



HM INSPECTORATE OF CONSTABULARY IN SCOTLAND

Police Scotland - Counter Corruption Unit Assurance Review

June 2016



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HM Inspector of Constabulary in Scotland

HM Inspectorate for Constabulary in Scotland (HMICS) is established under the Police and Fire Reform (Scotland) Act 2012¹ 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).

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 SPA 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.²

This Assurance Review was undertaken by HMICS in terms of Section 74(2) (a) of the Police and Fire Reform (Scotland) Act 2012 and laid before the Scottish Parliament in terms of Section 79(3) of the Act.

¹ Chapter 11, Police and Fire Reform (Scotland) Act 2012.

² HMICS, [Corporate Strategy 2014-17](#) (2014).



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Our review

The aim of our Assurance Review is to independently assess the **state, effectiveness** and **efficiency** of Police Scotland's Counter Corruption Unit (CCU). The background to this review is outlined within our terms of reference,³ which were published on 11 January 2016.

This HMICS review was requested by the Scottish Police Authority (SPA) 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* in respect of five applications for communications data submitted by Police Scotland. These related to one investigation being undertaken by Police Scotland's CCU. Although our review has not re-examined this finding by the Commissioner, we have taken the opportunity to examine the wider investigation conducted by the CCU into the circumstances which initially gave rise to these applications. The intention behind our review was to independently determine the facts and to identify practical lessons that will assist in improving police counter corruption practices in Scotland.

Our report has been separated into two parts:

- **Part one** – This *case study* comprised a detailed review and assessment of the initial referral to the CCU relative to the alleged disclosure of sensitive information to a journalist. This included the subsequent investigation into the circumstances which gave rise to the applications for communications data that were found by the Interception of Communications Commissioner's Office (IOCCO) to have contravened the statutory Code of Practice (2015). We have produced a timeline of key events in relation to these circumstances at *appendix one* and a glossary of terms at *appendix two*.
- **Part two** – Using our Inspection Framework, as shown in our methodology at *appendix four* we have concluded a thorough *Assurance Review*, testing the operational practice of the CCU and compliance with relevant legislation, codes of practice, policies, procedures and recognised best practice.

During our review we have accessed sensitive operational information and risk assessed the potential for compromise of individuals and roles. In order to determine whether the CCU investigation was necessary, proportionate and objective, we examined restricted intelligence files and interviewed key individuals. We have respected the anonymity and confidentiality of those individuals who have provided information to the CCU, and where appropriate we have protected the identity of such sources and the identity of operational police officers and members of police staff.

Our review was undertaken across five stages with a number of activities carried out concurrently. We examined relevant strategies, policies, policing plans and analytical products that are designed specifically to address the threat from corruption. We also researched media reports and websites to determine how the CCU is perceived by the public.

In accordance with our duty of user focus, we gained a user perspective from key stakeholders, including staff associations and relevant partners. We held a focus group with police officers who had been subject to CCU investigations, which was facilitated by a solicitor acting on their behalf. We also carried out benchmarking activity with Merseyside Police to compare and contrast Police Scotland's approach to tackling corruption with that deployed by Merseyside Police.⁴

³ HMICS, [Assurance Review, Police Scotland – Counter Corruption Unit, Terms of Reference](#).

⁴ HMIC, Inspection of Merseyside Police (November 2014).



We acknowledge that this review was commissioned by the SPA as part of its commitment to improve policing and strengthen governance and accountability. We were requested to provide an independent view of the operations, systems and procedures in place, with the objective of providing an assurance against best practice. We were also requested to comment on the operational effectiveness and efficiency of the CCU, independence of the internal investigative function, its governance and accountability, including training and guidance for staff.

During our review, we highlighted some areas for immediate action and made recommendations to Police Scotland. These were fully accepted, progressed and have already driven improvement within the CCU. Chief officers and senior managers within the CCU have co-operated fully throughout our review and the senior leadership within Police Scotland are committed to preventing corruption and investigating wrongdoing in a professional and ethical manner.

As a consequence of our review, Police Scotland will be asked to create an action plan in order that our recommendations are taken forward. We will monitor progress against this plan and publish our findings as part of our annual reporting process. We welcome the commitment from the Chief Constable and the Chair of the SPA to implement all our recommendations.

Given the operational sensitivities that exist around elements of the material examined, I have personally led this review supported by Stephen Whitelock, Lead Inspector, HMICS; John Young, Associate Inspector, HMIC (England and Wales); and Stephen Mackay, Associate Inspector, HMICS.

HMICS wishes to thank senior officers and staff from Police Scotland and the CCU, including staff associations, Crown Office and Procurator Fiscal Service (COPFS), Police Investigations and Review Commissioner (PIRC), Merseyside Police and others for their support and co-operation during this review.

Derek Penman QPM

HM Inspector of Constabulary in Scotland

June 2016

Executive summary

I recognise the legitimate need for Police Scotland to protect itself, its people and its information against the risk from corruption. However, in order to maintain public confidence in policing, the tactics employed for counter corruption must be lawful, proportionate and necessary. They must also be subject to effective oversight.

In conducting this review, I have highlighted two key events that preceded the SPA requesting HMICS to undertake this assurance review of Police Scotland's CCU. The first was the Sunday Mail newspaper article on 5 April 2015, claiming there was a "forgotten suspect" in the unresolved murder of Emma Caldwell. The second was the annual inspection by IOCCO of Police Scotland (15 - 17 June 2015) when compliance issues were identified and investigated.

On 25 November 2015, the Interception of Communications Commissioner published a statement⁵ that Police Scotland had contravened *the Acquisition and Disclosure of Communications Data Code of Practice (2015)* by seeking communications data 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 without the required judicial approval.

Since publication of the Commissioner's statement there has been significant political, public and media interest that centred on an assertion that Police Scotland, specifically the CCU, had carried out an unlawful "spying" operation directed at serving and former police officers who had allegedly leaked information to the media about deficiencies in the original murder investigation. There has also been criticism that Police Scotland had placed its efforts into finding the source of this leak and protecting its reputation, rather than concentrating on the reinvestigation.

The Sunday Mail's coverage has been helpful in raising public awareness and prompting a reinvestigation into the murder of Emma Caldwell. In particular, it resulted in Police Scotland responding in two distinct ways.

Firstly, in response to the media claim that there was a "forgotten suspect," the Assistant Chief Constable (Major Crime and Public Protection) immediately instructed the Homicide Governance and Review Unit (HGRU) to prepare a report on the previous murder investigation for consideration of a more detailed review or reinvestigation. I consider that this was an appropriate response to the issues raised by the newspaper article by Police Scotland.

On 22 May 2015, Crown Office and Procurator Fiscal Service (COPFS) formally advised Police Scotland that Crown Counsel, having considered the circumstances of Emma Caldwell's death instructed the murder be reinvestigated. Having personally interviewed the chief officer, the senior representative from COPFS and the senior investigating officer (SIO), I am satisfied that the reinvestigation into the murder of Emma Caldwell is well resourced and the SIO and enquiry team have had no prior involvement in the previous homicide investigation. I am satisfied that governance arrangements are in place to ensure integrity of all aspects of the reinvestigation and that Police Scotland, directed by COPFS, is using modern investigative and forensic techniques. This includes a more sophisticated approach to witness engagement than that used during 2005-2007.

As this remains a live reinvestigation, it is my view that continued public and media interest around potential suspects is unhelpful and may prejudice fresh proceedings. I shall not make further public comment on this aspect of my review.

Secondly, in response the newspaper article, the then Head of the HGRU made a referral to the CCU that information contained within it was operationally sensitive and, in his view, could only

⁵ Interception of Communications Commissioner statement.



have originated from a police source. In response, the CCU commenced an initial intelligence assessment. This was conducted separately from the homicide reinvestigation and did not diminish the effectiveness of this reinvestigation.

The purpose of the CCU intelligence assessment was to gather information and identify who in Police Scotland had made the alleged unauthorised disclosure of information. Police Scotland has a legitimate interest in protecting sensitive operational information from unlawful disclosure and I believe it was reasonable at that time for Police Scotland to establish whether or not information from a “live” murder enquiry had been unlawfully disclosed to a journalist.

However, I established that even although the then Head of the HGRU had responsibility for the continued management and oversight of all unresolved homicides, including Emma Caldwell, there was no “live” enquiry ongoing and no major investigation team established at this time. Furthermore, following enquiry by the CCU Intelligence Section in June 2015, it was established that the majority of information printed in the Sunday Mail article, including statements and the deployment of covert techniques, had already been disclosed by COPFS to defence agents (circa 2007) as part of a legitimate criminal justice process. This resulted in the CCU Intelligence Section concluding that *“it was impossible to identify whether this information was passed to the media by any officer or member of police staff, serving or retired, or if it had been disclosed through other sources”*.


As Police Scotland was aware of this previous disclosure of sensitive information to defence agents and had concluded its CCU intelligence development activity by August 2015, I believe that there was an opportunity to make this information clearer in its evidence to the Justice Committee on 15 December 2015. This would have provided a plausible explanation for the sensitive information within the Sunday Mail article and offered some balance and reassurance over the assertions that an officer from the Emma Caldwell murder investigation team had leaked sensitive policing information to a journalist.

On 17 June 2016, IOCCO released a statement relating to the Police Scotland investigation concerning journalistic sources and published the Commissioner’s Memorandum, Annexes and letter to Police Scotland. I welcome the publication of these documents as they provide a factual account of the Commissioner’s determination and the circumstances surrounding IOCCO’s investigation of the contraventions of the Code of Practice (2015). The Commissioner has recognised that Police Scotland has put in place significant measures in order to prevent any recurrence of such contraventions. While my review has not re-examined the Commissioner’s determination, I have taken the opportunity to look at the wider CCU intelligence development activity as a case study to inform my overall assessment of effectiveness and efficiency.

I confirmed that the CCU Intelligence Section presented an initial application for communications data which included details of a journalist’s communications address (or telephone number) to the Designated Person (Detective Superintendent). The Designated Person was independent of the CCU and had no prior involvement in the Emma Caldwell murder investigation. This senior police officer sought and received advice from the Police Scotland Communications Investigations Unit that this application required judicial approval and on the basis of this advice, he returned the first application to the CCU Intelligence Section, indicating that judicial authorisation was required.

The CCU Intelligence Section deleted the request for communications data on the journalist’s communications address from this initial application and resubmitted the application along with two additional applications to the Designated Person (Detective Superintendent). All three applications were then authorised without further reference to the Police Scotland Communications Investigation Unit or the Senior Responsible Officer (SRO) or a chief officer which was in line with the operating procedures existing at that time.

Notwithstanding the pace with which the revised Code of Practice (2015) was introduced, I found no evidence of any organisational failure by Police Scotland in preparing for the Code. Whilst there is a clear responsibility for police officers and members of police staff to keep themselves abreast



of new legislation and guidance, I believe that Police Scotland would have benefited from a more structured and formalised approach to communicating important changes in legislation, practice and process. I also found the introduction of the revised Code had no bearing on the decision making process of the Designated Person (Detective Superintendent) as advice in relation to the Code was available and provided.

While access to communications data remains a valid tool in the prevention and detection of crime, I consider that other lines of enquiry were not fully exhausted in this case. It is my assessment that the CCU Intelligence development activity lacked objectivity and that those responsible applied prematurely for the acquisition and disclosure of communications data. Furthermore, I found no evidence of chief officer involvement in any of the five applications for communications data nor evidence of undue pressure or coercion placed on either of the two Designated Persons or the SRO by any police officer or member of police staff. I also found no evidence to suggest that either of the Designated Persons intended to undermine the revised Code of Practice (2015).

The Investigatory Powers Tribunal has confirmed to IOCCO that Police Scotland has conceded that the communications data authorisations were obtained in contravention of the Code of Practice (2015) and there is a public hearing to be held to decide the outstanding points of law in the case and to consider remedy.

In relation to the wider CCU intelligence development activity in this case, I found that information handling processes within the CCU were significantly different from national standards for source and information evaluation and fell below the standards I would have expected. In particular, the safeguards put in place by the CCU Intelligence Section to manage contact with sources of information were inadequate and highlighted gaps in the accurate recording of contact and information provided. I also found that confidential information provided by a retired police officer was not sufficiently recorded, risk-assessed and lacked proper evaluation. This information unduly influenced the CCU intelligence development activity.

I also identified that the handling of the CCTV disc footage in accordance with the Police Scotland standard operating procedure on productions had not been properly adhered to by the CCU Intelligence Section and that evidence had been lost. My examination of CCU intelligence files also raised concerns over the routine management, oversight and wider governance of CCU enquiries, including the extent to which chief officers are actively briefed and can direct on CCU matters.

As a consequence of my case study into this CCU intelligence development activity, I wrote to Police Scotland on 5 May 2016 with four initial recommendations for improvement to Police Scotland.

Using the HMICS Inspection Framework I conducted a thorough assurance review testing the operational practice of the CCU and compliance with relevant legislation, codes of practice, policies, procedures and recognised best practice. As a consequence of my review I have made **39 recommendations** that I believe will assist in improving police counter corruption practices in Scotland.

It is important to recognise that corruption within United Kingdom (UK) policing is rare and while it is clear that the majority of police officers and members of police staff are professional, and that corruption is not widespread in the police service, there remains a small but pernicious element whose corrupt actions have a negative effect on public confidence.

Police Scotland's CCU was established in 2013 as the single department for police officers and members of police staff to report, with anonymity and confidentiality ("whistleblowing") any criminality, conduct or integrity concerns. The CCU also has responsibility for carrying out internal investigations into allegations of corruption and wrong-doing on the part of police officers and members of police staff.



Over the past three years, the CCU has become a largely reactive unit with minimal evidence of proactive anti-corruption investigations with the majority of activity focused on administrative background checks, notifiable associations and data protection offences. There is no independent capacity or capability within the CCU to proactively investigate serious allegations of corruption from police officers and members of police staff without a requirement to secure specialist assets from elsewhere in the service. Although Police Scotland has the capacity and capability to provide these specialist assets, this increases the awareness of counter corruption investigations to other areas of policing and could potentially compromise operational security.

I found that police officers and members of police staff within the CCU have a range of pre-existing skills and training from previous roles including surveillance, financial investigation, public protection, intelligence and are motivated and experienced. Much of the feedback from officers and staff reflected a sense of frustration that the skill set available to the CCU was not being fully used due to the high volume of low complexity operational activity. I found that some CCU staff were unsure as to the overall purpose and direction of the unit, with some staff commenting that the focus was on prevention and that investigating corruption through proactive investigation was no longer a priority for the unit. There was an overlap between the functions of the CCU and wider professional standards activity.

I acknowledge that the CCU has evolved under the direction of the current senior command team, specifically in relation to preventing corruption through the Service Integrity programme. This has contributed to strengthening the preventative message, raising awareness of the threat, risk and harm from corruption and of the work of the CCU.

However, I have recommended that Police Scotland should take the opportunity to articulate a clear vision for tackling corruption and develop an overall strategy through engagement with relevant stakeholders. I have recommended that the service should urgently review its approach to tackling corruption, and develop both the capability and capacity for effective pro-active anti-corruption investigations that are underpinned by a robust intelligence function. This should include a review of its existing structures and give consideration to transferring the burden away from the CCU of high volume administrative background checks, notifiable associations and those data protection offences which do not infer corruption. Police Scotland should ensure that the CCU prioritises its workload around the threat posed by serious organised crime groups.

Despite the value of Authorised Professional Practice across a range of UK policing activities (including counter corruption) this has not been used by Police Scotland to develop its CCU policies. I also found that a number of standard operating procedures used to promote integrity require completion, are currently under review or being updated. Although the term “whistleblowing” is widely understood by police officers and police staff, there is not yet a formal “whistleblowing” policy. The online Integrity Matters application provides a secure internal platform for police officers and members of police staff to anonymously report wrongdoing, although this could be supplemented by an external confidential reporting function.

The establishment of a single police service has introduced complexity in terms of the police investigating the police and there is a need for an approach in Scotland that satisfies the demand for accountability, transparency and independence. I have recommended that Police Scotland should engage with COPFS, the Police Investigations Review Commissioner (PIRC), Scottish Government and other stakeholders to review and strengthen the overall approach to the independent scrutiny and oversight of investigations into allegations of serious corruption by police officers and members of police staff.

I have a statutory duty to secure continuous improvement in “user focus” and for this review, I met with the police staff associations. I also took the opportunity to meet with a solicitor with significant experience in representing police officers and former police officers who had been subject of CCU investigations, either under legacy force arrangements or under Police Scotland and through his co-operation, I was able to arrange a focus group to identify common themes or issues.



I found that the experiences from many of the police officers related to legacy Strathclyde Police CCU investigations, although there was a shared view that the culture from this unit was carried forward into the Police Scotland CCU in 2013. A common theme was the legality, proportionality and the apparent lack of procedural fairness carried out by the CCU when dealing with police officers and members of police staff. The primary concern was over a general lack of transparency and accountability within the CCU and frustration by police officers that when they raised complaints against CCU officers, these were not taken seriously or independently investigated.

I consider that in order to establish its legitimacy the CCU must be seen as an integral part of the service and consistently operate within the same values and Code of Ethics as the rest of Police Scotland. Whilst I acknowledge that CCU staff operate within a challenging environment and may be subject to unwarranted allegations intended to undermine genuine corruption investigations, the need remains for Police Scotland to demonstrate even greater transparency and independence in dealing with complaints made against CCU staff. Whilst I have made recommendations to increase the independent oversight of CCU investigations, I consider that additional safeguards should be put in place for complaints made against CCU police officers and members of police staff.

I acknowledge that both Police Scotland and the SPA recognise the importance of maintaining public trust and confidence in the delivery of a quality policing service and are committed to embed the Code of Ethics and values across policing in Scotland. Chief officer oversight of counter corruption activities sends out a clear message that the service takes ethical standards, integrity and tackling corruption seriously. I therefore welcome the personal commitment from the Chief Constable to review Police Scotland's approach to ethical policing and to consult with relevant stakeholders and benchmark across a range of public and private sectors to identify best practice. I support this commitment and will be interested in its development.



Key findings

General

- HMICS recognises the legitimate need for Police Scotland to protect itself, its people, and its information against the 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 effective oversight.
- Chief officers and senior managers within the CCU have co-operated fully throughout our review and the senior leadership within Police Scotland are committed to preventing corruption and investigating wrongdoing in a professional and ethical manner.

Part one – case study

- The Sunday Mail article reporting on deficiencies in the initial murder investigation of Emma Caldwell contributed significantly to raising public awareness and prompting the reinvestigation.
- The reinvestigation into the murder of Emma Caldwell is well resourced and the Senior Investigating Officer (SIO) and enquiry team have had no prior involvement in the previous homicide investigation. In addition, a strategic governance group, chaired by a chief officer and with senior representation from COPFS, has been established to provide oversight and ensure integrity over all aspects of the reinvestigation.
- Whilst Police Scotland instigated a counter corruption intelligence assessment after the publication of the Sunday Mail article on 5 April 2015, this was conducted separately from the reinvestigation into the murder of Emma Caldwell and did not diminish the effectiveness of this investigation.
- We would have expected the CCU to have confirmed whether there was a “live” reinvestigation into the murder of Emma Caldwell as part of its initial assessment, both in terms of identifying potential suspects from within a major investigation team and also to assess any ongoing risk to the integrity of the reinvestigation.
- The evidence provided by the then Deputy Chief Constable Designate to the Justice Committee in December 2015 reflected the initial CCU assessment. However, as this evidence was provided some eight months after the initial referral, we consider there was an opportunity for Police Scotland to have clarified the status of the reinvestigation.
- The information handling processes within the CCU Intelligence Section were significantly different from national standards, in terms of source and information evaluation. The safeguards put in place to manage contact with sources of information were found to be inadequate and highlighted gaps in the accurate recording of contact and information provided.
- The procedures relative to the seizure, handling and management of the CCTV disc footage by the CCU Intelligence Section including the recording, lodging and storage as outlined in the Police Scotland standard operating procedure on productions had not been adhered to and evidence had been lost.
- We found that Police Scotland had reached the conclusion on 21 August 2015 that all sensitive information contained within the Sunday Mail article had previously been disclosed through Crown Office to defence agents acting on behalf of four accused persons, and it was impossible to identify whether this information was passed to the media by any police

officer or member of police staff, serving or retired, or if it had been disclosed through other sources.

- While access to communications data remains a valid tool in the prevention and detection of crime, we found that other lines of enquiry were not fully exhausted in this case. Following our examination of the CCU intelligence files into the alleged unauthorised disclosure of sensitive policing information, it is our assessment that the enquiry lacked objectivity and that those responsible applied prematurely for the acquisition and disclosure of communications data.
- Our examination of CCU intelligence files has raised concerns over the routine management, oversight and wider governance of CCU enquiries, including the extent to which chief officers are actively briefed and can direct on CCU matters.
- The Investigatory Powers Tribunal has confirmed to IOCCO that Police Scotland has conceded that the communications data authorisations were obtained in contravention of the Code of Practice (2015) and there is a public hearing to be held to decide the outstanding points of law in the case and to consider remedy.
- Whilst there is a clear responsibility for police officers and members of police staff to keep themselves abreast of new legislation and guidance, we believe that Police Scotland would have benefited from a more structured and formalised approach to communicating important changes in legislation, practice and process.
- In relation to all five applications for communications data we established that in line with the operating procedures existing at that time, there was no requirement for either of the two Designated Persons to contact the Police Scotland Communications Investigations Unit, the Senior Responsible Officer (SRO) or a chief officer.
- The Commissioner has recognised the comprehensive review that Police Scotland conducted and wished to emphasise that Police Scotland has put in place significant measures in order to prevent any recurrence of such contraventions.
- Notwithstanding the pace with which the revised Code of Practice (2015) was introduced, we consider this had no bearing on the decision making process of the Designated Person, as advice in line with the Code was available and provided.
- From our review, we found no evidence of chief officer involvement in any of the five applications for communications data nor evidence of undue pressure or coercion placed on either of the two Designated Persons or the SRO by any police officer or member of police staff. We found no evidence to suggest that either of the Designated Persons intended to undermine the Code of Practice (2015).
- Given that Police Scotland was aware of the legitimate disclosure of sensitive information to defence agents in June 2015 and had concluded its CCU enquiry, there was an opportunity to make this information clearer in its evidence to the Justice Committee. We consider that placing this information into the public domain may have provided a legitimate explanation for the sensitive information within the Sunday Mail article and provided balance and some public reassurance to the assertions that an officer from the Emma Caldwell murder investigation team had leaked sensitive policing information to a journalist.



Part two – assurance review

Outcomes

- National studies consistently show that corruption within UK policing is rare. While it is clear that the majority of police officers and members of police staff are professional, and that corruption is not widespread in the police service, there remains a small but pernicious element whose corrupt actions have a negative effect on public confidence.
- Through the Service Integrity programme, the emphasis from the CCU has been on prevention raising the awareness of all police officers and members of police staff to the potential threat, risk and harms from corruption.
- We found little evidence of an effective and efficient approach to proactive anti-corruption investigations with the majority of CCU activity focused on administrative background checks, notifiable associations and data protection offences.
- While there is a general awareness of Police Scotland's values across the service the detail within the Code of Ethics is less understood.
- The Chief Constable has committed to reviewing Police Scotland's approach to ethical policing and the service is currently engaged with stakeholders and benchmarking across a range of public and private sectors in pursuit of best practice.

Leadership and governance

- The CCU completed an internal self-assessment exercise in 2014 that identified 50 recommendations to support improvement. Although a number of recommendations have been progressed, we found that awareness of this internal review amongst current senior CCU staff was limited and we found no clear evidence of a structured approach to implement the required improvements.
- CCU internal governance arrangements are organised and management team meetings are conducted professionally with an agenda, minutes, action log and documented updates. While there is evidence of regular discussion around activities we did not see the same level of evidence in relation to formal peer review of ongoing operations.
- Although there is a requirement for Police Scotland to have effective internal governance and accountability of CCU activities we consider that in cases involving serious allegations of police corruption, there is a legitimate role for COPFS to provide independent scrutiny over ongoing investigations.
- There is no independent covert capacity or capability within the CCU to proactively investigate serious allegations of corruption without a requirement to access specialist assets from elsewhere in Police Scotland. This increases the awareness of counter corruption investigations to other areas of policing and potentially compromises operational security.
- There is an overlap between the functions of both the CCU and Professional Standards Department (PSD). This creates ambiguity over the role and function of the CCU and has created tension where staff suspected of misconduct issues are interviewed by the CCU.



Planning and process

- Police officers and members of police staff within the CCU do not routinely access the College of Policing Authorised Professional Practice (APP).
- The CCU contributes to the National Crime Agency UK Anti-Corruption Threat Assessment about the nature of the threat from corruption.
- The strategic assessment, control strategy and the use of intelligence, prevention and enforcement priorities by the CCU were not fully understood by some staff and are not part of routine business.
- We found little evidence of measures to reflect the outputs and outcomes from CCU activity.
- The CCU Tactical Assessment provided a useful foundation and there are opportunities for improvement with additional focus on intelligence, operational and prevention activity.
- A number of standard operating procedures used to promote integrity across the service require completion.
- The CCU introduced a number of “60 Second Policies” as a quick reference guide for police officers and members of police staff. Officers welcomed their concise and readable format.
- Although the term “whistleblowing” is understood by police officers and members of police staff, there is no formal “whistleblowing” policy.
- The online Integrity Matters (IM) system provides a secure platform for police officers and members of police staff to anonymously report any criminality, conduct or integrity concerns.
- Developing an external confidential reporting function to receive reports of unethical or illegal behaviour by police officers and police staff would provide an additional channel for police officers and members of police staff who were not confident in using the internal IM system. Moreover such an arrangement could provide a new channel for members of the public to report such matters.
- The CCU must be seen as an integral part of Police Scotland and be committed to the same values and Code of Ethics. We acknowledge that in the past year the CCU management team have worked hard to develop positive working arrangements with partners to improve perceptions.
- Feedback from some police officers and members of police staff is that the previous approach by the CCU to reports of notifiable associations and data protection offences lacked a proportionate and measured response.
- There were 140 Police Scotland personnel on restricted duties with 29 of these having been on restricted duties for over 700 days. Police Scotland has recently introduced a process to assess each case with a risk management plan for each individual.
- Management Meetings that were previously used by the CCU to interview staff over professional concerns became discredited amongst staff associations and users. Police Scotland has since introduced a more transparent process which is focused on advice and guidance.
- Monitoring the use of police ICT systems in a proportionate and lawful manner is vital in countering corruption and the service remains at risk without having the capacity and capability to monitor activity across information systems in real time.



People and resources

- Feedback from CCU staff across Scotland revealed they felt part of a national unit and received good support from their local managers.
- CCU officers and staff are motivated and experienced, with a range of competencies and training from previous roles including surveillance, financial investigation, public protection and intelligence. Officers and staff reflected a sense of frustration that the skill set available to the CCU was not being fully used due to the high volume of low complexity operational activity.
- Police Scotland would benefit from developing a workforce planning model that supports the current and future demands on the CCU and provides an evidence based assessment of the required staffing levels, including supervisory ratios.
- Officers and staff are equipped to manage the current priorities within the CCU. However, to ensure that individuals are equipped to fulfil the array of future operational demands, there would be value in Police Scotland undertaking a Training Capacity and Capability review.
- We found an inconsistent approach across the risk assessment process with different terminology and styles being used. Work is in progress to standardise internal processes.
- The *iBase* case management system within the CCU contained in excess of 700 entities that were either unlinked or “orphaned”. This makes analysis and research difficult.
- The CCU has been actively developing its approach to assessing the threat, risk and harm from serious organised crime groups however, this is being managed alongside the significant volume of work generated by audit and background checks, notifiable associations and data protection offences.
- Although the CCU identifies and distributes organisational learning from its investigations, this could be further enhanced by a more structured approach to internal debrief.
- The CCU Public Sector Section has contributed to preventing fraud and corruption across the public sector in Scotland. However, its role currently lacks clarity and there is insufficient capacity and capability within the CCU to instigate an enquiry into public sector corruption and provide a sustained level of service delivery across all public sector organisations in Scotland.
- The Public Sector Investigators Course has been well received by partners and has enabled internal audit and investigators to have a better understanding of corruption.
- To reduce the vetting backlog of approximately 1155 applications additional staff have been appointed on a temporary basis to the vetting section.



Partnerships

- We found that centralising the CCU has improved engagement with partners both internally and externally.

User focus

- We found that a number of the negative experiences from police officers who had been subject to CCU investigations related to the legacy Strathclyde Police CCU, although there was a shared view amongst these officers that the culture from this unit was carried forward into the Police Scotland CCU in 2013.
- Concerns were raised from officers who had been subject to CCU investigations during the period of transition from Strathclyde Police to Police Scotland that the CCU tactics were disproportionate and lacked procedural fairness. The primary concern was over a general lack of transparency and accountability within the CCU and frustration by officers that when they raised complaints against CCU officers, these were not taken seriously or independently investigated. A number of police officers have outstanding complaints in relation to their contact with the CCU and we consider that these cases should be reviewed and resolved. In interest of transparency and service confidence any review should include independent scrutiny.
- Whilst we acknowledge that CCU staff operate within a challenging environment and may be subject to unwarranted allegations intended to undermine genuine corruption investigations, there is a pressing need for Police Scotland to demonstrate greater transparency and independence in dealing with complaints made against CCU staff.



Recommendations

Part one – case study

Recommendation 1

Police Scotland should ensure that the Counter Corruption Unit intelligence processes are reviewed and that information including the source of that information is subject of a process of evaluation, risk assessment and validation to produce a product that provides added value and supports the decision making process.

Recommendation 2

Police Scotland should reconsider the decision not to seek an explanation from the serving officers regarding information collected during the Counter Corruption Unit enquiry.

Recommendation 3

Police Scotland should investigate the circumstances which led to the loss of CCTV disc footage seized by the Counter Corruption Unit Intelligence Section and establish whether the loss of the disc and any data is a notifiable data security breach.

Recommendation 4

Police Scotland should introduce robust and effective scrutiny arrangements for Counter Corruption Unit operations, including greater oversight from chief officers.

Recommendation 5

Police Scotland should introduce a more structured approach to communicating changes in legislation, practice and process to police officers and members of police staff involved in applications under the Regulation of Investigatory Powers (RIPA) 2000 and by extension the Regulation of Investigatory Powers (Scotland) Act (RIPSA) 2000.

* Recommendations 1 to 4 were communicated to Police Scotland by letter dated 5 May 2016.

Part two – assurance review

Recommendation 6

Police Scotland should take the opportunity to articulate a clear vision for tackling corruption and develop an overall strategy that involves engagement with key stakeholders.

Recommendation 7

Police Scotland should urgently review its approach to tackling corruption, and develop both the capability and capacity to undertake effective pro-active anti-corruption investigations that are underpinned by a robust intelligence function. This should include a review of its existing structures and give consideration to transferring the burden away from the Counter Corruption Unit of high volume administrative background checks, notifiable associations and those data protection offences which do not infer corruption.

Recommendation 8

Police Scotland should develop a refreshed communications plan to increase the awareness of the Code of Ethics and promote a positive culture where police officers and members of police staff at all levels are familiar with each of the behaviours and are conscious of applying them.



Recommendation 9

Police Scotland should improve its co-ordination of internal self-assessment reviews to ensure they receive greater executive visibility and where accepted, any recommendations or improvement actions are supported by a delivery plan detailing SMART objectives⁶ and outcome measures.

Recommendation 10

Police Scotland should introduce a process of formal peer review of counter corruption investigations.

Recommendation 11

Police Scotland should engage with the Crown Office and Procurator Fiscal Service, Police Investigations and Review Commissioner, the Scottish Government and other stakeholders to review and strengthen the overall approach to the independent scrutiny and oversight of investigations into allegations of serious corruption by police officers and members of police staff.

Recommendation 12

Police Scotland should develop formal joint working arrangements between the Counter Corruption Unit and those areas of the service that provide specialist assets in support of counter corruption investigations. This should be supported by agreed governance structures that allow informed decisions to be made against competing operational priorities.

Recommendation 13

Police Scotland should maintain functional separation between the Counter Corruption Unit and Professional Standards Department and where possible, Counter Corruption Unit police officers should not be used to investigate cases that would ordinarily be conducted by Professional Standards Department police officers.

Recommendation 14

Police Scotland should consider adopting the Authorised Professional Practice on counter corruption, subject to any modification or extension to cover Scotland. This should be applied to the review and development of key policies and procedures.

Recommendation 15

Police Scotland should finalise its Strategic Assessment on Corruption and thereafter produce a control strategy that will deliver the intelligence, service integrity, enforcement and the communication and engagement priorities for the next 12 months.

Recommendation 16

Police Scotland should develop a balanced performance management framework to reflect Counter Corruption Unit activity and provide regular management information to those charged with the internal and external governance and oversight.

Recommendation 17

Police Scotland should develop the Counter Corruption Unit Tactical Assessment to focus more on intelligence, operational and preventative activity.

⁶ See glossary.



Recommendation 18

Police Scotland should expedite the review and development of those standard operating procedures that are used to promote integrity and consider relevant Authorised Professional Practice.

Recommendation 19

Police Scotland should introduce a system that enables the analysis and cross-referencing of notifiable associations across relevant ethical registers. This should identify potential conflicts of interest and provide an informed assessment of trends, threats and vulnerabilities to inform preventative activity.

Recommendation 20

Police Scotland, through engagement with staff associations, should progress development of its “whistleblowing” policy, which informs relevant standard operating procedures that support those who report wrongdoing.

Recommendation 21

Police Scotland should review the Integrity Matters Confidential Reporting System with a view to implementing further technical safeguards for audit.

Recommendation 22

Police Scotland should engage with the Police Investigations and Review Commissioner to consider establishing a confidential reporting function.

Recommendation 23

Police Scotland should engage with Crown Office and Procurator Fiscal Service to examine alternative and more expeditious approaches to the reporting of minor offences against the data protection act in cases where the individual police officer or member of police staff has admitted the offence and there is no evidence of corruption.

Recommendation 24

Police Scotland should urgently review the circumstances of all police officers and members of police staff who are on restricted duties to ensure that those restrictions remain proportionate and necessary to the current risk.

Recommendation 25

Police Scotland should engage with Crown Office and Procurator Fiscal Service to expedite decisions around outstanding data protection cases. In addition to this, Police Scotland should review those cases which have been returned from Crown Office and Procurator Fiscal Service with no criminal proceedings being taken, with a view to expediting decisions around ongoing internal misconduct.

Recommendation 26

Police Scotland should engage with the Scottish Police Authority to finalise its standard operating procedure for Advice and Guidance Briefings by the Counter Corruption Unit. This should also include a process to ensure that the offer/option to audio record the briefing is documented for audit purposes.

Recommendation 27

Police Scotland should progress development of a business case for workforce monitoring software.



Recommendation 28

Police Scotland should review its Counter Corruption Unit production handling procedures to ensure they maintain the operational security of corruption investigations and are consistent across all areas.

Recommendation 29

Police Scotland should develop a workforce planning model that supports the current and future demands on the Counter Corruption Unit and provides an evidence based assessment of required staffing levels, including supervisory ratios.

Recommendation 30

Police Scotland should commission a Training Capacity and Capability Review to map current and future skills and identify gaps within the Counter Corruption Unit which can be filled through recruitment, training and professional development.

Recommendation 31

Police Scotland should review its Counter Corruption Unit Risk Assessment Processes to ensure a consistency of approach.

Recommendation 32

Police Scotland should maintain *iBase* as its primary Counter Corruption Unit case management system and commission a comprehensive review of the design, structure and management of the system. This should also include the development of operating procedures, guidance and training for staff.

Recommendation 33

Police Scotland should ensure that the Counter Corruption Unit prioritises its workload around the threat posed by serious organised crime groups.

Recommendation 34

Police Scotland should introduce a process that enables Counter Corruption Unit police officers and members of police staff to debrief intelligence and operational activity in a structured manner to support organisational and operational learning.

Recommendation 35

Police Scotland should consult with its public sector partners and refresh the remit of the Counter Corruption Unit Public Sector Section.

Recommendation 36

Police Scotland should monitor the progress of the vetting section to reduce and, if possible, eliminate the backlog of vetting applications and provide regular updates to the Scottish Police Authority.

Recommendation 37

Police Scotland should expedite its review of police officers and members of police staff who are considered to be “super users” with administrative access to Force ICT systems. It should ensure these staff are appropriately vetted, with safeguards put in place to ensure access to information is for a legitimate policing purpose.



Recommendation 38

Police Scotland and the Scottish Police Authority should engage with the Crown Office and Procurator Fiscal Service, Police Investigations and Review Commissioner and other stakeholders to review and strengthen the overall approach to the independent scrutiny and oversight of complaints made against Counter Corruption Unit police officers and members of police staff.

Recommendation 39

Police Scotland should ensure that in the interests of transparency and service confidence, any review into outstanding complaints against the CCU should include independent scrutiny.

Part One – case study

Background

We have produced a timeline of key events in relation to the circumstances surrounding part one of our review at appendix one.

1. On 1 April 2013, the Counter Corruption Unit (CCU) was established as the single department for police officers and members of police staff to report, with anonymity and confidentiality (often referred to as “whistleblowing”), any criminality or conduct or integrity concerns. It also has responsibility for carrying out internal investigations into allegations of corruption and wrong-doing on the part of police officers and members of police staff.
2. The Interception of Communications Commissioner’s Office (IOCCO) is charged with undertaking communications data inspections on behalf of the Interception of Communications Commissioner (“the Commissioner”). This involves a revolving programme of inspection visits to all relevant public authorities who are authorised to acquire communications data under Part I Chapter 2 of the Regulation of Investigatory Powers Act (RIPA) 2000.
3. Between 15 - 17 June 2015, Police Scotland was the subject of its second annual inspection by IOCCO. As a direct result of this inspection, compliance issues were identified and investigated, which ultimately led to the Commissioner publishing a statement⁷ that Police Scotland had contravened the Code of Practice (2015) in respect of five applications for communications data. In these cases Police Scotland 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 without the required judicial approval. Following publication of the statement by the Commissioner, the Scottish Police Authority (SPA) requested HMICS to undertake an assurance review of the state, effectiveness and efficiency of Police Scotland’s CCU.⁸
4. However, it is important from the outset to recognise that the background circumstances that led to this review have arisen from a Sunday Mail newspaper article, dated 5 April 2015,⁹ which focused on the 10th anniversary of the unresolved murder of Emma Caldwell, and the inspection of Police Scotland by IOCCO. Since then there has been political and public interest that centred on the assertion that Police Scotland undertook an unlawful “spying” operation directed at serving and former police officers who had leaked information to the media about deficiencies in the murder investigation.

The murder of Emma Caldwell and reinvestigation by Police Scotland

5. There have been assertions that Strathclyde Police and subsequently Police Scotland had failed to pursue the murder of Emma Caldwell and that Police Scotland had focused its resources on identifying who had leaked sensitive police information to a journalist rather than reviewing the murder enquiry.¹⁰
6. Emma Caldwell was last seen alive on 4 April 2005 in Glasgow. She was reported as a missing person on 10 April 2005 and on 8 May 2005 her body was discovered in a forested area near Roberton, Lanarkshire. Strathclyde Police commenced a murder enquiry (Operation Grail) and on 1 March 2006, the force began a separate covert enquiry (Operation

⁷ IOCCO, Statement (25 November 2015).

⁸ SPA Statement, [IOCCO Determination on Police Scotland](#) (25 November 2015).

⁹ [Sunday Mail](#) Article dated 5 April 2015.

¹⁰ The Scottish Parliament, Justice Committee Session 4 Official Reports: [15 December 2015](#) and [12 January 2016](#). Sunday Mail article [“Emma Caldwell scandal: Police tried to hunt down Sunday Mail sources instead of trying to catch killer”](#) (29 November 2015).



Guard), which focused on the alleged criminal activities of a number of Turkish males who frequented café premises in Glasgow.

7. On 31 August 2007, as a result of Operation Guard, four Turkish males were arrested and charged with the murder of Emma Caldwell, placed on petition and remanded in custody. COPFS and Crown Counsel considered it important to have the translations verified by independent experts, who advised that the translations were not accurate. This led an instruction to liberate the suspects on 7 December 2007 as there was at that time insufficient admissible evidence. The murder of Emma Caldwell currently remains unresolved.
8. In December 2008, Grampian Police received a complaint from a former officer, who had been deployed (circa. March 2006) as a translator during Operation Guard, that he had been instructed to withhold evidence by colleagues during the covert investigation. An independent investigation into the criminal allegations was carried out and findings reported to COPFS. On 8 December 2010, Crown Counsel instructed no criminal proceedings as there was insufficient evidence to substantiate the complaint.
9. In 2011, the Crown Office Cold Case Review Unit (CCRU), was established with responsibility for the investigation of unresolved homicides.¹¹ Following creation of the single police service, Police Scotland established a Homicide Governance and Review Unit (HGRU), which collated all recorded unsolved and unresolved homicides from the legacy police forces. This included the unresolved murder of Emma Caldwell. In conjunction with the CCRU, the HGRU monitor new evidential developments, including advances in forensic techniques, which assist in providing a basis for future criminal proceedings. The CCRU and HGRU have been successful in reinvestigating and prosecuting offenders for high profile unresolved murders.¹²
10. On 5 April 2015, the Sunday Mail published an exclusive article claiming there was a “forgotten suspect” in the murder and raised concerns about the investigation. On 31 May 2015, the Sunday Herald published an article that reported the allegations made by the former police officer. (see paragraph 8).¹³
11. On 16 July 2015, in his half-yearly report¹⁴ to the Prime Minister, the Commissioner stated that since the introduction of the revised Code of Practice (2015), two police forces, one of which was Police Scotland (although not identified at that point), had acquired communications data to identify the interactions between journalists and their sources without obtaining judicial approval; a contravention of the Code.
12. Since then there has been political and public interest that centred on the assertion that Police Scotland, specifically the CCU, had carried out an unlawful “spying” operation directed at serving and former police officers who had leaked information to the media about deficiencies in the murder investigation.
13. During our review we interviewed the Assistant Chief Constable (Major Crime and Public Protection) and the Procurator Fiscal (Major Crime and Fatalities Investigation). We established that in 2013, the CCRU had started to re-examine the Emma Caldwell murder and during 2014, was actively progressing matters towards a formalised reinvestigation of the circumstances. This involved the assessment of a significant volume of data in what was a protracted and complex investigation.
14. From our fieldwork we established that following publication of the newspaper article on 5 April 2015, the Assistant Chief Constable (Major Crime and Public Protection), instructed

¹¹ For the definition of unresolved homicides see [Glossary](#).

¹² COPFS, [Lord Advocate Announces New Crown Office And Procurator Fiscal Service Cold Case Unit](#) (2 June 2011).

¹³ Herald Scotland, [Police whistleblower: I was told to withhold evidence during Emma Caldwell murder inquiry](#), (31 May 2015).

¹⁴ IOCCO, *Half-yearly report of the Interception of Communications Commissioner* (July 2015), see section 3.



Police Scotland's HGRU to prepare a report on the previous investigation for consideration of a more detailed review or reinvestigation. We consider that this was an appropriate response to the article. On 22 May 2015, COPFS formally advised Police Scotland that Crown Counsel, having considered the circumstances of Emma Caldwell's death, instructed the murder be reinvestigated.

15. We consider that the Sunday Mail article reporting on deficiencies in the initial murder investigation contributed significantly to raising public awareness and prompting the reinvestigation.
16. We have interviewed the Senior Investigating Officer (SIO) responsible for the ongoing reinvestigation and are satisfied that Police Scotland, directed by COPFS, is actively reinvestigating the homicide. We found that the reinvestigation is well resourced and that the SIO and enquiry team have had no involvement in the previous homicide investigation. In addition, a strategic governance group, chaired by a chief officer and with senior representation from COPFS, has been established to provide oversight and ensure integrity over all aspects of the reinvestigation.
17. As part of this reinvestigation, Police Scotland and COPFS are using contemporary investigative and forensic tools, including a more sophisticated approach to witness engagement to that used in 2005-2007. We fully support this approach.
18. We found that whilst Police Scotland instigated a counter corruption intelligence assessment after the publication of the Sunday Mail article on 5 April 2015, this was conducted separately from the homicide reinvestigation and did not diminish the effectiveness of this reinvestigation.
19. As this remains a live reinvestigation, it is our view that continued public and media interest around potential suspects may prejudice fresh proceedings and, therefore, we shall not make further public comment on this aspect of our review.

The Counter Corruption Investigation into the alleged leak of sensitive information

20. In April 2015, the CCU organisational structure comprised of (i) Operations Section (ii) Service Integrity (iii) Public Sector and (iv) Intelligence Section. The Intelligence Section has responsibility for the management of intelligence relating to corrupt activity by police officers and members of police staff and was at that time led by a Detective Chief Inspector (Intelligence) who reported to the Detective Chief Superintendent (Head of CCU).
21. Following publication of the Sunday Mail article, the then Head of the HGRU, expressed concerns to the CCU that the information contained within the article could only have originated from a police source. Although the then Head of the HGRU had responsibility for the continued management and oversight of all unresolved homicides; including Emma Caldwell, there was no "live" enquiry ongoing and no major investigation team established at this time.
22. Notwithstanding the actual status of the homicide enquiry, there was a clear belief within the CCU that a "live" enquiry was ongoing on 5 April 2015. This appears to have been partly due to the initial referral being made by the then Head of the HGRU. However, we would have expected the CCU to have confirmed whether there was a "live" investigation as part of its initial assessment, both in terms of identifying potential suspects from within a major investigation team and also to assess any ongoing risk to the integrity of the reinvestigation.
23. During the evidence session to the Justice Committee¹⁵ on 15 December 2015, the then Deputy Chief Constable Designate advised that the breach of sensitive information was first identified and surfaced by police officers involved in a "live" homicide enquiry and had been

¹⁵ The Scottish Parliament, Justice Committee Session 4 Official Report [15 December 2015](#).

referred to the CCU. He highlighted that the CCU assessment was that information had been provided to someone outside Police Scotland who was a retired police officer and the initial focus was not on identifying a particular journalist but on finding out who in the “murder team” had unlawfully released sensitive information. We found that the evidence provided by the then Deputy Chief Constable Designate to the Justice Committee reflected the initial CCU assessment. However, as this evidence was provided some eight months after the initial referral, we consider there was an opportunity for Police Scotland to have clarified the status of the reinvestigation.

24. As a result of the initial referral from the then Head of the HGRU, the CCU Intelligence Section commenced an initial intelligence assessment the purpose of which was to gather information as to the identity of the person(s) in Police Scotland who had made the unauthorised disclosure of information. This intelligence assessment focused on:
 - identifying connections between a former police officer and serving and retired police officers and members of police staff
 - researching previous intelligence reports
 - profiling individuals suspected of the unauthorised disclosure of information
 - investigating details of contact between retired and serving police officers
 - cross-referencing names and communication details
25. As part of this enquiry, the CCU Intelligence Section prepared five separate applications for the acquisition and disclosure of communications data. We examine this in more detail in paragraphs 37 to 53.
26. We established that the CCU Intelligence Section had received a number of reports providing information as to the possible identities of individuals who may have disclosed information. We examined the relevant intelligence files in some detail and we found that the information handling processes within the CCU were significantly different from national standards in terms of source and information evaluation and fell below the standards we would have expected.
27. Where we identified there had been contact between the CCU and those providing information, we found the safeguards put in place to manage contact with sources of information to be inadequate and highlighted gaps in the accurate recording of contact and information provided. We also considered that the information provided by a retired police officer was not sufficiently recorded, risk-assessed and lacked proper evaluation. Consequently, we consider that this information unduly influenced the CCU intelligence development activity.
28. As a consequence of our review of CCU intelligence files, we have already made the following recommendation to Police Scotland:

Recommendation 1

Police Scotland should ensure that the CCU intelligence processes are reviewed and that information including the source of that information is subject of a process of evaluation, risk assessment and validation to produce a product that provides added value and supports the decision making process.

29. We also established that some enquiries to identify connections between serving and retired police officers had not been fully concluded by the CCU Intelligence Section and in our view would have benefited from seeking an explanation from those concerned. We believe that concluding CCU enquiries is particularly important in terms of serving police officers being able to offer a legitimate account of any suspicious activity that has been reported to the

CCU. The investigation into the conduct of police officers and members of police staff can produce valuable learning for the individual and the organisation, which can improve the integrity of the service and service delivery. We have already made the following recommendation to Police Scotland in relation to those serving police officers identified during this enquiry:

Recommendation 2

Police Scotland should reconsider the decision not to seek an explanation from the serving police officers regarding information collected during the CCU enquiry.

30. As part of investigating connections between serving and retired police officers, we learned that CCTV disc footage was seized by police officers from the CCU Intelligence Section. We enquired into the audit trail of this particular CCTV disc footage and established that the data whilst seized had not been lodged as evidence and was lost. We found the procedures relative to the seizure, handling and management of the CCTV including the recording, lodging and storage as outlined in the Police Scotland standard operating procedure (on productions) had not been adhered to within the CCU Intelligence Section. Given the potential sensitivity and personal data contained on the CCTV footage, we have already made the following recommendation to Police Scotland:

Recommendation 3

Police Scotland should investigate the circumstances which led to the loss of CCTV disc footage seized by the CCU Intelligence Section and establish whether the loss of the disc and any data is a notifiable data security breach.

31. On 4 June 2015, following enquiry by the CCU Intelligence Section, COPFS confirmed that as part of a legitimate criminal justice process in 2007, information including details of six statements taken from a named individual who featured in the Sunday Mail article,¹⁶ had been disclosed to defence agents acting on behalf of the four Turkish males. This included details from the covert Operation Guard. (see paragraph 6). As a consequence of this enquiry, we found that Police Scotland had reached the conclusion on 21 August 2015 that all sensitive information contained within the Sunday Mail article had previously been disclosed through Crown Office to defence agents acting on behalf of four accused persons and that it was impossible to identify whether this information was passed to the media by any police officer or member of police staff, serving or retired, or if it had been disclosed through other sources.
32. This effectively concluded the CCU intelligence development activity into the unauthorised disclosure of police information and the file was closed, together with a management decision not to interview serving police officers who had featured in the enquiry.
33. Given that Police Scotland was aware of the legitimate disclosure of sensitive information to defence agents in June 2015 and had concluded its CCU enquiry, there was an opportunity to make this information clearer in its evidence to the Justice Committee. We consider that placing this information into the public domain may have provided a legitimate explanation for the sensitive information within the Sunday Mail article and provided balance and some public reassurance in relation to the allegations that an officer from the Emma Caldwell murder investigation team had leaked sensitive policing information to a journalist.
34. While access to communications data remains a valid tool in the prevention and detection of crime, we found that other lines of enquiry were not fully exhausted in this case. Following our examination of the CCU intelligence files into the alleged unauthorised disclosure of

¹⁶ [Sunday Mail](#) Article dated 5 April 2015.

sensitive policing information it is our assessment that the enquiry lacked objectivity and that those responsible applied prematurely for the acquisition and disclosure of communications data.

35. Given the potential operational risks identified from the initial CCU assessment that an officer or ex-officer had leaked sensitive policing information to a journalist relating to a “live” murder enquiry and the fact that the CCU initially sought to obtain communications data from a journalist, we would have expected far greater oversight and more intrusive supervision from senior police officers within the CCU. Our examination of CCU intelligence files has raised concerns over the routine management, oversight and wider governance of CCU enquiries, including the extent to which chief officers are actively briefed and can direct on CCU matters. As a consequence of this, we have already made the following recommendation to Police Scotland:

Recommendation 4

Police Scotland should introduce robust and effective scrutiny arrangements for CCU operations, including greater oversight from chief officers.

The Acquisition and Disclosure of Communications Data Code of Practice (2015) and contravention by Police Scotland

36. Any access to communications data by public authorities is an interference with someone’s privacy and to justify such intrusion the principles of necessity and proportionality must be satisfied. RIPA 2000 and the Code of Practice (2015)¹⁷ provide the statutory framework for such access. RIPA 2000 is a reserved matter and extends to all of the United Kingdom (UK). IOCCO¹⁸ is charged with undertaking communications data inspections on behalf of the Commissioner and carries out a revolving programme of inspection visits to all relevant public authorities who are authorised to acquire communications data under Part I Chapter 2 of RIPA 2000.
37. As outlined in our published terms of reference¹⁹ our review did not re-examine or comment on findings by the Commissioner, but has included an examination of the wider investigation conducted by the CCU into the circumstances which initially gave rise to these applications. We also committed to maintain contact with the Investigatory Powers Tribunal (IPT) secretariat during our review to ensure that we do not compromise the integrity of ongoing judicial proceedings. This section of our report aligns our findings with the work of the IPT.
38. On 17 June 2016, IOCCO released a statement²⁰ relating to the Police Scotland investigation concerning journalistic sources and published the Commissioner’s Memorandum,²¹ Annexes²² and letter to Police Scotland.²³ We welcome the publication of these documents, as they offer a factual account of the Commissioner’s determination and the circumstances surrounding IOCCO’s investigation of the contraventions of the Code of Practice (2015) and helpfully place these into the public domain. We have not found it necessary to provide a separate account of these circumstances and have instead referenced IOCCO’s documents where relevant to provide context within this section of our report.
39. The IPT has confirmed to IOCCO that Police Scotland has conceded that the communications data authorisations were obtained in contravention of the Code (2015) and there is a public hearing²⁴ to be held to decide the outstanding points of law in the case and

¹⁷ Home Office, [Acquisition and Disclosure of Communications Data, code of practice](#) see glossary (March 2015).

¹⁸ *Interception of Communications Commissioner’s Office (IOCCO)*.

¹⁹ HMICS, [Assurance Review, Police Scotland – Counter Corruption Unit, Terms of Reference](#).

²⁰ IOCCO, *Statement* (17 June 2016).

²¹ IOCCO, *Memorandum* (13 November 2015).

²² IOCCO, *Journalist inquiry report findings - Annex D, email from Det. Supt. Smith to Det. Ch. Supt. Cuzen*.

²³ IOCCO, *Letter to Police Scotland Chief Constable* (17 November 2015).

²⁴ The scheduled date for the Hearing is on 22 July 2016.



to consider remedy.

40. On 6 October 2014, following national (UK) concerns relating to the protection of journalistic sources, the Commissioner launched an inquiry into the use of powers under Part 1 Chapter 2 of RIPA 2000. The Commissioner's report²⁵ was published in February 2015 and he recommended that applications for communications data to determine journalistic sources should be approved by a judge. The Prime Minister accepted the Commissioner's recommendations and committed to implement them as soon as possible. The Serious Crime Act which received Royal Assent on 3rd March 2015 amended section 71 of RIPA to require the revised Code of Practice to include provision designed to protect the public interest in the confidentiality of journalistic sources.
41. As required by the Code of Practice, there is a Senior Responsible Officer (SRO) within Police Scotland who is accountable for a number of functions including the integrity of the process to acquire communications data.²⁶ We established that throughout the period of the Commissioner's journalist inquiry referenced in the preceding paragraph, the SRO had responsibility for providing the Scottish policing response and was actively engaged at a UK level in preparing for the revised Code of Practice (2015). This included contact with IOCCO, the Home Office, Scottish Government and COPFS.
42. On 25 March 2015, the Code of Practice (2015) came into effect requiring all UK law enforcement agencies, including Police Scotland, to seek judicial authorisation when applying for communications data to identify or determine journalistic sources. Furthermore, the revised Code of Practice (2015) directed that law enforcement agencies in Scotland must use the appropriate legislation or common law powers to ensure judicial authorisation for communications data applications to determine journalistic sources.²⁷
43. Although there was no agreed approach to seeking such authorisation by Police Scotland at that time, we established that in March 2015 meetings were held between the SRO, the Detective Chief Superintendent (Head of CCU), the Interim Head of Legal Services for Police Scotland and COPFS to explore options to secure judicial authorisation. We are aware that a process is now in place, having been set out by the previous Lord Advocate in a letter to the Chief Constable on 22 April 2016.
44. Within the restricted timeframe between publication of the Commissioner's journalist inquiry report,²⁸ the introduction of the revised Code of Practice (2015) and the documented contraventions by Police Scotland, we consider that the SRO made every effort to cascade the relevant information across the Specialist Crime Division and the CCU. Having examined the facts, we are satisfied that the senior management within the CCU had been engaged during the process and conclude that there was no organisational failure by Police Scotland in preparing for and delivery of the revised Code of Practice (2015).
45. Notwithstanding our assessment that Police Scotland was prepared for the delivery of the Code of Practice (2015), we found it relied predominately on email to communicate these important changes to the Code to staff. Whilst there is a clear responsibility for police officers and members of police staff, especially those in specialist support posts and engaged in covert policing, to keep themselves abreast of new law and guidance, we believe that Police Scotland would have benefited from a more structured and formalised approach to communicating such important changes in legislation, practice and process. This could have included personal briefings and checks that key staff were both aware and understood what was being communicated.

²⁵ IOCCO, *inquiry into the use of Chapter 2 of Part 1 of the Regulation of Investigatory Powers Act (RIPA) to identify journalistic sources* (4 February 2015).

²⁶ Home Office, [Acquisition and Disclosure of Communications Data, code of practice](#) see glossary (March 2015).

²⁷ Paragraph 3.78 Code of Practice (2015).

²⁸ IOCCO, *inquiry into the use of Chapter 2 of Part 1 of the Regulation of Investigatory Powers Act (RIPA) to identify journalistic sources* (4 February 2015).

Recommendation 5

Police Scotland should introduce a more structured approach to communicating changes in legislation, practice and process to police officers and members of police staff involved in applications under the Regulation of Investigatory Powers (RIPA) 2000 and by extension the Regulation of Investigatory Powers (Scotland) Act (RIPSA) 2000.

46. On 16 April 2015, the CCU Intelligence Section presented an initial application to the Designated Person (Detective Superintendent) which included details of a journalist's communications address (or telephone number). We established that the Designated Person (Detective Superintendent) was independent of the CCU and had no prior involvement in the Emma Caldwell murder enquiry. He was a trained and experienced Authorising Officer with particular knowledge and understanding of RIPA 2000, RIPSA 2000 and was aware of the Code of Practice (2015).
47. The Designated Person (Detective Superintendent) sought and received advice from the Police Scotland Communications Investigations Unit that this application required judicial approval (the details of which are outlined in the Commissioner's Memorandum²⁹ and Annexes³⁰). On the basis of this advice, the Designated Person returned the first application to the CCU Intelligence Section, indicating that judicial authorisation was required. A further series of emails (the details of which are outlined in the Commissioner's Memorandum and Annex H) recorded the exchange between the SRO and the Detective Chief Superintendent (Head of CCU) offering advice and guidance in respect of the request for communications data.
48. The CCU Intelligence Section deleted the request for communications data on the journalist's communications address (or telephone number) from this initial application and resubmitted the application along with two additional applications relative to its investigation to the Designated Person (Detective Superintendent). All three applications were authorised without further reference to the Police Scotland Communications Investigations Unit or the SRO. The details of these are further described in the Commissioner's Memorandum. Had the amended and subsequent applications been discussed with the Communications Investigations Unit and/or the SRO, then we believe that further advice, in which to inform the decision making process, would have been provided.
49. The authorisation levels for the acquisition and disclosure of communications data are shown at appendix three. In relation to all five applications, we established that in line with the operating procedures existing at that time, there was no requirement for either of the two Designated Persons to contact the Police Scotland Communications Investigations Unit, the SRO or a chief officer. Once all five applications were authorised by the respective Designated Person (three by the Designated Person (Detective Superintendent) and two by the Designated Person (Detective Inspector, CCU Intelligence Section)), the applications were returned to the CCU Single Point of Contact (SPoC) who acquired the data from the Communication Service Providers (CSPs). The CCU was thereafter provided with the communications data.
50. Having been made aware of the contravention of the Code, Police Scotland responded and carried out an internal review and introduced procedures to ensure that a more robust guardian and gatekeeper role exists. This has removed any ability for the CCU to process its own applications for the acquisition and disclosure of communications data. The Commissioner has recognised the comprehensive review that Police Scotland conducted and emphasised that Police Scotland has put in place significant measures in order to prevent any recurrence of such contraventions.³¹

²⁹ IOCCO, *Memorandum* (13 November 2015).

³⁰ IOCCO, *Journalist inquiry report findings - Annex D*.

³¹ IOCCO, *Statement* (25 November 2015).



51. In his evidence to the Justice Committee on 15 December 2015, the then Deputy Chief Constable Designate highlighted concerns over the speed with which the Code of Practice (2015) was introduced and the clarity of the guidance provided. Notwithstanding the pace with which the revised Code was introduced, we consider this had no bearing on the decision making process of the Designated Person (Detective Superintendent) as advice in line with the Code was available and provided.

52. We were aware of questions put to Police Scotland by members of the Justice Committee during its evidence sessions,³² asking whether the SRO had been overruled by senior police officers, whether the Designated Person (Detective Superintendent) had sought advice from his senior officers, or whether officers involved in the authorisation process had been put under any pressure. From our review, we found no evidence of chief officer involvement in any of the five applications for communications data nor evidence of undue pressure or coercion placed on either of the two Designated Persons or the SRO by any police officer or member of police staff. We found no evidence to suggest that either of the Designated Persons intended to undermine the Code of Practice (2015).

³² The Scottish Parliament, Justice Committee Session 4 Official Reports: [15 December 2015](#) and [12 January 2016](#).



Part two – assurance review

Outcomes

What is corruption?

53. National studies consistently show that corruption within UK policing is rare. While it is clear that the majority of police officers and members of police staff are professional, and that corruption is not widespread in the police service, there remains a small but pernicious element whose corrupt actions have a negative effect on public confidence.³³ As there is no specific offence of “corruption,” the National Police Counter Corruption Advisory Group (NPCCAG) developed a working definition to provide police forces with a common understanding of the behaviours that constitute corruption:

“Corruption exists where a law enforcement official commits an unlawful act, or deliberately fails to fulfill their role, arising out of an abuse of their position, for personal or perceived organisational advantage, having the potential to affect a member of the public”.

54. Transparency International³⁴ categorise the main types of corruption within policing as: (i) disclosure of information (ii) abuse of authority (iii) theft and fraud (iv) misuse of IT systems (v) perverting the course of justice and (vi) supplying controlled drugs.

55. The National Crime Agency (NCA)³⁵ strategic assessment of serious and organised crime (2015), highlighted that organised crime would not be able to operate to the extent and on the scale it does without the aid of corruption. The NCA defines corruption as the ability of an individual or an organised crime group to pervert a process or function of an organisation to achieve a criminal aim. Disclosure of information is the primary concern and the most reported consequence of corruption in law enforcement. As police officers and members of police staff have access to a wide range of personal data, operational information and systems they remain an attractive target for serious organised crime groups. A long established and documented threat is that posed by former police officers and members of police staff working in fields such as private investigation, business consultancy and private security. Such individuals present a compromise risk either through direct attempts to gain unauthorised access to information by way of corruption or through the exploitation of established friendships.

Police Scotland’s response to corruption

56. Police Scotland’s Counter Corruption Unit (CCU) was established in April 2013 as a gatekeeper acting as a single point of contact for “whistleblowing”, to carry out internal investigations into allegations of corruption and investigate those who externally look to corrupt police officers and members of police staff. Its purpose was outlined in the original terms of reference;³⁶

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

³³ College of Policing, [Professional standards: Counter Corruption](#).

³⁴ Transparency International, [Corruption in the UK: Part Two Assessment of Key Sectors](#) (June 2011).

³⁵ National Crime Agency, [National Strategic Assessment of Serious and Organised Crime 2015](#) (23 June 2015).

³⁶ Police Scotland CCU: Structure and Remit 2 May 2013.



57. The CCU committed to the proactive investigation of all allegations of corruption and its key deliverables included:
- identify potential and emerging threats and deliver an organisational threat assessment to the Deputy Chief Constable Designate
 - through a control strategy, develop, monitor and review the work of the CCU to ensure best practice
 - assist public sector organisations devise and enhance policies to mitigate the risk of corrupt working practices
 - proactively work with internal and external stakeholders to identify individuals and crime groups suspected to be involved in corrupt activity within law enforcement agencies and public sector organisations
 - deliver preventative briefings to groups of staff, partner agencies and public sector organisations to highlight emerging threats, increase awareness and prevent corrupt activity
 - identify intervention opportunities to target those suspected of being involved in criminal or corrupt activity
 - enhance and develop all intelligence opportunities to identify those involved in criminal and corrupt activity
 - conduct overt and covert investigations using all available tactics when reasonable grounds provide that a police officer or member of police staff is involved in criminal and corrupt activity
 - tackle corruption and corrupters through robust investigation
58. Notwithstanding this commitment towards proactive investigation, we found that the CCU has primarily focused on delivering a counter corruption message through its Service Integrity programme. While the emphasis has been on preventing corruption, through raising the awareness of all police officers and members of police staff to the potential risks, we found little evidence of an effective and efficient approach to proactive anti-corruption investigations with the majority of CCU activity focused on administrative background checks, notifiable associations and data protection offences.
59. We consider that Police Scotland should articulate a clear vision for tackling corruption and develop an overall strategy that involves engagement with key stakeholders. It should urgently review its approach to tackling corruption, and develop both the capability and capacity to undertake effective pro-active anti-corruption investigations that are underpinned by a robust intelligence function. This should include a review of its existing structures and give consideration to transferring the burden away from the CCU of high volume administrative background checks, notifiable associations and those data protection offences which do not infer corruption. This would allow for a restructured counter corruption function to concentrate on those within the organisation who present the greatest risk of corruption.

Recommendation 6

Police Scotland should take the opportunity to articulate a clear vision for tackling corruption and develop an overall strategy that involves engagement with key stakeholders.

Recommendation 7

Police Scotland should urgently review its approach to tackling corruption, and develop both the capability and capacity to undertake effective pro-active anti-corruption investigations that are underpinned by a robust intelligence function. This should include a review of its existing structures and give consideration to transferring the burden away from the CCU of high volume administrative background checks, notifiable associations and those data protection offences which do not infer corruption.

Ethics and values

60. The Police Scotland Annual Police Plan 2016-17³⁷ outlines that the policing purpose is to improve the safety and wellbeing of people, places and communities in Scotland. It emphasises that the policing service will be delivered through a quality of service which demonstrates the *Code of Ethics for Policing in Scotland*.³⁸ This Code sets out the standards expected of all of those who contribute to policing in Scotland. Although it is not a formal discipline code, it establishes a practical set of behaviours which reflect the values of Police Scotland – **Integrity, Fairness and Respect** - and embeds **Human Rights**. Importantly, it provides a statement of what the public can expect from Police Scotland and what police officers and members of police staff should expect from one another. We fully endorse the Code of Ethics and consider it an essential foundation upon which Police Scotland can build a modern, responsive and ethical policing service. It is also core to any proactive counter corruption message to police officers and members of police staff.

Figure 1 – Code of Ethics for Policing in Scotland

Integrity

- I recognise my role in policing as being a symbol of public faith and trust and the obligation this places upon me to act with integrity, fairness and respect.
- I shall behave in a way which reflects the values of policing in Scotland.
- I understand I am personally responsible for my own actions and will appropriately exercise my discretion.
- I shall act as a positive role model in delivering a professional, impartial service, placing service to communities before my personal aims.
- I will not accept any gift or gratuity that could, or could be perceived to, compromise my impartiality.
- I shall avoid all behaviour, which is or may be reasonably considered as abusive, bullying, harassing or victimising.
- I will demonstrate and promote good conduct and I will challenge the conduct of colleagues where I reasonably believe they have fallen below the standards set out in this Code.

Fairness

- I will act with courage and composure and shall face all challenges with self-control, tolerance and impartiality.
- I will promote a positive wellbeing within the community and service and ensure that all people have fair and equal access to police services according to their needs.
- I shall maintain an open attitude and continue to improve my understanding and awareness of cultural, social and community issues.

³⁷ Police Scotland, [Annual Police Plan 2016/17](#).

³⁸ Police Scotland, [Code of Ethics \(Values: Integrity, Fairness, Respect and Human Right\)](#).

- I will carry out my duties in a fair manner, guided by the principles of impartiality and non-discrimination.

Respect

- I take pride in working as part of a team dedicated to protecting people.
- I will show respect for all people and their beliefs, values, cultures and individual needs.
- I will have respect for all human dignity as I understand that my attitude and the way I behave contributes to the consent communities have for policing.
- I will respect and uphold the law in order to maintain public confidence and, by enhancing my personal knowledge and experience, contributing to the professional development of policing.
- I shall treat all people, including detained people, in a humane and dignified manner.
- I shall ensure that my relationships with colleagues is based on mutual respect and understanding and shall, therefore, conduct all communications on that basis.

Human rights³⁹

- I shall ensure my actions and policing operations respect the human rights of all people and officers whilst understanding that I will also enjoy these same human rights.
- I will not undertake high-risk activities or use force other than where strictly necessary in order to attain a legitimate objective and only after I have balanced all the competing priorities I am aware of. (Article 2)
- I will not encourage, instigate or tolerate any act of torture or inhuman or degrading treatment under any circumstance nor will I stand by and allow others to do the same. I understand that the humane treatment of prisoners is an essential element of policing and that the dignity of all those I am trusted to care for remains my responsibility. (Article 3)
- I understand that people have an equal right to liberty and security. Accordingly, I will not deprive any person of that liberty, except in accordance with the law. (Article 5)
- I will investigate crimes objectively and be sensitive to the particular needs of affected individuals whilst following the principle that everyone who is the subject of criminal investigation is innocent until found guilty by a court. (Article 6)
- In carrying out my duties I shall respect everyone's fundamental rights. I will only interfere with privacy or family life when I am legally authorized to do so. (Article 8)
- I will respect individual freedoms of thought, conscience or religion, expression, peaceful assembly, movement and the peaceful enjoyment of possessions. (Articles 9,10,11)

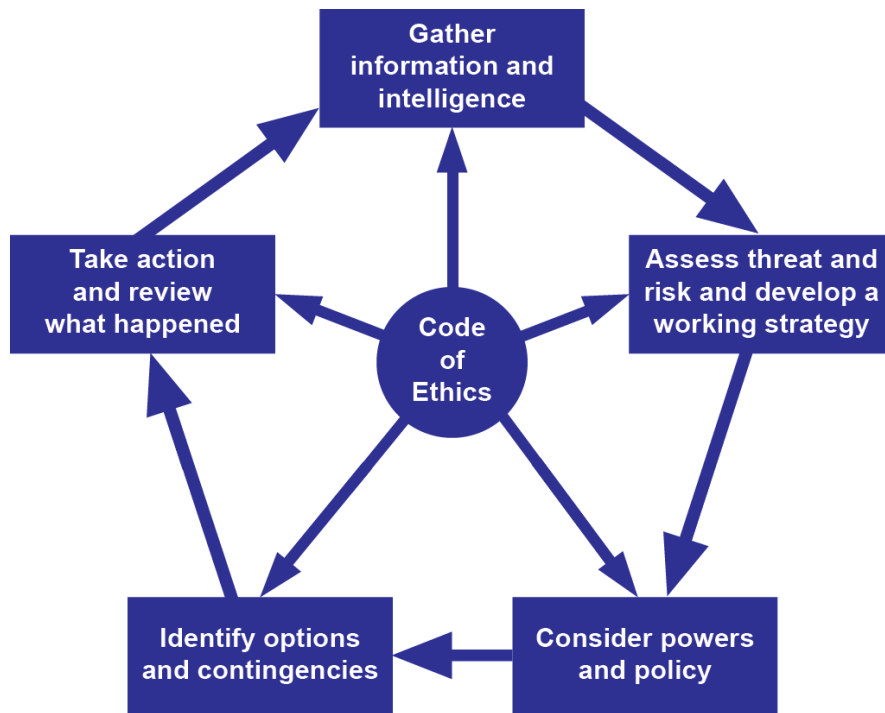
61. At the launch of the Code of Ethics across Scottish policing presentations were delivered to all senior managers and management teams. All new recruits to the service are provided with a copy of the Code of Ethics and receive a presentation on its relevance in providing a valued public service.
62. Police Scotland has adopted the National Decision Model (NDM),⁴⁰ which is suitable for all decisions and should be used by everyone in policing. It can be applied to (i) spontaneous incidents or planned operations (ii) by an individual or team of people and (iii) to both

³⁹ All references to Articles relate to the European Convention of Human Rights (ECHR).

⁴⁰ College of Policing, [National Decision Model](#).

operational and non-operational situations. Decision makers can use the NDM to structure a rationale of what they did during an incident and why; managers and others can use it to review decisions and actions, and promote learning. In a fast-moving incident, the police service recognises that it may not always be possible to segregate thinking or response according to each phase of the model. In such cases, the main priority of decision makers is to keep in mind their overarching mission to act with integrity to protect and serve the public. The Code of Ethics is placed at the centre of this model and reflects the importance of values based decision making.

Figure 2 – National Decision Model



63. Police Scotland and the SPA recognise the importance of maintaining public trust and confidence in the delivery of a quality policing service and we acknowledge the commitment to embed the Code of Ethics and values across policing in Scotland. While we accept that there is a general awareness of Police Scotland’s values across all staff in the organisation, we consider that the detail within the Code of Ethics is less well understood.
64. During our benchmarking we found that Merseyside Police had introduced an integrity and anti-corruption board attended by staff associations and unions contributing towards a common understanding of corruption and a partnership approach to minimising the vulnerabilities that potentially could be exploited by serious organised crime groups.
65. The Chief Constable has made a commitment to reviewing the force approach to ethical policing and the service is engaged with stakeholders and benchmarking across a range of public and private sector organisations in pursuit of best practice. We support this commitment and will be interested in its development.
66. We believe there are further opportunities for the Code to be embedded into everyday policing and for Police Scotland to create a culture where police officers and members of police staff at all levels are familiar with the behaviours and are conscious of applying them. We also believe that supervisors have a key role in encouraging the practical application of the Code and being explicit to staff when challenging any behaviours that fall short. Police Scotland should develop a communications plan to increase the awareness of the Code of



Ethics. This could also capture the second phase of the Service Integrity programme. (see paragraph 128).

67. We would also encourage Police Scotland to carry out periodic health checks, to ensure that police officers and members of police staff understand the relationship with the Code of Ethics, decision making and values based policing. Progress in relation to this should be routinely provided to the SPA.

Recommendation 8

Police Scotland should develop a refreshed communications plan to increase the awareness of the Code of Ethics and promote a positive culture where police officers and members of police staff at all levels are familiar with each of the behaviours and are conscious of applying them.

Leadership and governance

Continuous improvement

68. We found that within a 15-month period (April 2013 to July 2014) there were three different Detective Chief Superintendents (Head of CCU). We consider this turnover in senior officers led to delays in delivering outcomes based on the original terms of reference and promoting continuous improvement. While there is evidence that the CCU has evolved under the direction of the current senior command team, specifically in relation to preventing corruption through the Service Integrity programme, the CCU has over the past three years become a largely reactive unit with minimal evidence of proactive intelligence-led anti-corruption activity. We found that since the establishment of the CCU in 2013, it has not yet delivered a strategic threat assessment (although we acknowledge a draft document was submitted to the Deputy Chief Constable Designate in May 2016) and that pro-active work in relation to tackling the corruption threat posed by serious organised crime groups whilst started in 2013, was only brought into real focus in the autumn of 2015. We discuss this further at paragraph 174.
69. The CCU delivered a number of business change programmes during 2014-15, including;
- establishment of a national vetting section
 - design of the CCU intranet
 - design and delivery of a Service Integrity programme
 - introduction of Integrity Matters replacing a phone based system and
 - physical relocation of the CCU (West) including people and equipment
70. During 2014, the Detective Chief Superintendent (Head of CCU) commissioned an internal organisational review to identify areas for improvement. This resulted in a report being completed in October 2014 with 50 recommendations to support improvement over a 3-year period. We welcome the positive approach to self-assessment and acknowledge that a number of recommendations from this review have been progressed. However, we found that the awareness of this review amongst current senior CCU staff was limited and found no clear evidence of a structured approach to implement the required improvements. We consider that much of the improvement identified within the review remains valid and Police Scotland would benefit from re-visiting this as part of the wider strategic review that we have recommended earlier in this report (see recommendations 6 and 7).
71. We consider that Police Scotland should improve its co-ordination of internal self-assessment reviews to ensure they receive greater executive visibility and that where accepted, any recommendations or improvement actions are supported by a delivery plan detailing SMART objectives and outcome measures. We are also of the view that all internal and external improvement actions and recommendations should be collated and managed centrally to support the co-ordinated delivery and oversight by chief officers and the SPA.

Recommendation 9

Police Scotland should improve its co-ordination of internal self-assessment reviews to ensure they receive greater executive visibility and where accepted, any recommendations or improvement actions are supported by a delivery plan detailing SMART objectives and outcome measures.

72. Amongst the internal review were two recommendations to (i) revise the CCU aims and objectives to reflect the introduction of the Service Integrity role in 2014 and (ii) to create a formal CCU policy. We acknowledge that there is a draft policy, which states that the CCU is focused on ensuring organisational and individual integrity is maintained, the development

and delivery of a preventative strategy and supporting police officers and members of police staff to identify, take ownership and proactively address areas of vulnerability.

73. We note that the policy is work in progress. However, during our fieldwork some CCU staff were unsure as to the overall purpose and direction of the unit, with some staff commenting that the focus, as outlined in the draft policy, was prevention and that investigating corruption through proactive means was no longer a focus for the unit. This is supported by evidence collected during our review that the Service Integrity programme and reactive enquiries currently account for the majority of CCU activity.
74. We recognise that prevention is a core activity, however, the policy should be expanded to reflect the component elements of intelligence, operations, public sector and vetting and that Police Scotland should clearly articulate its approach to tackling corruption. This can be addressed by Police Scotland in progressing our earlier recommendation to articulate a clear vision for tackling corruption and develop an overall strategy that involves engagement with key stakeholders (see recommendation 6).

Governance and oversight

75. We found that the CCU senior management discuss operational activity daily, including a process where bids for resources are considered and actioned. There are also weekly and fortnightly updates. Internal management arrangements are organised and robust and we observed the CCU senior management team meeting, which was conducted professionally with an agenda, minutes, action log and documented updates provided. While there is evidence of regular discussion around enquiries we did not see the same level of evidence in relation to formal peer review of ongoing operations. We consider that the oversight of counter corruption investigations could be strengthened by a process of formal peer review.

Recommendation 10

Police Scotland should introduce a process of formal peer review of counter corruption investigations.

76. Chief officer oversight of counter corruption activities sends out a clear message that the service takes ethical standards, integrity and tackling corruption seriously. We were impressed by the level of chief officer scrutiny of anti-corruption investigations within Merseyside Police. Whilst the Detective Chief Superintendent (Head of CCU Police Scotland) reports directly to the Deputy Chief Constable Designate on all CCU related matters and has ready access to this chief officer when required, this does not equate to effective chief officer scrutiny. As an area for improvement Police Scotland should introduce robust and effective scrutiny arrangements for CCU operations, including greater oversight from chief officers (see recommendation 4).
77. It was evident from our *part one - case study* that governance and oversight arrangements of the CCU were ineffective and better controls are needed. We believe that existing arrangements should be strengthened and consideration given to providing external scrutiny over counter corruption investigations where there are serious allegations of police corruption. The establishment of a single police service has introduced complexity in terms of the police investigating the police and there is a requirement for an approach in Scotland that satisfies the demand for accountability, transparency and independence.
78. From our benchmarking activities we established that the Independent Police Complaints Commissioner (IPCC) has a mandate to conduct *managed* and *supervised* investigations into allegations of police corruption in England and Wales.⁴¹ We have provided two illustrations of the type of case where the IPCC has been involved in a managed investigation:

⁴¹ Independent Police Complaints Commission, [Annual report and statement of accounts 2014/15](#).



Figure 3 – Case study Humberside Police responding to allegations of corruption

The IPCC managed an investigation into a number of serious allegations against a member of Humberside Police staff, who had also served as a chief superintendent with the force. One of his victims, who was bombarded with calls and text messages, said his actions left her frightened and unable to function normally. He then threatened to expose intimate details about her life if she co-operated with the investigation.

After a six-week trial, which ended in January 2015, the man involved was found guilty of witness intimidation, aggravated stalking, harassment and assault. He was jailed for 12 months.

“This case was very challenging as the offender had a long history with the force and people in it. Working with the IPCC, Durham Constabulary (The investigation was carried out by Durham Constabulary and the terms of reference set by the IPCC) and the CPS ensured a robust, independent approach that secured justice and helped the Force address the legacy issues and move forward.”

Humberside Police

Figure 4 – Case study Staffordshire Police officer found guilty of misconduct in public office

Following a managed investigation, an officer was found guilty of six offences (five counts of misconduct in public office and one data protection act offence). He had engaged in sexual activities with five women while on duty and deliberately targeted vulnerable victims of crime for sexual purposes. He was dismissed from the force after a misconduct hearing and jailed for three years.

The IPCC has previously expressed concern at the number of cases across England and Wales where officers have targeted vulnerable women for sex.

79. The second case study highlights the effective use of misconduct in a public office, which is a common law offence in England and Wales, and is used to prosecute police officers and members of police staff, as well as other public officials, where criminal misconduct is not adequately covered by existing statutory provisions. There is no such criminal offence in Scotland, however we are aware that Police Scotland, COPFS and the Scottish Government are in dialogue in relation to this.
80. Effective oversight must protect the sensitive aspects of a covert investigation, whilst balancing accountability, transparency and public confidence in policing. Although there is a requirement for Police Scotland to have effective internal governance and accountability, we consider that in cases involving serious allegations of police corruption, there is a legitimate role for COPFS to provide independent scrutiny over ongoing investigations. Effective arrangements already exist for COPFS oversight in serious and complex criminal investigations, where it provides direction to Police Scotland. We consider that these arrangements could form a template for similar oversight of significant corruption investigations.
81. In some cases, it may be inappropriate or impracticable for Police Scotland to investigate allegations of corruption within the service, particularly where these may involve senior police officers. Prior to the creation of a single force, these cases would have been referred to another police force for independent investigation. Whilst it is still legitimate for Police Scotland to seek assistance from another UK force or the NCA, we believe that oversight from COPFS would be essential in terms of managing any external investigation, especially in terms of jurisdictional and legal issues.

82. The Police and Fire Reform (Scotland) Act 2012 established the role and function of the Police Investigations Review Commissioner (PIRC).⁴² This allows the Commissioner to be directed by the appropriate prosecutor to investigate any circumstances in which there is an indication that a person serving with the police may have committed an offence. This allows the PIRC to undertake investigations into police corruption, provided it is directed to do so by COPFS. Whilst the PIRC has the legitimacy and capability to undertake corruption investigations, it is currently resourced more towards reactive investigations into crimes that have occurred, rather than intelligence-led enquiries into potential corruption that relies on covert policing tactics.
83. An enhanced role for COPFS in the oversight of counter corruption enquiries would involve early engagement with Police Scotland and provide a gatekeeper role to assess (i) those enquiries which should be retained within the CCU (ii) those appropriate for the PIRC and (iii) those which would be passed to another force or agency when the circumstances required it. We would envisage that the majority of enquiries would still be retained within Police Scotland, albeit with increased oversight and scrutiny from COPFS. Whilst we would not wish to be prescriptive in terms of oversight structures, we recommend that Police Scotland should engage with COPFS, the PIRC, the Scottish Government and other stakeholders to review and strengthen the overall approach to independent scrutiny and oversight of investigations into serious corruption by police officers and members of police staff, adopting the approach currently used to investigate serious organised crime.

Recommendation 11

Police Scotland should engage with the Crown Office and Procurator Fiscal Service, Police Investigations and Review Commissioner, the Scottish Government and other stakeholders to review and strengthen the overall approach to the independent scrutiny and oversight of investigations into allegations of serious corruption by police officers and members of police staff.

84. We acknowledge the statutory role of the SPA to hold the chief constable to account for the policing of Scotland. This includes an assurance that corruption is being tackled effectively and regular updates should be provided to the SPA Board.

Chief officer complaints

85. During our review we were made aware that the CCU was requested by the SPA to undertake an initial enquiry into a non-criminal complaint made against a chief officer serving within Police Scotland. This was intended to inform the preliminary assessment by the SPA under the Police Service of Scotland (Conduct) (Senior Officers) Regulations 2013. Where a misconduct allegation against a chief officer comes to the attention of the SPA, it is obliged to assess whether the alleged conduct if proven would amount to (a) misconduct or (b) gross misconduct. Whilst we acknowledge that the SPA may wish to seek more information from Police Scotland, we question the appropriateness of asking the CCU to undertake an initial enquiry into its own chief officers. We consider such enquiries could be open to allegations that they lacked independence or objectivity or were subject to undue influence. The SPA is conscious of this and will not make further requests of the CCU in this regard.
86. Similarly, where the SPA assesses that the conduct would, if proved, amount to either misconduct or gross misconduct, it must decide whether to investigate the misconduct allegation. If it decides to investigate, it must either (i) appoint an investigator or (ii) request the PIRC to carry out an investigation on its behalf. We note that the regulations provide a number of options for the SPA to appoint an investigator, including making arrangements with the Chief Constable for the appointment of a police officer from Police Scotland. Notwithstanding that such a constable would be deemed to be on temporary service outwith Police Scotland and under the direction and control of the SPA, we would still question the

⁴² PIRC, [About us](#).

appropriateness of asking serving police officers (whether CCU or not) to undertake an investigation into its own chief officers.

87. We note that the regulations are silent on how the SPA will undertake its preliminary assessment of a misconduct allegation and there is no provision to appoint an investigator or commence an investigation until after the preliminary assessment has been made. It would therefore appear legitimate for the SPA to limit its preliminary assessment solely to what is contained within the initial complaint, without any form of initial enquiry. Where there is *prima facie* case that the allegation as presented in the complaint would if proven amount to misconduct or gross misconduct, then we would suggest that it should automatically be referred to the PIRC for investigation.
88. In practical terms, this would ensure that *all* complaints against chief officers with a *prima facie* case of misconduct or gross misconduct would be referred to the PIRC for an independent investigation. This would avoid the need for any form of investigation by Police Scotland or the CCU. In any case, the regulations require the PIRC investigator as soon as is reasonably practicable after being appointed to carry out his or her own initial assessment of whether, if proved, that conduct would amount to misconduct or gross misconduct.
89. We are aware that the Chair of the SPA published his *Review of Governance in Policing* on 23 March 2016 and made a recommendation that consideration should be given to reorganising or removing the service delivery responsibilities of the SPA in relation to Complaints and Conduct and reinforcing its purpose as a governance body. We would expect the issues we have raised in this report to be explored more fully as part of this governance review.

Access to specialist capability

90. Previous reports⁴³ by Her Majesty's Inspectorate of Constabulary in England and Wales (HMIC) have highlighted the importance of appropriately resourcing overt and covert internal investigations. An HMIC inspection of Merseyside Police (2014),⁴⁴ reported that the force has a well-resourced, trained and equipped anti-corruption unit with capacity and capability to deal effectively with incoming intelligence and to deploy a range of technical covert assets without recourse to other forces or national assets. As part of our fieldwork we benchmarked with Merseyside Police anti-corruption unit to compare and contrast with the arrangements in place by Police Scotland.
91. We found that despite an additional 21 constables being allocated to Police Scotland's CCU⁴⁵ in 2013, there is no capacity or capability to proactively investigate serious allegations of corruption without a requirement to outsource specialist assets. These assets include access to information held on data systems, various types of surveillance, acquisition and disclosure of communications data and technical support. This increases the awareness of counter corruption investigations to other areas of policing and potentially compromises the overall operational security. Clear governance structures and operating procedures are necessary to mitigate this risk.
92. We established that in 2014 an external force review was carried out in relation to an operational deployment of non-counter corruption assets in support of a CCU investigation. The review identified a number of areas for improvement, including a recommendation that Police Scotland consider the development of dedicated in-house surveillance assets for the CCU. We found that the CCU does not currently have this capacity and is still required to seek specialist support from outwith the CCU. Having reviewed the level of activity

⁴³ Police Integrity: Securing and maintaining public confidence (1999), Without fear or favour: A review of police relationships (2011) and Integrity matters: An inspection of arrangements to ensure integrity and to provide the capability to tackle corruption in policing (2015).

⁴⁴ HMIC Police Integrity and Corruption. Merseyside Police November (2014).

⁴⁵ Information Paper structure and remit dated 2 May 2013.

undertaken by the CCU, we do not consider that there is currently sufficient demand to justify a surveillance capability within the CCU. However, this may change should the CCU review its approach to tackling corruption and focus more on pro-active anti-corruption investigations that are underpinned by a robust intelligence function. (see recommendation 7).

93. We examined records relative to a proactive investigation by the CCU into alleged corrupt practices in the public sector. We found that a comprehensive investigative framework had been put in place, supported by a manual incident room. We also identified that a range of specialist assets had been deployed in support of the CCU enquiry. This demonstrated that Police Scotland as an organisation has the capability and capacity to investigate such criminality and that specialist technical support can successfully be provided in support of a CCU investigation.
94. As the CCU develops the intelligence assessment around corruption, it should also develop collaborative working relationships with other specialist areas of the service. Where the CCU is required to bid for specialist assets against other competing operational priorities, this should be supported within agreed governance structures, overseen by chief officers who are suitably briefed and can make informed decisions. Where it is necessary to conduct parallel investigations with other non-CCU teams, the senior investigating officers should agree and record clear terms of reference and ensure that the respective management teams understand the requirements of intelligence sharing, the use of covert tools, tactics and authorisations. There may also be a requirement to formally indoctrinate other officers to the corruption enquiry. These working arrangements should be formally documented within relevant policies and procedures.

Recommendation 12

Police Scotland should develop formal joint working arrangements between the CCU and those areas of the service that provide specialist assets in support of counter corruption investigations. This should be supported by agreed governance structures that allow informed decisions to be made against competing operational priorities.

Overlap with professional standards

95. We noted that the CCU had carried out a number of Professional Standards Department (PSD) conduct type enquiries which had the unintended consequence of creating ambiguity over the role and function of the CCU. We found that the CCU was typically being asked to carry out PSD enquiries when there was a need for a particular skillset or investigative experience that was available from CCU officers; or where there was available capacity within the CCU to supplement PSD. This issue was raised through our engagement with the staff associations and also those officers who had been subject to CCU investigations. In particular, we were made aware of the tension when officers suspected of misconduct issues were interviewed by the CCU and the damaging impact on their professional reputation amongst colleagues. One police officer commented during our fieldwork that *“the worst thing you can do to a police officer is accuse them of being corrupt.”* Although we recognise the need to use limited resources effectively and for departments to support each other in managing demand, we consider that where possible, the CCU and the PSD should remain functionally separate. We believe that CCU police officers should not be used to investigate cases that would ordinarily be conducted by PSD police officers. This separation should protect the integrity of CCU investigations and avoid any ambiguity amongst staff as to the respective functions of the CCU and PSD.

Recommendation 13

Police Scotland should maintain functional separation between the CCU and PSD and where possible, CCU police officers should not be used to investigate cases that would ordinarily be conducted by PSD police officers.

Planning and Process

Authorised professional practice

96. Authorised Professional Practice (APP) is developed and authorised by the College of Policing as the official source of professional practice on policing. The APP on counter corruption⁴⁶ is produced on behalf of the National Police Chiefs Council (NPCC) and describes a framework within which counter corruption units operate. It is available to police officers and members of police staff in counter corruption units (including Police Scotland), via the Police Online Knowledge Area (POLKA).
97. The APP provides a series of valuable publications to support improvement in CCU working practices and includes:
- APP Professional Standards Counter Corruption – Intelligence - July 2015
 - APP Professional Standards Counter Corruption – Prevention - July 2015
 - APP Professional Standards Counter Corruption – Enforcement - October 2015
 - APP Professional Standards Communication and engagement
98. We acknowledge the value provided by the College of Policing and NPCC in establishing APP across a range of policing activities and consider that the creation of national standards is essential in supporting interoperability and mutual-aid across the UK. We also recognise the value of national standards in terms of inspection. Whilst we accept that not all APP will be directly transferrable to Scotland, it nonetheless provides a valuable source of professional practice that can in most cases be modified or extended to cover Scots law and other jurisdictional issues.
99. We found that police officers and members of police staff within the CCU do not routinely access the APP. We consider that the APP is a useful point of reference and provides standards which may be used as a benchmark to measure the quality of internal strategies, policies, processes and to determine areas for improvement. We consider that Police Scotland should refer to APP when reviewing or developing key CCU policies and procedures, especially in terms of progressing relevant recommendations made within this report.

Recommendation 14

Police Scotland should consider adopting the Authorised Professional Practice on counter corruption, subject to any modification or extension to cover Scotland. This should be applied to the review and development of key policies and procedures.

100. Police Scotland's engagement with the College of Policing and NPCC is on a voluntary rather than a statutory basis. This reflects the current Home Office funding arrangements for the College and NPCC and the devolved nature of policing in Scotland. The College recognises the strength of existing relationships with Police Scotland and is interested in developing these further. There is currently no formal engagement between the College of Policing and the SPA and we reaffirm our earlier recommendation from our *Review of Standing Firearms Authority for Armed Response Vehicle Crews within Police Scotland (2014)*⁴⁷ that Police Scotland and the SPA should engage with the College of Policing to explore options for more formal relationships and reduce the risks and ambiguity, particularly around reference to APP, which potentially arise from the current voluntary arrangements.

⁴⁶ College of Policing, [Professional standards: Communication and engagement](#).

⁴⁷ HMICS, [Review of Standing Firearms Authority for Armed Response Vehicle Crews within Police Scotland](#) (October 2014).

101. We consider it important that Police Scotland participates fully and influences the development of APP and benefits from the efficiencies and effectiveness these arrangements bring. As previously highlighted in our Armed Policing report, we do not consider it to be viable for Police Scotland to develop its own professional practice or standards in isolation.

Strategic threat assessment

102. The NCA on behalf of the NPCCAG produce a UK Anti-Corruption Threat Assessment detailing current threats and emerging issues. This Threat Assessment also informs UK Government about the nature of the threat from corruption to UK law enforcement agencies.

103. At the establishment of the CCU in 2013, there was an expectation that it would identify potential and emerging strategic threats and deliver an organisational threat assessment to the Deputy Chief Constable Designate. As previously stated, we are aware that the CCU has delivered a draft document to the Deputy Chief Constable Designate and the first strategic assessment on corruption is now scheduled for (limited) publication in the summer of 2016.

104. The NPCCAG categories (see Figure 5 below) are used by UK law enforcement and reflect the potential harm that corrupt activity can have on an individual or organisation. Recording against them is considered national good practice, providing consistency across the UK. We found that the CCU contribute to the NCA UK Anti-Corruption Threat Assessment and use the NPCCAG categories effectively.

Figure 5 – NPCCAG categorisation

| Priority | Description | Priority | Description |
|----------|---------------------------|----------|------------------------------|
| 1 | Infiltration | 7 | Misuse of force systems |
| 2 | Disclosure of information | 8 | Abuse of authority |
| 3 | Pervert course of justice | 9 | Inappropriate associations |
| 4 | Sexual misconduct | 10 | Vulnerabilities |
| 5 | Drug offences | 11 | Aid and abet, commit, incite |
| 6 | Theft/fraud | 12 | Other |

105. We found that the overall understanding of the use of a strategic assessment, control strategy and the use of intelligence, prevention and enforcement priorities were not fully understood by some staff and are not part of routine business. In line with APP on Counter Corruption (see paragraph 98) Police Scotland should ensure there are systems in place to collect accurate data on the threat, risk and potential harm from corruption. It should produce for internal use a strategic assessment, control strategy and intelligence, enforcement and prevention priorities.⁴⁸ A model detailing the interaction between the strategic assessment and performance measures is shown below:

⁴⁸ College of Policing, [Intelligence management index](#).



Figure 6 – Model detailing the interaction between the strategic assessment and performance measures



Recommendation 15

Police Scotland should finalise its Strategic Assessment on Corruption and thereafter produce a control strategy that will deliver the intelligence, service integrity, enforcement and the communication and engagement priorities for the next 12 months.

106. We found little evidence of measures to reflect the outputs and outcomes from CCU activity and consider that there would be value in the CCU developing these and providing regular management information to those charged with both the internal and external governance and oversight of the CCU. This information should form part of a balanced performance framework that captures information across the range of CCU activity and provide greater visibility of referrals received against the NPCCAG categorisation as well as the action taken and disposal.

Recommendation 16

Police Scotland should develop a balanced performance management framework to reflect CCU activity and provide regular management information to those charged with the internal and external governance and oversight.

107. We observed the CCU Tactical Tasking and Coordination Group meeting and the presentation by the analytical team of the 2nd CCU Tactical Assessment. We found that the Assessment contained a mix of performance and management data and although it provided a useful foundation, there were opportunities for improvement where the CCU should focus more on intelligence, operational and prevention activity.

Recommendation 17

Police Scotland should develop the CCU Tactical Assessment to focus more on intelligence, operational and preventative activity.

Standard operating procedures

108. Standard operating procedures (SOPs) provide guidance and information to police officers and members of police staff, describing in practical terms the work or activity to be carried out. This should ensure that a professional and consistent approach is taken across Scotland. While there are other guidance documents available, Police Scotland's core procedural guidance is provided through SOPs. Legacy forces had a wide range of SOPs and we recognise the challenges for Police Scotland in prioritising and integrating legacy SOPs into a single national standard. There are currently a number of SOPs which are used to promote integrity:

Figure 7 – Standard operating procedures used to promote integrity

| Standard Operating Procedure | Business Area | Status |
|--|--------------------------|--|
| Notifiable associations | CCU | Version 2 published on 3 October 2015 Under review |
| Data protection and information security. | Information Management | Version 1 published 26 November 2013 Due for review |
| Advice and Guidance Briefings | CCU | Under development |
| Vetting | CCU | New national vetting policy Under development |
| Business interests and secondary employment | People and Development | Under development |
| Gifts, gratuities, hospitality and sponsorship | CCU | Version 2 published 16 April 2015 Annual review |
| Use of personal mobile phone whilst on duty | PSD | Version 1 published 25 May 2015 |
| Social media | Corporate Communications | Under development |
| Media engagement | Corporate Communications | Version 1 published 5 November 2015 |
| Substance misuse including with cause drug testing | CCU | Version 1 published 1 September 2014 Under review |
| Lawful business monitoring (e-mail accounts) | Information Management | Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 Internet Security SOP |

109. We identified that a number of SOPs used to promote integrity require completion, are under review or being updated. Given the importance of these SOPs in promoting the Code of Ethics and countering corruption, we would encourage Police Scotland to expedite this activity. In doing this work, we would encourage Police Scotland to consider relevant APP and any learning identified from our review.

Recommendation 18

Police Scotland should expedite the review and development of those standard operating procedures that are used to promote integrity and consider relevant Authorised Professional Practice.

110. We found that the CCU had introduced a number of “60 Second Policies” as a quick reference guide for police officers and members of police staff on the key elements of the various SOPs. These included:
- gifts, gratuities, hospitality and sponsorship
 - substance misuse – police officers
 - corruption vulnerability indicators
 - sexual predator/abuse of authority behaviour indicators
 - notifiable associations – police officers
 - information security including the 8 principles and policing purpose
111. We found that officers and staff welcomed the concise and readable format and that these documents had been frequently accessed on the CCU intranet site.⁴⁹ While we welcome this approach in terms of raising awareness and providing an accessible briefing, there is still a requirement to reinforce these with the definitive advice contained within SOPs.
112. There was little evidence of proactive or retrospective analysis and cross referencing of notifiable associations across the various ethical registers including; gifts, gratuities, hospitality and sponsorship; business interests and secondary employment. Such analysis and cross-referencing would identify potential conflicts of interest and/or vulnerabilities with the duties and/or role of police officers and members of police staff. It would also provide Police Scotland with a more informed assessment of trends, threats and vulnerabilities, allowing preventative work to be better targeted.

Recommendation 19

Police Scotland should introduce a system that enables the analysis and cross-referencing of notifiable associations across relevant ethical registers. This should identify potential conflicts of interest and provide an informed assessment of trends, threats and vulnerabilities to inform preventative activity.

“Whistleblowing”

113. The Committee on Standards in Public Life highlighted the role which “whistleblowing” plays *“both as an instrument in support of good governance and a manifestation of a more open culture”*.⁵⁰ “Whistleblowing” is the raising of a concern, either within the workplace or externally, about a danger, risk, malpractice or wrongdoing which affects others. By virtue of the Public Interest Disclosure Act 1998, whistleblowers are provided with essential protection if they suffer detriment at the hands of their employers because they have spoken up.⁵¹
114. Lord Justice Leveson in his report⁵² stated: *“My overall assessment is that a series of pragmatic solutions need to be devised to maximise the chance that genuine whistleblowers will use confidential avenues in which they may have faith rather than feel it necessary to break confidences by bringing about much wider public dissemination through disclosures to*

⁴⁹ During the period 1 April 2015 – 21 February 2016 there were 9,567 hits on the CCU intranet site.

⁵⁰ Committee on Standards in Public Life Tenth Report, [Getting the balance right: implementing standards in public life](#), paragraph 4.31, page 89 (January 2005).

⁵¹ Public Audit Committee Scottish Parliament 9 March 2016.

⁵² The Leveson Report, [An inquiry into the culture, practices and ethics of the press](#), paragraph 8.9, page 992 (November 2012).

the media. In my view, this strikes the right balance between the competing interests at stake.”

115. It is essential that Police Scotland promotes a positive culture of supporting individuals to raise concerns. We found that although the term “whistleblowing” is widely understood by police officers and members of police staff, there is no formal “whistleblowing” policy or standard operating procedures which make reference to it. We acknowledge that Police Scotland is currently developing an overarching policy on “whistleblowing”, which will be cascaded into relevant SOPs. In the interests of transparency, any “whistleblowing” policy and associated SOPs should be made publicly available wherever possible.

Recommendation 20

Police Scotland, through engagement with staff associations, should progress development of its “whistleblowing” policy, which informs relevant standard operating procedures that support those who report wrongdoing.

Integrity Matters (IM) confidential reporting system

116. Integrity Matters (IM) is an online confidential reporting system introduced by the CCU in March 2015.⁵³ The online Integrity Matters, replaced a phone based system, providing a secure platform for police officers and members of police staff to report both anonymously and confidentially, any criminality, conduct or integrity concerns. The individual reporting should have a reasonable belief that an issue has occurred, is occurring, or is likely to occur in the future. The facility is widely promoted throughout Police Scotland by posters displayed on workplaces and on the intranet. We established that the IM reporting system received on average 11 referrals per month, which was a significant increase from previous arrangements which recorded only 1-2 referrals per month.
117. The belief amongst staff that IM provides a platform for anonymous and confidential reporting will contribute to the confidence in reporting matters to the CCU. During our fieldwork we tested the process and established that the system is configured in such a way that the CCU has no access to the identity of the sender. Once a referral is sent, the system auto deletes to ensure the confidentiality of the reporter. We are aware that consideration is being given by the CCU to develop additional functionality to enable a two-way communication between an individual making a referral via IM and the CCU. To maintain integrity of the system and the confidence of users, Police Scotland should ensure that this additional functionality does not compromise confidentiality. Technical safeguards should be developed and the system thoroughly tested before any additional functionality is introduced. We consider that the integrity of the system should also be demonstrated to the staff associations to secure their ongoing support and confidence in the system.
118. Access to the system is through pre-determined protocols and only senior CCU managers have access to the information provided in the initial referral. We found that the system does not generate a unique reference number for each submission and the integrity of the system currently relies on the fact that an anonymised email is sent simultaneously to a number of CCU managers. We consider that in the interests of greater transparency, Police Scotland should review the IM system with a view to implementing further technical safeguards such as the automated sequential numbering of submissions for audit.

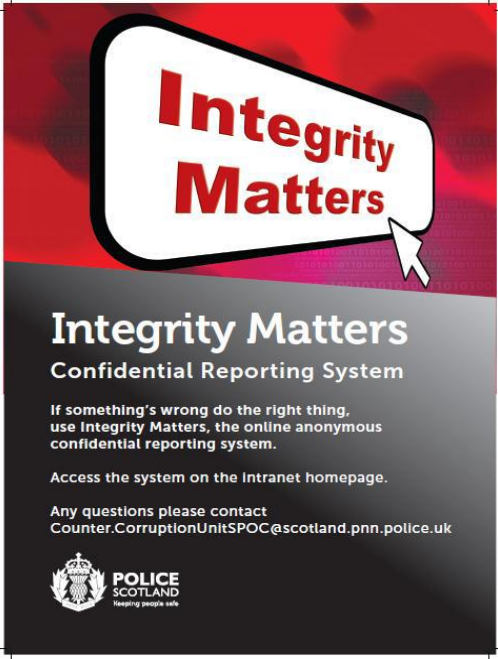
⁵³ Deputy Chief Constable Designate memorandum dated 2 March 2015, PS030/15 establishment of IM Confidential Reporting System replaced Safecall.

Recommendation 21

Police Scotland should review the Integrity Matters Confidential Reporting System with a view to implementing further technical safeguards for audit.

119. An initial assessment of the information is made by the Detective Inspector, CCU Intelligence Section to determine the next steps and in every instance there is a discussion with the Detective Chief Inspector, CCU Intelligence Section to ensure that a course of action is agreed. The IM process is shown below:

Figure 8 – Integrity Matters (IM) process



The poster features a red and black background. At the top, a white speech bubble with a black outline contains the words 'Integrity Matters' in red. Below this, the text 'Integrity Matters Confidential Reporting System' is written in white. A mouse cursor icon points to the bottom right of the speech bubble. The poster includes the following text: 'If something's wrong do the right thing, use Integrity Matters, the online anonymous confidential reporting system.', 'Access the system on the Intranet homepage.', and 'Any questions please contact Counter.CorruptionUnitSPOC@scotland.pnn.police.uk'. At the bottom left is the Police Scotland logo with the tagline 'Helping people see'.

1. The information in the referral is such that it can be resolved immediately without the need for any further significant activity taking place.
2. Due to the nature and type of information shown in the referral it can be referred to PSD for progression.
3. Due to the nature and type of information shown in the referral it can be referred to the relevant local division or department for progression.
4. Due to the nature and type of information shown in the referral there is a requirement for the CCU to create an intelligence file to enable further intelligence development work to be undertaken.

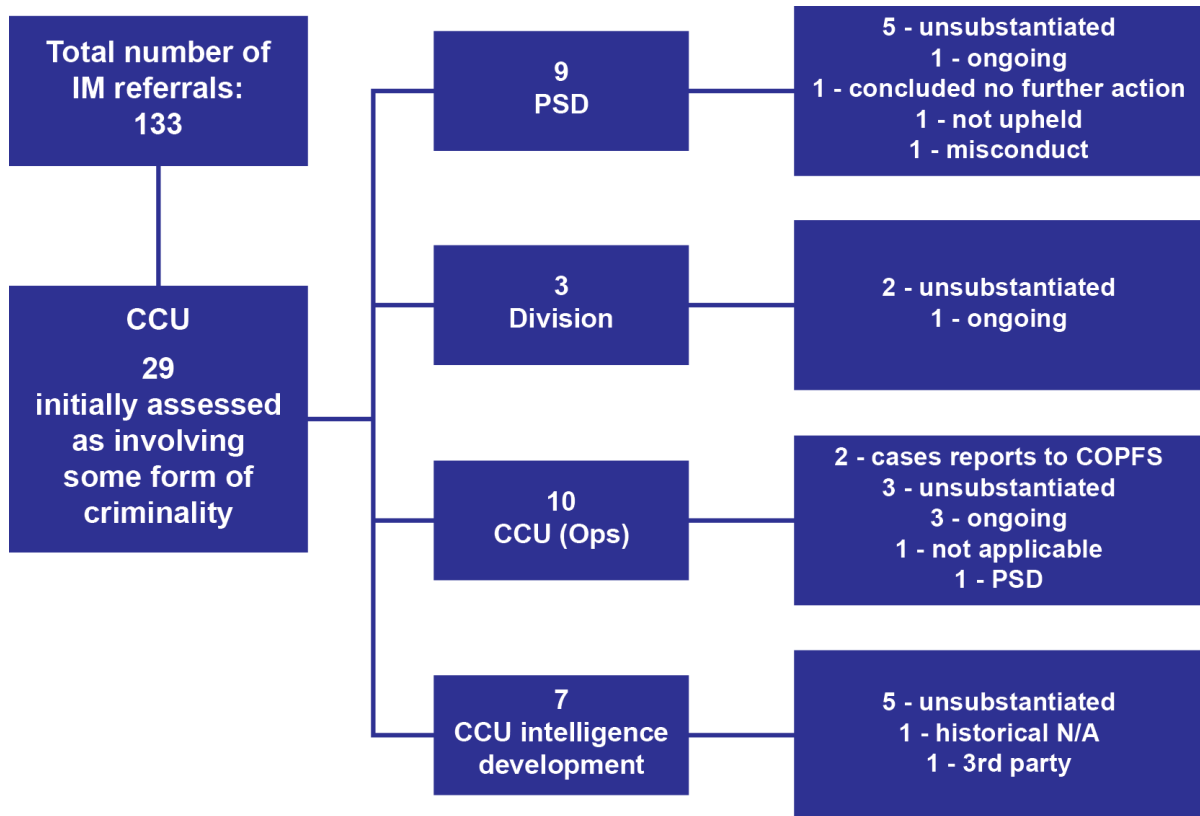
120. There were a total of 133⁵⁴ IM referrals received by the CCU between March 2015 and February 2016, of which 29 were initially assessed as involving some form of criminality. Of the 29:

- 10 forwarded to the CCU Operations Section for further enquiry
- 7 retained within the CCU Intelligence Section
- 3 referred to the relevant Territorial Division
- 9 referred to the Professional Standards Department

⁵⁴ Parliamentary Correspondence 10 March 2016.

121. Further information relative to these IM referrals is shown below⁵⁵

Figure 9 – Breakdown of IM referrals March 2015 – February 2016



122. Integrity Matters is the internal process that police officers or members of police staff can use to anonymously report concerns regarding unethical, unacceptable, unprofessional or illegal behaviour. There are other internal routes available, including direct contact with the CCU or PSD. However, we found that IM was frequently used by police officers and members of police staff to report management issues and grievances which do not amount to corruption. We acknowledge that officers and staff must feel secure and supported when reporting such issues, however IM is not designed to replace existing grievance procedures or divert staff from having the confidence and opportunity to raise issues both formally and informally with line management. We consider that there is a need for Police Scotland to ensure that police officers and police staff are familiar with the range of routes for raising concerns and grievances. This could be included as part of our earlier recommendation for Police Scotland to develop a communications plan to increase the awareness of the Code of Ethics (see recommendation 8).

123. In addition to the internal process for reporting unethical, unacceptable, unprofessional or illegal behaviour, there is also the opportunity for any person to use the Crimestoppers service.⁵⁶ This is an independent charity helping law enforcement to locate criminals and help solve crimes. They have an anonymous 24/7 phone number, that people can call to pass on information about crime and police corruption. Whilst the service is intended to receive reports of any form of criminality, there is an agreement in place with Police Scotland to forward reports of police corruption to the CCU and during 2015 five referrals were made to the CCU via Crimestoppers.

⁵⁵ Police Scotland Management Information (2016).

⁵⁶ [Crimestoppers](#).

124. During our fieldwork, we met with the PIRC and raised a number of issues relative to counter corruption. The Commissioner has a statutory role over complaints handling and the independent investigation of Police Scotland where there are allegations of criminality, serious incidents and where there is a public interest to investigate.⁵⁷ Given this independent role, we consider there would be value in the PIRC developing a confidential reporting function to receive reports of unethical or illegal behaviour by police officers and members of police staff. This function would supplement the Police Scotland Integrity Matters reporting system by providing an additional channel for police officers and police staff who were not confident in using the internal system. It could also provide a new channel for members of the public to report such matters. We acknowledge that in developing a reporting function, the PIRC would be required to provide the necessary safeguards. We recognise that it would be essential for the PIRC to share all reports that relate to corruption with the Police Scotland CCU to ensure that this information can be checked against other information and intelligence sources to facilitate a single assessment of threat, risk and harm.

Recommendation 22

Police Scotland should engage with the Police Investigations and Review Commissioner to consider establishing a confidential reporting function.

Service integrity programme

125. The Police Scotland Service Integrity programme aims to “*work in partnership with Divisions/Departments and staff to identify and mitigate known and emerging risks that can lead to the compromise of individual and organisational integrity*”.⁵⁸ The key priorities focus on preventing opportunities for corruption by helping police officers and members of police staff understand their individual responsibilities in respect of:

- notifiable associations
- data protection
- online presence
- abuse of power/sexual predatory behaviour
- gifts, gratuities, hospitality and sponsorship
- secondary employment or business interests

126. The programme aims to enhance staff knowledge and understanding of both organisational and individual vulnerabilities and is delivered through a series of interactive workshops led by experienced police officers. During our fieldwork we observed workshops and considered that the presentations were professionally delivered and that feedback from those in attendance was positive. Those who attended had a better awareness of the potential areas of vulnerabilities that exist to individuals and the organisation.

127. Between 28 July 2015 and 1 March 2016, CCU staff delivered 93 Service Integrity Workshops involving a total of 1544 police officers and members of police staff. This is in addition to inputs provided to probationer officers, detective officers and special constables. Complementing the Service Integrity workshops is an e-learning corruption prevention course. We established that at March 2016, 15,836 police officers and police staff had undertaken the online training course and successfully completed the online assessment.

128. We consider the Service Integrity programme to have contributed to strengthening the preventive message and raising awareness of the work of the CCU. As the programme of work approaches conclusion, Police Scotland should take the opportunity to design the next phase of the Service Integrity programme around a sustained prevention message underpinned by the Code of Ethics. This aligns with our earlier recommendation to develop a

⁵⁷ Police and Fire Reform (Scotland) Act 2012, Section 62.

⁵⁸ CCU presentation to SPA 19 January 2016.

refreshed communications plan to increase the awareness of the Code of Ethics and promote a positive culture where police officers and members of police staff at all levels are familiar with each of the behaviours and are conscious of applying them. (see recommendation 8).

129. When the CCU was established in 2013, staff associations reported that they had little knowledge and understanding of the role and purpose of the CCU. Information was provided by users who had experienced the CCU activity first hand. During our fieldwork we engaged with a number of users who explained that the tactics deployed by the CCU were perceived to be disproportionate and in some cases intimidating. Whilst we did not review individual cases we listened to the views and conclude that the early approach adopted by the CCU has had a negative impact on the long term reputation of the CCU as a recognised and trusted single point for “whistleblowing.” (see paragraph 197).
130. We consider that the CCU must be seen as an integral part of Police Scotland. It must be committed to the same values and Code of Ethics as the rest of the service and not perceived as separate and isolated. We found that in the past year the CCU senior management have strived to change this perception of the CCU through Service Integrity workshops, Advice and Guidance Briefings (see paragraph 145) and better engagement with staff associations. We have evidenced police managers from across the service contacting the CCU for advice, which we consider a positive indicator in terms of engagement.

Notifiable association

131. A key element of the Service Integrity programme is for police officers and members of police staff to understand that persons with whom they have some form of association may present a risk to them or the organisation. Officers and staff are expected to notify Police Scotland of any association with an individual, group or organisation that is inappropriate and has the potential to compromise;

- police officers and members of police staff
- the operations or activity of the service
- the reputation of the service

132. Given that many police officers and members of police staff are recruited from the communities they serve, it is inevitable that some will join the service with existing associations that may present a risk. As previously noted the SOP relevant to Notifiable Associations is currently under review.

Data protection

133. We found that early in the establishment of the CCU, a submission of a notifiable association would routinely trigger an in-depth audit of police ICT systems. This was to establish if the police officer or member of police staff who had made the notifiable association had accessed any police systems and searched for the individual, group or organisation referred to in the notifiable association report. Where the CCU identified such access and considered there was a lack of legitimacy in accessing the data for a policing purpose,⁵⁹ the police officer or member of police staff was reported for a criminal breach of data protection to COPFS. The unintended consequence of this approach was that police officers and members of police staff were “*fearful of submitting a notifiable association in the event that a full systems audit would reveal historical data searched which they could not account for.*”⁶⁰

134. The terms of reference for the CCU is to carry out internal investigations into corruption. We found that the majority of cases investigated by the CCU,⁶¹ related to notifiable associations and data protection breaches. Whilst a breach of data protection and disclosure of

⁵⁹ Policing purpose see glossary.

⁶⁰ CCU Review April 2013 – November 2014 paragraph 8.10.7.

⁶¹ 69% of all CCU enquiries conducted during 2015 related to notifiable associations and data protection breaches.

information can present a significant risk to Police Scotland, we found that in many of the data protection cases reported by the CCU, the police officer or member of police staff had accessed the data but had not disclosed personal data or information to others. Indeed, subsequent enquiry had shown that there was no evidence that the access was related to corruption.

135. Much of the feedback from police officers and members of police staff is that the approach to notifiable associations and the data protection act lacks a proportionate and measured response. This feedback is echoed by the Scottish Police Federation and UNISON and featured strongly in our workshop with police officers who had been subject to CCU investigations. This feedback also highlighted concerns over the duration of time taken to progress investigations and conclude prosecutions, which in turn extended the length of time police officers and members of police staff were placed on restricted duties. (see paragraph 140).
136. We established that the Crown Prosecution Service (CPS) in England and Wales has provided advice to police forces in the north-east of England to assist chief officers in deciding whether a breach of the data protection act should be dealt with under misconduct or referred to the CPS for prosecution. A matrix designed around four core elements is used to determine the appropriate level of action and includes:
 - the circumstances
 - an assessment as to the motivation for access such as benefit, gain, detriment
 - an assessment of public interest considerations
 - an assessment as to the gravity of the action in terms of seriousness
137. In cases where it is assessed that the activity had low impact and the offence had been admitted by the officer, an option for disposal is internal management action. We commend this approach from the CPS, and consider that in relation to data protection offences by police officers and members of police staff in Scotland, there is an urgent need to develop a more measured approach. This approach should be easily understood by staff and encourage them to report notifiable associations.
138. We consider that data protection breaches should initially be risk assessed by the CCU, but only those cases where there is an inference of corruption should be retained. All other cases would be forwarded to PSD or Divisions/departments for investigation and a decision on whether there was sufficient evidence to report to COPFS. We are aware of ongoing developments within COPFS to streamline the current process, but would still encourage Police Scotland to engage with COPFS to examine alternative and more expeditious approaches to the reporting of minor offences against data protection where the individual police officer or member of police staff has admitted the offence and there is no evidence of corruption.

Recommendation 23

Police Scotland should engage with COPFS to examine alternative and more expeditious approaches to the reporting of minor offences against the data protection act in cases where the individual police officer or member of police staff has admitted the offence and there is no evidence of corruption.

Restricted duties

139. The decision to place a police officer or member of police staff on restricted duties is one for Police Scotland. This is legitimate where there is a risk to the organisation or the individual in allowing them to perform their normal duties and where the restrictions seek to mitigate this risk. This may range from restricting access to police information systems to removal from operational duties and is used where it is not deemed necessary to suspend the individual

involved. Whilst we fully accept the need for restricted duties, it is important that each case is risk assessed and only those restrictions that are necessary to mitigate the risk are applied. It is also important that each case is reviewed on a regular basis to ensure that any restrictions remain proportionate and necessary. In terms of the effectiveness and efficiency, and the wellbeing of staff, it is important that police officers and members of police staff are returned to their duties as early as possible.

140. Our engagement with the Scottish Police Federation and UNISON highlighted concerns over the length of time police officers and police staff are placed on restricted duties and the impact this has on them personally. This also featured strongly in our workshop with police officers who had been subject to CCU investigations. We were made aware of police officers and members of police staff remaining on restricted duties after COPFS taking no criminal proceedings in their case, but where Police Scotland were considering the option of misconduct proceedings. In some cases, this can significantly extend the period of restriction and the personal uncertainty for the individuals concerned. While we accept the legitimacy of Police Scotland to consider misconduct proceedings in cases which have been returned from COPFS, we consider that these should be expedited where possible.
141. We established that in February 2016, there were 140 Police Scotland personnel on restricted duties with 29 of these having been on restricted duties for over 700 days.⁶²
142. We note that Police Scotland has recently introduced a process that enables each case to be risk assessed with a risk management plan for each individual. We welcome this approach to manage the number of police officers and members of staff subject of restricted duties. However, given the significant number of personnel who are currently subject to restrictions, we consider that Police Scotland should urgently review all those who are on restricted duties to ensure that those restrictions remain proportionate and necessary to the current risk. Where appropriate, these restrictions should be lifted and staff returned to full operational deployment.

Recommendation 24

Police Scotland should urgently review the circumstances of all police officers and members of police staff who are on restricted duties to ensure that those restrictions remain proportionate and necessary to the current risk.

143. We also consider that there would be significant value in Police Scotland engaging with COPFS to expedite decisions around outstanding data protection cases. In addition to this, Police Scotland should review those cases which have been returned from COPFS with no criminal proceedings being taken, with a view to expediting decisions around ongoing internal misconduct.

Recommendation 25

Police Scotland should engage with COPFS to expedite decisions around outstanding data protection cases. In addition to this, Police Scotland should review those cases which have been returned from COPFS with no criminal proceedings being taken, with a view to expediting decisions around ongoing internal misconduct.

Advice and guidance briefings

144. Police Scotland previously adopted the practice of Management Meetings, which were intended to provide an opportunity for the CCU to interview staff over professional concerns which fell short of criminal allegations. The meetings became discredited with staff associations and users perceiving that the CCU had *“not always conducted engagement in*

⁶² SPA, [Complaints & Conduct Committee](#) (17 February 2016).

an open, transparent and meaningful way". Police Scotland has since taken positive action and discarded the process of Management Meetings, introducing a more visible and transparent process, which is focused on advice and guidance where there are no allegations of criminality or misconduct. This is designed to support police officers and members of police staff assessed to be at risk from corrupting influences or being targeted by criminals.

145. This change has been welcomed by senior officers and users and now includes early contact with the appropriate Divisional Commander, Head of Department and a single point of contact at supervisory level. CCU engagement with the police officer or member of police staff is carried out discreetly with an option to audio record the meeting for transparency.
146. We sampled a number of case files and noted that for notifiable associations where there was no evidence of criminality or misconduct, the cases were quickly concluded by means of an Advice and Guidance Briefing. A briefing document is provided to the relevant Divisional Commander, who thereafter takes on a welfare and support role for the police officer or member of police staff who received an Advice and Guidance Briefing.
147. Understanding that such a process may cause anxiety to the individual police officer or member of police staff concerned, the CCU must be alert to the impact that such engagement may have on the individual, his/her family and colleagues ensuring that the process is managed appropriately with consideration of fairness and respect. Following engagement between the CCU and staff associations, there is agreement that these meetings may be audio recorded at the discretion of the individual police officer or member of police staff. We established that the Advice and Guidance Briefing SOP is currently under development and we encourage early publication of this SOP to provide visibility of the process by police officers, members of police staff and staff associations. This SOP should also include a process to ensure that the offer/option to audio record the briefing is documented for audit purposes.

Recommendation 26

Police Scotland should engage with the Scottish Police Authority to finalise its standard operating procedure for Advice and Guidance Briefings by the CCU. This should also include a process to ensure that the offer/option to audio record the briefing is documented for audit purposes.

Audit and lawful business monitoring

148. Police Scotland holds substantial personal data and operational information across a wide range of databases and the public expects that such data is held securely and is only used for a legitimate policing purpose. A review of police integrity in England and Wales⁶³ from 2011 identified that the *"current economic constraints have the potential to impact on forces' capability and capacity to address integrity issues"*, and recommended that *'forces consider the use of specialist IT software to enhance their audit and analytical capabilities'*.
149. Some forces have enhanced their general auditing capability by investing in software which provides comprehensive data (including key strokes, screenshots and emails) from all ICT systems, enabling routine and targeted auditing. We benchmarked with Merseyside Police Anti-Corruption Unit Audit Team and established that the force monitors its own systems. The majority of corruption investigations involve some element of unlawful access to and disclosure of information and data held on police ICT systems.
150. Police Scotland ICT systems can be audited retrospectively, although some systems need administrative or gatekeeper support which potentially compromises the operational security of any counter corruption enquiry. Best practice from our benchmarking with Merseyside Police supports our view that to be effective in countering corruption the service requires

⁶³ 'Without Fear or Favour' - Her Majesty's Inspectorate of Constabulary in England and Wales (2011).

effective and efficient oversight of all information systems, including mobile data. This is best achieved through workforce monitoring software. We understand that a business case for workforce monitoring software is being scoped by Police Scotland's ICT department.

151. Whilst we recognise that monitoring and audit of ICT systems has a cost implication, the extent of the threat and the value of the system in deterring and identifying corrupt activity should not be underestimated. Monitoring the use of police ICT systems in a proportionate and lawful manner that complies with the data protection act and ECHR is a vital component in countering corruption and from our review the service remains at risk without having the capacity and capability to monitor activity across information systems in real time.

Recommendation 27

Police Scotland should progress development of a business case for workforce monitoring software.

Production handling

152. We carried out a review of the CCU processes to manage productions.⁶⁴ The Police Scotland SOP contains the type of information which would normally be expected to be available in terms of providing guidance and instruction to production management. Police officers and members of police staff are aware of and routinely use the SOP to guide their operational activity.
153. We found that the CCU (East Region) has a separate approach to the management of counter corruption productions based on the legacy Lothian Borders Police practice. This requires the physical production to be anonymised by use of a case number. A memorandum of understanding, which is separate from the Police Scotland SOP, provides clear and specific guidance in relation to a number of areas, which had been identified as requiring more clarity for staff involved in production handling in corruption cases. This includes the seizure, labelling and lodging of productions to ensure that the anonymity of the individual police officer or member of police staff is maintained.
154. It is evident that certain elements of production handling within the CCU are inconsistent across the country. We also raised concerns over the management and loss of a production by the CCU Intelligence Section during our part one – case study. (see paragraph 30). This is a position recognised by the CCU and we acknowledge that this remains work in progress.

Recommendation 28

Police Scotland should review its CCU production handling procedures to ensure they maintain the operational security of corruption investigations and are consistent across all areas.

⁶⁴ Productions are items which are seized by police as evidence as part of an investigation.

People and resources

CCU establishment and structure

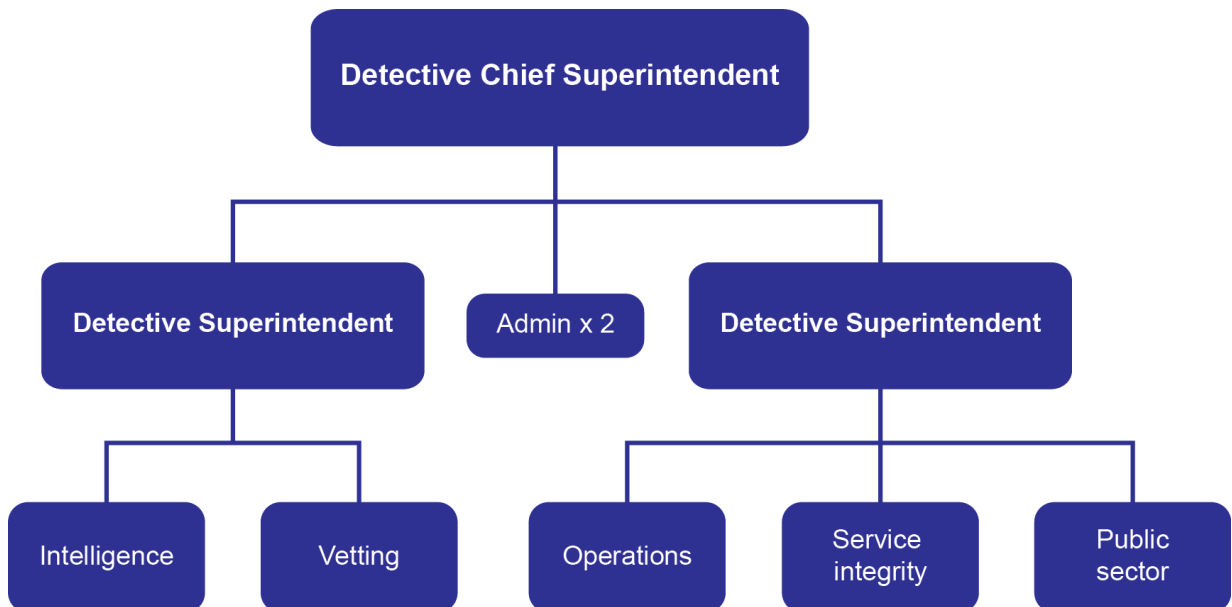
155. At the time of its creation in April 2013, the CCU comprised of 54 police officers and 10 members of police staff (equivalent to 0.24% of the Police Scotland establishment). In 2013 the CCU received a resource uplift of 21 Detective Constables to enable the unit to have sufficient capacity and capability to conduct investigations independently. In 2015 the CCU assumed responsibility for a further 28 staff to form a national vetting section. In June 2016, the CCU, excluding the vetting section, comprised of 56 police officers and 3 members of police staff.

Figure 10 – Police Scotland Counter Corruption Unit structure 2013 and 2016

| CCU structure March 2013 | CCU structure June 2016 ⁶⁵ |
|--|---|
| 1 Detective Chief Superintendent 3 Detective Superintendents 4 Detective Chief Inspectors 9 Detective Inspectors 14 Detective Sergeants 23 Detective Constables 10 Members of Police Staff | 1 Detective Chief Superintendent 2 Detective Superintendents 5 Detective Chief Inspectors 9 Detective Inspectors 22 Detective Sergeants 17 Detective Constables 3 Members of Police Staff |

156. The CCU is currently led by a Detective Chief Superintendent (Head of CCU) supported by a Detective Superintendent with responsibility for Operations, Public Sector and Service Integrity and a Detective Superintendent with responsibility for Intelligence and Vetting. The current CCU structure is shown in Figure 11 below:

Figure 11 – Police Scotland Counter Corruption Unit structure (June 2016)



⁶⁵ Management Information provided by Police Scotland (June 2016), excluding the Vetting section at paragraph 189.

157. The People Strand of the CCU Business Plan 2015-16⁶⁶ establishes a key objective to support operational delivery through efficient and effective resource utilisation. To achieve this, the CCU planned to convert eight Detective Constable posts identified within the CCU Operations Section to Detective Sergeant posts. The rationale for this is to ensure that CCU investigations reflect the requirements of the Police Service of Scotland (Conduct) Regulations 2014,⁶⁷ which stipulate that in relation to misconduct allegations an investigating officer must be a constable of a higher rank than the constable being investigated.
158. Notwithstanding this process is almost complete, we believe that this proposal would benefit from review and consider that the CCU should develop a workforce planning model that supports its current and future demands and introduce a balanced workforce based on skill and not rank. This should be informed by the wider strategic and structural review that we recommended earlier in this report (see recommendations 6 and 7).

Recommendation 29

Police Scotland should develop a workforce planning model that supports the current and future demands on the CCU and provides an evidence based assessment of required staffing levels, including supervisory ratios.

159. We found that vacant posts within the CCU are advertised in the Police Scotland vacancies section of the Intranet providing a visible and transparent process. Staff newly appointed to the CCU were complimentary in relation to an induction presentation they received, which provided a good initial overview of structures as well as supporting staff to integrate into the new role. A CCU Induction Bronze Course had been designed for police officers and members of police staff who undertake counter corruption investigations.
160. We found that police officers and members of staff have a range of pre-existing competencies and training from previous roles including surveillance, financial investigation, public protection, intelligence and are motivated and experienced. Much of the feedback from police officers and members of police staff reflected a sense of frustration that the skill set available to the CCU was not being fully utilised due to the low level of complexity of operational activity.
161. We consider police officers and members of police staff are equipped to manage the current priorities within CCU. However, to ensure that individuals have the necessary technical skills, knowledge and understanding to fulfil the array of operational demands likely to be placed upon them in relation to significant corruption investigations, we recommend that Police Scotland undertake a Training Capacity and Capability review to map current and future skills identifying gaps within the CCU which can be filled through recruitment, training and professional development. This should be informed by the wider strategic and structural review that we recommended earlier in this report (see recommendations 6 and 7).

Recommendation 30

Police Scotland should commission a Training Capacity and Capability Review to map current and future skills and identify gaps within the CCU which can be filled through recruitment, training and professional development.

162. Feedback from CCU staff across Scotland indicated that they were part of the national unit and received good support from their local management team. They indicated that they are currently kept well informed of changes to guidance and legislation through a variety of mechanisms including face to face contact with line management, email, and briefing notes.

⁶⁶ CCU Business Plan 2015-16. Provided to HMICS on 11 January 2016.

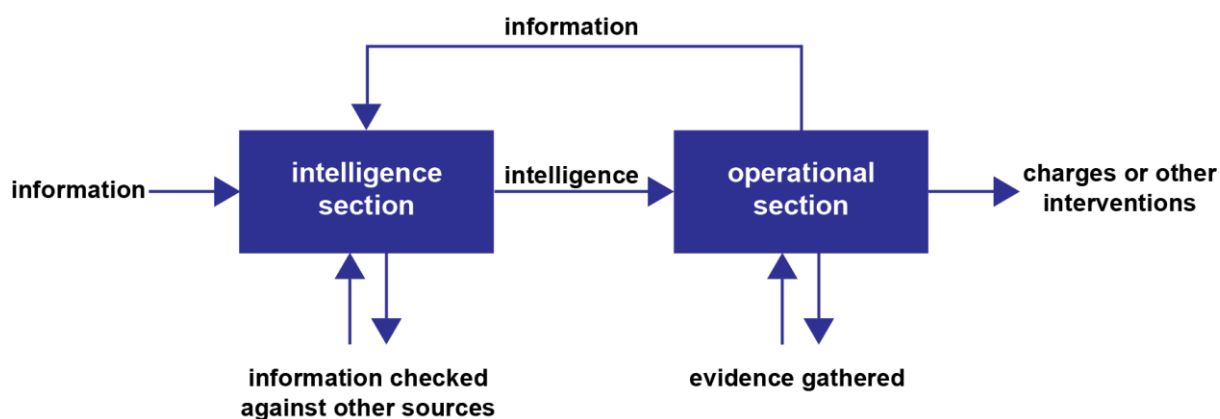
⁶⁷ Police Service of Scotland (Conduct) Regulations 2014, Part 2, Regulation 10 Section 5(a).

We noted that the CCU held Continuous Professional Development days which have been well received by staff and have contributed towards a positive approach to team building.

Intelligence section

163. The APP for counter corruption provides guidance on the assessment and development of intelligence. Core elements of the intelligence process are the grading, evaluation, analysis and risk assessment of the source of the intelligence and of the information provided. Counter corruption investigations are fundamentally different from traditional “reactive” professional standard investigations, in that they proactively develop and analyse information and intelligence on corrupt practices by police officers and members of police staff and instigate proactive intelligence led investigations.⁶⁸
164. For operational security reasons, information concerning potentially corrupt individuals should be forwarded to the CCU Intelligence Section. This allows the Intelligence Section to assess this information against other information and intelligence held within Police Scotland, with a view to identifying potential corruption and developing packages for the CCU Operations Section. It is for this reason that the CCU Intelligence Section needs to sit above other force intelligence structures and have controlled access to all force information and intelligence systems. During the operational investigation, evidence will be gathered and information shared with the Intelligence Section which will assess it and provide further intelligence to the investigation. At some point the Operations Section will conclude its investigation, which may lead to criminal charges against individuals or other interventions. A model showing the information and intelligence flows within the CCU is shown below:

Figure 12 – Model showing intelligence flows within the Counter Corruption Unit



165. Given the key responsibilities of the CCU Intelligence Section and access to all information and intelligence systems, it is crucial that staff are appropriately trained. We found in our part one – case study that the CCU information handling processes were significantly different from national standards in terms of source and information evaluation and the safeguards put in place to manage contact with sources of information were inadequate. This has resulted in a recommendation for improvement. (see recommendation 1).
166. We noted the development of a Single Point of Assessment (SPoA) within the CCU Intelligence Section, which provides an opportunity to triage all incoming referrals and make an initial assessment. Following this assessment, a decision is taken whether to retain the

⁶⁸ (Miller, 2003: 2). Miller, J. (2003) *Police corruption in England and Wales: An assessment of current evidence*, London: Home Office.

referral within the CCU, pass to professional standards or direct the referral to local policing or other departments for further action.

167. To ensure a consistent approach to the management of risk, all information and intelligence within the CCU is managed by the SPoA and a policy log is created for each new file, which outlines the risk to the police officer, member of police staff and or the organisation. During the case study we found an inconsistent approach across the risk assessment process with different terminology and style being used. We acknowledge that work is in progress to standardise internal processes, but have included this as a formal recommendation for improvement so we can monitor progress as part of our follow up to this report.

Recommendation 31

Police Scotland should review its CCU Risk Assessment Processes to ensure a consistency of approach.

168. We found that the CCU Intelligence Section routinely carries out between 1200 - 1500⁶⁹ administrative checks per month across multiple force information and intelligence systems. These support the wider organisation and include checks undertaken for vetting new recruits, promotions, retrials and award of long service and good conduct medals. Such background checks, whilst necessary, are not used for intelligence assessment or development. Significant time and resources are devoted to this activity and while necessary for Police Scotland, this has little value added for the CCU and reduces capacity within the Intelligence Section to focus on areas of threat, risk and harm. We consider that Police Scotland should take the opportunity to transfer the function of routine administrative checks away from the CCU Intelligence Section to focus on intelligence development. We believe this should be included as part of the wider structural review recommended earlier within our report (recommendation 7).
169. The CCU currently includes all administrative checks within the management information it provides on the total number of referrals received. We consider this masks the actual number of CCU referrals that relate to potential corruption and is potentially misleading in terms of the actual level of threat from corruption to Police Scotland. Figure 13 below show the actual referrals received by the CCU in 2015 (excluding administrative checks) against the NPCCAG categories. We consider that Police Scotland should separate the actual number of CCU referrals aligned to NPCCAG categories from non-corruption audit checks within its management information. We believe this should be included as part of the wider performance framework recommendation made earlier within our report (recommendation 16).

⁶⁹ A review of a three month period was undertaken and the data extrapolated for the year. This activity is in addition to NPCCAG categories and includes HR checks, promotions, retrials, LSGC medals, firearm and licensing checks.

Figure 13 – Counter Corruption Unit referrals 1 January – 31 December 2015⁷⁰

| Breakdown | Activity |
|--|-------------------------------|
| Cat 1 – Infiltration | 0 |
| Cat 2 – Disclosure of information | 107 |
| Cat 3 – Pervert course of justice | 5 |
| Cat 4 – Sexual misconduct | 10 |
| Cat 5 – Drug offences | 24 |
| Cat 6 – Theft/fraud | 4 |
| Cat 7 – Misuse of force systems | 18 |
| Cat 8 – Abuse of authority | 4 |
| Cat 9 – Inappropriate associations | 118 |
| Cat 10 – Vulnerabilities | 8 |
| Cat 11 – Aid and abet, commit, incite | 2 |
| Cat 12 – Other | 339 |
| Total NPCCAG categories | 639 |
| Total requests to the CCU for administrative checks. | 14,400 - 18,000 ⁷¹ |

170. This shows that disclosure of information (107 or 16.7%) and inappropriate associations (118 or 18.4%) represent a significant proportion of CCU referrals. We established that during 2015 the main sources of referral to the CCU were originated from self-notification (310 or 48.5%) and police reports (127 or 19.8%).

Intelligence systems

171. Police Scotland CCU currently uses the *IBM i2 iBase* computer system for intelligence management. This system was used within Merseyside Police. We found that within the CCU Intelligence Section *iBase* contained in excess of 700 entities⁷² that were either unlinked or “orphaned” on the system. This makes analysis and research difficult, with CCU police officers and members of police staff having to make full text searches on keywords in an attempt to locate potential links. We were informed that the analytical team had to spend around four weeks to cleanse the data prior to submitting returns for the NCA UK Anti-Corruption Threat Assessment. The CCU also relies on a shared storage drive to access a directory of documents that hold the majority of CCU information. This is ineffective and inefficient for analysis and research. We consider that the CCU should concentrate on its intelligence development function and maintain *iBase* as the primary CCU case management system. This will require a comprehensive review of the design, structure and management of *iBase* and the development of operating procedures, guidance and training for staff.

Recommendation 32

Police Scotland should maintain *iBase* as its primary CCU case management system and commission a comprehensive review of the design, structure and management of the system. This should also include the development of operating procedures, guidance and training for staff.

Operations section

172. We found that throughout 2015, there was no significant proactive corruption investigation against any police officer or member of police staff by the CCU. There was no operational requirement for senior investigating officers nor the use of a range of specialist tools and techniques. We reviewed a number of operational cases and established that skilled

⁷⁰ CCU Management Information March 2016.

⁷¹ A review of a three month period was undertaken and the data extrapolated for the year. This activity is in addition to NPCCAG categories and includes HR checks, promotions, retireals, LSGC medals, firearm and licensing checks.

⁷² Entities see glossary.

detective officers were routinely investigating minor data protection offences. Staff were frustrated that their skills were under-utilised and while we saw that the quality of investigations was generally good, the level of complexity of the enquiry was low. The low level of complexity associated with the majority of cases under investigation creates a risk of deskilling experienced officers and staff within the CCU.

Figure 14 – Counter Corruption Unit operational cases (1 January – 31 December 2015)⁷³

| Region | Number of cases | Notifiable associations | Data protection | Other | Other criminal |
|--------|-----------------|-------------------------|-----------------|-------|----------------|
| North | 38 | 22 | 9 | 7 | 0 |
| East | 35 | 10 | 10 | 15 | 0 |
| West | 78 | 40 | 13 | 21 | 4 |
| TOTAL | 151 | 72 | 32 | 43 | 4 |

173. During 2015, CCU Operations Section conducted 151 investigations, which resulted in 9 individuals arrested and 47 reports submitted. Of these reports, 22 were sent to COPFS; 22 to PSD and 3 to the SPA.
174. The Police Scotland Annual Plan 2015-16 recognised that serious organised crime is a priority and highlighted that there are 238 serious organised crime groups operating across Scotland. We established that a number of organised crime groups had been identified as posing a corruption threat and had been allocated to the CCU for analysis. Police Scotland has a mature process in place for the management of serious organised crime groups. The CCU has been actively developing its approach to assessing the threat, risk and harm of these groups to the police service and communities. However, we saw this activity being managed alongside the significant volume of work generated by audit and background checks, notifiable associations and data protection offences. We consider that tackling serious organised crime groups with indicators of corruption should be a priority for the CCU and that Police Scotland should ensure that the CCU prioritise its workload around this threat.

Recommendation 33

Police Scotland should ensure that the CCU prioritises its workload around the threat posed by serious organised crime groups.

175. We found that caseloads within the CCU are managed on an ongoing basis through daily tasking meetings and individual meetings with staff. Policy decisions and actions are recorded on word documents and excel spread sheets retained within CCU computer systems. By virtue of the current low level of complexity in CCU investigations, formal SIO policy files are not routinely used.
176. We recognise the benefits of organisational and operational learning and acknowledge the importance of debriefs to maximise this learning:

Organisational learning

- investigative team learning
- gaps in policy that have allowed the corrupt activity to take place
- non-compliance with policy
- individual vulnerabilities
- early warning opportunities that were not identified in the particular case

⁷³ CCU Management Information.

Operational learning

- to debrief how effective the operational aims and objectives were achieved
- the tactics deployed and how they were implemented

177. We found evidence of the CCU identifying and promulgating organisational learning from CCU investigations and consider this could be enhanced by a more structured approach to internal debrief. We consider that Police Scotland should introduce a structured process that enables CCU police officers and members of police staff to debrief intelligence and operational activity in a structured manner to enable lessons learned to be cascaded across the CCU.

Recommendation 34

Police Scotland should introduce a process that enables CCU police officers and members of police staff to debrief intelligence and operational activity in a structured manner to support organisational and operational learning.

Public sector section

178. The terms of reference for the establishment of the CCU in 2013 included the creation of a Public Sector Section with a remit⁷⁴ to:

- provide assistance to review existing recruitment and personnel policies in relation to personnel security and to identify areas of vulnerability
- support partners to devise an action plan to “harden” the organisation from insider threat
- encourage the development of mechanisms and relationships that would enable the public sector bodies to gather information/intelligence; to ensure that there were defined processes to support whistleblowers and to provide confidence in the confidential reporting concerns to senior managers, and where required to the CCU and
- where necessary, conduct sensitive investigations into public sector corruption or allegations thereof.

179. At the time of its creation in April 2013, the Public Sector Section was staffed by a Detective Superintendent, a Detective Chief Inspector and three Detective Inspectors each covering the three regions in the North, East and West.⁷⁵ In 2016, this had reduced to one Detective Chief Inspector, one Detective Inspector and one member of police staff who is an auditor.

180. There are existing channels across the public sector to report criminality and for “whistleblowing”. In addition, there are processes in place for information security, procurement, contracts, finance, audit, and risk management. Where a public sector organisation seeks to report an allegation of corruption to Police Scotland, the initial contact would most likely be through local policing and following assessment would be allocated to an appropriate resource for enquiry. The Police Scotland Fraud and Economic Crime SOP directs that any police officer or member of police staff in receipt of a public sector corruption/bribery allegation should note details and refer the matter to the Economic Crime Unit (ECU). We found that such crimes are almost exclusively investigated by the ECU, despite an intention that the CCU would seek primacy or assist in the investigation of corruption within public sector bodies.⁷⁶

181. We saw evidence of effective engagement by the CCU through the provision of strategic, tactical and operational advice across a range of public sector organisations.⁷⁷ These included local authorities, Scottish Fire and Rescue Service, Her Majesty’s Revenue and Customs (HMRC), COPFS, Courts Service, Scottish Water and the Scottish Prison Service.

⁷⁴ CCU Review 1 April 2013 – 1 November 2014 paragraph 4.3.

⁷⁵ Police Scotland CCU Structure and Remit Appendix 5 Public Sector Structure 2013.

⁷⁶ Source Intranet print out dated 11/1/16.

⁷⁷ CCU Public Sector Engagement Record (2015).

A practical example is when the CCU Public Sector Section assisted COPFS in 2014 to identify organisational vulnerabilities from corruption and provided advice and guidance on appropriate actions to reduce the identified risks. Notwithstanding that local authorities have their own internal audit arrangements we saw that the CCU Public Sector Auditor provided valued advice and expertise on the risk from corruption.

182. The Public Sectors Investigators Course was designed through partnership with police and public sector partners to prevent and investigate corruption and examines:

- serious and organised crime
- public sector corruption vulnerabilities
- insider threat
- partnership investigations
- information sharing and security
- vetting
- investigative strategy and tactics
- interviewing witnesses and statement noting
- open source research
- money laundering and financial intelligence
- bribery act 2010
- service integrity

183. This training has been well received by public sector partners and has enabled internal audit and investigators to have a better understanding of corruption. Participants take the lessons learned back to their own organisations and are encouraged to implement measures to reduce corruption risk. We recognise the positive feedback from participants and conclude that this activity has been a positive output.

184. In 2014, the CCU proposed a concept referred to as the “Integrity Model” within Scotland’s public sector. The model was produced in draft in January 2016 and is currently a work in progress. The Scottish Government strategy, *“Protecting Public Resources in Scotland”*⁷⁸ was published in June 2015 and sets out five strategic objectives to tackling fraud across the public sector. Scottish Government has established a Counter Fraud Forum to determine how intelligence can be shared, how opportunities for joint working can be usefully enhanced across all sectors in Scotland and how counter fraud best practice can be disseminated to organisations across the public sector in Scotland. The CCU contribute at this forum and across a number of areas designed to address the threat posed by serious organised crime.

185. We support the initial creation of the Police Scotland CCU Public Sector Section and acknowledge its contribution to preventing fraud and corruption across the public sector in Scotland. However, we believe that the role of the section currently lacks clarity and that there is insufficient capacity and capability to instigate an enquiry into public sector corruption and provide a sustained level of service delivery across all public sector organisations in Scotland. Given the establishment of the national Counter Fraud Forum, it would seem timely for Police Scotland to consult with its public sector partners and refresh the remit of the Public Sector Section in relation to aims, objectives, outputs and outcomes.

Recommendation 35

Police Scotland should consult with its public sector partners and refresh the remit of the CCU Public Sector Section.

186. Notwithstanding the above recommendation, we question whether the Public Sector Section should be located within the CCU or whether it would be better located within the Specialist

⁷⁸ The Scottish Government, [Protecting Public Resources in Scotland: The strategic approach to fighting fraud and error](#) (June 2015).

Crime Division. This would provide better synergy with the investigative function delivered through the Economic Crime Unit (ECU) and the preventative function delivered through Safer Communities, particularly in terms of serious and organised crime. Police Scotland may wish to review the location of the CCU Public Sector Section as part of wider strategic and structural review that we recommended earlier in this report (see recommendation 7).

Vetting section

187. We recognise that Police Scotland and the SPA are committed to maintaining the highest levels of honesty and integrity and preventing corrupt, dishonest, unethical or unprofessional behaviour. The public are entitled to expect that appropriate safeguards are in place to ensure that individuals employed by Police Scotland have integrity and that those who access police premises, police information systems and other assets hold a current and appropriate level of vetting. Vetting is a long established and recognised approach to mitigate against compromise risk.
188. On 19 March 2013, the JNCC approved the structure of the Police Scotland CCU, incorporating the existing legacy force vetting sections. Since then, the strategic direction has been to move from an interim vetting section distributed across a number of geographic locations to a centrally managed unit in a single location. In May 2015, the CCU launched a central vetting section to provide a national vetting function to Police Scotland and the SPA in respect of police officers, members of police staff and those that occupy designated posts.
189. The current vetting section structure comprises a vetting manager, a vetting coordinator, four senior vetting officers, 15 members of police staff (vetting officers) and four police constables. We found that the centralised vetting model was based on a demand profile which had underestimated the requirements of the service in terms of:
- supporting the strategic requirement of maintaining police officer numbers at 17,234 and the turnover of staff
 - supporting the recruitment of customer service agents
 - supporting the vetting of contractors building new facilities including, custody and solicitor consultation rooms
 - supporting the national review of designated posts ensuring that the right posts have the right level of vetting
 - supporting an annual review of vetted posts
190. The vetting section operates under the UK vetting policy, although we established that a new national vetting policy is being prepared and that Police Scotland has convened a Vetting Reference Group to ensure stakeholder engagement. The section currently administers about 12,000 vetting applications per year⁷⁹ in terms of Force vetting and National Security vetting.⁸⁰
191. The vetting section is also responsible for ensuring that all contractors working for Police Scotland and the SPA are fit and proper persons to access police premises, although the procedures in place mean that the cost associated with carrying out vetting checks of private external contractors rests with Police Scotland. We note that the CCU is considering options around the financial costs associated with vetting contractors and the potential for cost recovery- a position we encourage.
192. Since September 2013, police officer recruitment and associated vetting applications has averaged 400 per month. We established that in May 2015 the vetting backlog was about 800 applications with a steady increase month on month and on 2 March 2016, the backlog was 1155 applications. We found that the vetting section has completed an analysis of demand and estimated that it will take 24 months to clear the backlog, whilst maintaining vetting in line

⁷⁹ Police Scotland Transforming the Service Business Case dated November 2014. CCU Vetting Staff Restructure.

⁸⁰ See glossary.

with recruitment. Whilst we consider that the vetting section has a clear approach to reduce and eliminate the backlog, Police Scotland should continue to scrutinise progress and provide regular updates to the SPA. We shall monitor developments throughout 2016-17.

Recommendation 36

Police Scotland should monitor the progress of the vetting section to reduce and, if possible, eliminate the backlog of vetting applications and provide regular updates to the SPA.

193. Whilst we acknowledge that Police Scotland has taken the decision to locate the vetting section within the CCU structure, we are of the view that it could equally be located within a number of departments within Police Scotland, provided staff have access to the appropriate ICT systems. Police Scotland may wish to review the location of the vetting section as part of wider strategic and structural review that we recommended earlier in this report (see recommendation 7).
194. We established that a review of “super users” with administrative access to ICT systems remains work in progress. We consider this review is important in identifying and reducing the number of people within Police Scotland who have a high level or unrestricted access to police systems. It should therefore be progressed within a realistic timescale. These “super users” should be suitably vetted with safeguards put in place to ensure their access to information is for a legitimate policing purpose.

Recommendation 37

Police Scotland should expedite its review of police officers and members of police staff who are considered to be “super users” with administrative access to Force ICT systems. It should ensure these staff are appropriately vetted, with safeguards put in place to ensure access to information is for a legitimate policing purpose.


Partnerships

195. We found that centralising the CCU has improved engagement with partners both internally and externally. Senior police officers from the CCU attend a number of in-force specialist meetings including:
- divisional intelligence managers
 - covert human intelligence source (CHIS) controllers
 - serious organised crime group mapping peer review group
 - specialist crime division multi agency tasking and coordination group
196. The Detective Chief Superintendent (Head of CCU), represents Police Scotland at the National Police Counter Corruption Advisory Group (NPCCAG) and the Detective Chief Inspectors participate at the North East and North West National Police Counter Corruption Advisory Groups (NPCCAG).

User focus

197. We have a statutory duty to secure continuous improvement in “user focus” in the exercise of our scrutiny functions, and involve users of scrutinised services in the design of this review.⁸¹ In terms of this review, we primarily engaged with the police staff associations. The key issues raised in respect of police officers by the Scottish Police Federation and Association of Scottish Police Superintendents and UNISON have been incorporated within our review and have been reflected in our evidence and commented on within this report.

⁸¹ HIMCS has a statutory duty of user focus under the Public Services Reform (Scotland) Act 2010, Section 112.

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198. In addition to this, we were contacted by a number of police officers and former police officers who had been subject of Counter Corruption investigations; either under legacy force arrangements or under Police Scotland. We also took the opportunity to meet with a solicitor with significant experience in representing police officers and former police officers who had been subject of Counter Corruption investigations. Through his co-operation, we were able to arrange a focus group with a number of these police officers and former officers. While we were clear from the outset that we could not investigate or comment on any individual cases/complaints, we were interested to understand their experiences and identify any common themes or issues.
199. We found that the experiences from many of these police officers related to legacy Strathclyde Police CCU investigations, although there was a shared view that the culture from this unit was carried forward into the Police Scotland CCU in 2013. A common theme that emerged from this session was the manner in which police officers were dealt with by the CCU. Concerns were raised over some of the CCU tactics that were used, including their legality, proportionality and the apparent lack of procedural fairness. Accounts were provided in relation to alleged bullying and oppressive conduct, not only to the police officers themselves, but in relation to CCU dealings with work colleagues, family, friends and associates. The primary concern was over a general lack of transparency and accountability within the CCU and frustration by officers that when they raised complaints against CCU officers, these were not taken seriously or independently investigated.
200. We consider that in order to establish its legitimacy within Police Scotland, the CCU must be seen as an integral part of service and consistently operate within the same values and Code of Ethics as the rest of the service. Whilst we acknowledge that CCU staff operate within a challenging environment and may be subject to unwarranted allegations intended to undermine genuine corruption investigations, the need remains for Police Scotland to demonstrate even greater transparency and independence in dealing with complaints made against CCU staff. Whilst we have already commented within this report and made recommendations to increase the independent oversight of CCU investigations, we consider that additional safeguards should be put in place for complaints made against CCU police officers and members of police staff.
201. Although current processes ensure that all criminal complaints against CCU staff are referred to COPFS, there may be opportunities to strengthen this oversight to include non-criminal complaints and for COPFS to direct whether these investigations should be investigated internally by Police Scotland or referred to the PIRC. Given the statutory role of both the Scottish Police Authority and PIRC, it would be important to include them in the development of any proposals.

Recommendation 38

Police Scotland and the Scottish Police Authority should engage with the Crown Office and Procurator Fiscal Service, Police Investigations and Review Commissioner and other stakeholders to review and strengthen the overall approach to the independent scrutiny and oversight of complaints made against CCU police officers and members of police staff.

202. Whilst we were clear from the outset that we could not investigate or comment on any individual cases or complaints, we are aware that a number of the police officers we met had outstanding complaints in relation to their contact with the CCU. We consider that these outstanding cases should be resolved. Police Scotland has confirmed to us that the current Deputy Chief Constable Designate is aware of these outstanding complaints and has recently been in contact with the solicitor representing police officers and former police officers who had been subject of Counter Corruption investigations. We welcome this intervention by Police Scotland and consider that in the interests of transparency and service confidence, any review into outstanding complaints should include independent scrutiny.



Recommendation 39

Police Scotland should ensure that in the interests of transparency and service confidence, any review into outstanding complaints against the CCU should include independent scrutiny.



Appendix one – timeline of key events

The following timeline provides visibility of the key events including a synopsis of the factors that led to the contravention of the Code of Practice (2015).

| Date | Event |
|-----------------------------------|---|
| 8 May 2005 | Operation Grail. Following the discovery of the body of Emma Caldwell in a forested area near Roberton, Lanarkshire a murder investigation is commenced by Strathclyde Police. |
| 1 March 2006 | Operation Guard. Strathclyde Police commence a covert investigation that is focused on the alleged criminal activities of a number of Turkish males. |
| 31 July 2007 | Four Turkish males arrested and charged with the murder of Emma Caldwell. |
| 7 December 2007 | The four Turkish males are released from custody. |
| May 2011 to May 2015 | The Emma Caldwell murder is categorised as an “unresolved homicide” and managed by Strathclyde Police and then by the HGRU, Police Scotland. |
| October 2014 | IOCCO instigated a national UK inquiry into the use of Chapter 2 of Part 1 of the Regulation of Investigatory Powers Act (RIPA) 2000 to identify or determine journalistic sources. |
| 9 December 2014 | Home Office launched a consultation on proposals to update the <i>Acquisition and Disclosure of Communications Data</i> Code of Practice. Key changes included: <ul style="list-style-type: none"> ■ Enhancing the operational independence of the Authorising Officer from the specific investigation for which communications data was required. ■ Ensuring that where there may be concerns relating to professions that handle confidential or privileged information (e.g. lawyers or journalists) law enforcement should give protection and consideration to the level of intrusion in each application. Police Scotland were engaged with the consultation process. |
| 4 February 2015 | IOCCO’s inquiry into the use of Chapter 2 of Part 1 of the Regulation of Investigatory Powers Act (RIPA) 2000 to identify or determine journalistic sources is published. |
| 20 February 2015 and 6 March 2015 | Police Scotland and Scottish Government in discussion with the Home Office on changes to the Code of Practice (2015). |
| 4 March 2015 | Part 1 Chapter 2 Regulation of Investigatory Powers Act (RIPA) 2000 meeting with the SRO, Detective Chief Superintendent (Head of CCU) and Interim Head of Legal Services, Police Scotland to discuss changes to the Code of Practice (2015) and requirement for judicial authorisation. |
| 6 March 2015 | Informal notification by IOCCO to Police Scotland of the intended annual inspection of Police Scotland. |
| 13 March 2015 | IOCCO inquiry report available via the SPoC Communications Data Assistant. |



| | |
|--------------------|--|
| 23 March 2015 | Formal notification of the annual (2015) inspection by IOCCO of Police Scotland. |
| 25 March 2015 | The revised <i>Acquisition and Disclosure of Communications Data Code of Practice (2015)</i> came into effect. |
| 26 March 2015 | Communications Investigations Unit advised SPoC (West) of the changes to the Code and provided direction regarding the judicial process. |
| 27 March 2015 | Corporate Communications Department, Police Scotland prepare statement in response to a media enquiry regarding the 10 th anniversary of the Emma Caldwell murder. |
| 30 March 2015 | Home Office PowerPoint uploaded onto Home Office Communications Data Assistant. |
| 3 April 2015 | Corporate Communications Department, Police Scotland approve the media statement in relation to the unresolved murder. |
| 5 April 2015 | Sunday Mail article regarding unresolved murder of Emma Caldwell. |
| 5 April 2015 | Assistant Chief Constable (Major Crime and Public Protection) requests that the HGRU scope the timeline and breadth of the previous investigation for further consideration of review/reinvestigation. |
| 7 April 2015 | Communications Investigations Unit alert Police Scotland's Authorising Officers of the changes to the Code of Practice (2015). |
| 7 April 2015 | Designated Person (Detective Superintendent) briefed on the revised Code of Practice (2015). |
| 7 April 2015 | Training event scheduled for 8 May 2015 and invitation extended to all SPoCs. |
| 7 April 2015 | CCU intelligence assessment instigated following the Sunday Mail newspaper article published 5 April 2015. |
| 8 April 2015 | Designated Persons guidance documents updated and posted on the Police Scotland intranet. |
| 10 April 2015 | Assistant Chief Constable (Major Crime and Public Protection) instructed HGRU to carry out a review of the HOLMES account for the Emma Caldwell murder. |
| 6 May 2015 | Training event via the College of Policing Distance Learning Tradecraft. |
| 7 May 2015 | Initial briefing paper submitted by HGRU. |
| 12 and 17 May 2015 | Radio 4 BBC Programme. 'Who killed Emma'? |
| 22 May 2015 | COPFS write to Police Scotland advising that following an initial review of the circumstances of Emma Caldwell's death Crown Counsel instructed that the death be reinvestigated. |
| 28 May 2015 | Enquiry on HOLMES reveal that the six statements referred in the article 5 April 2015 were forwarded to COPFS on 20 September 2007. |
| 31 May 2015 | Sunday Herald article entitled: Police Whistleblower: I was told to withhold evidence during the Emma Caldwell murder inquiry. |
| 4 June 2015 | COPFS confirmed that six statements were disclosed to defence agents acting on behalf of four Turkish accused as part of the Criminal Justice process. |
| 4 June 2015 | Senior Investigating Officer appointed for the reinvestigation of the murder of Emma Caldwell. |

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| 15 - 17 June 2015 | IOCCO (2015) annual inspection of Police Scotland. Contraventions of the revised Code identified by IOCCO inspectors are notified to Police Scotland. |
| 16 June 2015 | Senior Investigating Officer briefed reinvestigation team and preparatory work begins. |
| 29 June 2015 | Emma Caldwell murder reinvestigation formally commenced. |
| 8 July 2015 | Internal review conducted by the Assistant Chief Constable, Organised Crime, Counter Terrorism and Safer Communities, Police Scotland. |
| 16 July 2015 | Interception of Communications Commissioner's Office IOCCO half yearly report published reporting that two police forces had contravened the Acquisition and Disclosure of Communications Data Code of Practice (2015) regarding journalistic sources and that further investigation required. |
| 4 August 2015 | Letter from Police Scotland to IOCCO providing details of the outcome of the internal Police Scotland review of the circumstances. |
| 4 August 2015 | Interception of Communications Commissioner's Office IOCCO released a statement in response to a number of media enquiries about recent findings concerning the acquisition of communications data by police forces to determine journalistic sources. |
| 21 August 2015 | CCU intelligence file closed. |
| 25 November 2015 | Statement by the Interception of Communications Commissioner The Rt Hon. Sir Stanley Burnton, Interception of Communications Commissioner statement that there had been contraventions of the Code of Practice (2015) in respect of five applications for communications data submitted by Police Scotland relating to one investigation. |
| 25 November 2015 | Police Scotland statement on IOCCO findings. |
| 25 November 2015 | Scottish Police Authority statement on IOCCO findings. |
| 25 November 2015 | Cabinet Secretary for Justice statement on IOCCO findings. |
| 1 December 2015 | Interception of Communications by Police Scotland Justice Committee consider the Interception of Communications Commissioner's statement of 25 November 2015. |
| 8 December 2015 | Interception of Communications by Police Scotland (in private) The Committee considered its approach to the 15 December evidence session on matters arising from the Interception of Communications Commissioner's statement of 25 November 2015. |
| 15 December 2015 | Interception of Communications by Police Scotland Session one: The Committee take evidence from Neil Richardson, Deputy Chief Constable Designate ,Police Scotland and John Foley, Chief Executive, Scottish Police Authority. Session two: The Committee take evidence from Michael Matheson, Cabinet Secretary for Justice, Scottish Government. |
| 12 January 2016 | Interception of Communications by Police Scotland The Committee take evidence from Ruaraidh Nicolson, Assistant Chief Constable, Organised Crime, Counter Terrorism and Safer Communities, Police Scotland. |

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| 1 March 2016 | <p>Interception of communications by Police Scotland The Committee take evidence from Philip Gormley, Chief Constable, Police Scotland; Andrew Flanagan, Chair Scottish Police Authority and John Foley, Chief Executive, Scottish Police Authority on the interception of communications and related matters of public interest.</p> |
| 17 June 2016 | <p>Interception of Communications Commissioner's Office IOCCO publish further statement, Commissioner's memorandum and accompanying annexes and letter to Chief Constable.</p> |

Appendix two – glossary

| | Description |
|---------------------|--|
| ACCAG | ACPO Counter Corruption Advisory Group (ACCAG). The National Police Counter Corruption Advisory Group (NPCCAG) replaced ACCAG in January 2014. |
| Applicant | The applicant is a person involved in conducting an investigation or operation for a relevant public authority who makes an application in writing or electronically for the acquisition of communications data. The applicant completes an application form, setting out for consideration by the Designated Person, the necessity and proportionality of a specific requirement for acquiring communications data. Paragraphs 3.3 – 3.6 of the Code of Practice (2015). |
| CCRU | Crown Office Cold Case Review Unit. |
| Communications Data | The term ‘communications data’ embraces the ‘who’, ‘when’, ‘where’, and ‘how’ of a communication but not the content, not what was said or written. Paragraphs 2.12 – 2.23 of the Code of Practice (2015). |
| CSP | Communication Service Provider is an operator who provides a postal or telecommunications service. |
| Designated Person | <p>The Designated Person is a person holding a prescribed office in a relevant public authority. It is the Designated Person’s responsibility to consider the application and record their considerations at the time (or as soon as is reasonably practicable) in writing or electronically. If the Designated Person believes the acquisition of communications data is necessary and proportionate in the specific circumstances, an authorisation is granted or a notice is given.</p> <p>Designated Persons must be independent from operations and investigations when granting authorisations or giving notices related to those operations.</p> <p>Paragraphs 3.7 – 3.18 of the Code of Practice (2015).</p> |
| Force Vetting | <ul style="list-style-type: none"> ■ recruitment of police, staff and special constables ■ management vetting ■ non-police personnel vetting (NPPV). <p>NPPV has three levels of vetting (i) general trades which may access police buildings but not systems (ii) access to police systems and (iii) access to sensitive police systems and information.</p> |
| HGRU | Homicide Governance and Review Unit, Police Scotland |
| i.Base | IBM® i2® iBase is an intelligence data management application that enables analysts to capture, control and analyse multisource data using a wide range of analytical tools. The system provides visualisation capabilities to help identify networks, connections, patterns and trends, together with dissemination tools to support faster and more informed decision making. |

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| IOCCO | <p>IOCCO is an independent oversight body – independent of Government and Parliament – led by the Interception of Communications Commissioner. IOCCO’s function is to keep under review the interception of communications and the acquisition and disclosure of communications data under RIPA 2000. IOCCO conducts thorough and robust inspections of public authorities which have powers to intercept communications and acquire communications data. These inspections ensure they are acting within the law.</p> |
| Investigatory Powers Tribunal | <p>The Investigatory Powers Tribunal was established in October 2000 under RIPA 2000 and provides a right of redress for anyone who believes they have been a victim of unlawful action under RIPA or wider human rights infringements in contravention of the Human Rights Act 1998.</p> <p>The Tribunal is made up of senior members of the judiciary and the legal profession and is independent of the Government. The Tribunal has full powers to investigate and decide any case within its jurisdiction which includes the acquisition and disclosure of communications data under RIPA 2000.</p> <p>Paragraphs 9.3 – 9.4 of the Code of Practice (2015).</p> |
| Journalist ⁸² | <p>Issues surrounding the infringement of the right to freedom of expression may arise where a request is made for the communications data of a journalist. There is a strong public interest in protecting a free press and freedom of expression in a democratic society, including the willingness of sources to provide information to journalists anonymously. Where an application is intended to determine the source of journalistic information, there must therefore be an overriding requirement in the public interest and the guidance should be followed.</p> <p>Paragraphs 3.78 – 3.84 of the Code of Practice (2015).</p> |
| National Security Vetting | <p>National security vetting is required to enable access to Government systems and includes counter terrorist checks, security checks and developed vetting. The national vetting section administer such vetting requirements on behalf of Police Scotland and the SPA.</p> |

⁸² See the Appendix to the recommendation No R (2000) 7 of the [Committee of Ministers to Member States](#).

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| Necessity | <p>In order to justify that an application is necessary, the application needs as a minimum to cover three main points:</p> <ul style="list-style-type: none"> ■ the event under investigation, such as a crime or vulnerable missing person; ■ the person, such as a suspect, witness or missing person, and how they are linked to the event; and ■ the communications data, such as a telephone number or IP address, and how this data is related to the person and the event. <p>Necessity should be a short explanation of the event, the person and the communications data and how these three link together. The application must establish the link between the three aspects to be able to demonstrate the acquisition of communications data is necessary for the statutory purpose specified.</p> <p>Paragraphs 2.37 – 2.38 of the Code of Practice (2015).</p> |
| NPCCAG | <p>The National Police Counter Corruption Advisory Group (NPCCAG) replaced ACCAG in January 2014.</p> |
| Policing Purpose | <ul style="list-style-type: none"> ■ for the prevention and detection of crime ■ to prevent harm/risk of harm to an individual(s) ■ if required for the purpose of discharging statutory functions ■ if needed for legal proceedings. |
| Proportionality | <p>Applications should include an outline of how obtaining the data will benefit the investigation or operation. If more than one item of data is being sought, the relevance of the additional data should be explained.</p> <p>Paragraphs 2.39 – 2.45 of the Code of Practice (2015).</p> |
| Reckless | <p>Should the Commissioner establish that an individual has been adversely affected by any wilful or reckless failure by any person within a relevant public authority exercising or complying with the powers and duties under RIPA in relation to the acquisition or disclosure of communications data, he shall, subject to safeguarding national security, inform the affected individual of the existence of the Investigatory Powers Tribunal and its role.</p> <p>Paragraph 8.3 of the Code of Practice (2015).</p> |
| Senior Responsible Officer | <p>Within every relevant public authority a Senior Responsible Officer (SRO) must be responsible for:</p> <ul style="list-style-type: none"> ■ the integrity of the process in place within the public authority to acquire communications data ■ compliance with Part 1 Chapter 2 of RIPA 2000 and with the Code of Practice (2015) ■ oversight of the reporting of errors to IOCCO and the identification of both the cause(s) of errors and the implementation of processes to minimise repetition of errors ■ engagement with the IOCCO inspectors when they conduct their inspections; and where necessary, oversight of the implementation of post- inspection action plan approved by the Commissioner. <p>Paragraph 3.31 of the Code of Practice (2015).</p> |

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| Service Use Information | <p>Service use information is data relating to the use made by any person of a communication service and may be the kind of information that habitually used to appear on a Communication Service Provider's itemised billing document to customers.</p> <p>Paragraphs 2.28 – 2.29 of the Code of Practice (2015).</p> |
| Single Point of Contact | <p>The Single Point of Contact (SPoC) is an accredited individual trained to facilitate lawful acquisition of communications data and effective co-operation between Police Scotland and Communication Service Providers.</p> <p>Paragraphs 3.19 – 3.30 of the Code of Practice (2015).</p> |
| SMART Objectives | <p>Objectives should be SMART i.e. Specific, Measurable, Achievable, Realistic and Timed.</p> |
| Subscriber Information | <p>Subscriber information is data held or obtained by a Communication Service Provider in relation to a customer and may be the kind of information which a customer typically provides when they sign up to use a service. For example, the recorded name and address of the subscriber of a telephone number or the account holder of an email address.</p> <p>Paragraphs 2.30 – 2.35 of the Code of Practice (2015).</p> |
| Traffic Data | <p>Traffic data is data that may be attached to a communication for the purpose of transmitting it and could appear to identify the sender and recipient of the communication, the location from which and the time at which it was sent, and other related material. Paragraphs 2.24 – 2.27 of the Code of Practice (2015).</p> |
| Unresolved Homicide | <p>A death where there is clear evidence of homicide or there is a suspicion that the death has resulted from the homicidal act of another person in respect of which:</p> <ul style="list-style-type: none"> (a) no suspects are identified (b) a suspect has been identified but not charged (c) a suspect has been identified and charged but not placed on petition (d) a suspect has appeared on petition but no indictment served due to there being considered an insufficiency of evidence at that time (e) a suspect has been indicted and the case has not proceeded to a conclusion due to the failure of the accused to appear, the indictment not being called or being deserted pro loco et tempore (f) a suspect has been indicted and a trial concluded which has resulted in an acquittal (g) a suspect has been convicted but acquitted on appeal and no fresh prosecution has been authorised by the appeal court. |



Appendix three – investigatory powers and authorisation levels

| Acquisition and disclosure of communications data | | |
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| Activity | Authorisation Level | Legislation |
| Traffic Data | Designated Person Superintendent | Section 21(4)(a) of RIPA 2000 |
| Service Use Information | Designated Person Superintendent | Section 21(4)(b) of RIPA 2000 |
| Subscriber Information | Designated Person Inspector | Section 21(4)(c) of RIPA 2000 |
| Police Scotland's internal policy instructs that any requests for Communication Data that fall within the scope of paragraphs 3.78 to 3.79 of the Code of Practice (2015) - Communication Data involving certain professions - are now referred to the SRO for clarification and referral for judicial approval. | | |



Appendix four - methodology

The terms of reference for this review were 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 into contravention of the *Acquisition and Disclosure of Communications Data*, Code of Practice (2015) is exclusively a matter for IOCCO and our review did not cover any matters that are properly the statutory remit for IOCCO. Although our review did not re-examine or comment on the findings by the Commissioner, we have examined the wider investigation conducted by the CCU into the circumstances which gave rise to the applications for communication data.

While we examined the co-ordination of activity between the CCU and the PSD we did not undertake a comprehensive review of PSD.

Objectives

The SPA 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 police officers and members of police staff
- assurance against best practice

These have been incorporated into our methodology and are addressed through our structured Inspection Framework⁸³ 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 provided a structure to our review which was risk-based, proportionate and focused on improving policing in Scotland.

⁸³ HMICS, [Inspection Framework](#) (September 2014).

Exhibit HMICS Inspection Framework

| HMICS Inspection Framework | | | | | |
|--------------------------------|--|---|---|---|---|
| Outcomes | Leadership and governance | Planning and process | 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 co-ordinated 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 | | | |

Our review was delivered over five stages, a number of which were undertaken concurrently.

Stage 1 Initial scoping phase

The terms of reference for the review were published on 11 January 2016 and the Lead Inspector commenced an initial scoping of the work 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.

During this stage we examined relevant strategies, policies, policing plans and analytical products designed specifically to address the threat from corruption including performance and management information. This initial stage also included desktop research, relevant academic research, previous review reports and initial meetings with key stakeholders. We scanned the media and websites to determine how the CCU is viewed by the public and key partnerships. In accordance with our duty of user focus we also gained a service users' perspectives from key stakeholders, including staff associations and relevant partners.

Stage 2 Fieldwork

During this stage we reviewed and assessed the initial referral to the CCU and the subsequent investigation conducted by the CCU into the circumstances which gave rise to the applications for communication data that were found by IOCCO to have contravened the Code of Practice (2015).

Stage 3 Fieldwork

This phase focused on testing operational practice of the CCU and compliance with relevant legislation, codes of practice, policies, procedures and recognised best practice. Specific topics and questions for interviews and focus groups were structured around our Inspection Framework. A single point of contact for the review was identified by Police Scotland to support the review process and to facilitate appropriate access to people and information. Review visits were conducted across Police Scotland.

Stage 4 Review and analysis of evidence

During this stage, we reviewed and evaluated the information and evidence collected during the process and 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 was prepared in line with HMICS reporting format guidelines. Quality assurance was provided by way of internal review followed by a factual accuracy check by Police Scotland and other relevant stakeholders who contributed to the evidence base of our report.



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About Her Majesty's Inspectorate of Constabulary in Scotland

HMICS operates independently of Police Scotland, the Scottish Police Authority and the Scottish Government. Under the Police and Fire Reform (Scotland) Act 2012, our role is to review the state, effectiveness and efficiency of Police Scotland and the Scottish Police Authority. We support improvement in policing by carrying out inspections, making recommendations and highlighting effective practice.

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