconduct rather than a criminal offence and that it has been returned to the police to deal with.

- 3) Where there is insufficient evidence to determine that the conduct complained about amounts to a criminal offence the Area Fiscal should instruct the Assistant Chief Constable to make enquiries and reply within a specified period².
- 4) Where it is clear that the allegation is of a criminal nature the Assistant Chief Constable should be instructed to investigate the allegation and provide a full report and reply within a specified period³.

Once this full report is received from the police the Area Procurator Fiscal must investigate the complaint. This can be done –

- Personally
 - By instructing the Procurator Fiscal of the District concerned to investigate and report to the Area Fiscal
 - By instructing another Procurator Fiscal in the Area or a Depute or Precognition Officer from his own District Office to investigate and report
 - It is the responsibility of the Area Fiscal to select the individual who will carry out the investigation.
- 5) As a general rule the complainer and the alleged victim (if different) must be invited to attend for precognition (ie personal interview). Any apparent material eyewitness should also be invited to attend for precognition.

² The Area Fiscal can at this stage conduct his own enquiry

³ Again at this stage the Area Fiscal can commence his own investigation

- 6) Where the Area Fiscal thinks the complaint is of a minor nature or may not have substance the Area Fiscal may write to the complainer enclosing a copy of the complainer's statement (usually taken by the police) and asked to check its accuracy.
- 7) The fact that the complainer may be due to stand trial should not normally delay the process.
- 8) In the event of criminal proceedings against the complainer for an "associated case" the paperwork for the investigation of the complaint against the police must be kept quite separate from any prosecution papers and prosecutors should not be allowed access to it, the so called "Chinese Walls" situation.
- 9) On the other hand no evidence which might be beneficial to the complainer's defence should be withheld.
- 10) If the complaint is withdrawn the Area Fiscal must satisfy himself/herself that there has been no undue pressure or inducement.
- 11) If the Area Fiscal is of the view, after investigation, that there is no substance in the complaint he/she will inform the complainer, Assistant Chief Constable and, where appropriate, the District Fiscal that there are to be no proceedings.
- 12) The investigation should normally be concluded within 4 months (12 weeks) from receipt of the full report.
- 13) If the Area Fiscal considers there is "substance" in the complaint he/she will submit a bound precognition (a collection of the various statements etc) to Crown Office along with an assessment of the merits of the case and a recommendation. "Substance" is defined as

where there is credible evidence to support the allegation whether or not the evidence is sufficient (see above) to support proceedings. Equally “corroborated” complaints which lack reliability need not be reported.

- 14) The decision by Crown Counsel will be communicated within 21 days to the Area Fiscal and by him/her to the complainer etc within that time period.
- 4.15 There are further guidelines in the Appendix relating to what should be done where a report is received from a Solicitor, MP or other; how the investigation should be conducted by the Area Fiscal; what should be done with regard to precognition; what to do if the complaint is of a minor nature (copy statement procedure); what happens when the complainer fails to attend; information about delay; separation of enquiries; disclosure of information relating to criminal proceedings against the complainer; what happens when a complaint is withdrawn; identifying malicious and false complaints; who to inform if there will be no proceedings (no substance); information about what constitutes ‘substance’; targets for completion of investigation, and finally, information on reporting cases to Crown Office.
 - 4.16 Information about the role of the Procurator Fiscal in the investigation of complaints against the police should be issued to complainers and the outcome of investigations should be intimated to complainers, the Assistant Chief Constable and the District Fiscal where appropriate.
 - 4.17 These guidelines received judicial approval in the case of MacLeod -v- Tiffney (1994) where the crown’s approach was said to have “much to commend it”. This case was concerned with the situation where the complainer was himself being prosecuted but the investigation of his complaint against the police was progressed at the same time.

- 4.18 In England complaints of both a criminal and non-criminal nature are dealt with by the Independent Police Complaints Commission (IPCC). The method of investigation depends on the extent/nature of the complaint, some complaints being dealt with by Police Officers supervised by the IPCC and some, usually the most serious, investigated by IPCC officers.
- 4.19 The IPCC does not prosecute cases but passes cases where it considers it appropriate (a threshold test) to the Crown Prosecution Service (CPS, the English equivalent of COPFS). This threshold test is quite low and consists of a crime “may” have been committed. The CPS has the final say on whether there is to be a prosecution and uses its own prosecution code criteria. In practice this means the CPS considers a large number of referrals in which no proceedings are taken. The threshold test may be changed in the light of experience.

5 Findings

5.1 Glasgow

5.1.1 Glasgow has had for many years a discrete unit which dealt exclusively with complaints against the police under the personal supervision of originally the Regional Procurator Fiscal and latterly the new Area Procurator Fiscal.

5.1.2 This unit normally consisted of a mixture of legal, paralegal and administrative staff and staff were selected normally on the basis of seniority and their ability to deal with what was considered an important area of work.

5.1.3 The number of complaints in Glasgow meant that the Regional and now Area Fiscal could not personally deal with the bulk of these and the investigation was therefore delegated to these other staff. However, the reports on all cases were and are considered by the then Regional and now Area Fiscal.

5.1.4 The Glasgow office itself was originally divided into 4 Divisions mirroring the police divisions of the city and recently was restructured to 3 Divisions to again mirror police administrative areas in the city of Glasgow. The Area Fiscal decided to delegate the investigation of complaints against the police from this discrete central unit to each of the newly created 3 Divisions.

5.1.5 Central control is still maintained, however, by the Area Fiscal seeing all the complaints on arrival and the monitoring of progress against the targets being carried out by a dedicated Personal Assistant in the Area Fiscal's office. All reports will also return to the Area Fiscal for final consideration.

5.1.6 At the time of our enquiry the old system was in operation and all the cases examined had been investigated by the previous discrete central unit.

5.1.7 Management information showed that a total of 310 complaints against the

police were received and closed off in 2006 for all four Divisions within the Glasgow Area. 207 of these cases were selected for review. It was noted that the Area Fiscal applied a new streamlined approach in 6 cases where, in certain circumstances, the copy statement procedure is applied straight away eg where there is no apparent corroboration.

5.1.8 Complainers in 116 cases (56%) withdrew complaints, 48 of which were noted to have been withdrawn within days of the complaint being made.

5.1.9 The findings at Glasgow are as follows:

- The Area Fiscal accepted or rejected the complaint ranging from the same day as receipt up to 25 days later with 96% of decisions being made within 7 days.

- Decisions were intimated to the complainer/Assistant Chief Constable in a timescale ranging from the same day as the decision up to 50 days later with 61% informed within 14 days.

- In cases where the complaint had been withdrawn a standard letter asking for confirmation of the withdrawal was issued between 1 and 35 days after the complaint was reviewed with 53% being issued within 14 days.

- In 55% of applicable cases a full report was received from the police within the 10-week target.

- There were no cases where the complainer should have been advised that the actions complained of were not criminal.

- The complainer was advised of the role of the PF by style letter in 97% of cases. Attempts were made through an agent to advise the complainer in the remainder.

- In 99% of relevant cases it would appear that the standard Department Information Leaflet had not been issued but as stated above an in-house letter was issued in 97% of cases.

- In 29 cases the complainer was precognosed. In 35 other cases the complainer either failed to appear for precognition, was ill, or for some other reason could not be contacted.

- In 28 cases the copy statement procedure was followed.

- In 20 cases all material witnesses had been precognosed. In a further three witnesses failed to appear for precognition.

- Video evidence was available in 37 cases.

- In 2 cases the complainer was shown the video.

- No videos were submitted to Crown Office.

- 2 cases were submitted to Crown Office, one within 9 weeks and the other within 6 months of receipt of the full report.

- There were no cases where the complainer refused to be precognosed until after his/her trial.

- Where the complaint was being withdrawn the Area Fiscal in all cases issued a letter to the complainer to confirm whether he/she wished to withdraw the complaint and that there had been no undue pressure or influence from the police in all cases.

- In all applicable cases appropriate people were advised of the decisions taken.

- In 97% of cases the investigation was completed within 12 weeks.

5.2 Lanarkshire

- 5.2.1 The Area Fiscal for Lanarkshire sees all reports against the police on first submission and instructs what is to happen to them. She does not personally carry out the investigation work but has a dedicated member of staff, who is a senior legal member of staff, who deals exclusively with this work.
- 5.2.2 There are 3 District Offices within the Lanarkshire Area namely Hamilton, Airdrie and Lanark. Previously some of the investigation work was delegated to the District Fiscals for each of these area but in recent times that has ceased to be the case.
- 5.2.3 The Area Fiscal is currently content with the arrangement whereby a single centralised person deals with such work. There are currently no paralegal staff such as Precognition Officers dealing with this work.
- 5.2.4 So far as training is concerned the police run training courses for Officers dealing with complaints and it is intended that a legal member of staff from Lanarkshire will attend the next such course.
- 5.2.5 The Area Fiscal indicated that she would like more discretion in dealing with complaints against the police including such matters as seeing the complainer and reporting cases to Crown Office.
- 5.2.6 Management information showed that 141 complaints against the police were received and closed off in 2006 in Lanarkshire. 98 cases were selected for review. 1 case was reported to the Area Fiscal from the British Transport Police. Another case showed that the complainer was charged with making false allegations. A further case showed that the complainer referred the complaint to Her Majesty's Inspectorate of Constabulary when the police decided to deal with the complaint on a 'counselling' basis. The matter was thereafter referred to the Area Fiscal.

5.2.7 Complainers in 36 cases (37%) withdrew complaints. Details were provided in some instances as to why complaints were withdrawn eg 7 cases showed that the complainers wished to withdraw the complaint immediately when they had sobered up, in 5 cases the complaints were withdrawn when the complainers realised the police were taking it seriously.

5.2.8 The findings at Lanarkshire are as follows:

- In just under half of the cases reviewed the Assistant Chief Constable referred the allegation/complaint to the Area Fiscal within the target of 14 days.

- In all relevant cases the Assistant Chief Constable advised the Area Fiscal whether or not a case had been or was to be reported against the complainer.

- The Area Fiscal accepted or rejected the complaint ranging from the same day as receipt up to 24 days later with 71% of decisions being made within 4 days.

- These decisions were intimated to the complainer/Assistant Chief Constable ranging from same day as the decision up to 11 days later with 86% being issued within 3 days.

- In only 52% of cases a full report was received from the police within the 10-week target.

- In 4 cases the complainer was advised that the actions complained of were not criminal.

- In all except 2 relevant cases the complainer was advised on the role of the Procurator Fiscal in the investigation of the complaint by letter. In the remainder one was advised at precognition and one appeared not to be advised.

- In all except 5 relevant cases the standard Departmental Information Leaflet was issued to complainers.

- In cases where it would be expected that the complainer would be seen or the copy statement procedure followed, 5 cases showed that the complainer was seen and in 37 cases the copy statement procedure was followed.

- In 4 cases all material witnesses had been precognosed.

- Video evidence was available in 4 cases.

- In the above 4 cases the complainer was not shown the video.

- In 1 case the video was submitted to Crown Office.

- In 9 cases a report was submitted to Crown Office.

- There were no cases where the complainer refused to be precognosed until after his/her trial.

- In all relevant cases the Area Fiscal issued a letter to the complainer to confirm whether he/she wished to withdraw the complaint and that there had been no undue pressure or influence from the police.

- In all relevant cases appropriate people were advised of the decisions taken with the exception of the District Fiscal who was not always so advised.

- In 92% of cases the investigation was completed within the 12-week target.

5.3 Ayrshire

5.3.1 In Ayrshire the Area Fiscal personally deals with most of the complaints against the police and sees complainers and, if necessary, relevant witnesses.

5.3.2 He would be in favour of delegating some of this work. Within the Ayrshire area there are 2 District Offices namely Ayr and Kilmarnock and the Area Fiscal feels it would be possible to delegate complaints against the police emanating from these offices to the other office to ensure a measure of independence. The Area Fiscal estimates this takes between 10 and 15% of his time. As previously stated only complaints against the police alleging criminal conduct while on duty are referred to the Area Fiscal. The system in Ayrshire for complaints against Police Officers allegedly committing crimes or offences outwith normal duties are currently dealt with by the District Fiscal at Kilmarnock.

5.3.3 Management information showed that 64 complaints against the police were received and closed off in 2006 in Ayrshire. 38 cases were selected for review. Analysis showed that 35 of the 38 were marked for no proceedings/no substance by the Area Fiscal, 2 were marked no proceedings on Crown Counsel's instructions and 1 was marked for proceedings on Crown Counsel's instructions and the accused was placed on petition pending further procedures. In 1 of the cases marked by the Area Fiscal for no proceedings/no substance, proceedings were raised against the complainer for making a false/malicious allegations and in a further two consideration was given to pursuing proceedings for making false/malicious allegations but it was decided not to proceed.

5.3.4 Complainers in 12 cases (32%) withdrew complaints. Details were provided in some instances as to why complaints were withdrawn eg 1 case showed that the complainer wished to withdraw the complaint immediately when he

had sobered up. In a further 7 cases complainers withdrew their complaint while still in custody.

5.3.5 The findings at Ayrshire are as follows:

- In just under half of the cases reviewed the Assistant Chief Constable referred the allegation/complaint to the Area Fiscal within the target of 14 days.

- In all cases the Assistant Chief Constable advised the Area Fiscal whether or not a case had been or was to be reported against the complainer.

- The Area Fiscal accepted or rejected the complaint in a timescale ranging from the same day as receipt up to 42 days later with 63% of decisions being made within 12 days.

- These decisions were intimated to the complainer/Assistant Chief Constable on the same day as these decisions were made.

- Further enquiries were needed to ascertain if the conduct complained of amounts to a criminal complaint in only 1 case.

- In 67% of cases a full report was received from the police within the 10-week target.

- In 1 case the complainer was advised that the actions complained of were not criminal.

- In 8 cases the complainer was advised of the role of the PF at precognition.

- In 95% of cases leaflets had been issued to the complainer. The remaining 5% of complainers were not provided with leaflets but this was only in 2 cases.

- In 9 cases of the 38 cases examined the complainer was precognosed. In 13 cases the copy statement procedure was followed. For the remainder, the complainer either did not turn up or the procedure was not applicable.

- In 9 cases all material witnesses had been precognosed.

- Video evidence was available in 14 cases but was not shown to the complainer.

- In 1 case the video was submitted to Crown Office.

- In 3 cases a report was submitted to Crown Office.

- There were no cases where the complainer refused to be precognosed until after his/her trial.

- In all relevant cases the Area Fiscal issued a letter to the complainer to confirm whether he/she wished to withdraw the complaint and that there had been no undue pressure or influence from the police.

- In all relevant cases appropriate people were advised of the decisions taken with the exception of the District Fiscal who was not always so advised.

- In 95% of cases the investigation was completed within the 12-week target.

5.4 **Argyll and Clyde**

- 5.4.1 Like most of his other Area colleagues in Strathclyde the Area Fiscal for Argyll and Clyde personally handles all complaints against the police and sees complainers and, where necessary, the relevant witnesses.
- 5.4.2 Again like other colleagues he would prefer to and has in the past delegated such work to District Fiscals within his Area. The District Offices within his Area are Dumbarton, Paisley, Greenock and Oban. At the time when this was done again mirroring approaches by other Area Fiscals he would send complaints to a different District from which they had emanated.
- 5.4.3 The current system he feels has the merit of achieving economies of scale and consistency. As with other Area Fiscals his Personal Assistant tends to be the person who monitors the time targets for such cases.
- 5.4.4 He had strong views on changes to the system and would like to have more autonomy in dealing with complaints especially in minor cases including referring more cases back to the police for 'misconduct hearings'.
- 5.4.5 In contrast to other views the Area Fiscal was of the view that mirroring the police's central unit for dealing with complaints for the whole of Strathclyde he would like to see a pan Strathclyde Fiscal Complaints Unit which would have the benefit of economies of scale and expertise.
- 5.4.6 Argyll and Clyde was the last Area reviewed. 26 cases were selected for review. In one case a personal warning was given to the Police Officer involved due to his conduct and in another proceedings were raised against the complainer for making a false accusation.
- 5.4.7 Complainers in 4 cases (15%) withdrew complaints. Details were provided in some instances as to why complaints were withdrawn eg 1 case showed that

the complainer wished to withdraw the complaint immediately when he had sobered up!

5.4.8 The findings at Argyll and Clyde are as follows:

- In 77% of cases the Assistant Chief Constable referred the allegation/complaint to the Area Fiscal within the target of 14 days.

- In all cases the Assistant Chief Constable advised the Area Fiscal whether or not a case had been or was to be reported against the complainer.

- The Area Fiscal accepted or rejected the complaint in a timescale ranging from the same day as receipt up to 20 days later with 69% of decisions being made within 7 days.

- These decisions were intimated to the complainer/Assistant Chief Constable in a timescale ranging from the same day as the decision was made up to 16 days after with 46% intimated the same day and 92% intimated within 7 days.

- In 2 cases where the complaint had been withdrawn standard letters asking for confirmation of the withdrawal had been issued 1 and 10 days after the complaint was reviewed.

- In 1 case further enquiries were made to ascertain if the conduct complained of amounted to a criminal complaint.

- In only 35% of cases a full report was received from the police within the target of 10 weeks.

- In all relevant cases the complainer was advised, where appropriate, that the actions complained of were not criminal.

- In all relevant cases the complainer was advised of the role of the Procurator Fiscal by letter.

- In 84% of relevant cases leaflets had been issued to the complainer.

- In 15 cases the complainer was precognosed or attempts were made to do so.

- In 4 cases the copy statement procedure was followed.

- In all relevant cases all material witnesses had been precognosed.

- Video evidence was available in 12 cases.

- In 2 cases the complainer was not shown the video. It was not clear from the papers whether the complainers were shown the video in the remaining cases.

- In 4 cases a report was submitted to Crown Office.

- There were no cases where the complainer refused to be precognosed until after his/her trial.

- In 4 cases the Area Fiscal issued a letter to the complainer to confirm whether he/she wished to withdraw the complaint and that there had been no undue pressure or influence from the police.

- In all cases appropriate people, with the exception of the District Fiscal, were advised of the decisions taken.

- In 78% of cases the investigation was completed within the target of 12 weeks.

6 Conclusions

- 6.1 Overall, compliance with policy and procedures was very high. Although there were the inevitable differences on minor detail no significant breaches were found in any of the cases examined. Further the Inspectors did not disagree with any of the substantive decisions reached.
- 6.2 It was noted that District Fiscals were not generally informed that there was a complaint against the police in the Area for which they are responsible unless they have been asked to investigate the complaint.
- 6.3 A significant feature was the high level of withdrawals of complaints before they were submitted to the Area Fiscal. This varied from a high in Glasgow of 56% to the lowest level in Argyll and Clyde of 15%. It was also evident from some completed questionnaires that, on occasion, the reason for the complainer or the witnesses not being precognosed was because they failed to attend. It may be worth asking complainers in the standard letter issued for reasons why they wished to withdraw the complaint.
- 6.4 It is considered that it would be good practice to show video evidence to complainers if they are seen.
- 6.5 There was considerable variation on the use of the standard information leaflet although, where it was not used, other methods such as standard letters supplied at least some of the relevant information. We feel it would be good practice to standardise the use of the leaflet.
- 6.6 Compliance with the Departmental target of completing 90% of cases within 12 weeks was high. Of the sample we looked at only Argyll and Clyde was under target at 78% but the sample size was comparatively small, current Departmental target figures (reproduced at Appendix 2) show Argyll and Clyde at 92%.

- 6.7 There were apparent significant differences in the approach to the reporting of cases to Crown Office which to some extent reflects the somewhat inevitable subjective nature of the terminology used ie “if the Area Fiscal considers there is substance in the complaint he/she will submit a bound precognition to Crown Office”.
- 6.8 Substance is defined as there being credible evidence to support the allegation whether or not there is sufficient evidence to support proceedings. The corollary of that is where there is sufficient but unreliable evidence the complaint need not be reported to Crown Office. This leaves room for interpretation and may explain the differences in the percentage of cases reported from a high of 15% in Argyll and Clyde to a low of 1% in Glasgow.
- 6.9 Our remit was to look at the system as it currently operates and make recommendations if appropriate. Some time has elapsed since the last internal review of policy in this area and there appears to be an appetite for change. We accordingly recommend that the time may be ripe to consider a fundamental review of policy and practice in this area.

Appendix A - Intimation of Complaint to Procurator Fiscal of Complaint against the Police

The Area Procurators Fiscal have a duty to investigate all complaints which are made against police officers where the complaint alleges that a crime may have been committed by a police officer or officers in the course of their duty. This duty is exercised in a way which is entirely independent of the police and in carrying out this duty the Area Procurator Fiscal must be seen to provide a completely impartial and thorough system of investigation.

From the Police

1. Most complaints against the Police are made, in the first instance, direct to police forces. Regulation 7 of the Police (Conduct) (Scotland) Regulations 1996 requires that where a report, allegation or complaint is made from which it "may reasonably be inferred" that a Constable has committed a criminal offence, such report, allegation or complaint shall, "as soon as possible" be referred by the Assistant Chief Constable to the Procurator Fiscal. The Police have been instructed that such reference should be made to the Area Procurator Fiscal. This reference should be made only where the complaint or allegation is that the officer has committed a crime in the course of his duty. Where a police officer is detected committing a crime or offence other than in the course of his duty, he should be dealt with by being reported to the District Procurator Fiscal for consideration of proceedings in the same way as any member of the public. A copy of the police report in such cases should (except in minor road traffic cases) be sent by the District Procurator Fiscal to the Area Procurator Fiscal for information.

As soon as possible

2. Assistant Chief Constables are instructed to refer the allegation or complaint to the Area Procurator Fiscal within 14 days of the allegation or complaint being made. The Assistant Chief Constable should at this stage advise

the Area Procurator Fiscal if a case has been or is to be reported against the complainer. The Assistant Chief Constable should not advise the complainer that the complaint has been referred to the Area Procurator Fiscal until the Area Procurator Fiscal has accepted the complaint for investigation.

May reasonably be inferred

3. Assistant Chief Constables are instructed that complaints must be referred to the Area Procurator Fiscal where the alleged conduct involves an act of a criminal nature. They are also instructed that references to the Area Procurator Fiscal should not be made where the incident complained of is disciplinary in nature rather than criminal. A complaint of misconduct by an officer under Section 44(2) of the Police (Scotland) Act 1967 should be referred to the Area Procurator Fiscal only where the allegation amounts to one of wilful or reckless neglect or violation of the duties specified in Section 17 of the same Act. If the Deputy Chief Constable is in any doubt a report should be referred to the Area Procurator Fiscal. The Area Procurator Fiscal, on receipt of the reference, may conclude that the complaint or allegation is not one from which it may reasonably be inferred that a Constable has committed a criminal offence.
4. If the Area Procurator Fiscal receives a reference from a Assistant Chief Constable which does not disclose an allegation of a criminal nature, the Area Procurator Fiscal should inform the Assistant Chief Constable accordingly, advise him that the complaint may be investigated as a disciplinary matter and instruct that only if during the conduct investigations there is disclosed an allegation of criminal conduct (different from that already made) should the matter be re-referred to the Area Procurator Fiscal. The complainer should be informed in writing by the Area Procurator Fiscal that as his complaint concerns a matter of misconduct rather than a complaint about a crime or offence, it has been returned to the police for the police to deal with.
5. Where there is insufficient information to determine whether it may be reasonably inferred that the conduct complained of amounts to a criminal offence, the Area Procurator Fiscal should direct the Assistant Chief

Constable to make such enquiry as appears necessary to determine the position within a specified period. Alternatively, the Area Procurator Fiscal may conduct his own enquiry and instruct the Assistant Chief Constable appropriately thereafter.

6. Where it is clear that the allegation referred to the Area Procurator Fiscal is of a criminal nature, the Assistant Chief Constable should normally be instructed to investigate the allegation and to provide a full report within a specified period (but see paragraph 7 below). Specific instructions as to the nature, manner and extent of the investigation may be given. If the Area Procurator Fiscal considers it appropriate, he may elect to commence his own investigation at this stage. In cases where a complainer has refused to give a statement to the Police the Area Procurator Fiscal may direct the Police to investigate all other aspects of the complaint where it appears both appropriate and expedient to do so. If the complainer refuses to provide a statement to the police and refuses to be precognosed the complaint in these circumstances is likely to be regarded as without substance.

Report from a Solicitor, MP or Other

7. Where a complaint is received by a Procurator Fiscal direct from the complainer or his solicitor or from a Member of Parliament or other person, the complaint should be sent immediately to the Area Procurator Fiscal for consideration and appropriate action. This will normally involve the complaint being referred to the Assistant Chief Constable for investigation but, in exceptional circumstances, the Area Procurator Fiscal may begin his investigation without reference to the police.

Section 61 of the Police and Magistrates' Court Act 1994 introduced new provisions in relation to the examination of the way in which complaints against police constables are dealt with by a force. From 1 August 1996, members of the public who are dissatisfied with the way in which their complaint against a police constable has been dealt with by the Chief Constable concerned can ask Her Majesty's Inspectorate of Constabulary to review the manner in which the Chief Constable has dealt with the complaint.

Chief Constables will continue to be responsible for investigating complaints made by members of the public against police officers but the Inspectorate will be able to direct the Chief Constable to reconsider the complaint and take action on any new information.

Investigation by the Area Procurator Fiscal

8. Once a relevant police report has been received or if the Area Procurator Fiscal has decided to proceed direct on receiving a complaint from another source, the Area Procurator Fiscal must investigate the complaint. He may do this:-
- (a) personally; or
 - (b) by instructing the Procurator Fiscal of the District concerned to investigate and report to him; or
 - (c) by instructing another Procurator Fiscal in the area or a Depute or Precognition Officer from his own District Office to investigate and report to him in whatever form he considers appropriate (and see paragraphs 18-21 below).

Where the investigation and report is to be carried out by a Depute Procurator Fiscal or Precognition Officer from the Area Office or from a District Office, it is the responsibility of the Area Procurator Fiscal to select the individual who will carry out the investigation. Exceptionally, one Area Procurator Fiscal may request the assistance of another Area Procurator Fiscal, bearing in mind the need to preserve the independence of the investigation. In appropriate cases, the Area Procurator Fiscal may on receipt of a police complaint report (or at any other stage in the investigation) advise the District Procurator Fiscal either to discontinue the relevant current proceedings against the complainer or to delay trial of such proceedings, if the circumstances allow.

Precognition

9. As a general rule, and subject to paragraph 10 below, the complainer and the alleged victim (if he is other than the complainer) must be invited to attend for precognition. Any other person who appears to be a material eyewitness should be invited to attend for precognition or at least given the opportunity to

attend. The terms of the invitation should make it clear that the individual is being requested to attend for precognition, that such attendance is voluntary and that the individual cannot be compelled to attend. Copies of a form for inviting an individual for precognition may be obtained from the Crown Office (Form 59C).

Where there are difficulties, for example, where the complainer is resident in England, a careful judgement must be exercised on whether it may be acceptable to deal with the matter by telephone or in correspondence.

10. Where the Area Procurator Fiscal is of the opinion that the complaint is of a minor nature or may not have substance, the Area Procurator Fiscal may write to the complainer enclosing a copy of the complainer's statement. The complainer should be asked to check the accuracy and completeness of the statement and to sign the statement if he agrees that the statement is a full and accurate account of his version of events. Otherwise, the complainer should be invited to make any amendment to the statement which he considers is appropriate. The letter to the complainer should also ask him to list any witnesses to the incident of whose identity he is aware. Where a complainer is written to in this way, he should be asked if he wishes to be interviewed about his complaint by a member of the Procurator Fiscal Service. A pre-paid envelope should be included for the complainer's reply. If the complainer fails to respond, the matter will require to be dealt with on the basis of the statement already submitted.
11. Where a complainer is to be seen by a member of the Procurator Fiscal Service, the complainer will be sent a note giving him some basic information about the role of the Procurator Fiscal in the investigation of his complaint. This note should, in the first instance, be sent by ordinary post, together with the invitation to attend for precognition. Where the matter is dealt with as at paragraph 10 above, the note should be sent to the complainer together with a copy of his statement. Copies of the note may be obtained from Crown Office (Form F45).

12. When a complainer attends for precognition it is preferable that he or she should be precognosed alone. It is a matter for the discretion of the Area Procurator Fiscal whether, exceptionally, he may permit another person to be present.

Failure to attend

13. If the complainer fails to attend for precognition the Area Procurator Fiscal may have difficulty in assessing whether proceedings are merited but the complaint must still be considered on the basis of all the other available evidence.

Delay

14. The general aim of the Area Procurator Fiscal should be to investigate the police complaint as soon as possible and, in relevant cases, to reach or obtain a decision before any trial of the complainer which arises from the same circumstances as the complaint.
15. Precognition of the complainer should be delayed only in exceptional circumstances. Normally, the fact that the complainer is due to stand trial will not be a good reason for delay. A complainer who is still to stand trial must be advised that he is not obliged to answer any question relating to the subject matter of any outstanding charge against him. This rule also applies to any other witness who is in the same position. In any case where the complainer is to stand trial, the trial should, so far as possible, be given priority and an early diet of trial sought from the Court.
16. If the complainer, on his solicitor's advice, refuses to be precognosed before the complainer's own trial, it should be pointed out that delaying the investigation of the complaint until after the complainer's trial runs a risk of prejudicing the investigation.

If the complainer insists on waiting, the Area Procurator Fiscal may decide, depending on the circumstances of the individual case:-

- (a) to investigate the rest of the case in the meantime;
- (b) to delay the full investigation until the complainer's trial is over;
- (c) to take no proceedings; or
- (d) to report the complaint to Crown Office on the basis of the information which is already available.

17. If there has been delay in the investigation the causes of the delay should be carefully documented.

Separation of Enquiries

18. Assistant Chief Constables are instructed that any statements or information obtained for the purpose of an investigation of a complaint should be sent direct to the Area Procurator Fiscal and should not be sent or disclosed to any other police officer other than an officer who is involved in the investigation or supervision of the investigation of the complaint. If during the course of the investigation into a complaint the investigating officer requires to put the allegations contained in the complaint to the officer under investigation, this should be done in the same manner as in any other criminal investigation - by reference to the general nature of the complaint, or, where necessary, by reference to specific aspects of the allegation(s) made. The officer under investigation must not, however, be shown the statement of the complainer or of any other witness to the complaint.
19. Except in cases where the complainer is to be prosecuted for making a false and malicious complaint against a police officer, the complainer's statement to the police and his precognition by the member of the Procurator Fiscal Service in respect of the complaint will not be disclosed to any other Procurator Fiscal or Depute Fiscal except those instructed by the Area Procurator Fiscal to investigate the complaint. In particular, the complainer's statement to the police and his precognition in respect of the complaint will not be made available to the Fiscal or Depute Fiscal who is to take the complainer's trial. (Similarly with statements/precognitions obtained from witnesses in relation to the complaint). It is sufficient for the trial Fiscal or Depute Fiscal to have a note on the file informing him that the case is

associated with a complaint against the police, with a brief indication of the nature of the complaint and a request that the Fiscal or Depute Fiscal should, where appropriate, prepare a report to the Area Procurator Fiscal at the conclusion of the trial. The person who interviews the complainer about his complaint against a police officer must not take or have taken the complainer's trial.

Disclosure of information: related Criminal Proceedings against the Complainer

20. Information obtained solely as a result of an investigation into a complaint against the police is information which would not normally have been available to the Crown in a related prosecution against the complainer. By making a complaint against the police the complainer must not be put in a position where he is prejudiced in respect of related criminal proceedings against him. Accordingly, as a general rule, and subject to what is said at paragraph 21 below, information which comes to light during the investigation of the complaint as a result of that complaint and which is relevant to any related criminal proceedings against the complainer must not be disclosed to the District Fiscal or to any other person with an interest in the related criminal proceedings, even though the information may be of assistance to the prosecution case against the complainer.

Where information is obtained in the course of the investigation of the complaint and that information is relevant to any separate or unrelated criminal investigation or prosecution, such information may be disclosed by the Area Procurator Fiscal to the District Procurator Fiscal concerned. The complainer and his solicitor must be informed by the Area Procurator Fiscal that this information will be disclosed.

21. The Area Procurator Fiscal must not withhold any information which would be beneficial to the defence of an accused person irrespective of whether the accused is the complainer or a co-accused of the complainer or any other individual. If during the investigation of the complaint against the police the Area Procurator Fiscal obtains information which would assist the complainer in the conduct of his defence, the information must be disclosed to

the complainer or to his solicitor and to the relevant District Procurator Fiscal. In circumstances where information has been obtained as a result of the investigation of the complaint against the police and it appears to the Area Procurator Fiscal that the information is likely to be of assistance to the defence of an accused person other than the complainer, the Area Procurator Fiscal must disclose the information to that individual or to his solicitor and must inform the complainer or the complainer's solicitor and the relevant District Procurator Fiscal that the information will be disclosed.

Complaint Withdrawn

22. A complainer may indicate that he wishes to withdraw his complaint by informing the police or contacting the office of the Area Procurator Fiscal. In both circumstances, the Area Procurator Fiscal must make sufficient enquiry to satisfy himself that the complaint has not been withdrawn as a result of pressure or inducement. Where the complaint is withdrawn after precognition, the Area Procurator Fiscal may consider whether it is appropriate to re-interview the complainer to confirm the complainer's position.

23. If during the course of the investigation information has been disclosed which suggests to the Area Procurator Fiscal that it is in the public interest to proceed against the police officer, the fact that the complainer wishes to withdraw his complaint will be drawn to the attention of Crown Counsel but the case should still be reported to Crown Office.

Vexatious Complaints

24. Where a complaint against the police has been made and the Area Procurator Fiscal is satisfied that there is clear evidence to prove that the complaint was malicious and false, and it is considered in the public interest to prosecute the complainer, the Area Procurator Fiscal should report the case to Crown Counsel for instructions, but it is not necessary to submit a full precognition.

No Proceedings – No Substance

25. If, after investigation, the Area Procurator Fiscal concludes there is no substance in the allegation, he will inform the complainer, the Assistant Chief

Constable and, where appropriate, the District Procurator Fiscal that there are to be no proceedings.

Target for Completion of Investigation

26. Investigation of the complaint against the police should normally be concluded within four months of the receipt of the full report from the Assistant Chief Constable. Complaints which appear likely to result in proceedings should be given priority over those which do not.

Report to Crown Office

27. If the Area Procurator Fiscal considers there is any substance in the complaint against the police, he will submit a bound precognition to Crown Office along with his assessment of the merits of the case and his recommendation. Any information held by the Area Procurator Fiscal about previous complaints against the officer must be included in the precognition.

Substance

28. A complaint has substance where there is credible evidence to support the allegation in the complaint whether or not the evidence is sufficient to support proceedings. Complaints which are based on corroborated but unreliable evidence need not be reported to Crown Office where the unreliability is such that the preparation of a full report would be a waste of resources.
29. If Crown Counsel instruct proceedings against the police officer and the complainer, both prosecutions may be run concurrently if the prosecutions relate to two separate matters, that is, if the facts are not inter-related.

Only where the subject matter of both trials is closely inter-related will the question of delaying proceedings for one or other of the cases be considered. Where proceedings in such circumstances have not yet been initiated against either but are envisaged against both, Crown Counsel will instruct which case will take precedence.

30. When a final decision on the complaint is deferred pending proceedings

against the complainer, Crown Counsel will normally instruct that the matter should be re-reported after the trial with a report from the trial Depute.

31. The decision of Crown Counsel will be communicated by Crown Office within 21 days to the Area Procurator Fiscal and by him to the complainer, the police and the Procurator Fiscal of the District concerned.
32. It is appropriate that police officers charged on summary complaint with offences committed in the course of duty should be designed as care of their workplace. Where an incident has occurred outside the course of duty such an officer should be designed as at his or her home address unless there has been a specific request for designation at the place of work and the Procurator Fiscal considers that that request is reasonable.
33. In solemn proceedings the officer will require to be designed as at his domicile of citation. It is open to the Sheriff to accept a domicile of citation which is not the normal place of residence of the accused (Section 25(1) of the Criminal Procedure (Scotland) Act 1995) and the Procurator Fiscal should approach any motion for the workplace to be specified as a domicile of citation on the same principles.
34. It is not sensible to adhere rigidly and unswervingly to rules when investigating complaints against the police. Some flexibility of approach is necessary, and careful consideration should be given to situations where it appears necessary or beneficial to the enquiry to depart from normal procedure.

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Author: Head of Policy

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Performance Against Target - April to June 2007

Target:

To complete the investigation of complaints of criminal conduct by Police Officers and advise the complainer of the outcome within 10 weeks of the date on which the report is received in at least 60% of cases.

Achievement⁴:

Target Met

Target	Strategic Objective	PFS	Glasgow	Lanarkshire	Ayrshire	Argyll & Clyde
CAPs: Area PFs	Close in 10 weeks – 60% of cases	81%	73%	89%	88%	90%
CAPs: Area PFs	Close in 12 weeks – 90% of cases	85%	77%	89%	94%	92%

⁴ Information taken from statistical tables on the COPFS Intranet