



**Improving  
Policing  
Across  
Scotland**

## **HM Inspectorate of Constabulary in Scotland**

**Police Scotland – Counter Corruption Unit**

**Terms of Reference for HMICS Assurance Review**

Find out more about our work by visiting our website at [www.hmics.org.uk](http://www.hmics.org.uk)



# HM Inspector of Constabulary in Scotland

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HM Inspectorate for Constabulary in Scotland (HMICS) is established under the Police and Fire Reform (Scotland) Act 2012 and has wide ranging powers to look into the '*state, effectiveness and efficiency*' of both the Police Service of Scotland (Police Scotland) and the Scottish Police Authority (SPA).<sup>1</sup>

We have a statutory duty to ensure that the Chief Constable and the SPA meet their obligations in terms of best value and continuous improvement. If necessary, we can be directed by Scottish Ministers to look into anything relating to the SPA or Police Scotland as they consider appropriate. We also have an established role in providing professional advice and guidance on policing in Scotland.

- Our powers allow us to do anything we consider necessary or expedient for the purposes of, or in connection with, the carrying out of our functions.
- The SPA and the Chief Constable must provide us with such assistance and co-operation as we may require, to enable us to carry out our functions.
- When we publish a report, the SPA and the Chief Constable must also consider what we have found and take such measures, if any, as they think fit.
- Where our report identifies that the SPA or Police Scotland is not efficient or effective (or best value not secured), or will, unless remedial measures are taken, cease to be efficient or effective, Scottish Ministers may direct the Authority to take such measures as may be required. The SPA must comply with any direction given.
- Where we make recommendations, we will follow them up and report publicly on progress.
- We will identify good practice that can be applied across Scotland.
- We work with other inspectorates and agencies across the public sector and co-ordinate our activities to reduce the burden of inspection and avoid unnecessary duplication.
- We aim to add value and strengthen public confidence in Scottish policing and will do this through independent scrutiny and objective, evidence-led reporting about what we find.

Our approach is to support Police Scotland and the SPA to deliver services that are high quality, continually improving, effective and responsive to local needs.<sup>2</sup>

**This Assurance Review will be undertaken by HMICS in terms of the Section 74(2)(a) of the Police and Fire Reform (Scotland) Act 2012 and a report on our findings will be laid before the Scottish Parliament in terms of Section 79(3) of the Act.**

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<sup>1</sup> Chapter 11, Police and Fire Reform (Scotland) Act 2012.

<sup>2</sup> HMICS, [Corporate Strategy 2014-17](#) (2014).

# Our review

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## Aim

The aim of this Assurance Review is to assess the **state, effectiveness** and **efficiency** of Police Scotland's Counter Corruption Unit (CCU). The review will provide an independent assessment of the operations, systems and procedures in place, including compliance with the relevant legislation, codes of practice, policies, procedures and recognised best practice.

This HMICS review was requested by the Scottish Police Authority in response to a finding by the Interception of Communications Commissioner that there had been contraventions of the *Acquisition and Disclosure of Communications Data, Code of Practice 2015*<sup>3</sup> in respect of five applications for communications data submitted by Police Scotland. These related to one investigation being undertaken by Police Scotland's Counter Corruption Unit. Although our review will not re-examine or comment on this finding by the Commissioner, it will include an examination of the wider investigation conducted by the Counter Corruption Unit into the circumstances which initially gave rise to these applications.

We are aware that the Commissioner has written to four individuals who were adversely affected by these contraventions and informed each of the existence of the Investigatory Powers Tribunal (IPT) and its role. HMICS will maintain contact with the IPT Secretariat throughout our review to ensure that it does not compromise the integrity of ongoing judicial proceedings.

Our review will be undertaken in terms of Section 74 (2) (a) of the Police and Fire Reform (Scotland) Act 2012 and will be laid before Scottish Parliament in terms of Section 79 (3) of the Act.

## Background

While it is clear that the overwhelming majority of police officers and staff are committed, professional and act with the utmost integrity whilst undertaking a challenging role, there is always the potential for a small but pernicious element to exist, whose corrupt actions have a negative effect on public confidence. Corruption by police officers and police staff is likely to involve some or all of the following elements:<sup>4</sup>

- conduct that is abusive of the trust which the public places in the police;
- the exercise of police powers or privileges for purposes other than those for which they were conferred, or for which a reasonable person would expect them to be exercised, and which is to this extent 'improper';
- the deliberate and self-serving misuse of a police power or failure to perform a police duty;
- the exercise of police powers or privileges for personal gain, or in order to confer benefits or dis-benefits on others.

Those involved in serious and organised crime seek to exploit vulnerabilities through a range of activities including taking advantage of legislative loopholes, bribery and corruption.<sup>5</sup> In a serious organised crime context, corruption is a critical enabler, without which those involved in serious organised crime would not be able to operate. Criminals at all levels seek access to sensitive information about themselves, competitors, investigations, tactics, prosecutions, witnesses and

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<sup>3</sup> Home Office, [Acquisition and Disclosure of Communications Data, Code of Practice](#), March 2015.

<sup>4</sup> HMIC Integrity matters: [An inspection of arrangements to ensure integrity and to provide the capability to tackle corruption in policing](#) (2015).

<sup>5</sup> National Crime Agency, [National Strategic Assessment of Serious and Organised Crime 2015](#).

intelligence sources, including the identity of police officers. This information is used to undermine law enforcement operations, evade arrest and facilitate serious criminal activity. Generally, serious and organised criminals will seek to exploit personal connections to corrupt those in law enforcement. Corruption in this sector does not occur on a large scale, but individual instances can have a disproportionate effect and often have serious ramifications across the public and private sectors.

There is a recognised and legitimate need for all police forces and public sector organisations to protect themselves, their people and their information against the real risk from corruption. However, in order to maintain public confidence in policing, the tactics employed to counter corruption must be lawful, proportionate and necessary. They must also be subject to appropriate oversight.

### **Counter Corruption Unit**

On 1 April 2013, Police Scotland established a dedicated national Counter Corruption Unit designed to investigate all allegations of corruption in order to protect the integrity of the service or relevant public sector organisation. The Counter Corruption Unit has a dual remit:

#### to focus internally within Police Scotland

- to reduce the risk of compromise of ongoing operational activity
- to reduce the risk presented by individual officers and or members of staff
- to increase public confidence

#### to focus on the wider public sector

- to reduce the risk of compromise relative to the awarding of a contract or licence
- to work across the entire public sector to prevent corruption.<sup>6</sup>

Where there are reasonable grounds that an officer or member of staff is involved in criminal and corrupt activity the Counter Corruption Unit will conduct investigations. This can include the lawful acquisition of “communications data” authorised under the Regulation of Investigatory Powers Act (RIPA) 2000. Communications data colloquially embrace the ‘who’, ‘when’ and ‘where’ of a communication but not the content, what was said or written. Communications data is further defined in the Report of the Interception of Communications Commissioner dated March 2015.<sup>7</sup>


The police can access communications data if they demonstrate that it is necessary for the purpose of preventing or detecting crime. Access to such data is on a case by case basis and is subject to authorisation and oversight. In the specific case of an application for communications data, which is made in order to determine a journalist’s source there is a requirement for law enforcement agencies, including the police, to seek judicial authorisation.

Following an inspection of Police Scotland by the Interception of Communications Commissioners Office, on the 25 November 2015, the Rt Hon. Sir Stanley Burnton, Interception of Communications Commissioner issued a statement<sup>8</sup> in relation to contravention of the *Acquisition and Disclosure of Communications Data, Code of Practice 2015* by Police Scotland. He reported that there had been contraventions of the Code of Practice in respect of five applications for communications data submitted by Police Scotland relating to one investigation being undertaken by the Counter Corruption Unit. The Commissioner reported that these applications sought communications data in order to determine either a journalist’s source or the communications of those suspected to have been acting as intermediaries between a journalist and a suspected source. In each case judicial approval was not obtained to acquire this communications data and in

<sup>6</sup> Police Scotland, [UK first for new unit to target corruption in Scotland](#), 20 September 2013.

<sup>7</sup> [Report of the Interception of Communications Commissioner](#), March 2015, paragraph 7.2.

<sup>8</sup> [Statement by the Interception of Communications Commissioner](#) dated 25 November 2015.



each case the applications failed to satisfy adequately the requirements of necessity and proportionality or to give due consideration to Article 8 or Article 10 of the European Convention on Human Rights (ECHR). Furthermore, two of the applications had been approved by a Designated Person who was not independent of the investigation, resulting in a breach of the aforementioned Code of Practice.

In response to the Interception of Communications Commissioner's Office report, Police Scotland carried out a review and established an action plan with measures designed to prevent any recurrence of such contraventions. This has been recognised by the Interception of Communications Commissioner.

The contraventions of the Code of Practice have been the subject of substantial media coverage and significant national political interest.

On 25 November 2015, John Foley, Chief Executive Officer, Scottish Police Authority formally requested HMICS to carry out an in-depth assurance review of the effectiveness and efficiency of Police Scotland's counter corruption practices.<sup>9</sup>

On 1 December 2015, the Justice Committee of the Scottish Parliament agreed to take evidence on the Interception of Communications Commissioner's statement of 25 November 2015 that Police Scotland had contravened the *Acquisition and Disclosure of Communications Data, Code of Practice*. On 15 December 2015, the Committee took evidence from Deputy Chief Constable Neil Richardson, Designated Deputy for the Chief Constable; John Foley, Chief Executive, Scottish Police Authority; and Michael Matheson, Cabinet Secretary for Justice. Following the evidence taking, the Committee agreed to hold a further evidence session on the interception of communications by Police Scotland; to take place on 12 January 2016.<sup>10</sup>

### Assurance Review - Terms of reference

The terms of reference for this review are designed to enable HMICS to independently assess the **state, effectiveness** and **efficiency** of Police Scotland's Counter Corruption Unit and provide assurance in terms of Police Scotland's compliance with relevant legislation, codes of practice, policies, procedures and recognised best practice.

### Out of scope

The investigation by the Interception of Communications Commissioner's Office into breaches made by Police Scotland in contravention of the requirements set out in the *Acquisition and Disclosure of Communications Data, Code of Practice* is exclusively a matter for the Interception of Communications Commissioner's Office (IOCCO) and our review will not cover any matters that are properly the statutory remit for IOCCO. Although our review will not re-examine or comment on the finding by the Commissioner, it will include an examination of the wider investigation conducted by the Counter Corruption Unit into the circumstances which gave rise to these applications.

While we will examine the co-ordination of activity between Police Scotland's Counter Corruption Unit and its Professional Standards Department (PSD), we will not be undertaking a comprehensive review of PSD.

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<sup>9</sup> Scottish Police Authority statement, [IOCCO Determination on Police Scotland](#), 25 November 2015.

<sup>10</sup> Scottish Parliament Justice Committee, [Interception of communications by Police Scotland](#).



## Objectives

The Scottish Police Authority has set out expectations of the areas to be reviewed by HMICS:

- Independent view of the operations, systems and procedures in place
- Independence of the internal investigation function
- Governance and accountability
- Training and guidance for officers and staff
- Assurance against best practice

These have been incorporated into our methodology and will be addressed through the development of Key Lines of Enquiry (KLOE) and our structured Inspection Framework.<sup>11</sup>

## Methodology

We will use the HMICS Inspection Framework which is based on the Public Service Improvement Framework (PSIF), the European Foundation for Quality Management (EFQM) Excellence Model and Best Value Characteristics. The Inspection Framework will provide a structure to our review which will be risk-based, proportionate and focussed on improving policing in Scotland. We will structure our review around six themes:

- Outcomes
- Leadership and Governance
- Planning and Processes
- People
- Resources
- Partnership

The following table highlights the specific elements that we will examine under these themes.

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<sup>11</sup> HMICS, [Inspection Framework](#), September 2014.



HMICS Inspection Framework					
Outcomes	Leadership and Governance	Planning and Processes	People	Resources	Partnerships
Adherence to statutory duties	Scrutiny and oversight arrangements	Identification of threats	Staff, motivation, satisfaction and contribution	Capacity and capability within CCU and management of resources	Partnership working
Adherence to codes of practice	Vision, values and culture	Assessing risk and risk management planning	Staff skills, training, development and knowledge	Capacity and capability and access to specialist assets	Communications and stakeholder engagement
Adherence to national guidance	Leadership and governance of strategy and direction	Intelligence strategy, plans and processes	Staff deployment and team work	Information systems and data management	Collaborative and coordinated working
Outcomes for communities	Leadership of people	Operational strategy, plans and processes	Healthy and safe working environment	Costs and internal financial management	
Outcomes for users	Leadership of change and improvement	Preventative strategy, plans and processes		Organisational structures and processes to support delivery of outcomes	
Impact on staff	Independence of CCU investigations and overlap with Professional Standards	Communication and engagement strategies, plans and processes			
Impact on users		Performance management and quality assurance			
Impact on communities		Results analysis			
		Improvement through self-assessment			
		Organisational learning and development including external benchmarking			

The review will be delivered over five stages, some of which will be undertaken concurrently.

## Stage 1 Initial scoping phase

The Terms of Reference for the review will be published during January 2016. The Lead Inspector will commence review activities during January 2016. Initial scoping will be essential to enable the review team to focus resources, minimise the burden of the review process and provide sufficient evidence to make judgements in relation to our Inspection Framework.

We will examine relevant strategies, policies, policing plans and analytical products that are designed specifically to address the threat from corruption including performance and management information. Where possible we will access these documents from open sources, but this may require Police Scotland to provide the documents. These documents will assist in determining our overall judgement as to how well the Counter Corruption Unit is organised. This initial stage also includes desktop research, relevant academic research, previous review reports and initial meetings with key stakeholders.

We will scan the media and websites to determine how the Counter Corruption Unit is viewed by the public and key partnerships. In accordance with our duty of user focus we will gain service users perspectives from key stakeholders, including staff associations and relevant partners.

## Stage 2 Fieldwork

This fieldwork phase will review and assess the initial referral to the Counter Corruption Unit and the subsequent investigation conducted by the Counter Corruption Unit into the circumstances which gave rise to the applications for communications data that were found by the Interception of Communications Commissioner's Office to have contravened the statutory Code of Practice. Our review shall not compromise the integrity of any ongoing police investigation related to this Counter Corruption Unit investigation.

## Stage 3 Fieldwork

This phase will focus on testing operational practice of the Counter Corruption Unit and compliance with relevant legislation, codes of practice, policies, procedures and recognised best practice. Specific topics and questions for interviews and focus groups will be structured around our Inspection Framework.

A single point of contact for the review will be identified by Police Scotland to support the review process and to facilitate appropriate access to people and information. Review visits will be conducted across Police Scotland.

This stage will involve the following activities:

- engagement with a range of key stakeholders, including but not limited to, Police Scotland, Scottish Police Authority, Scottish Government, staff associations and unions, elected representatives to understand key issues and concerns;
- consideration of seeking representatives views to understand the impact on users, key issues and concerns;
- liaison with the Police Investigations & Review Commissioner (PIRC) to identify current levels of engagement and wider issues;
- review and assessment of end to end counter corruption practices, policies, procedures, processes and systems;
- review of existing supervision and management, risk management, health and safety, performance reporting and governance;



- review and assessment of current and planned staffing levels, structures, experience and training;
- observation of internal governance including tasking and coordination meetings;
- qualitative sampling and review of case records;
- interviews and /or focus groups with staff within the Counter Corruption Unit, Specialist Crime Division and front line officers;
- interviews with relevant senior officers;
- liaison with Her Majesty's Inspectorate of Constabulary (HMIC), the College of Policing in relation to Authorised Professional Practice,<sup>12</sup> the National Police Chiefs' Council (NPCC) in relation to the operation of Counter Corruption Units in England, Wales and Northern Ireland;
- benchmarking activity to examine the approach to Counter Corruption in comparable United Kingdom (UK) police forces to contrast and compare against national guidance and best practice;
- literature review of relevant public and private sector sources of good practice and consultation with academics;
- collation, analysis and evaluation of information collected, identifying key themes, good practice or improvement requirements;
- review and assessment of the initial and current Police Scotland Strategic Threat Assessment on corruption, supporting intelligence and any other contextual data used to inform the decision making process.

#### **Stage 4 Review and analysis of evidence**

During this stage, the Lead Inspector will review and evaluate the information and evidence collected during the review. This will be assessed against current guidance, procedures and best practice across the UK.

#### **Stage 5 Publication and reporting timescales**

Following conclusion of the review an internal report will be prepared in line with HMICS reporting format guidelines. Quality assurance will be provided by way of internal review followed by a factual accuracy check by Police Scotland and other relevant stakeholders who may have contributed to the evidence base of our report.

The report will outline our methodology, our approach, our key findings, our conclusions and any recommendations. Where we identify good practice, this will also be highlighted in our report. In terms of safeguards, the report will not contain any specific information on the intelligence, threat or risk products that we will have examined. It will provide assurance on whether or not the Counter Corruption Unit is operating effectively and efficiently within Police Scotland as well as capacity for continuous improvement.

Given the scale of the review and the public interest in this matter, we anticipate publishing a report of our findings in Spring 2016 which will be in line with the timeline requested by the Scottish Police Authority. The report will be laid before the Scottish Parliament under Section 79(3) of the Police and Fire Reform (Scotland) Act 2012 and a copy of our report will be provided to the

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<sup>12</sup> College of Policing, [Professional standards, Counter corruption.](#)



Scottish Police Authority, the Chief Constable and the Cabinet Secretary for Justice. Our report will also be made publicly available on the HMICS website.

For further information about the Assurance Review of the Counter Corruption Unit please contact Stephen Whitelock, HMICS Lead Inspector (Stephen.Whitelock@gov.scot).

**Derek Penman QPM**  
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**January 2016**