



HM Inspectorate of Constabulary for Scotland

Quality of Service

A review of the investigation of complaints against the police in Scotland

Quality of Service

A review of the investigation of complaints against the police in Scotland

© Crown copyright 2004

ISBN 0-7559-4209-4

Scottish Executive
St Andrew's House
Edinburgh
EH1 3DG

Produced for the Scottish Executive by **Astron** B35555 6-04
Published by the Scottish Executive, June, 2004

Further copies are available from
The Stationery Office Bookshop
71 Lothian Road
Edinburgh EH3 9AZ
Tel 0870 606 55 66

The text pages of this document are produced from 100% elemental chlorine-free,
environmentally-preferred material and are 100% recyclable.

Contents	Page
EXECUTIVE SUMMARY AND RECOMMENDATIONS	
INTRODUCTION	I
PART I: THE THEMATIC REVIEW INSPECTION	4
Chapter 1 Progress Against Recommendations	4
Introduction	4
Progress Against Part I Recommendations	4
Chapter 2 Progress Against Part I and Part III Suggestions	23
Introduction	23
Progress Against Part I Suggestions	23
Case Study of PAM – Personnel Analysis Meeting	33
Progress Against Part III Suggestions	37
Recommendations Arising From Part I of the Review Inspection	38
Areas Requiring Further Attention	39
Good Practice	41
PART II: THE WAY AHEAD	42
Chapter 3 Fit for Purpose?	42
Introduction	42
A Modern Complaints System	42
Support or Straightjacket?	43
The Nature of a Complaint	44
Case Study – Conduct Unbecoming?	45
Counting the Cost	46
From Blame Culture to Learning Culture	47
Chapter 4 A Spectrum of Complaints	49
Across the Spectrum	49
Quality of Service	50
Minor Complaints	51
Complaints and Mediation	52
Case Study – The Application of Restorative Justice to the Police	53
Complaints Process	
Role of the Investigating Officer	54
Serious Complaints/Criminality – The Role of the Procurator Fiscal	56
The Investigating Officer's Report	57
Maintaining Integrity	58
Informed Assessment	59

Chapter 5	A Framework for the Future	61
	Introduction	61
	Current Legislation	61
	ECHR Compliant?	61
	An Imperfect Set of Rules?	63
	Conduct Regulations	63
	Senior Officers Conduct	64
	Police Appeals Tribunals	64
	Special Constables and Cadets	65
	National Forces	65
	A Case for Employment Law?	66
	A Framework for the Future	68
	Recommendations Arising From Part II – “The Way Ahead”	70

PART III: MORE INFORMATION AND STATISTICS **72**

Chapter 6	More Information and Statistics	72
	Background to Data	72
	Complaints Cases Received and Disposed Of	72
	Allegations	74
	Referrals to the Procurator Fiscal	78
	Professional Misconduct	78
	Dissatisfied Complainers	81

APPENDIX A – Statement of Ethical Principles **82**

Tables

1. Investigating Complaints – The Costs
2. Strengths and Weaknesses of Regionalisation

Figures

1. The Complaints Spectrum
2. Informed Assessment
3. Number of complaints cases received by Scottish Police forces in last 5 years
4. Complaints cases per 100 police officers and members of staff
5. Number of complaint allegations disposed of by Scottish forces in last 5 years
6. Share of disposals by allegation type, 2002-03
7. Proportion of allegations found to be substantiated, per complaint type, 2002-03
8. Nature of allegation disposals, 1989-99 to 2002-03
9. Percentage shares of disposal types by force, 2002-03
10. Cases leading to criminal proceedings as a % of all referrals and all disposed cases
11. % share of disposals for conduct cases, 2002-03
12. % share of disposals at conduct hearings, where guilt proven or admitted
13. HMIC complaints as percentage of force complaints

EXECUTIVE SUMMARY

HMIC has carried out a review of progress made by the Scottish police service and other stakeholders in addressing recommendations and suggestions made in “A Fair Cop?” (HMIC 2000) which reported on the handling of complaints against the police in Scotland in light of recommendations arising from the report into the death of Stephen Lawrence. The review was carried out against a backdrop of the Scottish Executive’s commitment to establish an independent police complaints body within the lifetime of this Parliament.

“A Fair Cop?” highlighted that the overwhelming majority of complaints against police officers were investigated with thoroughness, impartiality and integrity but made recommendations to improve, among other things, public awareness of complaints procedures, the ease with which complaints can be registered, the structured response to quality of service complaints and the responsiveness of the process. HMIC has found that the service has, generally, responded well to the recommendations and, in Part I of the Report, it reflects on progress made, highlighting elements of good practice. Further recommendations are made and areas which require further attention are identified to build on work already carried out and, in particular, to encourage a structured sharing of information between forces to enhance consistency in the application of misconduct regulations. Based on the evidence of this review, the public can be reassured that considerable effort is expended by the Scottish police service in ensuring a robust examination of allegations of criminality and misconduct.

However, HMIC, based on its experience of the police complaints process, particularly in relation to its statutory authority to examine complaints referred to it by members of the public who are dissatisfied with the manner in which forces deal with complaints, goes on, in Part II, to consider the adequacy of the existing complaints framework. It does so in the context of lingering perceptions of unfairness among members of public who make a complaint and officers or members of staff who are the subject of the complaint and the widespread use of complaints across the public and private sectors to identify learning outcomes and contribute to continuous improvement.

HMIC identifies a broad spectrum of issues ranging in importance from serious corruption to minor misconduct, such as incivility, all of which must be considered within a complaints framework. The spectrum should also, however, include quality of service issues which, while they are currently responded to, are not recognised within the existing discipline or misconduct complaints framework established by forces.

Having due regard to the special position of police officers, HMIC is convinced that the complaints framework requires further development if forces are to maximise the learning opportunities which arise from all types of complaints.

It encourages movement away from a “one size fits all” approach to a framework which continues to allow for thorough investigation of criminality and serious misconduct matters but also provides increased scope for a quick and effective response to minor complaints with consideration being given to the development of mediation techniques. On the one hand, HMIC presents the case for enhanced professionalism in dealing with serious cases while, on the other, it suggests that minor complaints, even those inferring misconduct, can be dealt with, following informed assessment, without recourse to misconduct procedures.

HMIC recognises that this might best be addressed within forces by outward facing “customer service” arrangements and structures.

HMIC’s report is not prescriptive but it recognises that, if this new philosophy is to be applied, there is a need to review current legislation. It also highlights the need for a review of rules and regulations in respect of senior officers, special constables, cadets and Police Appeal Tribunals and identifies the need for work to commence in this regard under the direction of the Scottish Executive in early course.

The following recommendations are made within the report:

Recommendations arising from the Review Inspection

RECOMMENDATION 1: HMIC recommends that ACPOS, in consultation with COPFS, develops a mechanism to allow complainers who have a specific criminal complaint to make to be able to register this directly with the procurator fiscal (paragraph 1.17).

RECOMMENDATION 2: HMIC recommends that ACPOS enters into discussions with COPFS and the Scottish Executive with a view to publication of a suitable police complaints leaflet (paragraph 1.28).

RECOMMENDATION 3: HMIC recommends that ACPOS creates and maintains a national database of all allegations and disposals from misconduct hearings (paragraph 1.32).

RECOMMENDATION 4: HMIC recommends that forces benchmark their suspension policies to ensure that all policies are consistent in content (paragraph 1.35).

RECOMMENDATION 5: HMIC recommends that ACPOS engages with its partners in the Scottish Criminal Justice system, including COPFS and the Scottish Court Service, to discuss the merits and practicalities of fast tracking criminal cases involving police staff (paragraph 1.41).

RECOMMENDATION 6: HMIC recommends that a national evaluation of lay visitor schemes should be carried out by the Scottish Executive in consultation with police authorities (paragraph 1.79).

Recommendations arising from Part II - “The Way Ahead”

RECOMMENDATION 7: HMIC recommends, in line with the philosophy of the similar recommendation as detailed in “A Fair Cop?”, that ACPOS agrees and publishes guidelines to deal with quality of service complaints that do not fall within the statutory definition set out in the regulations. The guidelines should encompass counting rules, enquiry procedures and the rights of complainers (paragraph 4.6).

RECOMMENDATION 8: HMIC recommends that ACPOS, assisted by the Scottish Executive, pilots the use of restorative justice techniques within the police complaints process in a Scottish force. If successful, consideration should be given by all forces to adopting such an approach as part of the police complaints system (paragraph 4.16).

RECOMMENDATION 9: HMIC recommends that all complaints Investigating Officers should be full time in the role as members of Complaints and Professional Standards departments (paragraph 4.20).

RECOMMENDATION 10: HMIC recommends that ACPOS enters into discussions with COPFS to seek agreement on a memorandum of understanding around the respective roles of the DCC and APF and the interface between them, to enhance informed decision making by both parties in proceedings with criminal and misconduct allegations (paragraph 4.28).

RECOMMENDATION 11: HMIC recommends that ACPOS enters into discussions with the Scottish Executive to consider appropriate statutory provision to safeguard the confidentiality of the Investigating Officer’s report (paragraph 4.31).

RECOMMENDATION 12: HMIC recommends that all Investigating Officers’ reports to the APF should contain both the complainer’s previous convictions and the subject officer(s) complaints history (paragraph 4.32).

RECOMMENDATION 13: HMIC recommends that all forces should be supported by a dedicated professional standards unit, capable of conducting robust proactive investigation (paragraph 4.34).

RECOMMENDATION 14: HMIC recommends that forces put in place new arrangements to manage the wide range of complaints received (paragraph 4.37).

RECOMMENDATION 15: HMIC recommends that the current role of assessors who may assist the chair should be amended to become part of a three person adjudicating panel (paragraph 5.10).

RECOMMENDATION 16: HMIC recommends that the current raft of rules and regulations be reviewed to take account of and address the issues that have been highlighted in both this report and its predecessor, as well as proposals for an independent police complaints body.

HMIC envisages a coherent set of rules and regulations, accompanied by detailed guidance, affecting all police officers from cadet to chief constable.

To formulate such a body of legislation and guidance, HMIC recommends the early establishment, by the Scottish Executive, of a working party of practitioners (paragraph 5.35).

INTRODUCTION

- 1** The examination of the way in which complaints against the police is addressed is not a new phenomenon. The police service has been subject to much scrutiny in this area. One of the drivers for the Royal Commission into policing (1962) was a concern around this very issue. HMIC has itself conducted two thematic inspections on the handling of complaints against the police. The first of these was undertaken in 1992 by the then HM Chief Inspector of Constabulary, Mr John Boyd. Its findings and recommendations played a significant part in the subsequent reform of much of the legislation governing police performance and conduct at all levels in the service.
- 2** The second was requested by the Scottish Executive in determining its response to the recommendations of the report into the death of Stephen Lawrence and, in particular, Recommendation 58 which concerns the investigation of serious complaints against the police. This resulted in a report entitled “A Fair Cop?”, which was published in April 2000. Like its earlier counterpart, it provided a series of recommendations and suggestions intended to strengthen and improve the existing framework for the investigation of complaints. A number of benefits can be identified as having come from this inspection and report.
- 3** There is now clear evidence that complaints are being investigated thoroughly. HMIC, in the course of its planned programme of inspection of forces, always examines the way forces are dealing with complaints and has the opportunity to examine individual cases. In its oversight of complaints as laid out by the Police and Magistrates’ Courts Act 1994, Section 61, HMIC also examines, in detail, individual cases where members of the public have expressed dissatisfaction with some aspect of the complaint handling process. HMIC’s examination of some 92 cases referred to it during 2002-03 highlights the thoroughness of the complaints investigation. It also confirms the view that forces, in responding to complainers, have taken cognisance of “A Fair Cop?” and are seeking to provide as full an explanation as possible to those complaining.
- 4** “A Fair Cop?” succeeded in raising awareness in the complaints process and this has encouraged debate. In response to the report, the Scottish Executive published a consultation paper in July 2001 which put forward a number of proposals for enhancing the independence of the police complaints system. Following consultation, the Executive is currently considering options for change. It is committed to setting up an independent complaints body within the lifetime of this Parliament.
- 5** In identifying the positive developments that have arisen from this detailed scrutiny, there is no room for complacency. At the January 2003 meeting of the Police Advisory Board for Scotland (PABS), concerns were raised regarding aspects of the complaints process, in particular in relation to misconduct hearings and the associated appeals process. A view was taken that the time was right for HMIC to carry out a thorough review of progress made by the Scottish police service and partners in addressing the recommendations and suggestions contained within “A Fair Cop?”, as well as addressing those issues raised at PABS. Like its predecessors, this report is also intended to stimulate and contribute to the ongoing debate around the investigation of complaints against the police in Scotland.

-
- 6** The inspection was carried out initially, under the direction of Sir Roy Cameron, then HMCIC, and thereafter his successor Mr Andrew Brown. Field work was undertaken by Mr Kenneth McInnes, Assistant Inspector of Constabulary, and Mrs Jane Irvine, HM Lay Inspector of Constabulary, supported by staff officers at HMIC.

Terms of Reference

- 7** As part of the inspection process, a steering group was convened consisting of representatives from the police staff associations, the Scottish Executive, the Convention of Scottish Local Authorities (COSLA) and the Society of Local Authority Chief Executives and senior managers (SOLACE). The group agreed the following terms of reference:
- to review progress made by the Scottish police service and other stakeholders in addressing recommendations and suggestions made by HMIC in its thematic inspection report "A Fair Cop?" (2000)
 - to examine areas of concern in relation to existing legislation regarding conduct within the Scottish police service and, with reference to other discipline frameworks, to consider options for improvement in the light of the changing needs of the 21st Century.
- 8** The specific objectives of the inspection were to:
- establish how far the service has progressed in implementing the 18 recommendations and 12 suggestions contained in Part I of "A Fair Cop?"
 - examine the views of internal and external stakeholders in relation to the five suggestions contained in Part III of "A Fair Cop?"
 - identify options for change
 - assess the impact of related employment law
 - examine the operation of other disciplinary systems
 - identify instances of good practice
 - make recommendations designed to ensure the continuous improvement of the service provided by the Scottish police service.
- 9** This review did not specifically address the issue of enhanced independence within the police complaints system. As referred to earlier, an extensive public consultation exercise has already been carried out and the outcomes from that exercise will be announced by the Executive in due course.

Methodology

- 10** The Inspection began with an environmental scan and literature review to place the project in context. A written inspection protocol was prepared and circulated to the Scottish Executive, the eight Scottish forces and the Association of Chief Police Officers in Scotland (ACPOS). Detailed responses along with supporting material were received and analysed. This process assisted in fieldwork which was undertaken between September and November 2003.

- 11** All police forces were visited and a cross section of staff interviewed. In every force, deputy chief constables, heads of Complaints/Professional Standards departments and representatives of the Superintendents Association and Police Federation were interviewed. In addition, a cross section of investigating officers, operational commanders and constables was seen in focus group settings. Alongside visits to forces, the opportunity was taken to speak to Conveners and Clerks of police authorities, as well as Area Procurators Fiscal who, following reorganisation of the Crown Office and Procurator Fiscal Service (COPFS), have replaced Regional Procurators Fiscal in assuming responsibility for all criminal allegations against police officers. In one force area, lay visitors, who carry out independent, unannounced visits to police custody facilities, were also seen.
- 12** At a national level, Crown Office and the Scottish Executive Justice Department were consulted. External stakeholders were also given the opportunity to contribute, including the Scottish Consumer Council, the Scottish Human Rights Centre and the Commission for Racial Equality. Comparative visits were made to Northern Ireland and England where meetings took place with the Police Ombudsman for Northern Ireland, representatives of the Association of Chief Police Officers for England, Wales and Northern Ireland, the Police Complaints Authority and its then shadow body, the new Independent Police Complaints Commission. Internationally, a comparative visit was made to the Boston Police Department, USA. In particular, the opportunity was taken to study that force's use of Personnel Analysis Meetings (PAM), a holistic approach to people management.
- 13** HMIC, in the course of recent thematics, has commissioned independent research. On this occasion, the Centre for Public Policy and Management, Robert Gordon University, carried out a review of complaints and discipline procedures in the public sector¹. The findings of the review have been invaluable in informing parts of this report. HMIC also sought advice from its lawyers in examining processes from a legal perspective.

¹ 'Complaints and Discipline Procedure in the Public Sector' - commissioned by HMIC from Robert Gordon University, Centre for Public Policy and Management, November 2003.

Chapter I Progress Against Recommendations

Introduction

- 1.1** “A Fair Cop?” contained some eighteen recommendations most of which were considered “capable of rapid implementation”. Emerging from the review of progress made, HMIC is pleased to note the progress that has been made across Scotland but equally there is evidence that more requires to be done. Within this chapter, each of the recommendations is considered in turn. Where good practice has been identified, it is highlighted and forces are urged to take cognisance of same and consider whether it is appropriate to their policing environment. Where further progress is required, it is also identified and again forces should map their own progress against the overall benchmark that this report attempts to provide. Those areas that should be progressed as a priority are summarised at the end of Chapter 2. Given the ever changing police environment, it is not surprising that, arising from the review of the recommendations, fresh issues have been identified which, in HMIC’s opinion, merit attention. These are also summarised at the end of Chapter 2.

Progress Against Part I Recommendations

RECOMMENDATION I: HMIC recommends that chief constables review the standard letters to complainers and undertake any changes which may assist in making clear the independent investigative role of the fiscal service.

- 1.2** During the original inspection, HMIC found that, outwith those with a specialist involvement, there was limited understanding of the independent investigative role of COPFS in respect of all criminal allegations. Attempting to address this, and as a step towards addressing the perception that the police are in every case investigating themselves, chief constables were asked to consider the content of standard letters used by forces to inform a complainer, where a criminal allegation has been made, of the actions taken. It was customary for such letters to comment on the complaint being referred to the procurator fiscal and in appropriate cases, to the independent senior police officer appointed to investigate the complaint, but in most cases the letter did not make clear the independent role of the procurator fiscal in directing investigations, including the actions of the police investigating officer.
- 1.3** For the most part, forces have reviewed the content of letters to complainers to highlight the independent role of the procurator fiscal but HMIC identified instances where this had not been done and had contributed to a lack of understanding of the process. HMIC would urge forces that have not undertaken this review to do so. It is neither time consuming nor resource intensive but the importance of clearly communicating the independent role of COPFS cannot be overstated. As forces widen the means by which an individual can make a complaint, for example via websites, there is scope here also for the independent role of the fiscal to be highlighted. The relationship between COPFS and the police is well documented within “A Fair Cop?” which may be of assistance in this respect. COPFS also produces a useful document, “Complaints against the Police - The Role of the Procurator Fiscal”, which is made available to complainers.

- 1.4** During the course of the review, HMIC became aware of ongoing policy development within COPFS intended to strengthen the independent role of COPFS in handling complaints of criminal conduct. HMIC welcomes this and further reference is made throughout this report.

RECOMMENDATION 2: HMIC recommends that chief constables formalise arrangements for the investigation of complaints by external forces in a way that ensures that the requirements of the fiscal service can be met on every occasion.

- 1.5** At the time of the original inspection, use of an investigating officer from another force was becoming more prevalent. This mainly occurred where there were serious criminal or misconduct allegations and forces recognised a need to establish the level of independent investigation required by the regulations. Such practice involved informal agreement between chief constables to provide investigation teams when required. However, during the course of that inspection, HMIC became aware of cases of criminal allegations in which the procurator fiscal had asked for an investigating officer from an external force and that request had not been met. HMIC saw this loose arrangement as constituting “*an unacceptable erosion of the investigative primacy of the fiscal service*”. HMIC was, and is, firm in the view that it is for procurators fiscal to decide who carries out investigations on their behalf and it is for police forces to meet that need.
- 1.6** HMIC is pleased to see that a protocol has now been drawn up by the ACPOS Professional Standards Standing Committee relating to arrangements for external investigations of complaints against the police. The document contains useful guidance in relation to the appointment of investigating officers, written terms of reference, recovery of costs and the keeping of records. Together with revised Lord Advocate’s Guidelines, the protocol provides a framework within which external enquiries can be conducted. It was particularly satisfying to find that, without exception, all area procurators fiscal (APFs) were positive in their experience of requesting an external force carry out enquiries where appropriate.
- 1.7** The provision of external investigating officers/teams, often at short notice and for protracted periods, has implications for forces not only in terms of the significant costs associated with this type of investigation but also the loss of experienced officers at all levels from normal policing duties in their own areas of responsibility. Given the disparate nature of force sizes in Scotland, there are genuine difficulties for some forces in meeting the needs of others, particularly where the enquiry is protracted and resource intensive. Three forces were found to have an informal agreement in relation to supplying each other with external investigators. Such arrangements are sensible. However, whatever arrangements are entered into, it is important that the Secretariat of the Professional Standards Standing Committee monitors activity in this area to ensure requests for personnel are evenly spread. In relation to the keeping of such records, HMIC was disappointed to find that collated information existed only for the financial year 2001-02 and part of 2002-03. This should be addressed.

RECOMMENDATION 3: HMIC recommends that all communications to police forces which infer an allegation of criminal behaviour or misconduct by police officers be recorded as complaints against the police for statistical purposes.

- 1.8** "A Fair Cop?" revealed inconsistencies across forces in the interpretation of what constituted a complaint, in recording practices and different approaches to investigations. As a result, it was difficult to make any meaningful comparison of complaints statistics.
- 1.9** As part of the response to this recommendation, ACPOS, through the then Complaints and Discipline Sub-Committee assisted by the Performance Information Working Group and in consultation with key stakeholders, for example COPFS and Audit Scotland, has redefined the definition of a complaint against the police. The current definition against which forces should set their recording standards is as follows:
- "Any complaint made by, or on behalf of, any person against one or more on duty members of a police force and from which it may be reasonably inferred that any act or omission which was made or committed by any individuals concerned amounts, or may amount to, a criminal offence or professional misconduct."*
- 1.10** There is evidence that forces have responded to the recommendation and in line with the definition. Even where dealt with locally, all complaints are now recorded centrally leading in one case to a 229% increase in recorded complaints between 2000-01 and 2001-02. Some forces have reinforced the new definition with training for operational supervisors who are often the first point of contact the public have when making a complaint.
- 1.11** During the inspection, HMIC found clear evidence that all forces had raised systems to enable the recording of complaints. However, the Accounts Commission, in its published performance audit of fire and police performance indicators, has classified some forces' data as unreliable. In part, this may be attributable to a phased implementation whereby some forces have started recording against the new definition at different times. However, the variations in recorded data over several years (Figure 4 at Part III) are too wide to suggest that forces are counting the same data. Forces therefore must ensure a consistency of approach in recording against the definition across Scotland.
- 1.12** HMIC is pleased to note that ACPOS, through the Professional Standards Standing Committee, is now undertaking an audit of data and a review of counting conventions across Scotland to identify variations in recording practices and to contribute to consistency. It is important that this consistency is achieved before 2005-06 so that the parties to the police complaints process, including a new independent police complaints body, are reporting against an accurate backdrop of annual statistical information. In tandem with this, the issue of 'quality of service complaints' also needs to be addressed and HMIC makes further comment at paragraphs 1.50 and 4.2 in relation to this issue.

RECOMMENDATION 4: HMIC recommends that chief constables develop and publicise means of recording a complaint against the police which allows much wider opportunities and choices to a potential complainer.

- I.13** Underpinning this recommendation was a desire to see more open and accessible arrangements for recording complaints.
- I.14** HMIC has found that some progress has been made in this area, indeed, there was evidence of creative thinking, but there is also a recognition that more could be done. In one force, the internet site is being redesigned and by early next year, when launched, should contain the facility to allow members of the public to register their complaints via this medium. In another force, the website publicises the police complaints mechanism and how to register a complaint. All force responses contained references to complaints being received from local race relations bodies, citizen advice bureaux (CAB) etc., but only one force has entered into a formal arrangement through a memorandum of understanding with their local CAB and People's Advocacy and Support Service (PASS) to allow for remote reporting of complaints. **HMIC regards this as good practice** but would like to see more effort made by forces to formalise arrangements and ensure they deliver practical outcomes as has been achieved with racist incidents.
- I.15** Forces have put considerable effort over the last few years into third party reporting of racist incidents and, while HMIC in a recent review of police race relations in Scotland recommended forces review existing arrangements to make appropriate improvements, there is no reason why similar mechanisms are not suitable to allow the reporting of complaints against the police. Such mechanisms might not necessarily generate significant numbers but it is important that the service continues to strengthen links/relations with the members of hard to reach communities, for example the homeless.
- I.16** In the course of regular inspections, HMIC routinely examines and comments on the complaints handling process in forces. Progress has been noted in relation to consistency of approach, improved case files and audit trails. On occasions, however, HMIC has identified continuing barriers to complainers who attempt to register a complaint by telephone and are told they must formally write detailing their concerns. Provided sufficient detail is supplied, forces should consider phone calls as instigating the complaints process and act accordingly.
- I.17** COPFS provides an independent element to the police complaints process through its responsibility for the investigation of complaints of criminal conduct and the proceedings that may follow. As part of efforts to meet this recommendation and to enhance the formal recognition of the role of COPFS, **HMIC** therefore **recommends** that ACPOS, in consultation with COPFS, develops a mechanism to allow complainers who have a specific criminal complaint to make, to be able to register this directly with the procurator fiscal. This is not intended to exclude the police service as recipients of such complaints but to provide an additional opportunity for raising complaints.

RECOMMENDATION 5: HMIC recommends that, in cases where there is strong evidence of serious misconduct, forces move to a formal hearing at the earliest opportunity and that investigations be undertaken in a way that allows this to happen.

- 1.18** In making this recommendation, HMIC was keen to see a more efficient and effective resolution of complaints which inferred criminality but also, by implication, serious misconduct. HMIC supported one single enquiry that covered both the misconduct and criminal allegations and thereafter a force moving, where appropriate, to misconduct before the criminal allegations had been dealt with.
- 1.19** This has not happened. Forces have examined the recommendation and, while sympathetic to the rationale, have found it impossible to move to misconduct before criminal matters are concluded without the support of the procurator fiscal. While the Lord Advocate's Guidelines allow for consultation between Deputy Chief Constables and the Procurator Fiscal, such consultation has rarely, if ever, resulted in agreement that the force could move to misconduct before the criminal allegations are dealt with. Area Procurators Fiscal have, quite properly, made it clear that to do so could compromise a criminal investigation by, for example, rehearsing evidence or through pre-trial publicity. Only on the rare occasion when misconduct issues could be deemed to be entirely separate from criminal allegations has misconduct gone ahead first and in such instances, it is unlikely that the misconduct which can be dealt with is the serious misconduct which the recommendation set out to address.
- 1.20** One outcome is that officers have continued to be suspended for considerable periods of time. In one example highlighted during this review, an officer was found to have been suspended for over 3 years awaiting criminal prosecution. In another, where the force was keen to deal with an officer whose conduct had impacted on public confidence in the force, it was specifically directed not to undertake misconduct hearings by the Crown. Only after the officer was found guilty and sentenced to imprisonment could the force deal with him, some two years after he had been suspended.
- 1.21** HMIC also examined whether forces were carrying out parallel enquiries, i.e. carrying out the enquiry into both criminal and misconduct allegations simultaneously, so that once criminal allegations had been dealt with, the misconduct proceedings could follow almost immediately thereafter. Again forces had considered this but in the main rejected the practice. As one head of complaints and discipline described it, *"The Regulations prevent them and protect the separate approach. An enquiry on a criminal matter and one for misconduct are for different purposes, with different outcomes and with different standards of proof."* The Scottish Police Federation representative in the same force agreed and said that if the practice were adopted, he would have to advise officers to say nothing, assuming they were interviewed under common law. Currently, officers in that force provide operational statements in response to complaint allegations.

- I.22** However, in at least three forces, it was claimed that concurrent enquiries were being undertaken. In one of these forces, HMIC interviewed the Area Procurator Fiscal (APF) who was presented with the outcome of both the misconduct and criminal enquiry for consideration. Where the likely outcome of misconduct may be more effective than dealing with criminal allegations, then the APF is in a position to allow the force to undertake the former. The APF described this as a sensible use of resources. **HMIC regards this as good practice** but acknowledges the difficulties surrounding practice and procedure in this area. There are clearly two different schools of thought and early clarification is required.
- I.23** The Inspection also found evidence that since the change in the definition of a complaint against the police to incorporate support staff and special constables, cases involving force support officers have, quite rightly, been viewed in the same way, with some APFs instructing that no disciplinary action should be taken until after the conclusion of criminal enquiries. In one instance, a force support officer was suspended for 18 months before misconduct could go ahead, awaiting the outcome of criminal proceedings in relation to an allegation of theft while on duty. Previously, the individual would have been dealt with under internal discipline procedures in a matter of weeks. Again, policy and practice in this area is inconsistent. In at least two forces, related misconduct for force support staff who face criminal proceedings is still being dealt with under disciplinary procedures prior to the conclusion of the criminal process.
- I.24** HMIC still believes that there is scope for progress against the recommendation and, at an early opportunity, ACPOS should engage COPFS in examining the issues raised with a view to reaching a consistent and effective approach across Scotland. HMIC is also convinced of the need for matters which involve allegations of both criminality and misconduct to be examined in the context of meeting the test of public confidence and there must be scope for open discussion between APFs and Deputy Chief Constables (DCC) to identify an agreed approach in appropriate cases which accelerate misconduct proceedings where it can be justified in public interest. Further comment with regards to the formalisation of the relationship between APFs and DCCs is made at paragraph 4.27.

RECOMMENDATION 6: HMIC recommends that chief constables and the Scottish Executive agree a national code of practice for the investigation of complaints. The code would cover issues such as timescales, the disclosure of information to complainers, Members of Parliament and other interested parties and the use of investigators from outside forces.

- I.25** In making this recommendation, HMIC wished to see greater transparency in respect of procedures and standards thereby assisting the general public's understanding.

-
- I.26** In response, an ACPOS working group has formulated a Code of Practice which addresses a number of issues around the role of the police service in handling complaints by members of the public. Explanation is given regarding the definition of a complaint against the police, how to make a complaint, how they are recorded, investigated, scrutinised, publicised and the role of the Crown and Procurator Fiscal etc. While it is intended that the document will be available at police offices and on the ACPOS website, its purpose is that of an internal guidance document only.
- I.27** Alongside the Code of Practice, it is proposed that there will be a complementary public document in the form of a new complaints leaflet issued by the Scottish police service to replace the current Scottish Executive leaflet, which no longer reflects current complaints procedures. It was argued that the draft Code is too technical for public consumption. HMIC notes that the proposed complementing public document has yet to be published and, at time of the inspection, no consultation had taken place with the Scottish Executive regarding funding for publication. If the Code, as has been suggested to HMIC, is to be made available on the ACPOS website, it will be in the public domain. HMIC would urge wider dissemination, by way of all force websites, for example.
- I.28** HMIC is aware of work being undertaken within COPFS to raise the profile of COPFS as regards complaints against the police. In light of this and ACPOS proposals to produce a new public complaints document, **HMIC recommends** that ACPOS enters into discussions with COPFS and the Scottish Executive with a view to publication of a suitable police complaints leaflet. It may be that other issues raised in this report and the report of the Scottish Executive's consultation process will lead to changes which will need to be reflected, in due course, in this document. This should not, however, delay ACPOS in entering into discussions.

RECOMMENDATION 7: HMIC recommends that chief constables agree broad criteria of principle governing matters which merit different degrees of disciplinary action and that these be published as part of the code of practice referred to at recommendation 6.

- I.29** During research for "A Fair Cop?", HMIC found inconsistencies across forces in practice, procedures and outcomes, for example what type of case was referred to hearings and what was not.
- I.30** Within its response, ACPOS states that it does not wish to be prescriptive. Some guidance has been incorporated within the Code of Practice which notes that "*where broad criteria might be agreed in principle, each case continues to be considered on its own merits*". In addition, the training of all Chairs centrally and the circulation of disposals and Chairs' written notes "*encourages a standard approach to the process*".
- I.31** While acknowledging the desire to avoid being over-prescriptive and the importance of local justice, this has to be balanced against a need for fairness and consistent practices that secure the confidence of all participants. The nature of the disposal should not be dependent on which force the individual belongs to. There is no evidence of broad

criteria having been agreed by ACPOS, unlike ACPO in England, Wales and Northern Ireland, which has, for example, recently agreed a policy with regard to officers who are guilty of domestic violence. Further, it was clear that the circulation of disposals and Chairs' written notes was intermittent. Where they had been made available, one Superintendent who had chaired a hearing spoke of their value in helping him come to a decision to fine an officer and not dismiss him. A force representative of the Association of Scottish Police Superintendents has suggested that there would be value in the creation of a national database of all allegations and disposals from misconduct hearings.

1.32 **HMIC** sees merit in such an approach and **recommends** that ACPOS creates and maintains a national database of all allegations and disposals from misconduct. This should not be an onerous task as there have only been 165 misconduct hearings in the last three financial years. The collation of the data should be accompanied by a systematic overview and analysis that, in essence, serves as disposal guidelines for Chairs of misconduct hearings. The experience of the Scottish Police College in designing and maintaining PINS, the Police Information Network for Scotland, should be drawn upon to assist the creation of such a database. In the interim, ACPOS, in taking cognisance of the comments at paragraph 1.7, needs to ensure that the Professional Standards Standing Committee Secretariat addresses, as a matter of priority, the collation and circulation of Chairs' notes and disposals.

1.33 Concerns were also raised with HMIC by force Federation representatives regarding cases where the Chair's disposal involves the loss of increments, as loss of increments for police constables could carry greater financial losses than some supervisory ranks. An examination of pay scales and increments does not appear to support this where the finding is for the loss of one increment. However, as there are at least 10 constable increments compared to four sergeant and three inspector, there is the greater likelihood of a constable incurring the maximum disposal of two increments. There may be merit therefore in monetary disposals being based only on cash amounts rather than increments which allows for wider discretion.

RECOMMENDATION 8: HMIC recommends that criteria for suspension and the support available to suspended officers be included in a national code of practice referred to at recommendation 6.

1.34 HMIC, in making this recommendation, sought a more consistent and open approach allied with the more rapid resolution of appropriate cases to reduce the negative impact of suspension on the individual officer, who at the point of suspension is the subject only of an allegation.

-
- I.35** The Code of Practice document does contain brief reference to the criteria for suspension. In examining force policy documents, HMIC found a number which listed the criteria in some detail, and in two cases included a flow chart that explained the process for the benefit of subject officers and managers alike. Other policies were more circumspect in such detail and **HMIC recommends** that forces benchmark their suspension policies to ensure that all policies are consistent in content. In particular, they should contain criteria that provide guidance around the decision to suspend. Such criteria should consider, for example, issues of proportionality, necessity and reasonableness balanced against the impact of not suspending on colleagues and the public.
- I.36** Most forces have now prepared guidance notes for suspended officers explaining force policies and procedures. Individual policies also make it clear that, in addition to the appointment of a dedicated liaison officer to act as reference and support point for suspended officers, in all cases force welfare providers will be notified. The position in relation to the suspended officer's staff association representative was less clear. Some forces notify automatically while others take the view that it is for the suspended officer to make contact if he/she wishes their advice. Having spoken to force Federation representatives, HMIC is satisfied that good lines of communication exist within forces between the staff associations and complaints/professional standards departments.
- I.37** Federation representatives in general also perceived the use of suspension in line with the criteria to be appropriate. In one force, a case conference approach is utilised wherever possible when dealing with suspension. Chaired by the Deputy Chief Constable, participants include the heads of professional standards and human relations, departmental or divisional line manager, staff association and welfare representatives. While acknowledging the Deputy's final responsibility for suspension, **HMIC regards this** holistic approach prior to and during suspension **as good practice.**
- I.38** Just as important as sound policy formulation is effective policy implementation. A number of comments were made to HMIC during the review that identified that after suspension, while all appropriate steps may have been taken in line with the policy at time of suspension, over time inconsistencies can occur around keeping suspended officers informed of progress and maintaining contact with liaison officers. In several forces, contact with the suspended officer is formally logged by the liaison officer. Whatever measures are utilised and without wishing to encourage a tick box approach, HMIC stresses the importance of maintaining contact with suspended officers, who, in a few instances, may be suspended for years rather than months, in a structured and managed way.
- I.39** Successfully implemented, sound suspension policies should go some way to addressing the stress associated with a decision to suspend. However, it is recognised that the biggest single factor is the lifting of suspension. At the time of the review inspection, 20 officers were currently suspended throughout Scotland. Of those, 4 had been suspended in excess of 2 years and one officer for over 3. The average length of suspension in one force over the last 3 years has been 10 months. HMIC is not in a

position to say whether this situation has improved or deteriorated since “A Fair Cop?”. Where suspension is as a result of criminal allegations, HMIC did not find evidence of tardiness on the part of Area Procurators Fiscal. However, once embroiled in the judicial process, a case against an officer is no different from that against a member of the public. If there is merit in dealing with such cases through some fast track mechanism then equally this applies to any public sector official suspended and facing criminal allegations but to do so has to be at the expense of others.

- I.40** In the first instance, forces have a responsibility to review suspensions on a regular basis. While HMIC is satisfied that this is being done, it is noted that the Department of Health has recently introduced new measures to deal with suspensions of doctors and dentists. Under the new measures, a doctor or dentist under investigation faces an immediate exclusion from work of no more than two weeks. Any further exclusion must be limited to 4-week periods, and subject to an active review. HMIC sees merit in a similar approach.
- I.41** In tandem, regular contact should take place with Area Procurators Fiscal. Again there was evidence of this. Once a decision has been taken to proceed to criminal proceedings however, the question of how the proceedings might be administered goes beyond the sphere of influence of the prosecuting authorities. **HMIC recommends** that ACPOS engages with its partners in the Scottish Criminal Justice System, including COPFS and the Scottish Court Service, to discuss the merits and practicalities of fast tracking cases involving police staff who are suspended and face criminal proceedings. In doing so, the wider public interest of having a police officer dealt with in a timely manner should be considered.

RECOMMENDATION 9: HMIC recommends that chief constables review their arrangements for selecting personnel for complaints departments in order to ensure that the requirements of equal opportunities are being fully met.

- I.42** At the time of the original inspection, there were few cases of vacancies having been advertised, tenure was variable and often at the discretion of the Deputy Chief Constable. Of the then 29 full time investigators in the complaints departments of Scottish forces, none were women and none from a minority ethnic background. All of the senior officers responsible for the management of departments were male and white.
- I.43** HMIC was pleased to find a much changed picture during the review inspection. Appointment is now by a mixture of appointment/advertisement and career development. The make up of most force complaints/professional standards departments is more representative of the force and the heads of department in two forces are women. HMIC was disappointed to find, in one force, no female full time investigating officers at Inspector rank. The force’s efforts to attract candidates were acknowledged but it was suggested that the post was not seen as an attractive one for a variety of reasons. HMIC expects to see continued efforts to address this recommendation within overall diversity policies and will monitor progress and adherence to this recommendation during primary and review inspections.

RECOMMENDATION 10: HMIC recommends that chief constables, the Scottish Executive and Police Support Staff Council (Scotland) develop a code covering complaints against police staff who are not regular constables.

- I.44** When “A Fair Cop?” was published, force support staff made up 27% of the overall Scottish police service. In the last financial year, this figure has risen to 29% and there is every reason to believe that it will continue to grow. The range of posts held is spread across the Scottish police service from executive directors operating at a strategic level to administrative personnel providing tactical support to front line officers. Yet the original inspection found there was no reference to support staff within legislation and complaints against support staff were not recorded for statistical purposes. Special constables and police cadets were similarly excluded.
- I.45** While no code has been produced as per the original recommendation, ACPOS argues that, following the change to an all encompassing definition, “forces consider that this has resulted in one complaints process” and “Given that employment law and Special Constable Regulations cover all other aspects of complaints against non-regular constables, there is no need for a separate Code.”
- I.46** HMIC concurs with this argument. It is clear from force responses and examination of current practice and policy that considerable effort has been put into redrafting policies to ensure, where possible, a consistent approach is adopted when dealing with all staff subject to a criminal allegation. The draft ACPOS Code of Practice on Complaints against the Police also contains relevant comment. Where police and support staff are subject of a criminal allegation, then one investigation is carried out usually by a police investigating officer.
- I.47** HMIC welcomes the efforts made. However, comment has already been made (“A Fair Cop?” - Recommendation 5), regarding the unforeseen consequence of this redefinition with regard to its impact on force support staff and the subsequent delay in going to disciplinary proceedings. At least one head of Human Resources identified that ACAS guidelines based on employment law suggests waiting for criminal outcome is not necessary for the internal process to continue but admitted a reluctance to move directly to internal discipline. However, as has already been referred to in at least one force, related misconduct for force support staff who face criminal proceedings is still going ahead prior to the latter.
- I.48** The whole issue of how two different systems of regulating conduct - one based on employment law and the other on regulations might be harmonised is discussed in detail later in the report (paragraph 5.23).

RECOMMENDATION 11: HMIC recommends that chief constables agree and publish national guidelines for addressing communications made to police forces which, while appearing to constitute “complaints” within the conventional meaning of the word, do not primarily fall within the statutory definition set out in the Regulations. The guidelines should encompass counting rules, investigation procedures and the rights of complainers.

- I.49** In making this recommendation, HMIC was mindful that the term “complaints against the police” may be a misnomer. Police regulations and the criminal law provide a specific means of addressing complaints which allege crime or misconduct by one or more police officers. They provide no redress for complaints against “the police” as organisations. An example given was that a local force had been insufficiently thorough and professional in the investigation of a serious crime. In essence, such complaints tend towards an allegation of organisational inefficiency rather than the actions of an individual. Such quality of service issues are dealt with by forces on a regular basis but do not fall within the definition of a complaint and are therefore not recorded systematically.
- I.50** The ACPOS Code of Practice document refers to such complaints and comments, *“Complaints are often made by the public which do not fall within the above definition such as quality of service or delivery of service issues. These complaints do not infer misconduct or criminality on the part of individual members of a force and will be dealt with separately”*. However, HMIC notes that the draft public version of the document makes no reference to such complaints.
- I.51** ACPOS takes the view that to record such complaints would be unmanageable. Most individual forces take a similar view, considering a system of recording would be bureaucratic and the efforts involved unwarranted. However, during the course of inspection HMIC found two forces who are now formally recording such complaints centrally with a view to improving service delivery alongside those that fall within the agreed definition. In another three forces, the centre monitors these complaints while allowing them to be resolved locally. It would be wrong to give the impression that other forces ignore quality of service complaints. On the contrary, they are dealt with by departments/local command units on receipt, often occupying a supervisor’s time researching the basis of the complaint to allow a senior officer to assess the information and respond appropriately to the individual who has raised the issue.
- I.52** A Superintendent’s Association representative in one force highlighted that the key to dealing with quality of service complaints is speed and efficiency alongside systems to allow the organisation to learn from the issues identified. Incorporating a bureaucratic recording system would run counter to this philosophy.
- I.53** While HMIC has no wish to increase bureaucracy, most forces record such complaints in one form or another, for example as items of correspondence. HMIC takes the view that in reinforcing the learning from service delivery complaints and improving the service to the public there is scope for a complaints system, divorced from misconduct, that looks at all complaints, whatever the type, within one comprehensive framework and responds accordingly, a system constructed towards continuous improvement of service and not having as its sole focus the misconduct of one or more of its officers. This issue is further addressed in Section II of the report (paragraph 4.2).

RECOMMENDATION 12: HMIC recommends that chief constables discuss with the Scottish Executive the need to bring Scotland’s national policing organisations within the statutory framework which provides for an effective complaints procedure and clearer lines of accountability in matters of professional conduct. The current review of Scotland’s policing structure may provide an opportunity to take this issue forward.

I.54 While HMIC acknowledged in “A Fair Cop?” that the service in Scotland had “*lived with these arrangements for long enough and no conspicuous disaster has resulted*” it did not “*consider that the present arrangements for dealing with complaints and misconduct occurring in national police organisations provide a credible means of promoting high professional standards and accountability in the 21st Century.*”

I.55 ACPOS acknowledges that the situation has not altered, although the Director of the SDEA is now represented on ACPOS Professional Standards Standing Committee. In addition, minutes of the Committee are routinely circulated to the SDEA and common police service organisations, such as the Scottish Police College and the Scottish Criminal Record Office, to ensure consistency and awareness of current issues and developments.

I.56 HMIC welcomes these developments and, while the landscape may appear to have altered little, acknowledges that following from the review of policing structures which agreed to retain the 8 forces, the ongoing review of Common Police Services (CPS) will have implications with regard to this recommendation. Within the primary inspection of the SDEA published in 2003, HMIC has already commented that:

“For the present, current complaint arrangements are appropriate and effectively applied. However, following the review of CPS and subject to the current review of police conduct commissioned by the Police Advisory Board for Scotland (PABS), it would be appropriate to consider the advantages in terms of professional standards of the Agency taking responsibility for discipline and complaints made against its own officers and staff. This would appear to HMIC to fit more neatly with the clearer accountability arrangements pertaining to the Director which should fall from the CPS Review. Such an approach would be consistent with related measures to protect Chief Constables and Police Authorities from vicarious liability for the actions of seconded staff. However, HMIC is acutely aware that any consideration in this regard will have to be consistent with any wider reform of the police complaints system which has been under consideration by the Scottish Executive.”.

I.57 HMIC will continue to monitor developments and awaits the outcome of the review of Common Police Services to ensure that the thrust of this recommendation is addressed.

RECOMMENDATION 13: HMIC recommends that chief constables, the Scottish Executive and COSLA establish a fair and cost effective policy for dealing with persistent complainers. Any such policy should be published.

- I.58** “A Fair Cop?” identified that all police forces, and most public bodies, deal with complainers who utilise the complaints process to maintain dialogue with the organisation, often beyond the point at which there is a reasonable expectation of further progress being made. It is an issue which needs to be managed within a fair and recognised process. An appropriate process for addressing same would be one that preserves individual rights but prevents their activities consuming an inordinate level of investigative resources. While forces had developed local procedures, HMIC considered that more national consistency was required.
- I.59** During the review, HMIC found that national consistency has still not been achieved but that progress has been made, with one force piloting a protocol for dealing with vexatious or repetitious complainers based on the need to balance individual rights against unfair demands on the organisation’s finite resources. The protocol’s objectives are to protect the force *“from people who abuse the police complaints system by making vexatious or repetitious complaints”* and *“to provide safeguards to the rights of people who have abused the police complaints system by making repetitious or vexatious complaints and against whom an Interdict has been taken out, in the event that they have legitimate cause for complaint in respect of any new matters”*. All other forces are awaiting the outcome of the pilot scheme utilising this protocol.
- I.60** In the interim, forces sensibly deal with each approach/complaint on a case by case basis. Indeed, some forces were in the fortunate position that they currently had no persistent complainers while others identified numbers ranging from 2 to 6. Such numbers may not seem to be significant in placing demands on the organisation but, examined in detail, a different picture emerges.
- I.61** One force has been in communication with a complainer since 1989 around a continually changing complaints scenario that originated from a civil dispute in which the police has no involvement. Another has dealt with an individual since 1997 during which 6 formal complaints have been recorded. The complaints involve a series of allegations against officers ranging from neglect, incivility, irregularity in procedure, assault and oppressive conduct. None of the complaints have been substantiated and where referred to the procurator fiscal, he has advised that no criminal proceedings should be taken, yet all have been investigated, sometimes without the cooperation of the complainer, involving many hours of police time. Another force has calculated that one complainer has made 68 complaints at a substantial cost to the force in its investigative commitment. A number of forces have gone as far as seeking legal advice with a view to seeking an Interdict against the complainer although, for a number of reasons, have stopped short of this measure. In one case, when a senior officer wrote to one complainer informing the individual that consideration was being given to taking this step, the senior officer was immediately the subject of a complaint.

-
- I.62** As has been referred to, other public sector organisations face similar problems in addressing complaints. The Scottish Prisons Complaints Commission has guidelines for dealing with serial complaints. The NHS in Scotland has issued guidance to Trusts to adopt a vexatious/habitual complainant policy to be formally incorporated into organisations' complaints procedures. The guidelines emphasise that such policies should only be used as a last resort after all reasonable measures have been taken to try and resolve the complaint using the formal NHS complaints procedure. As a first step, the individual is given habitual or vexatious status and then dealt with in a number of ways. This might include use of a conciliator or seeking legal advice with a view to an interdict against the individual. It is interesting to note that the policy identifies the need for support for front line staff in a positive manner and to provide feedback to them on what action is being taken and how the complaint has been dealt with.
- I.63** Further work is ongoing within the NHS in this area, particularly in relation to a multi-organisation review on approaches to manage persistent complainers so that it may be possible for some form of consistent approach to be used throughout the service. While HMIC recognises there is no easy solution to this problem, it will monitor the development of the protocol being piloted and considers there is scope for ACPOS to develop policy further in this area, in light of the work undertaken by the NHS in Scotland.

RECOMMENDATION 14: HMIC recommends that forces schedule complaints investigation to an early review under the Best Value programme and in particular they should seek savings in the area of investigation support.

- I.64** At the time of the inspection, there had been few attempts to estimate the costs of police complaints investigation. Costs of complaints departments could be calculated. Harder to calculate were costs where enquiries are allocated to operational officers. True costs would include time spent by officers under investigation preparing statements or being interviewed as well as word processing and administrative costs.
- I.65** Forces have a clear duty to pursue maximum cost effectiveness within statutory parameters of the current system. "A Fair Cop?" reflected the view that there was more scope to utilise the services of less senior officers in the complaints process, even at Hearings. A "Best Value" review was seen as the appropriate vehicle to take this forward.
- I.66** During the review inspection, it was noted only one force had undertaken a review of the complaints process, although not a Best Value review. In other forces, while policy and practice may have been subject to review, there was no evidence of any comprehensive Best Value type review. While acknowledging that forces have examined staffing, with at least one force replacing most Chief Inspectors within the area dealing with complaints with Inspectors and that in all forces, where appropriate, Superintendents now regularly chair hearings rather than Assistant Chief Constables, HMIC is disappointed to see that forces had not specifically carried out Best Value reviews. One force response commented that it was not a priority while another said that there was no evidence to suggest a major performance gap.

1.67 Allied to this is little progress in designing effective costing regimes. As before, forces were able to supply details of departmental budgets but not the costs of investigating complaints. There were exceptions to this. Two forces have attempted to capture the hours/travelling overheads involved in each complaint and based on the rank/mileage calculate a cost of investigating the complaint. The data produced is then supplied internally and to police authorities as part of a comprehensive report on police complaints on a quarterly basis. **HMIC**, welcoming the efforts made, **regards this as good practice**, and would encourage the development of these models to include other costs such as administrative support. All other forces should address this and agreement should be reached through ACPOS Professional Standards Standing Committee with regards to a consistent regime so that the data produced can be usefully compared between forces. HMIC has examined the current costs to forces of administering a police complaints system in Scotland based on figures supplied by forces before and during the inspection. This is considered in detail in Part II. In addition, HMIC, following on from this report, believes there is still scope for forces to carry out a Best Value review internally and will monitor progress in this respect during primary and review inspections.

RECOMMENDATION 15: HMIC recommends that the Scottish Executive liaises with the Crown to establish arrangements for the production and publication of an annual report setting out national statistics and trends in complaints against the police in Scotland, supported by objective comment on good practice and remedial action.

1.68 At a strategic level, HMIC believed there was a need *“for a constructive analysis of the average 1000 criminal complaints which are investigated in Scotland each year”* unlike in England and Wales where the Police Complaints Authority already published a comprehensive annual report. It was stated that *“chief constables would welcome information on national trends and, in particular, an independent view in respect of those areas where management action may play a role in reducing the opportunities for complaint”*. Such information would complement that available locally.

1.69 While there has been no development to date with regard to this recommendation, HMIC is aware that work currently under way within the Crown Office and Procurator Fiscal Service (COPFS) is considering this recommendation with a view to commissioning a study to identify available and necessary data for such a report. HMIC welcomes and supports this initiative. The need for progress in this area takes on an even greater significance in the light of the Scottish Executive’s commitment to introduce an independent body to deal with police complaints.

1.70 With regard to local management information, further comment is provided under an examination of the response to Suggestions 2 and 12 (paragraphs 2.11 and 2.53).

RECOMMENDATION 16: HMIC recommends that all chief constables prepare, publish and implement a programme providing for adequate secure sound and vision CCTV coverage of custody areas. Such a programme should be targeted to achieve full implementation before the end of 2003.

-
- I.71** HMIC considered CCTV as part of the overall framework for the promotion of transparent ethical standards. In spite of its undoubted value, CCTV installation in the Scottish police service was seen at the time of “A Fair Cop?” as uneven. HMIC also had reservations regarding the value and integrity of systems which were not fully “tamper proof”. While recognising that CCTV was yet another demand on hard pressed budgets, it was considered that such a vital tool in promoting integrity should receive greater priority. In addition, there were also considered to be economic benefits through saving on investigation costs.
- I.72** HMIC commends forces on the progress made since this recommendation was made. All forces now have a programme in place and virtually all main holding stations throughout Scotland are now covered by CCTV. HMIC acknowledges that for forces policing large rural areas with a number of offices where custodies might be received, there is considerable expense but was pleased to find intent to include such offices. HMIC found that in 4 forces where reviews of custody provision are ongoing that future development is dependent on the outcome of the review. This is a sensible approach but, once decisions are taken, it is HMIC's view that CCTV development should progress without delay.
- I.73** In further developments, HMIC found some forces considering or having already installed next generation digital technology. At least one Area Procurator Fiscal interviewed was supportive of such a development to improve the quality of visual images and audio and HMIC encourages such developments. Two forces are currently trialling CCTV technology within police vehicles intended to transport custodies with a view to installing it in all such vehicles in the force. **HMIC welcomes this and regards this as good practice.** The presence of CCTV and the evidence it can provide has proved to be of considerable benefit in preventing/countering unfounded allegations. Even where its intended purpose has not been to “promote visible integrity” and counter unfounded allegations, its presence has done so. For example, CCTV equipment installed within road patrol vehicles, designed to capture evidence of dangerous driving, has provided evidence in support of an officer who was the subject of a complaint.
- I.74** Forces should ensure that evidence handling practices and procedures are robust. HMIC will continue to monitor policy, practice and developments in this area during primary and review inspections.

RECOMMENDATION 17: HMIC recommends that after 6 months of operation the lay visitor scheme be subject to evaluation with a view to chief constables introducing similar arrangements in their police areas.

- I.75** “A Fair Cop?” found lay visiting schemes well established in England and Wales but only one Scottish force had a newly established scheme. HMIC considered this scheme offered a potential model for the remainder of the Scottish police service contributing “*transparency to the integrity of the custody process*”.

- I.76** After review, HMIC is pleased by the very good progress that has been made in establishing schemes throughout Scotland. Seven out of eight forces now have a scheme fully operational or in pilot form in parts of the force area with a view to further development. Despite two attempts in the remaining force area, the police authority, which is responsible for such schemes independent of the chief constable, has been unsuccessful in recruiting sufficient volunteers. The authority remains committed to the establishment of such a scheme and assistance has been offered from the national lay visiting organisation. It is hoped that, in time, the authority's efforts will come to fruition.
- I.77** During the inspection, HMIC took the opportunity to speak with lay visitors in one force and was impressed with their commitment and enthusiasm. This commitment involved visiting all prisoner reception and holding stations at least once a month and for larger stations at least twice, often at unsociable hours. In one year examined, 94 visits had been carried out to eight designated police stations. The visitors felt they had had an impact in areas, for example property maintenance, and the Deputy Chief Constable corroborated that the visitors had influenced policy and practice around the custody issues in a positive manner.
- I.78** One visitor commented that there was a lack of awareness amongst the public as to the role and impact of lay visitors. HMIC notes that the police authority responsible for this scheme has identified this issue with a view to promoting better understanding of police practices in which the public can have confidence. HMIC supports this and would encourage other police authorities to pursue a similar policy in due course. This lack of awareness can also be found in forces. HMIC was disappointed by one response that indicated that the lay visiting scheme had had no impact on complaints and discipline. This shows a lack of understanding of the role of such schemes and their potential to impact on an area from which complaints can often arise. Chief Constables should also consider the benefit of promoting schemes within their force.
- I.79** Part of the recommendation advocates an evaluation of such schemes after six months. As schemes are at different stages of development, evaluation of schemes is inconsistent. Once they are fully operational across all force areas there may be value in a national evaluation to assess progress made and the contribution the lay visiting schemes have made. **HMIC recommends** that ACPOS, in liaison with police authorities, should approach the Scottish Executive for such evaluation to be carried out. In the interim, HMIC will continue to measure progress during the course of primary and review inspections.

RECOMMENDATION 18: HMIC recommends that chief constables liaise with police authorities in order to agree and publish a code of ethical standards for the service based on the “seven principles of public life” (known as the Nolan principles) and implement procedures to ensure that the principles are enforced and their compliance measured.

-
- I.80** HMIC, in making this recommendation, wished to see a more coordinated and committed police response to the principles of Nolan. While it was acknowledged that some action had been taken at force level, none amounted to a complete code of ethics. Such actions were perceived to be indicators of good intent that needed to be fully integrated into force policy and operational procedures.
- I.81** HMIC is pleased to find that an ACPOS working party drafted a Code of Ethical Practice which was approved by ACPOS Council of Chief Constables in June 2002. The Code is an excellent piece of work which places the Scottish police service to the fore in this arena. The Code's Statement of Ethical Principles is reproduced at Appendix A. Only the Police Service of Northern Ireland has a similar document, a Code of Ethics, which is now at the heart of maintaining standards of behaviour in that police service and is a perfect example of aspirations being integrated with policy and practice.
- I.82** HMIC fully endorses the implementation of a Code of Ethical Practice and urges all parties to move forward quickly towards its formal establishment across the Scottish police service. In "A Fair Cop?", HMIC commented on the need to fully integrate such principles or standards *"into force policy and operational procedures before they achieve their full worth"*. HMIC continues to advocate such an approach which ensures that the Code is not simply aspirational but has practical value and influence. Any review of the conduct regime presents an opportunity to integrate the principles or standards and provide practical value.

Chapter 2 Progress Against Part I and Part III Suggestions

Introduction

2.1 In addition to a series of recommendations, “A Fair Cop?” also contained suggestions arising from the thematic inspection at Part I of the report and further suggestions arising from consideration of issues concerning the misconduct regulations (Part III). In total, these amount to some 17 suggestions. In relation to the Part I Suggestions, while progress has been made, there is scope for further work. However, progress in relation to Part III has been deferred due to consideration of the introduction of an independent element to the police complaints process. The opportunity has been taken to re-examine these issues and make further comment that, hopefully, will contribute to the way forward. While no new recommendations arise from the review of the Part I Suggestions, areas to be progressed have been identified and are summarised at the end of the chapter.

Progress Against Part I Suggestions

SUGGESTION I: The Scottish Executive, COSLA and ACPOS give further consideration to the regulations dealing with complaints against chief police officers, and in particular seek to clarify the extent to which the 1999 regulations allow a preliminary enquiry prior to full consideration of a complaint or allegation.

2.2 In putting forward this suggestion, HMIC expressed the view that this was “*a complex area in which the needs for integrity, transparency, the proper use of public funds and protection of chief officers from unfounded, eccentric, or malicious complaints all intersect and sometimes conflict.*”. Police authority members found the process complex and HMIC found little evidence of any police authority regarding the existing regulations and guidelines in a positive light. In light of the widespread unease, HMIC considered, at the very least, further review of the effectiveness of the regulations was required.

2.3 Whilst carrying out the current inspection, HMIC met with chief officers, police authority members and clerks to police authorities across the country and in many respects found the situation unchanged. From the perspective of authority members and their clerks, the regulations continue to be viewed as unclear and inadequate. When dealing with allegations against chief officers, they are often faced with having to take, often highly sensitive, decisions with insufficient information. One Clerk to a police authority summed up the situation as follows:

“From the outset the Clerk and Board are faced with a difficult decision as to what action they should take. They have only one version of events and in many ways it would be preferable, indeed, it would be in line with natural justice, that they should also have some indication of the views of the officer complained against before deciding what to do. However, the regulations offer no scope to do this. It would be helpful if an approach could be made to a chief constable, but what would happen if the complaint were against the chief constable? There isn’t an easy way to establish the facts. It is therefore difficult to

advise members as to what they should do and therefore a cautious approach will be taken and it will likely involve an investigation by an outside force. To take the alternative route and declare that there had been no misconduct could merely reinforce a public perception that the Board and Force had a cosy relationship.”

- 2.4** Similar views were put to HMIC on a number of occasions. The regulations were seen as unclear and lacking in precision, with one Clerk citing the lack of a definition for the term ‘neglect of duty’ as one area that required urgent attention. Further negative comment was made that there was no satisfactory mechanism for dealing with minor or trivial complaints. Due to their nature such complaints would not merit an investigation by an outside force but the options available to the Police Authority were stark - do nothing or invite in a chief constable from another force. Another shortcoming highlighted was in relation to service delivery issues. Quite simply, the regulations dealt only with misconduct or criminality and there was nowhere for someone to go when they were unhappy with a service delivery issue.
- 2.5** The final, linked, area of concern was that of the preliminary enquiry. Where this was deemed necessary, there was a reliance upon the force to provide details. Invariably, this co-operation was forthcoming but the situation was seen as being unsatisfactory as Police Authority members were reliant upon the goodwill and professionalism of the force and its chief officers, against one of whom the complaint has been made. HMIC was made aware of practice in one English force where the initial enquiry was carried out on behalf of the police authority by utilising the services of a retired senior officer and former clerk to the police authority. Such a procedure seems to HMIC to be sensible and practical. The guidance in support of current regulations indicates that “*the authority can take whatever steps it considers reasonable to obtain further particulars*”. In the current climate of uncertainty, the appropriateness of such a measure needs to be clarified.
- 2.6** Various approaches had been taken by police authorities and their Clerks to deal with these issues. Some had sought legal opinion and had received detailed briefing papers augmented by personal presentations from the solicitor concerned to guide them through the complex issues and legal requirements. Members of one authority had even met with a complainer in an effort to establish greater clarity as to the substance of the complaint. The meeting lasted for over two hours, and it is perhaps indicative of the nature of these matters that no greater clarity emerged as to the specifics of the complaint or the desired resolution. While anecdotal evidence suggests that the number of such complaints is not high, approximately a dozen or so a year with perhaps half necessitating an enquiry, inevitably they attract media attention and such publicity has the potential to impact on public confidence.
- 2.7** In essence, the views expressed by chief police officers, elected representatives and public officials during the current inspection echo those made by their peer group during the previous inspection. The regulations and the means by which they are applied are perceived by many of those subject to them and those charged with applying them as lacking clarity and effectiveness. Despite discussions between the

relevant parties, including ACPOS and the Scottish Executive, HMIC is disappointed at the lack of progress in this area. Complaints against Scotland's chief police officers are rare but the level of widespread uncertainty in the current system is of concern to HMIC and it believes an urgent review of existing regulations is called for. A specific recommendation in relation to a review of the legislative framework surrounding police conduct is made within Part II of this report at paragraph 5.35. Such a review should include the Senior Officer Regulations.

SUGGESTION 2: COSLA and the Scottish Executive jointly consider the role of police authorities in carrying out their statutory function in dealing with complaints, with a view to producing national guidance on good practice.

2.8 Previously, HMIC found that police authorities exhibited a rather low profile in respect of complaints against the police and concluded that a number of factors had contributed to this situation, including:

- a lack of understanding among members of the nature of their statutory responsibilities
- the absence of independent professional advice on the specific subject of complaints
- the lack of confidence by authority members in their ability to question senior police officers on a potentially complex subject.

2.9 Some examples of good practice were evident and, generally, it was found that the process worked well when a number of councillors had a specific responsibility, usually by means of a sub-committee. However, even where the process worked well, councillors tended to doubt they were getting to grips with issues and HMIC saw there being distinct benefits to be derived from the publication of national guidance that would facilitate elected members' ability to exercise their statutory responsibilities in a more effective manner. It was also suggested that authorities should review their own procedures in light of their experiences and that of others.

2.10 During this review, HMIC found that, on a regular basis, information on complaints against the police is presented to police authorities and most authorities have established sub-committees with specific responsibility for complaints against the police. In one instance, the authority has only recently established a working party to examine the issue of complaints against the police and HMIC would hope that this working party will provide the basis for a permanent arrangement allowing increased focus on police complaints.

2.11 HMIC does have some reservations regarding variations in the quantity and quality of information that is presented to police authorities or their complaints sub-committees. An example is the lack of detail around the timeliness of enquiries into police complaints and further comment about this issue is made in relation to Suggestion 12 (paragraph 2.53). Nevertheless, HMIC found evidence that, regardless of any shortcomings in the information presented to elected representatives, questions were being asked of forces as to performance in key areas such as numbers of complaints,

timescales for concluding enquiries and numbers of dissatisfied complainers. Clear evidence was also found that individual complaints files were being inspected. This was being done by members calling for files to be presented to them at sub-committee meetings or by members visiting force complaints departments and viewing files. Regardless of the approach, files were chosen at random with members examining the actions of the force from the perspective of a complainer seeking to satisfy themselves that all appropriate steps had been taken to investigate the complaint under scrutiny.

- 2.12** This level of involvement is welcomed by HMIC and by forces. Without exception, chief officers interviewed during the course of this inspection expressed a strong desire to work closely with their police authorities to bring about better-informed and more robust scrutiny of complaints investigation. In many ways, the following statement made by one chief officer typifies the desire of forces:

“We want our Board members to be informed customers and we want them to come in and be robust in their questioning. We want to know if we are getting it wrong and where we are getting it wrong. That’s how we will learn and that’s how we will improve.”

- 2.13** However, HMIC is disappointed to note that no national guidance has yet emerged and believes there is value in the eight police authorities, with the support of ACPOS, COSLA and the Scottish Executive, meeting regularly and sharing best practice with a view to published guidance emerging.
- 2.14** Elsewhere in this review, the role of HM Lay inspector of Constabulary is referred to (paragraph 4.13). This role applies an independent element to the consideration of police complaints referred to HMIC. No such element operates elsewhere in the non criminal police complaints process. While the role of HM Lay Inspector will change following the introduction of the independent complaints body by the Scottish Executive, HMIC has seen the significant advantage in lay involvement in relation to complaints and there is real potential for this also to be applied at force level, working with police authorities, particularly complaints sub-committees, in all aspects of their deliberations, including complaints analysis and monitoring, inspection of individual files and complaints against senior officers. This is a matter which can be considered against the backdrop of the new independent complaints body.

SUGGESTION 3: Forces maintain statistical records of letters of appreciation received as an indicator of the good and, in some cases, exemplary service provided by officers and other staff.

- 2.15** All forces are now routinely recording letters of appreciation and details are submitted to HMIC as part of the Annual Statistical Return. From the evidence submitted to HMIC, it is clear that there is now much more consistency when it comes to recording and collating statistical data in this area and there are no longer huge discrepancies or variances from one year to the next within force figures. HMIC was pleased to note that in one force a comprehensive database of such letters is kept linked to the officer’s personnel file. **HMIC regards this as good practice.**

- 2.16** It is, however, disappointing to note a steady downward trend in the numbers of letters submitted. Between 1 April 1996 and 31 March 1999 there were some 11,309 letters of appreciation received by Scotland's eight police forces. For the three most recent years for which figures are available, 1 April 2000 to 31 March 2003, the number of letters received by forces had fallen by almost 32% to 7718. The reason for this marked reduction is unclear. It may be that people are becoming less inclined to recognise good or exemplary service formally by putting pen to paper. A more negative view could be that it was due to instances of good or exemplary service becoming less common. However, this would be somewhat at odds with the results obtained by forces in their customer satisfaction surveys. In recent years, the results of these have remained fairly static with the percentage of respondents either 'fairly' or 'very' satisfied with the service they received being in the region of 80% and the number of those 'fairly' or 'very' dissatisfied being about 10%.
- 2.17** Policing is often a difficult job done in difficult circumstances, requiring hard work, dedication and commitment to deliver a service that meets people's expectations. Praise and recognition can often prove to be great motivators and HMIC believes it to be important that forces should not just be well placed to capitalise on those occasions where members of the public feel moved formally to record their thanks but should examine ways in which they could more actively elicit such responses. During a comparative visit to Boston Police Department, it was found that the force's website contains a section allowing the public to both register a commendation as well as a complaint and the force's Bureau of Internal Investigations own explanatory leaflet for the public details how to both commend and complain about an employee of the force. As is commented upon elsewhere within this report, forces are actively pursuing alternative mechanisms whereby members of the public can lodge complaints against the police, such as third party reporting or use of the internet. HMIC considers that a similar focus should be given to encouraging more positive comment from members of the public thereby assisting in the production of a balanced picture of service delivery in forces.

SUGGESTION 4: Chief Constables develop common procedures in respect of how disciplinary warnings are administered and the use to which they are put on a future occasion.

- 2.18** HMIC encountered considerable uncertainty and ambiguity on the status and use of warnings which were administered for a diverse range of matters. Some forces recorded these in an officer's personal records whilst others considered this improper. Most forces also considered hearings should not be told of previous warnings. HMIC found this position difficult to reconcile with the 1996 regulations which stipulate that warnings administered in terms of the regulations should be recorded.
- 2.19** HMIC also expressed the opinion that warnings should have a more robust status, ideally supported by specific actions, such as training or mentoring, and they should be fully considered should any further breach occur.

2.20 While acknowledging the difficulty in achieving consistency, HMIC is disappointed to find that no common procedures have been developed. During the financial year 2002-03, a total of 407 warnings of varying categories were given to officers. HMIC believes there is value in analysis being undertaken in relation to these warnings with a view to identifying consistencies and divergences and producing common procedures or guidelines and also to assess whether the use of warnings is being linked to training and mentoring. This is a worthwhile task which should be undertaken by ACPOS, under the direction of ACPOS Professional Standards Standing Committee. Consistency in the use and administration of warnings is just as important as consistency in disposals that result from misconduct hearings.

SUGGESTION 5: It would be good practice for only trained senior officers to chair misconduct hearings.

2.21 During the previous inspection, HMIC gathered material, which may not have been representative, that the majority of those who had chaired hearings had had no training whatsoever for the role. Training had been available at the Scottish Police College but this resource had not been fully exploited by forces. Evidence obtained during the current inspection strongly indicates that there has been considerable progress in this area and forces have taken advantage of the facilities provided by Strathclyde Police to ensure that all persons who may be called upon to chair misconduct hearings receive appropriate training to prepare them for this role.

2.22 This training is of a day's duration and comprises a series of inputs that focus on key areas such as the roles of the chair, presenting officer, conduct representation at hearings and appeal procedures. In addition to the presentations, there are two mock hearings. These are based on previously heard cases but are also modified to incorporate any current or emerging issues. They are also anonymised and disguised to ensure that the confidentiality of the original cases on which they have been based is not compromised. Additionally, a comprehensive "training pack" is provided to all delegates.

2.23 This training is commended by participants and is seen by HMIC as a welcome and positive development. Credit is due to Strathclyde Police for accepting the responsibility of making the course available to others. However, HMIC also believes that there are a number of issues relating to the training of chairpersons which would benefit from further attention. Firstly, although delegates invariably provide either verbal or written feedback to Strathclyde Police as to the perceived effectiveness of the course, it is not subject to formalised evaluation. HMIC believes that the introduction of such a mechanism would permit more focused feedback which could better inform the force as to the effectiveness of the training content, delivery and effectiveness.

2.24 Secondly, there is the issue of the availability of the training. At present, training courses are organised on an ad hoc basis in response to requests and three such training events have been held between January 2002 and December 2003. Forces appear to be satisfied that they have adequate numbers of trained officers available to meet their

needs. However, this situation may change with the onset of the so-called 'Edmund-Davies Effect' when, from around 2005 to 2010, a significant proportion of serving officers will retire. The impact of this phenomenon is likely to be significant right across the service and is well understood by ACPOS. However, it will undoubtedly be the case that the service will lose a significant proportion of senior officers. As such, it is highly probable that there will be an enhanced demand for chairperson training and ACPOS may wish to review the current structure and frequency of training provision in this area to ensure the service is well placed to meet its future needs.

- 2.25** HMIC also believes that any such review should also examine the issue of refresher training in order that knowledge and skill levels remain high. Misconduct hearings are not an everyday occurrence and, since 1997, there have been, on average, seventy two hearings each year. These are not spread evenly across all forces and it is entirely possible that some trained officers may not be called upon to act as chairpersons until some considerable time has elapsed since they received their initial training. Ready accessibility to the details and findings of misconduct hearings, an issue which is discussed elsewhere within the report, may well reduce the need for refresher training, nevertheless HMIC remains convinced that this is an area worthy of further consideration.

SUGGESTION 6: ACPOS liaises with the director of the Scottish Police College to consider training for investigating officers appointed under the misconduct regulations.

- 2.26** When HMIC previously examined the question of training for investigating officers (IOs) it found that there was no specific training available and skills development occurred through a combination of personal experience allied with advice and support from colleagues. In response to this situation, HMIC suggested that there would be benefit in ACPOS and the Director of the Scottish Police College liaising in regard to training needs analysis and training provision for investigating officers.

- 2.27** Since then, the matter has been considered by forces and a move towards centralised training deemed unwarranted and unnecessary on the basis that:

- full time IOs invariably receive in-house training within their own force, with the opportunity to shadow experienced IOs and/or be mentored by one prior to undertaking an investigation
- whilst all forces operate under the same Regulations and very similar procedures, the unique aspects of each force's approach remain such that centralised training would have difficulty in taking account of all local circumstances and, as such, immersion in the local system was seen as more valuable in producing skilled and efficient IOs
- the number and infrequency of turnover of IOs was such that it would be difficult to deliver the necessary training in a sufficiently cost effective, or timely, manner.

-
- 2.28** As part of this inspection, HMIC examined not just the training delivered to full-time IOs based within Complaints or Professional Standards Departments but also the training support provided to those local supervisory officers who are regularly appointed to this role in some forces. In general terms, the training given to full time IOs within Scotland's eight forces comprises the supply of guidance documentation augmented by inputs or briefings from managers or colleagues along with some form of mentoring arrangements and, although these arrangements appear to be well received by staff, HMIC remains convinced that there would be benefit in moving to a more formalised approach to the training of IOs.
- 2.29** The current arrangements contain much that is worthy of praise, having been developed by complaints practitioners, well versed in current and emerging issues, with a wealth of personal experience, ideally placed to provide practical support and assistance to officers new to the role. HMIC is not questioning the appropriateness of complaints department officers being involved in the training of colleagues. This should remain a core element within the training programme. Rather, what is being advocated by HMIC is that the content of the training programme should be established by more formal means through the use of a Training Needs Analysis (TNA). It is accepted that each force's approach contains certain unique elements and due account should be given to these. However, there is also much that is shared, for example legislation and core skills and, as is the case in many other areas of policing, the use of TNA has proved invaluable in determining the content of appropriate (national) training programmes. Allied with the use of TNA, HMIC believes that there should be greater use of formal evaluation techniques to obtain participant feedback as to the effectiveness of the training delivered, its impact on workplace performance and organisational effectiveness.
- 2.30** HMIC also believes that this more formalised approach should be applied to the training and support provided to non-departmental staff who have enquiry or investigatory roles within the complaints investigation process. At present this training tends to be less formalised than that delivered to full-time IOs and generally comprises some form of guidance documentation being issued to officers allied with access to support from complaints department staff. Two forces do deliver in-house training and three offer secondment opportunities for supervisors. In the main, these are aimed at inspectors but there are also some opportunities for sergeants. It is well documented that **HMIC** is supportive of short-term secondments for developmental purposes and considers such secondments to be **good practice**.
- 2.31** Elsewhere within this report (paragraph 4.20), HMIC outlines its belief that forces should move towards a complaints investigation structure that sees the role of local supervisors confined to that of enquiry officers with all investigating officers being appointed to this role on a full time basis, based within either a centralised department or local office. Nevertheless, the need for more structured training remains. Even in a more restricted role these officers will have an important part to play in the complaints process. It is therefore vital that they are appropriately trained in order that they can carry out their duties in a competent and effective manner. During the current inspection, HMIC had the opportunity to speak with officers who had experience of

this initial enquiry role and also that of IO. A number expressed the opinion that more training should be given to assist them to carry out their role more effectively and it was an issue that at least one Area Procurator Fiscal believed worthy of attention.

- 2.32** When HMIC previously considered the issue of training, no reference was made to the training needs of other officers or staff, the overwhelming majority of staff within Scotland's eight forces. Throughout the course of the current Inspection, HMIC took the opportunity to take soundings as to the level of knowledge and understanding of the complaints process among these staff. It was found that there was uncertainty regarding the complaints process, force policy and the role of key personnel such as the Area Procurator Fiscal.
- 2.33** HMIC is disappointed that such uncertainty exists. However, it is important that HMIC takes this opportunity to give due recognition to the work that has been, and is being done by forces in the area of information giving. In recent years, a great deal of time and effort has been devoted to the creation of detailed policy documents and guidance materials, much of which is readily accessible to staff via local intranet sites in addition to training inputs, for example, newly appointed supervisors and probationers. HMIC would encourage forces to ensure all staff take full advantage of these facilities to improve their knowledge in this key area.

SUGGESTION 7: Forces establish procedures to analyse civil claims in a way which allows learning opportunities to be fed back into the operational environment.

- 2.34** In making this suggestion, HMIC was seeking to ensure that forces integrate the administration of civil actions with the management of complaints to ensure a consistent and corporate approach to considering expressions of dissatisfaction with performance. It was also important that all actions were monitored by forces with a view to identifying key issues and initiating remedial action to improve performance and effect long term savings.
- 2.35** During the review inspection, a varied picture was found. HMIC acknowledges that in all forces a structure was in place to deal with civil claims, usually involving the Deputy Chief Constable, Force Solicitor or external legal adviser and head of Complaints or Professional Standards. This structure appears to work well, particularly in smaller forces where the numbers of claims are small. Examples were found of lessons having been learned and fed back into policy and procedure.
- 2.36** However, a number of forces did not supply details of claims made or, where details of claims were kept, did not supply them because they were not able to differentiate between those that arose from complaints against the police and those that arose from, for example, faulty equipment. In contrast, HMIC found in one force examples of excellent statistical and management information being produced monthly in relation to civil claims. Information included breakdown of claims by origin, for example employee/public, further sub-divided by type e.g. negligence, assault, faulty equipment etc. Claims had also been analysed by department/division of origin. **HMIC** considers such detailed analysis as **good practice**.

2.37 The general lack of detail or analysis suggests to HMIC that procedures are not as robust as they should be, a view that was acknowledged in several forces. HMIC would encourage forces to re-examine their procedures to ensure they are satisfied that the arrangements in place effectively address the suggestion. In addition, there is again scope for the ACPOS Professional Standards Standing Committee to act as a clearing house to allow lessons learned to be disseminated between forces.

SUGGESTION 8: HMIC suggests that all forces have in place some form of structured system for addressing the issues presented by officers who are persistently subject to complaint.

2.38 HMIC acknowledged in "A Fair Cop?" that the *"issue of officers who are subject of persistent but unsubstantiated complaints is a difficult one in that police officers, like all citizens, are entitled to be seen as innocent until proven guilty. However, a persistent pattern of allegations is undoubtedly a matter of legitimate management interest. Some forces have a system of conferences triggered when more than a set number of complaints are made over a specified period."*

2.39 Forces do have such processes in place but due to deficiencies in current recording software, an issue that is addressed under Suggestion 12, there is a reliance on manual records to address this issue. In small forces, Deputy Chief Constables and heads of Complaints and Professional Standards are well placed to identify officers persistently complained about. In larger forces, in addition, local management has a part to play. Indeed, in all forces, first line supervisors play a key role. It is they who have first hand knowledge of the officers under their command.

2.40 Irrespective of the systems in place, HMIC would encourage forces to adopt a holistic approach. Such an approach proactively manages personnel, taking account of a whole range of indicators both negative and positive that help inform a detailed understanding of the individual and his/her behaviour. An excellent example of this is a process pioneered by the Boston Police Department known as PAM (Personnel Analysis Meeting) and, while the cultures involved are quite different, HMIC views the concept as one which could be developed to suit the needs of Scottish forces.

CASE STUDY OF PAM – PERSONNEL ANALYSIS MEETING

The main goal of the Boston Police Department's Personnel Analysis Meeting (PAM) is to develop better ways for the department to work more effectively with its personnel. The meetings which are held at the various operational police district headquarters on an annual basis are attended by the Police Commissioner and a number of senior command staff, including the force legal adviser and head of administrative support, along with the host District's management team, right down to squad/shift supervisors who are sergeants. At the meeting, the district management team must be prepared to discuss both strengths and areas needing improvement, in regards to their personnel.

PAM is centred on distinct areas where statistical indicators highlight potential areas of concern regarding individual officers. The current nine areas include the following:-

- Police vehicles road accident history - personnel with two or more accidents in last 4 years
- Use of sick leave and injury time - personnel with ten or more sick days in the last 12 months and personnel out injured 30 days or more
- Complaint history - personnel with two or more complaints in the last 12 months, OR three or more complaints in the last 24 months.
- Total Arrests - last 12 months
- Use of force - personnel with more than one use of force (firearm, pepper mace, baton, etc.) in last four years
- Awards or Commendations received - last four years

In addition, a summary details those officers appearing in more than one category. For example, at a PAM attended by HMIC, one officer listed on the summary also appeared under commendations, total arrests and injured days. The resultant outcome of the process was the identification of several officers with whom local management were expected to work to address agreed areas of weakness. In one example given, an officer with a record of complaints, both substantiated and unsubstantiated, had been transferred to another area where there was less likelihood of the sort of confrontation which had contributed to the complaints.

By adopting this holistic approach involving headquarters and district management, it is the intention *“not only to define and demonstrate appropriate levels of supervisory guidance, accountability, mentoring, and professionalism for all our personnel, but also to underscore the Department's ongoing commitment to a tradition of excellence in the years to come”*.

2.41 While the introduction of the national computerised Human Resource Database in Scottish forces may facilitate the adoption of such a process, it should not be seen as a prerequisite to the introduction of such a scheme. The compilation of data to inform the PAM was undertaken manually by a member of the Department's Office of Research and Evaluation.

SUGGESTION 9: Forces set and monitor tight timescales for preliminary enquiries and attempted conciliation. In order to avoid uncertainty as to whether conciliation has been achieved, it should be “signed off” in a way which leaves no room for misunderstanding.

- 2.42** Within “A Fair Cop?”, HMIC was of the opinion that the reason a number of cases are brought to its attention was not because of the final outcome but rather the apparent reluctance of a force to accept, register and investigate allegations from a complainer. HMIC was also aware of cases where “preliminary enquiries” and “attempts to conciliate” had dragged on for months, even years, or where the force claimed that the complaint had been conciliated but the complainer denied this had happened.
- 2.43** There is evidence of progress in addressing this suggestion and, while examples continue to reach HMIC, it does not regard the problems highlighted in the original inspection as being a common occurrence. However, in examining force policies and procedures, ambiguities were revealed around timescales. Some make no specific reference to appropriate timescales while others set figures ranging from 14 to 21 days. HMIC would encourage all forces to review their written policies/guidelines to ensure that a timescale is set. A maximum of 21 days seems reasonable to HMIC.
- 2.44** In terms of “signing off”, again HMIC found most forces now insist an unambiguous letter of confirmation is sent by the local commander/head of department or in several instances from the Deputy Chief Constable. In one force, a recent change to procedure sees a signed minute of agreement completed between the complainer and local commander. HMIC was impressed by this innovative approach and considers it worthy of consideration by other forces. HMIC was disappointed that in one force while the Complaints/Professional Standards Department receive a copy of the complaints form indicating that conciliation has been achieved there is no further information available to indicate how that conciliation has been signed off. HMIC does not accept that the headquarters department’s monitoring role “could be interpreted as a diminution of local autonomy”. If the local command has successfully conciliated then there must be a record of this, be it a notebook entry, conciliating officer’s report or letter to the complainer. HMIC is firmly of the view that a copy of the appropriate documentation should accompany the complaints form to allow effective central monitoring.

SUGGESTION 10: Letters to complainers should be comprehensive, free of jargon and where appropriate contain a brief précis of the investigating officer’s report.

- 2.45** Along with Recommendation 1, HMIC made this suggestion commenting that “*Telling a complainer that their complaint is unsubstantiated is a task which, with the best of intentions, is likely to result in some dissatisfaction. However... tone and content of letters can make this situation worse*”. A direct result of this was further correspondence from the complainer to HMIC, the Scottish Executive etc.

- 2.46** Taking cognisance of the comments made under Recommendation 1 (paragraph 1.3), HMIC has found clear evidence that forces have addressed this suggestion. When dealing with dissatisfied complainers who come to HMIC, close examination is made of how a force has responded to the complainer. This examination includes an analysis of all correspondence to the complainer. Consistently, it is found that, where a clear and detailed explanation to a complainer is provided, this often resolves matters/provides satisfaction. Where this is lacking, despite the fact a thorough investigation has been undertaken by the force, it is the experience of HMIC that a complainer will continue to complain. Inevitably, some forces are better than others in providing a full response and HMIC would encourage forces to continue to learn from best practice established elsewhere in Scottish forces.

SUGGESTION 11: The Scottish Executive commissions research into customer expectations and experiences in respect of the police complaints system and that the findings are used to assist in developing some of the procedures and guidelines recommended in this report.

- 2.47** During “A Fair Cop?”, HMIC considered such evidence as was available on the expectations and experiences of customers of the police complaints system. However recognising the limitations of this evidence, HMIC considered wider debate could usefully be informed by more comprehensive research.
- 2.48** In making the proposal, HMIC was seeking academic research which presented a clearer picture of the public perception nationally. The case for good research still stands but HMIC acknowledges that progress towards establishing an independent police complaints body during the lifetime of the current Scottish Parliament has implications for such work. Research prior to such a body being established would help inform its decision making once established but, in any case, HMIC is keen that the issue should not be viewed in isolation but in full consideration of its comments put forward with regard to Recommendation 15 earlier in this report (paragraph 1.69).

SUGGESTION 12: Forces work towards using the same software, to provide a common level of complaint statistics and management information essential for annual review/analysis.

- 2.49** “A Fair Cop?” found that most complaints departments were setting local objectives towards achieving performance related targets, particularly for recognised timescales and the provision of management information. All forces were using computer technology to assist this process, although the technical capacity of the equipment and its overall effectiveness were found to be diverse. One force was using software developed by an English force, another an in-house system and others adaptations of commercially available business software. The use of different software together with reported differences in complaint recording practices were seen as making benchmarking performance between forces difficult.

-
- 2.50** This review inspection found that six forces are now using the same software. The other two are using in house developed programmes. The software being used by the majority of forces, however, has its limitations, e.g. in terms of what is recorded, its search ability and the ability to produce management information. HMIC was pleased to find that the next generation version of this software is currently being piloted by one force. HMIC is encouraged by the progress being made and the willingness expressed by all forces to adopt the same software if the pilot proves successful.
- 2.51** HMIC has been party to discussions around developing the next generation software to ensure, for example, the ethnicity of complainers can be recorded and analysed. Currently, this information is initially captured on the generic complaints form used by forces to record the initial complaint. Recording and analysing it electronically, however, has proved difficult because of the limitations of the current software and forces were found to be utilising a number of different methods to hold this important information, from electronic to manual. Pending the successful roll out of the next generation software, forces need to be alert that they have such information to hand and actively review same to identify trends or issues. HMIC will continue to monitor this during primary and review inspections.
- 2.52** HMIC was pleased to find one force proactively addressing the ethnicity of complainers via its Race Equality Scheme. The Complaints and Professional Standards Department is responsible for taking forward a number of action points including the recording and reporting of complaints against the police relating to racially discriminatory behaviour to meetings of the police authority and the provision of translator/interpreter to all complainers whose preferred language is not English. **HMIC regards this** proactive approach **as good practice**.
- 2.53** Just as it is important to analyse and produce management information at a national level, it is also important for it to be available at force level to help inform police managers and police authorities as highlighted above. Having viewed the information being supplied to police authorities, there are variations in style and content. Some include useful comment on costs associated with complaints, trends and timeliness, all key factors which HMIC currently examines and comments on during primary and review inspections, others do not.
- 2.54** HMIC does not accept that the lack of suitable software prevents analysis of data currently held and information being presented to police authorities in a suitable format. Comment has already been made under Suggestion 2 that police authorities should meet to discuss the requirements for national guidance. Such discussions should include agreeing a basic template of management information with regards to complaints and which would ensure all authorities were receiving a common synopsis of performance in addressing complaints and allow them to compare and contrast performance across forces if appropriate.

Progress Against Part III Suggestions

SUGGESTION 1: The Scottish Executive considers further the impact of ECHR regulations on current procedures which relate to deputy chief constables appointing the chair of a misconduct hearing.

SUGGESTION 2: The Scottish Executive considers the significant change in the disciplinary role of chief constables.

SUGGESTION 3: The Scottish Executive reviews the definition of ‘complainer’ within the interpretation of the Police (Conduct) (Scotland) Regulations 1996.

SUGGESTION 4: The Scottish Executive considers the question of ‘discreditable’ in terms of the conduct regulations and the likely impact of ECHR.

SUGGESTION 5: The Scottish Executive considers the working of police appeals tribunals when sufficient experience in this area has been gained.

2.55 As part of this review inspection, HMIC consulted with the Scottish Executive, in particular officials of the Justice Department. While the above suggestions have not been addressed directly, HMIC acknowledges that, during 2001-2002, the Scottish Executive undertook a public consultation on proposals for enhancing the independence of the police complaints system, addressing both the recommendations contained within “A Fair Cop?” and the concerns raised by the Stephen Lawrence Inquiry Report.

2.56 Following on from this consultation exercise, there is a recognition that a significant amount of work is required on the various elements of the complaints process to ensure Scotland has a modern and effective system which provides fairness and transparency for all those involved. This is being taken forward in a number of ways including a commitment to establish an independent police complaints body. Alongside this, the Scottish Executive is also aware that it needs to review the subordinate legislation governing police conduct and discipline, the role of police authorities in dealing with complaints against the police and the effectiveness of police appeals tribunals.

2.57 In furtherance of this work and drawing on the findings of the Review Inspection, HMIC, in Part II of this report, examines the way forward for the investigation of complaints against the police. In doing so, a series of recommendations are made that HMIC believes will assist the work of the Executive and address the issues raised within the Part III suggestions outlined above.

Recommendations Arising From Part I of the Review Inspection

RECOMMENDATION 1: HMIC recommends that ACPOS, in consultation with COPFS, develops a mechanism to allow complainers who have a specific criminal complaint to make to be able to register this directly with the procurator fiscal (paragraph 1.17).

RECOMMENDATION 2: HMIC recommends that ACPOS enters into discussions with COPFS and the Scottish Executive with a view to publication of a suitable police complaints leaflet (paragraph 1.28).

RECOMMENDATION 3: HMIC recommends that ACPOS creates and maintains a national database of all allegations and disposals from misconduct hearings (paragraph 1.32).

RECOMMENDATION 4: HMIC recommends that forces benchmark their suspension policies to ensure that all policies are consistent in content (paragraph 1.35).

RECOMMENDATION 5: HMIC recommends that ACPOS engages with its partners in the Scottish Criminal Justice system, including COPFS and the Scottish Court Service, to discuss the merits and practicalities of fast tracking criminal cases involving police staff (paragraph 1.41).

RECOMMENDATION 6: HMIC recommends that a national evaluation of lay visitor schemes should be carried out by the Scottish Executive in consultation with police authorities (paragraph 1.79).

Areas Requiring Further Attention (arising from work to progress recommendations and suggestions contained in Part I of “A Fair Cop?”)

- 1 The recording, monitoring and analysis of activity in relation to external investigations (paragraph 1.7).
- 2 The formalisation of arrangements with third party reporting organisations and to ensure such arrangements deliver practical outcomes as has been achieved with racist incidents (paragraphs 1.14 & 1.15).
- 3 ACPOS and the Crown Office and Procurator Fiscal Service (COPFS) should examine the issues raised in relation to moving to misconduct before criminal proceedings with a view to reaching a consistent and effective approach across Scotland (paragraph 1.24).
- 4 The collation and circulation of chairs’ notes and disposals (paragraph 1.32).
- 5 The need to maintain contact with suspended officers (paragraph 1.38).
- 6 Developments in complaints handling within common police service arrangements (paragraph 1.56).
- 7 ACPOS to develop policy further in the area of persistent complainers in light of the work undertaken by the NHS in Scotland (paragraph 1.63).
- 8 The carrying out of Best Value reviews into complaints by forces (paragraph 1.66).
- 9 The development of effective complaints costing regimes (paragraph 1.67).
- 10 Completion of CCTV schemes (paragraph 1.74).
- 11 The promotion of Lay Visitor Schemes to the general public and within forces (paragraph 1.78).
- 12 Formal implementation of a Code of Ethical Practice across the Scottish Police Service (paragraph 1.82).
- 13 The potential benefits in the governance of complaints against the police to be derived from police authorities, with the support of ACPOS, COSLA and the Scottish Executive, meeting and sharing best practice, with a view to publishing national guidance on good practice (paragraph 2.13) and a common template of management information (paragraph 2.53).
- 14 An examination, by forces, of ways in which they could more actively solicit public commendations thereby assisting in the production of a balanced picture of service delivery (paragraph 2.17).

-
- 15 An analysis, by ACPOS, of warnings given with a view to developing common procedures in respect of how disciplinary warnings are given (paragraph 2.20).
 - 16 A review, by ACPOS, of the training given to the chairs of misconduct hearings, to include formalised evaluation, the structure and frequency and the need for refresher training (paragraphs 2.23 - 2.25).
 - 17 A review, by ACPOS, of the need for training for investigating officers to include training needs analysis and greater use of formal evaluation techniques (paragraph 2.29).
 - 18 A re-examination, by forces, of their procedures in relation to civil claims to ensure they effectively address the suggestion (paragraph 2.37).
 - 19 A review, by forces, of the way they address the issues presented by officers who are persistently subject to complaint (paragraph 2.40).
 - 20 A review, by forces, of their written policies/guidelines to ensure a timescale for conciliation is set (paragraph 2.43).
 - 21 The opportunities to benefit from research into customer expectations and experience in respect of the police complaints system to be linked to work currently being considered by the Scottish Executive and COPFS (paragraph 2.48).

Good Practice (arising from work to progress recommendations and suggestions contained in Part I of “A Fair Cop?”)

HMIC considers the following to be good practice.

- 1 The entering into of a formal arrangement through a memorandum of understanding with appropriate bodies, e.g. Citizen Advice Bureaux to allow for remote reporting of complaints (paragraph 1.14).
- 2 The simultaneous presentation to the Area Procurator Fiscal (APF) of the outcome of both the misconduct and criminal enquiry for consideration. Where the likely outcome of misconduct may be more effective than dealing with criminal allegations, then the APF is in a position to let the force undertake the former (paragraph 1.22).
- 3 The utilisation of a case conference approach wherever possible when dealing with suspension (paragraph 1.37).
- 4 The utilisation of an effective costing regime and arising from same the provision of appropriate management information to police authorities and for internal force use (paragraph 1.67).
- 5 The trialling of CCTV technology within police vehicles intended to transport custodies with a view to installing in all such vehicles (paragraph 1.73).
- 6 The recording of letters of appreciation as part of the officer’s personnel file (paragraph 2.15).
- 7 Secondment opportunities for non-departmental staff (paragraph 2.30).
- 8 The regular publishing and circulation of detailed analysis of civil claims (paragraph 2.36).
- 9 Proactively addressing the ethnicity of complainers as part of the complaints process (paragraph 2.52).

Chapter 3 Fit for Purpose?

Introduction

- 3.1** The last decade was a period of change for the complaints against the police process in Scotland. A series of measures have been implemented, all intended to improve the efficiency and effectiveness of the police complaints system both in the eyes of the public and those who make up the Scottish police service. These changes culminated, in recent times, in "A Fair Cop?", a piece of work that significantly impacted upon the complaints against the police process and the debate that surrounded it.
- 3.2** "A Fair Cop?" sought to offer proposals which were capable of immediate implementation and Part I of this report has outlined progress made in implementing those proposals. As has been commented upon, much has been done but more is left to do. Perceptions of unfairness persist both externally, by members of the public who seek to complain about police actions, and internally, by police officers and staff who are complained against, which require to be addressed. Whether or not they are misplaced, perceptions are corrosive and, if left unchallenged, can impact on the confidence of all those involved in complaints against the police, both internally and externally.
- 3.3** As the last paragraph has alluded to, at the very heart of the police complaints system is an element which, it can be argued, the current process driven system can ignore, namely the individual. Police officers hold a special position in society exercising power and authority over others. It is quite right that they are held to account if they abuse that power. Equally, members of the public who are subject to abuse are entitled to recourse to a robust system that calls the wrongdoer to account.
- 3.4** However, this narrow focus on a crime and punishment model, in practice, serves neither party well nor does it address the issue of quality of service. As a result, the police officer can be subject to a complaint which has little to do with personal culpability and much to do with poor systems and procedures. The member of the public, in turn, finds him/herself ensnared in an often long drawn out process that rarely produces satisfaction in terms of the outcome. Rarely will either come away from the experience satisfied or expressing confidence.

A Modern Complaints System

- 3.5** HMIC believes there is considerable scope for introducing a modern complaints system that includes the following benefits:
- **flexibility** - providing an ability to respond that offers options appropriate to the complaint
 - **ease of access and use** - clear and easy to understand
 - **effectiveness** - a system that produces the right result quickly
 - **responsiveness** - a system that meets the full range of demands upon it

- **credibility** - respected by the public
- **cost effectiveness** - a system that does not take up a disproportionate amount of police time

3.6 A complaints system which satisfied these criteria would be a significant addition to the service's commitment to continuous improvement and service delivery and would have a positive impact on public and staff alike. No mention is made of discipline or misconduct because misconduct should not be regarded as a necessary follow-up to a complaint, only one of many options the service has in dealing with complaints. A comment by East Renfrewshire Council² sums this up. "*Complaints are positively welcome. Complaints should be looked upon as a management tool to help improve services and their reporting and analysis should be regarded as good management practice.*".

Support or Straightjacket?

3.7 This report makes it clear that current efforts by forces to investigate complaints are thorough and professional reflecting their expertise in evidence gathering from a variety of disciplines. As referred to earlier, of the 2823 recorded complaints against the police during 2002-03, only 92 (3%) were referred to HMIC by dissatisfied complainers. HMIC always examines the form of enquiry or investigation to verify that it is thorough, that all relevant evidence has been collated and witnesses identified and interviewed. In addition, HMIC checks that enquiry or investigating officers are impartial and free from bias. Finally, that responses are fair, objective, accurately reflect the enquiry or investigation findings and are provided within a reasonable timescale and in a manner that ensures members of the public fully understand how responses to complaints have been arrived at. For the most part, HMIC has found the enquiries carried out to have been detailed and exhaustive and, where adverse comment is made, it is mainly around minor procedural issues or oversights.

3.8 Irrespective of the efficiency of processes however, and acknowledging the special position of the police as a disciplined service of which the public has high expectations, it is the belief of HMIC that the current system for dealing with complaints has become a straightjacket in which the approach to addressing complaints has become inextricably linked with misconduct procedures leading forces to consider complaints almost exclusively as a mechanism for establishing individual culpability. While forces do, as a consequence, give regard to the systems and procedures which may have been at fault, the unnecessary association with misconduct inevitably means that less regard is given to this important aspect of continuous improvement. The only definition of a complaint formally used by forces reinforces this relationship and offers no scope for organisational culpability.

"Any complaint made by or on behalf of any person against one or more on duty members of a police force and from which it may be reasonably inferred that any act or omission which was made or committed by any of the individuals concerned amounts, or may amount, to a criminal offence or professional misconduct."

² 'Complaints and Disciplinary Procedures in the Public Sector' - Robert Gordon University, November 2003.

3.9 This view is supported by research undertaken on behalf of HMIC by Robert Gordon University, who undertook a comparative study of complaints and disciplinary procedures, mainly in the public sector and primarily examining two sources, local authorities and the National Health Service³. Some of the main findings of that study are detailed within the next section.

The Nature of a Complaint

3.10 The definition of a police complaint⁴ contains four key elements:

- a class of behaviour by officers
- an accusation of misconduct, and any response begins from the need to treat complaints as such
- against named officers, not against the service
- intimately linked with disciplinary procedures.

3.11 By contrast, complaints within the public sector organisations reviewed⁵, differ materially:

- **Complaints are an expression of dissatisfaction.** Such an expression does not necessarily relate to the actions of individual officers; it may be concerned with a much wider range of action.
- **Complaints require a response.** Complaints against the police cannot, currently, be taken as requiring a response to complainants, because they have to be treated as accusations of misconduct against individual officers who have statutory rights which cannot be ignored.
- **Complaints are made against the service, not against individuals.** This is not just about 'service issues' in the sense in which the police use the term; it is based on a fundamentally different understanding of the nature of the official to the public. If an official acts improperly, the responsibility rests in the first instance with the service, which is responsible for that person's training and conduct, not with the individual officer. Officials act on behalf of the service and complaints, consequently, lie against the service.
- **Complaints are distinct from disciplinary action.** There are strong practical arguments for making a clear distinction. One local authority referred to is careful to distinguish complaints procedures from accusations against members of staff. *"A 'blame culture' must be avoided at all costs since this encourages defensiveness and can be counter-productive."*

3 'Complaints and Disciplinary Procedures in the Public Sector' - Robert Gordon University, November 2003.

4 'Complaints and Disciplinary Procedures in the Public Sector' - Robert Gordon University, November 2003.

5 'Complaints and Disciplinary Procedures in the Public Sector' - Robert Gordon University, November 2003.

3.12 Reference has been made to the special position of the police. It is not just the service that is in a special position but its officers. HMIC acknowledges the special status and duties of police officers as an independent office holder. The status of the police constable is “*original, not delegated and is exercised at his own discretion by virtue of his office*”⁶. Arguably, it is this status more than anything that has driven the service to adopt a complaints system that focuses on the individual and his/her culpability. It is therefore not just a simple process of discarding one set of principles and replacing it with another. Rather, HMIC would like to see a system that maintains a robust mechanism for dealing with the individual actions of officers, where it is appropriate to do so, but recognises that complaints should be regarded, in the first instance, for what they are, an expression of dissatisfaction by a member of the public about the police force concerned.

3.13 A case study of an anonymised complaint referred to HMIC perhaps best serves to illustrate the inflexibility of the current system and the principles outlined above.

CASE STUDY - CONDUCT UNBECOMING?

A complaint recorded by a Scottish force centred on a case of vehicle obstruction. In this case, a member of the public complained to the police because a vehicle had been parked across his garage entrance preventing access. The attending officer decided that the vehicle should be removed utilising the force’s vehicle recovery scheme and impounded. This is not an uncommon scenario throughout Scotland. On this occasion, however, the owner of the vehicle subsequently wrote to the force complaining regarding the police action and a failure to allow her to remove it or inform her of its removal.

The force recorded the contents of the letter as a complaint against the police and attempted through a local supervisor to conciliate the complaint. Attempts at conciliation were unsuccessful and so the force felt compelled, in line with current legislation, to appoint an investigating officer. The officer who had decided to have the vehicle removed was formally served with investigation forms, as called for by the Police (Conduct) (Scotland) Regulations 1996, indicating that a charge of neglect of duty was being investigated as a result of an alleged failure to contact the owner prior to and after removal. A very thorough investigation ensued in which statements were taken and computer related enquiries relative to the incident documented. The investigating officer concluded there had been no neglect on the part of the officer who had correctly followed force policy and procedure, which did not require the owner of a vehicle to be contacted after it had been removed. The force then responded to the complainer saying that there was no evidence of neglect on the officer’s part and also outlining force policy and procedure for the complainer’s information.

Not satisfied with this, the complainer then referred the complaint to HMIC for review. This review concurred with the conclusions reached by the investigating officer and the subsequent response of the Deputy Chief Constable.

⁶Attorney General V New South Wales Perpetual Trustee Company Ltd [1955] AC 457.

-
- 3.14** It is important here to emphasise that HMIC is not being critical of the force's response. It applied the conduct regulations in an appropriate manner. However, from beginning to end, the whole process took in excess of 10 months and not without significant costs to the force. The complaint represented a fairly simple set of circumstances which, in the absence of existing regulations, could have been treated as a quality of service issue with learning outcomes, if appropriate, to inform force policies and procedures. Instead, it involved an officer being subject to personal investigation over a lengthy period of time. In attempting to be rigorous in its approach to the recording and processing of complaints against the police, the force has, not unreasonably, recorded the letter received as a complaint against an officer and not a quality of service issue relative to the force. Once recorded as a complaint, however, the force naturally focuses on individual fault rather than organisational deficiencies.
- 3.15** This is not an isolated example of the use of the current complaints system. There are many instances where the full weight of the conduct regulations, in the absence of any alternative process, is used to address procedural complaints. HMIC is not suggesting a softening of the police complaints process but rather is advocating a complaints process which focuses on answering the complaint quickly and effectively and in which misconduct is divorced from the complaints process and becomes simply one option, where appropriate, rather than the only option. For example, the Police (Efficiency) (Scotland) Regulations 1996 were intended to impact on officers identified as under performing. Infrequently utilised, they represent a possible alternative.

Counting the Cost

- 3.16** The complaints process and the associated investigatory work that it sets in motion do not come cheaply. While no comprehensive costing regime exists throughout the eight Scottish forces, an area HMIC has already identified as requiring further attention by forces (paragraph 1.67), HMIC has attempted to draw together a picture of the financial implications. The estimates used must be regarded simply as that - estimates - but, if anything, HMIC is satisfied that the figures produced here are an underestimate rather than an overestimate.
- 3.17** The figures used are based on data provided by forces specifically for this review, in relation to a series of headings provided by HMIC. The results are shown in the following table.

Table 1: Investigating Complaints - The Costs

Budgetary Head	Cost
Departmental Staff	£3,600,000
Non Departmental Staff	£750,000
DCC Involvement	£150,000
External Force Enquiries	£1,300,000
TOTAL	£5,800,000

Explanatory Notes

- **Departmental staff** costs include both police officers and support staff. Specifically excluded are staff who are dedicated to internal professional standards work, which is the case in three forces
- Regardless of structures and processes in place within each force the investigation of complaints against the police relies upon a significant level of involvement from **non-departmental staff**, either through participation in preliminary enquiries or, in some forces, routinely carrying out full enquiries
- During 2002/03, 2823 complaints were lodged with Scottish forces. The level of Deputy Chief Constable (**DCC**) **involvement** in cases will vary from force to force and will also depend on the nature of the case
- The cost of **external force enquiries** has been calculated on the basis of 16 such enquiries conducted between April 2001 and July 2002. This has been estimated to have involved 20 officers of varying ranks on a full time basis for over a year
- The costs are identified as estimates of annual expenditure.

3.18 The figures quoted do not include extra costs such as employer contributions, allowances, etc. This can be as much as 22% of salary for support staff and 49% for a police officer. They do not take account of the running of 60 misconduct hearings held in the last financial year nor a number of other associated costs, for example, office systems support, legal advice or other expert opinion. Nor is any account taken of the 92 complaints referred to HMIC in the same period. Clearly, the significant involvement of the Crown Office and Procurator Fiscal Service in police complaints that infer criminality is a matter which is outwith the scope of HMIC's work.

From Blame Culture to Learning Culture

3.19 From the figures shown, the current process can be seen as extremely costly in terms of time and other resources. It has other obvious drawbacks in that, in many instances, neither complainers nor police staff receive satisfaction from the process and line management can be excluded from involvement in resolving complaints and developing staff.

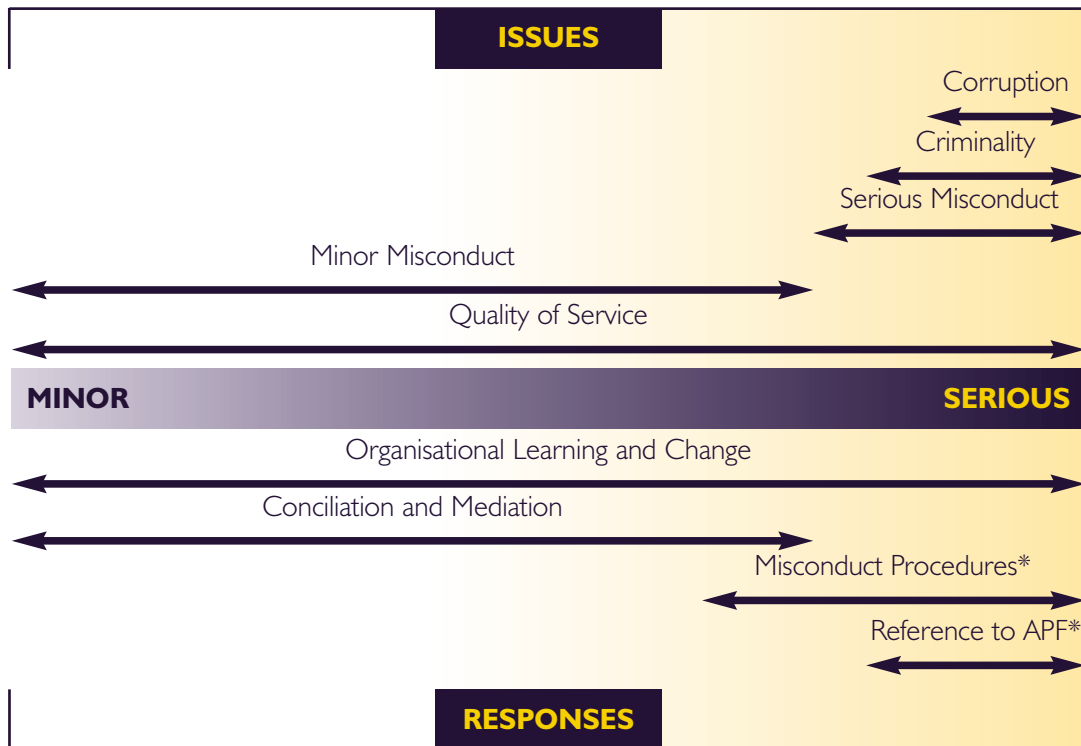
-
- 3.20** To quote one Deputy Chief Constable⁷, “ *the problem up to now has been that the received wisdom surrounding the way in which complaints are handled in Scotland has tended to be inflexible, leading to a ‘one size fits all’ approach and win/lose, lose/win, or lose/lose outcomes.... The challenge we have to overcome, it seems to me, is to stop associating the word ‘Complaint’ with the word ‘Discipline’ as easily as we associate the words ‘salt and vinegar’, because by doing so in the past we have unwittingly created negative connotations around the word ‘complaint’ and tended to limit our options for dealing with complaints to issues of misconduct*”.
- 3.21** HMIC recognises the need for a robust system to deal effectively with wrongdoing by police officers and staff. However, it believes the time is right to review the entire complaints process and to break the link between complaints and misconduct which leads to an automatic reaction that seeks to identify individual culpability. In its place should be a process that encourages officers to take responsibility for their own actions and places an emphasis on continuous individual and organisational improvement based on learning outcomes. This concept is developed in the next chapter.

Chapter 4 A Spectrum of Complaints

Across the Spectrum

4.1 In identifying the current police complaints process as a straightjacket, with a view to influencing thinking towards a more responsive process aimed at dealing with each complaint in an appropriate way, it is important to understand the broad range of issues that arise daily and to which an effective and flexible model must be capable of responding. It is useful, in this respect, to view the complexity of the complaints/professional standards arena as a wide spectrum of issues, ranging from serious corruption which has the potential to strike at the heart of public confidence in the police at one end and, at the other end, minor issues, often relating to a misunderstanding in response to which an immediate appropriate response would suffice.

Figure 1: The Complaints Spectrum



*Responses which require thorough investigation

Quality of Service

- 4.2** Running across the spectrum are quality of service complaints. Day and daily, forces receive communications in one form or another from the public or a representative, such as a local councillor. Very often these communications indicate dissatisfaction, not with an individual per se, but with the service received from the police. The issues raised might range from a poor response time following a telephone call for police assistance to the owner of a vehicle which has been broken into wanting to know what the local police command is doing about vehicle crime. These are not ignored. It is common practice for a local commander or head of department to delegate a supervisor to enquire into the circumstances and prepare a report to allow an explanatory response to be made. A response based on this report may explain that the delay in attending was because of a scarcity of resources to meet demand or measures undertaken by the local area to combat vehicle crime. Details of the issues raised and responses to them will be routinely kept at local/departmental level. In exceptional circumstances, the correspondence is undertaken at force headquarters and the whole process is a key part of the interface between the community and the police.
- 4.3** Within “A Fair Cop?”, HMIC recommended a new category of complaints intended to deal with performance of a police force and similar issues not covered by the existing regulations nor involving individual culpability, i.e. quality of service issues, such as those referred to above. The response of forces to this recommendation has been detailed in Part I against Recommendation 11 (paragraph 1.51).
- 4.4** HMIC acknowledges the ACPOS view that *“Forces have considered this issue at length and agree that any attempt to capture statistical information in relation to these complaints which do not fall within the statutory definition would be so unwieldy and bureaucratic as to be unmanageable. It is also agreed that the effort involved in attempting to do so would be unwarranted”*, yet finds this somewhat at odds with the evidence. As has already been highlighted, two forces are already formally recording, for their own purposes, “non-statutory” or quality of service complaints although they do not include these in any published statistical record of complaints. A further three forces allow divisions/departments to deal with same but provide for central oversight. Indeed, this central oversight allows learning points to be identified and acted on as part of force wide continuous improvement. In the remaining forces, such complaints are dealt with by local areas/departments without central oversight.
- 4.5** By way of comparison, in England and Wales, a recent survey⁸ found that more than half of the 43 forces were collecting statistics on complaints about ‘control and direction’, i.e. complaints made against a police force, as opposed to an individual police officer, involving force policies and procedures. They have done so recognising that such information on organisational or quality of service issues is valuable for analysing trends and assessing “customer” satisfaction.

8 “Opposite Sides of the Same Coin: Police Perspectives on Informally Resolved Complaints” A Report for the Police Foundation from the Institute for Criminal Policy Research, King’s College London, November 2003

- 4.6** HMIC is not seeking to widen the current statutory definition of a complaint, designed as it is to capture those aimed at the individual. Rather, the underlying philosophy of this report is to break the almost automatic link between complaints and discipline and examine the opportunities for learning and improvement at both organisational and personal levels. To include quality of service issues within the statutory definition runs counter to that philosophy. However, as already emphasised, at the heart of any new police complaints framework must be flexibility to address complaints, whatever their nature, in a structured fashion. HMIC does not believe that the framework can be effective if it is to exclude quality of service complaints. Indeed, the evidence is that all forces already deal with them and most have a recording/monitoring system for their own internal purposes. For those forces that have no central oversight, HMIC does not envisage that the additional bureaucracy is necessarily as unmanageable as is suggested. Nor does it accept that recording is unwarranted. On the contrary, it is essential as a first step in a new police complaints system if the police service in Scotland is to be serious about using the system as an instrument of continuous improvement.

HMIC therefore recommends in line with the philosophy of the similar recommendation as detailed in “A Fair Cop?” that ACPOS agrees and publishes guidelines to deal with quality of service complaints that do not fall within the statutory definition set out in the regulations. The guidelines should encompass counting rules, enquiry procedures and the rights of complainers (Recommendation 7).

- 4.7** This recommendation does not prevent quality of service complaints being addressed at a local/departamental level. It simply calls for details of the complaint and the response to be available for analysis and assessment at the centre. A Deputy Chief Constable in one force expressed the view that such complaints were but one learning opportunity within a quality of service performance management regime. HMIC seeks to encourage this approach with the establishment of a structured approach to recording and analysis.

Minor Complaints

- 4.8** Minor misconduct was defined within “A Fair Cop?” as, “A complaint which, if true, would mean that a police officer had committed misconduct of a nature which would be unlikely to merit a misconduct hearing.”.
- 4.9** Of the 2823 recorded complaints against police officers in Scotland in the financial year 2002-03, 1705 (around 60%) were disposed of without recourse to misconduct hearings. Some of these complaints will represent serious allegations of misconduct which are unsubstantiated but many are minor complaints and it is within this category, the major share of police complaints, that HMIC sees the greatest scope for a revised approach to police complaints. Indeed, through informed assessment, it may be that some of these complaints can be properly, and more appropriately, recorded as quality of service issues. Primarily, they should be addressed with a view to continuous improvement, acknowledging mistakes where they have occurred and learning from these mistakes, not with a view to apportioning blame.

-
- 4.10** The use of conciliation in minor misconduct complaints is a frequently used and appropriate response in dealing with such complaints. Currently, where forces decide a complaint is capable of resolution/conciliation, it is usually through the attempts of the supervisor appointed to deal with the complaint supported by his/her local manager. The 2823 recorded complaints in 2002-03 contained 4387 allegations, of which 1133(40%) were conciliated or informally resolved without recourse to formal investigation as part of potential misconduct proceedings. The vast majority of people who make a complaint are primarily seeking an apology, an explanation of what happened and reassurance that someone is accountable to make sure that it cannot happen again. Effective conciliation should normally allow the matter to be dealt with speedily and to the satisfaction of all parties.
- 4.11** However, attempts at conciliation often fail and the current process moves on, with the appointment of an IO and the potential for discipline that ensues. It is here that HMIC sees scope for the use of restorative justice processes, in particular mediation, as an option in appropriate cases.

Complaints and Mediation

- 4.12** *"The philosophy of restorative justice is one that moves away from traditional crime control principles of punishment and retribution, to encompass the idea of collective resolution through dialogue"*⁹. An important element of restorative justice is through using mediation to resolve complaints. This involves a formal meeting for the various parties concerned but with assistance of a trained "mediator", preferably someone unconnected to the police, to facilitate and ensure that an appropriate balance is maintained in a process which can be intimidating for the individuals concerned. The focus of such meetings is to find a mutually acceptable solution and a restoration of trust, not the allocation of blame.
- 4.13** Throughout Scotland, there is currently no lay involvement in complaints other than the unique role of Her Majesty's Lay Inspector of Constabulary. The Police and Magistrates' Courts Act 1994 included specific authority for HMIC to examine, at the request of a dissatisfied complainer, the manner in which a specific complaint against the police has been dealt with. While any direction or opinion issued by HMIC will be under the corporate ownership of HMIC, HM Lay Inspector has a particular key involvement in dealing with complaints referred to HMIC. The current Lay Inspector of Constabulary is also a chartered arbitrator and accredited mediator.
- 4.14** Amongst Scottish forces, there is a willingness to consider elements of the restorative justice process. One force in particular is undertaking research with a view to presenting a Best Value case for such an approach. The same force is also cooperating with a student from a local university, undertaking research for a thesis in this area. HMIC will follow the progress of these developments with interest.

⁹ "Opposite Sides of the Same Coin: Police Perspectives on Informally Resolved Complaints" A Report for the Police Foundation from the Institute for Criminal Policy Research, King's College London, November 2003

- 4.15** A recent analysis¹⁰ of the use of elements of restorative justice by one English force in resolving police complaints compared to another which continued the traditional approach illustrates the potential.

CASE STUDY – THE APPLICATION OF RESTORATIVE JUSTICE TO THE POLICE COMPLAINTS PROCESS

The research study referred to took place over two years and involved comparing two forces, one operating the statutory system for handling police complaints in a traditional manner and the other where elements of restorative justice were injected into the police complaints process. The main innovation used by the latter force was the organisation of meetings between the complainants and police officers managed by a facilitator/mediator trained in restorative justice principles. At the meeting the facilitator encourages:

- expressions of thoughts and feelings about the relevant issues
- respectful listening
- taking of responsibility for wrongdoing
- discussion about how any harm caused might be repaired.

The research adopted a predominantly qualitative, case study based method. In total, 82 complaints cases were tracked, approximately half in each force.

Comparing the conventional approach to the restorative justice approach, the identified outcomes included:

- The proportion of complainants holding a negative view of the officer complained about decreased in the restorative force following conclusion of the process, whereas within the conventional approach, the proportion of those holding a negative view increased
- Officers admitted some kind of wrongdoing in 19% of cases that involved a restorative meeting and just 9% of cases dealt with by the conventional informal resolution procedure
- In two-thirds of cases in which a restorative meeting was held, there was some positive movement or mutual understanding between the complainant and officer expressed in words. This positive outcome was rarely achieved in the conventional informal resolution procedure.

The study has concluded that restorative justice, while not a panacea, when implemented properly, offers substantial advantages over conventional complaints procedures and should be offered “across the board”.

¹⁰ “Meeting Expectations The Application of Restorative Justice to the Police Complaints Process”, Centre for Criminological Research, University of Oxford, November 2003

-
- 4.16** There is a broad base of evidence supporting restorative justice techniques and other areas of the public sector¹¹. For example, the NHS complaints procedure includes mechanisms for conciliation through an independent conciliation service. One West of Scotland health board uses unpaid Lay Conciliators to resolve issues. The Conciliator has access to a professional adviser from the same speciality as the person complained against. Both sides must agree that they wish to use the service. HMIC supports the application of such a philosophy to the police complaints procedure in Scotland as part of a package designed to shift the emphasis away from a discipline and blame culture.

HMIC recommends that ACPOS, assisted by the Scottish Executive, pilots the use of restorative justice techniques within the police complaints process in a Scottish force. If successful, consideration should be given by all forces to adopting such an approach as part of the police complaints system (Recommendation 8).

Role of the Investigating Officer

- 4.17** Where conciliation fails and there are clear misconduct or criminal allegations against an officer to be investigated, then an Investigating Officer (IO) will be appointed to carry out a full enquiry into the complaint made. The IO is normally of at least inspector rank or the rank being investigated, whichever is greater. The IO should not come from the same operational command area or department as the officer complained about. In forces with sufficient full time IOs, part of a Complaints and Professional Standards Department, there are few problems in achieving this level of independence. In other forces without this resilience, it is normal for the IO to be an Inspector who is part of a local command unit whose duties are many and various. HMIC has a number of concerns surrounding such procedures.
- 4.18** A complaint investigation will involve the taking of statements from the complainer, witnesses, the officer(s) complained about, the securing of evidence such as video evidence, notebook entries, and computer entries, for example custody recording or command and control systems, forensic evidence where appropriate and any other source considered necessary. The process can be a lengthy one, dependent on, for example, the availability of witnesses and the opportunity for the IO to free him/herself up from other priorities. Despite set deadlines for submission, it is not uncommon for such enquiries to exceed them, something HMIC considers during its inspection of forces and examination of individual complaints.
- 4.19** During the Review Inspection, some focus groups made up of IOs were arranged. Where those IOs were local operational inspectors, a number of concerns were raised. These ranged from lack of training, although it was acknowledged good written guidance was available, as was advice and support from Complaints Departments, to difficulty in meeting timescales, for reasons referred to above. One inspector highlighted a complaint where he had to interview 16 members of the public in addition to his normal supervisory responsibility. This, in his view, led to a lack of focus on complaints and a negative impact on his ability to manage his own staff.

4.20 HMIC shares these concerns and, while they should not be regarded as casting doubt on the integrity and sufficiency of investigation currently being undertaken, it is not particularly efficient nor does it contribute to perceptions of impartiality. HMIC believes that to improve efficiency and strengthen independence within the current system, the time is right for all IOs to be full time members of Complaints and Professional Standards departments, subject to suitable tenure arrangements. Only complaints relating to quality of service or minor misconduct and considered capable of resolution should be conducted by local/departmental enquiry officers, although there are occasions where it is perfectly reasonable to carry out a preliminary enquiry using local officers. HMIC also acknowledges there will be occasions when it will be appropriate for an IO to be temporarily seconded to carry out an investigation because it requires specialised skills, for example fraud or IT security.

HMIC recommends that all complaints Investigating Officers should be full time in the role as members of Complaints and Professional Standards departments (Recommendation 9).

4.21 In putting forward this recommendation, HMIC acknowledges that this may present some difficulties for smaller forces with large geographical areas. However, based on the argument laid out above, it is considered to be an efficient use of resources, as well as ensuring that complaints requiring thorough investigation receive the appropriate attention. In any case, within the context of a revised complaints process (paragraph 4.35), it is essential that IOs are only appointed where informed assessment justifies the pursuit of a misconduct route.

4.22 HMIC has also considered the scope for regionalisation of this function around three or four strategic locations in Scotland and, at some date, to be seen as an element of common police services. Such an approach would have both strengths and weaknesses.

Table 2: Strengths and Weakness of Regionalisation

Strengths	Weaknesses
<ul style="list-style-type: none"> • Positive influence on perceptions of independence of investigation • Increased effectiveness and efficiency • Removes difficulties in carrying out external force enquiries • Removes unplanned burden from forces 	<ul style="list-style-type: none"> • Reduced link with Deputy Chief Constable • Potential for reduced local knowledge and, therefore, capacity to achieve a satisfactory outcome for all parties • Interferes with forces' responsibility for complaints

4.23 In considering this option, it is acknowledged that neither the final outcome of deliberations around an independent police complaints body or common police services are yet known/finalised and, therefore, any move in this direction would be premature. However, HMIC would like to see ACPOS entering into discussions with the Scottish Executive and the Crown Office and Procurator Fiscal Service to examine the potential for such an arrangement in the light of emerging findings regarding a new independent police complaints body.

Serious Complaints/Criminality – The Role of the Procurator Fiscal

- 4.24** At one end of the spectrum of complaints are serious complaints likely to result in a misconduct hearing and allegations of criminality. In all these instances, it is more than likely that the investigating officer will be a full time member of a force Complaints and Professional Standards Department, unless the criminal allegation calls for the involvement of specialised officers with additional skills.
- 4.25** The Crown Office and Procurator Fiscal Service (COPFS) role in providing an independent element to the police complaints process, through its responsibility for the investigation of complaints of criminal conduct and the proceedings that may follow, is covered in detail in “A Fair Cop?”. In practical terms, the criminal investigation is conducted on behalf of and subject to the direction of COPFS by the police. HMIC acknowledges, in tandem with this review by HMIC, the current work being conducted within COPFS to review its role in the police complaints process. HMIC welcomes this work and offers comments intended to assist in this process.
- 4.26** Throughout this report, HMIC has made a number of recommendations and identified some areas to be progressed that are intended to contribute to the independent nature of the role of COPFS. These include:
- the recording and analysis of activity in relation to external investigations (paragraph 1.7)
 - the ability of complainers to register a criminal police complaint directly with the procurator fiscal (paragraph 1.17)
 - the presentation of the outcome of concurrent enquiries into misconduct and criminal allegations to Area Procurators Fiscal for consideration (paragraph 1.22)
 - the fast tracking of criminal cases involving police staff who are suspended (paragraph 1.41).
- 4.27** Central to all of this is the relationship between the Area Procurator Fiscal (APF) and the DCC of the force for which the APF has responsibility for allegations of criminality against police officers. During the course of the Review Inspection, HMIC spoke to all APFs and their respective DCCs. HMIC found substantial evidence of good working relationships between DCCs, heads of Complaints and Professional Standards departments and APFs. Meetings in most forces took place on a regular basis to discuss complaints issues. In others, the meeting structure was described as ad hoc. However, in all instances, sound and robust working relationships existed. Such relationships are best summed up in the words of one APF, *“It is important that there is a good relationship between the Force and the APF. Frequent contact and liaison can help achieve this. They promote mutual understanding of the process and mutual understanding of each other’s needs. However, the independence of the procurator fiscal is of paramount importance. If this were to be compromised, it would mean the end of the system.”*. HMIC fully concurs with this observation.

4.28 In seeking to support the strengthening of the APF's role, HMIC believes that there is scope to formalise the working relationship of the DCC and APF. Clearly, discussions take place around individual cases but one APF commented that, in making any decision whether to prosecute or not, the implications of associated misconduct proceedings did not form part of the decision making process. If he decided not to prosecute, he considered it presumptuous to suggest to the DCC that such a course of action took place. A different view was held by another APF who highlighted a case in which he had not proceeded against an officer who had been reported for a minor Breach of the Peace, because it was not in the public interest. He was, however, reassured in the knowledge that allowing the force to address the incident through misconduct was more appropriate. HMIC firmly believes that it is a matter of public interest, in appropriate cases, for APFs and DCCs to discuss the strengths and weaknesses of criminal and misconduct proceedings to ensure swift justice. This should not be seen as an attempt to compromise either's role and would recognise the reality that, in certain circumstances, to move to misconduct, rather than criminal, proceedings may well be more efficient and effective.

HMIC recommends that ACPOS enter into discussions with COPFS to seek agreement on a memorandum of understanding around the respective roles of the DCC and APF and the interface between them, to enhance informed decision making by both parties in proceedings with criminal and misconduct allegations (Recommendation 10).

4.29 Recent internal restructuring on the part of the Procurator Fiscal Service has seen a move from Regional Procurators Fiscal who had responsibility for police complaints across several forces to Area Procurators Fiscal with responsibility for one force. (An exception is Strathclyde, where 4 APFs have responsibility for police complaints relevant to groupings of territorial divisions.) As already referred to, this restructuring has not impacted on relationships, indeed, having successfully managed the transition, Crown Office and several APFs commented on their desire to strengthen their approach to police complaints with the new platform that the APF role now provides. HMIC was heartened by the commitment shown by COPFS to the complaints process and is convinced that strong, formal communications between COPFS and ACPOS, both at national strategic and local tactical levels, offers the potential to maximise the strengths of the independent role of the procurator fiscal in police complaints alleging criminality.

The Investigating Officer's Report

4.30 Central to both the role of the investigating officer and that of the procurator fiscal is the investigating officer's report. During this review, a number of concerns were raised in relation to the continued confidentiality of this report. It was put to HMIC that members of the public frequently provided statements to IOs in relation to police complaints alleging misconduct. There is no legal onus on them to do so where criminality is not involved. Part of the basis of that co-operation is that any such statements provided are treated as confidential so the witnesses are not exposed to any attack or ridicule by the complainer. In addition, the IO is encouraged to express

views and opinions based on the evidence he/she has gathered. This could include an opinion as to the credibility of individual witnesses and, if the report was generally available, this openness could be eroded to the extent that the report becomes purely a précis of basic facts. This would inevitably impact on the integrity of the complaints process.

- 4.31** HMIC was provided with details of a number of occasions in recent years where attempts have been made to gain access to the report. Forces in most instances have been able to resist such attempts, which one Sheriff described as “nothing more than a fishing expedition” but on at least two occasions, they have come into the public domain. It is anticipated that the Freedom of Information Act will widen the opportunity for the IO’s report to be accessed. HMIC has some sympathy with the concerns raised and, while they have already been brought to the attention of the Scottish Executive, HMIC repeats them and recommends that, in the process of any revision of the relevant legislation, ACPOS should discuss the matter with the Scottish Executive, with a view to consideration being given to some form of statutory provision for the safeguarding of the Investigating Officer’s report.

HMIC recommends that ACPOS enters into discussions with the Scottish Executive to consider appropriate statutory provision to safeguard the confidentiality of the Investigating Officer’s report (Recommendation 11).

- 4.32** One final issue is worthy of comment. It is normal practice for IOs’ reports to the APF to contain the complainer’s previous criminal convictions. Concerns have been raised within HMIC regarding the relevancy of this information on all occasions. In discussing this with APF’s during the review inspection, a view emerged that such information was relevant to help inform the APF’s decision making, although it was also considered appropriate, for balance, that it should make reference to the subject officer(s) complaints history as well.

HMIC recommends that all Investigating Officers’ reports to the APF should contain both the complainer’s previous convictions and the subject officer(s) complaints history (Recommendation 12).

Maintaining Integrity

- 4.33** In 1999, HMIC for England, Wales and Northern Ireland recommended that all forces should secure proactive capacity to maintain integrity and high professional standards¹². The inspection prompting the recommendation found that many chief police officers had no personal systems to inform them directly on the health of integrity within their functional responsibilities. *‘Robust proactive investigation into suspected corruption and the proactive maintaining of integrity by auditing, random or non targeted integrity testing, as well as quality of service checking’* then being developed in several forces, with the establishment of professional standards units dedicated to carrying out ‘robust proactive investigation’, was regarded as good practice and to be encouraged. HMIC in Scotland supports this development.

¹² “Police Integrity securing and maintaining public confidence”, HMIC for England, Wales and Northern Ireland, June 1999.

- 4.34** This review inspection, although not specifically focusing on progress with regards to professional standards units, found that, while in some forces such a capability existed, in others it did not. Three forces in Scotland are currently operating dedicated units within their overall Complaints and Professional Standards departments. In one other, a Chief Inspector had recently been appointed to progress the establishment of such a unit. In the remainder, while the title “Professional Standards” features prominently in the overall departmental title, it is clear that a robust proactive capability was not present. Either departments had no such capacity or, as one head of department put it, *“At the moment, it is a bolt on. Professional standards is a full time role. You can only do one or the other”* HMIC subscribes to such a view and would encourage forces without such a dedicated capability to resource same. If forces cannot do so, then the question of some form of regional capability will have to be considered although, in this case, HMIC is conscious of the very strong argument for such a capability to be force based as local knowledge and intelligence is paramount to success in this area.

HMIC recommends that all forces should be supported by a dedicated professional standards unit, capable of conducting robust proactive investigation (Recommendation 13).

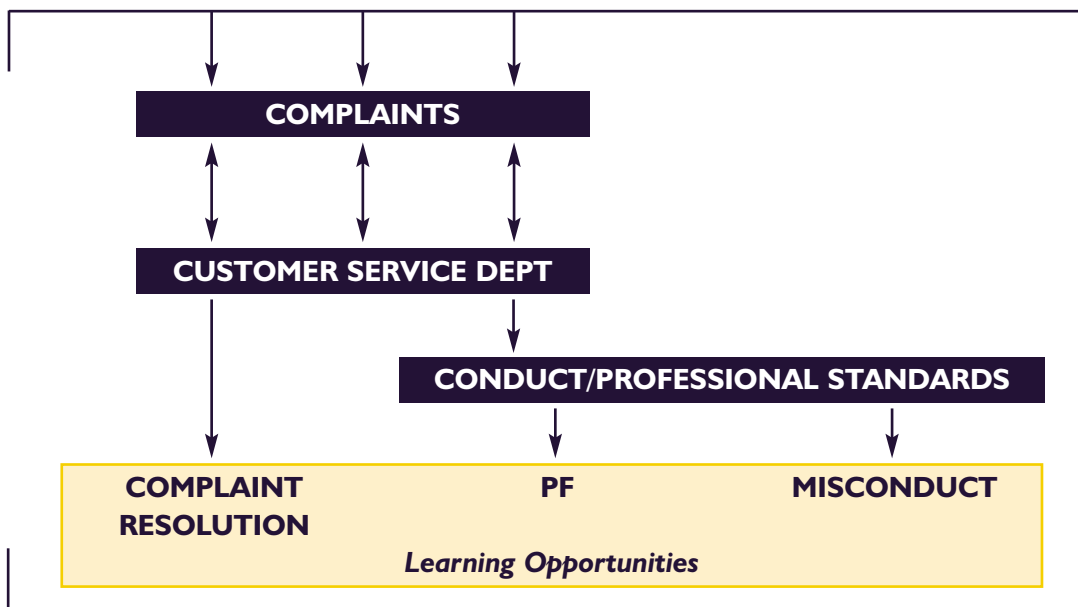
Informed Assessment

- 4.35** Running through the spectrum of complaints is the notion of informed assessment or decision making. HMIC is not suggesting that decisions within the current complaints process are ill-informed but that, within a new system, informed assessment becomes crucial to addressing complaints in the most appropriate manner. That assessment should inform whether the complaint is best dealt with as a quality of service issue, with learning both for the organisation and individuals, whether there is personal culpability, whether resolution through conciliation or mediation is the correct route and whether the appointment of an IO and the use of misconduct procedures is appropriate or necessary.
- 4.36** Informed assessment is appropriate for all parties to decision making in the police complaints process. For the DCC, the inclusion of quality of service complaints and ability to classify and respond to such complaints as appropriate, to be able to conciliate/mediate without the need to consider misconduct procedures, even where evidence of minor misconduct exists, and to be able to consult formally with the APF over criminal allegations should provide a flexible template.
- 4.37** Reference has already been made to the aims of a modern complaints process (paragraph 3.5). HMIC believes that to support the process of informed assessment every force should make new arrangements to manage the wide range of complaints as described by HMIC. This might involve the appointment of a complaints manager who would have responsibility for maintaining the integrity of the process surrounding each complaint from initial categorisation and assessment to finalisation. Such an individual might not necessarily sit within a traditional complaints department as such but rather a “Customer Service” Department. As the name suggests, all complaints

would be examined from the perspective of the complainer, breaking free from the straightjacket of the current system. Only where appropriate, and with considerable scope being given to the force to deal with cases of minor misconduct in a constructive way, would complaints be referred to a “Conduct” Department for consideration of misconduct proceedings.

HMIC recommends that forces put in place new arrangements to manage the wide range of complaints received (Recommendation 14).

Figure 2: Informed Assessment



Chapter 5 A Framework for the Future

Introduction

5.1 “A Fair Cop?” sought to improve performance within the existing framework through a number of measures which could be taken forward rapidly. The evidence of the review inspection is that, within the existing regulatory arrangements, these measures have had impact but more needs to be done. However, HMIC is firmly of the view that the current legislative framework will continue to provide an unnecessary straightjacket limiting progress and would wish to see thorough review.

Current Legislation

5.2 A patchwork of legislation has grown in recent years as a variety of amendments to processes and procedures have been made to the legal framework that regulates police complaints, misconduct and performance. In summary, the main pieces of relevant legislation are:

- The Police (Special Constables) (Scotland) Regulations 1966
- Police Cadets (Scotland) Regulations 1968
- Police (Scotland) Act 1967
- Police (Scotland) Regulations 1976
- Police and Magistrates’ Courts Act 1994
- Police Appeals Tribunals (Scotland) Rules 1996
- Police (Conduct) (Scotland) Regulations 1996
- The Police (Efficiency) (Scotland) Regulations 1996
- Police (Conduct) (Scotland) Amendment Regulations 1999
- Police (Conduct) (Senior Officer) (Scotland) Regulations 1996
- Police (Conduct) (Senior Officer) (Scotland) Regulations 1999

5.3 “A Fair Cop?” made a number of comments and criticisms around the legislation and this review has found that many of those criticisms are still “live” and have not been resolved. These and others are considered at paragraph 5.8. However, as a first step, the all encompassing issue of European Convention on Human Rights (ECHR) compliance in respect of the issues raised within Part III of “A Fair Cop?” is examined.

ECHR Compliant?

5.4 This review has already acknowledged that a significant amount of work is required on the various elements of the complaints process to ensure Scotland has a modern and effective police complaints system which provides fairness and transparency for all those involved. These views are intended to support Scottish Executive initiatives arising from its consultation process on police complaints. As part of this review, HMIC undertook, in consultation with its lawyers, a legal review of issues raised in “A Fair Cop?” in respect of ECHR concerns. In particular, the review examined the procedures relating to deputy chief constables appointing the chair of a misconduct hearing, considered the significant change in the disciplinary role of chief constables and examined the question of ‘discreditable’ in terms of the conduct regulations.

-
- 5.5** In essence, the legal review has concluded that the police disciplinary proceedings for dealing with allegations of misconduct could not in any sense be regarded as concerning criminal charges within the meaning of Article 6 of the ECHR. This distinguishes the police from the military, where the nature of the criminal punishments that can be imposed by courts martial requires the proceedings to have Article 6 protections to ensure that there is a fair trial.
- 5.6** In addition, ECHR case law firmly excludes police disciplinary proceedings as being a determination of civil rights and obligations under Article 6(1) because of the nature of duties and responsibilities of the police. Article 6(1) applies to contractual relationships of a private nature such as the medical profession. In contrast to this, the view is taken that the profession of a police officer is fundamentally different. The police are exercising public law powers and are performing duties designed to safeguard the general interests of the state. Police officers have no ECHR “civil right” to remain in office. The disciplinary process therefore does not involve a determination of any Article 6 civil rights and obligations of police officers. This is confirmed by the case of *Pellegrin*¹³, which reviewed the law in relation to this area. It follows that ECHR is not an issue in this regard although the ECHR case law and principles should, of course, continue to be reviewed on a regular basis to ensure that this remains the position.
- 5.7** In addition to ECHR, the legal review also looked at matters more broadly and considered the issues in terms of natural justice. With regard to the role of deputy chief constables appointing the chair of a misconduct hearing, HMIC is satisfied it is unlikely that this could be the source of partiality and unfairness because, on the face of the regulations, the entire process is generally transparent and the basic template of the discipline structure is clear and open to scrutiny, albeit internally. This issue is closely linked to that regarding the role of the chief constable. Decisions and procedures implemented by the deputy chief constable in the discipline process are now subject to review by way of appeal to the chief constable. This provides an essential mechanism for internal review of discipline decisions and another filter to sift out any bias which may or may not have occurred. Accordingly, HMIC is satisfied that the revised role of the chief constable does not undermine, but reinforces, his/her position in relation to the regulation of misconduct procedures. Finally, regarding the scope for interpretation of discreditable conduct, HMIC has had regard to the context of its use within the misconduct procedures, including the fact that decisions are open to scrutiny and that any appeal will include a written summary of proceedings at the misconduct hearing and will reveal, and allow consideration by the chief constable of, the nature of the conduct in question. Considered in the light of the process in which police conduct is judged, HMIC is content that the wide definition and interpretation of discreditable conduct complies with the basic principles of natural justice.

An Imperfect Set of Rules?

5.8 Having been satisfied that the current framework meets the principles of ECHR, it does not follow that HMIC is satisfied with the framework of regulations which currently apply to police conduct. In the introduction to this report, HMIC referred to the concerns expressed about misconduct issues at the PABS meeting of January 2003 and it is clear that, whether there is genuine unfairness or simply a perception of such, these issues should be addressed.

Conduct Regulations

5.9 A number of positive measures have already been put forward by HMIC in relation to the Conduct Regulations and the processes that flow from them, including misconduct disposals and hearings. All these measures can be addressed relatively quickly. They include:

- A national database of hearing disposals to be created to assist decision making and consistency (paragraph 1.32)
- The imposition of monetary fines in terms of increments to be replaced by cash sums (paragraph 1.33)
- An analysis of warnings given with a view to producing common procedures and guidelines and ensuring consistency (paragraph 2.20)
- A review of training given to misconduct chairs including the need for refresher training (paragraphs 2.23 - 2.25).

5.10 As already mentioned, an outstanding issue is the perception that, in appointing the chair of a misconduct hearing, usually a superintendent from the same force, the DCC could in some way influence the outcome. While it might be ECHR compliant, it is clear that the perception remains and was regularly expressed to HMIC by Scottish Police Federation representatives. On the other hand, when HMIC spoke to superintendents and their representatives, a different perspective emerged. It is clear that superintendents acting as chairs or assessors of misconduct hearings did not accept they were influenced in any way by the DCC. A focus group of Superintendents expressed the view that they took their responsibilities very seriously and considered themselves totally professional. On each and every occasion as chair, they had taken a great deal of time to ensure that they were fully briefed and clear as to their role and responsibilities. As one individual commented, *"It is my integrity that is at stake and I have to live with the decision"*. No evidence was put to, or found by, HMIC during the course of this review that the negative perceptions were borne out in reality. HMIC also acknowledges that there are occasions where the DCC, having considered the case on its merits, has arranged for the chair to come from an outside force. HMIC supports such a practice where appropriate. Nevertheless, to address this potentially damaging perception, HMIC considers that the current role of assessors who may assist the Chair should be amended to become part of a three person adjudicating panel. Such an option would require regulations to be amended and this is referred to at paragraph 5.35.

HMIC recommends that the current role of assessors who may assist the chair should be amended to become part of a three person adjudicating panel (Recommendation 15).

Senior Officers Conduct

5.11 In “A Fair Cop?”, HMIC found *“little evidence of any police authority regarding the existing regulations and guidelines in a positive light”*. HMIC on this occasion has found a similar picture. This is disappointing. The views expressed by police authority members and their clerks have not been repeated here, as to all intents and purpose they mirror the detailed comment in “A Fair Cop?” (Chapter 2, pages 12 to 17) and have been included in commentary around progress to Suggestion 1, as have the issues raised (paragraph 2.2). A review of police regulations requires to address these issues and provide clarity.

Police Appeals Tribunals

5.12 “A Fair Cop?” suggested that the Scottish Executive consider the workings of Police Appeals Tribunals once sufficient experience in this area had been gained. The suggestion was made primarily on the basis of concerns re costs but also because HMIC saw some logic in officers being able to appeal to employment tribunals.

5.13 To date, such a review has yet to be undertaken. During this inspection, further concerns were made to HMIC by Scottish Police Federation representatives regarding their perceptions of unfairness with regard to outcomes of appeals to the Tribunal. HMIC has examined data provided by forces in relation to appeals made during the last three financial years. It is acknowledged that data for the financial year 2002-03 was not complete when this information was provided, however, the numbers are not significant. Indeed, the number of appeals to tribunals has not been high.

5.14 Details of six appeals since April 2000 have been supplied. (One appeal was excluded from consideration as the appellant failed to appear on the day of the appeal and the proceedings went no further). Of the six, one is still pending. Of the remaining five, in one case the officer appealing, who had been reduced in rank, was reinstated to his old rank and a monetary punishment imposed instead. In the other four cases, the appeals were not upheld and the individuals remained dismissed from the service. Two of these dismissals related to drink driving convictions. Since the review, HMIC has become aware of a Police Appeal Tribunal decision that has resulted in one party seeking a judicial review.

5.15 Given the small numbers involved, the issue of costs does not appear to be significant. With respect to the perception of unfairness, HMIC finds it hard to identify with this. While the Scottish Police Federation supplied details of 2 cases as examples to illustrate its concern, HMIC is not in a position to carry out a legal review. However, HMIC is aware of the comments of the Scottish Committee of the Council of Tribunals in its annual report¹⁴. The Committee highlights its concerns in relation to the make up of a tribunal that involved a retired constable who had served in the same force as the

appellant. While the Committee did not believe the outcome was influenced on this occasion, it did not regard this as good practice and has asked the Scottish Executive to offer advice to 'Police Boards' on best practice and tribunal member selection. In light of the perceptions of unfairness and the comments of the Scottish Committee of the Council of Tribunals, HMIC considers it is appropriate, at an early opportunity, for the Scottish Executive to carry out such a review as was suggested in Part III of "A Fair Cop?".

Special Constables and Cadets

- 5.16** The Scottish police service is currently engaged in developing the role of special constables and cadets. ACPOS is actively reviewing the role of special constables with a view to increasing their numbers and their contribution to operational policing. This will lead to increased opportunities for interface with the public and, with it, an increased potential to be involved in complaints situations. Similarly, the number of cadets is growing after they had almost disappeared and one Scottish force in particular has recruited significant numbers and is likely to continue to do so, recognising their value in the face of any future recruitment tensions.
- 5.17** With regard to the regulations affecting special constables, these are nearly 40 years old and several forces complained of a lack of detailed framework with which to deal with issues that might arise around the conduct of special constables, as the 1996 Police Conduct Regulations do not apply. Evidence was found of forces beginning to formulate their own detailed policy and procedure around the special constable regulations. One force had produced a specific conduct policy while another had a well advanced draft policy which dealt with the investigation of complaints against support staff and special constables.
- 5.18** The number of forces operating cadet schemes, until recently, was few with only small numbers involved. The ambitious scheme developed by one force has led to several issues arising around conduct and a similar expression of dissatisfaction with existing regulations has been expressed.
- 5.19** It is only right therefore that the current legislation surrounding both groups be included in any review of conduct regulations.

National Forces

- 5.20** Section 61 of the Police and Magistrates' Courts Act 1994 included specific power for HMIC to examine, at the request of a dissatisfied complainer, the manner in which a specific complaint against the police has been dealt with. This applies to complaints made within the context of Scottish policing generally and the eight Scottish forces.

-
- 5.21** Three forces with national jurisdiction operate within Scotland. They are British Transport Police, the Ministry of Defence Police and the United Kingdom Atomic Energy Authority Constabulary. HMIC's statutory role does not extend to these forces, having the effect that any dissatisfied complainer has no recourse in Scotland to this review facility. Nor does the current Police Complaints Authority for England and Wales have any remit for complaints matters involving national forces where that complaint originates in Scotland.
- 5.22** HMIC has drawn attention to this anomaly over several years while carrying out inspections of these forces and, in any review of the current legislative framework, it needs to be resolved.

A Case for Employment Law?

- 5.23** Currently, police officers are subject to conduct regulations while police support staff are covered by contractually agreed conditions of service. This comes about from the officer's special status in law as an independent office holder. While over 40 years old, the 1962 Royal Commission on the Police lays out in detail the legal status of a police holder and the rationale behind same. In essence, it is designed to prevent *"interference or control by a police authority or anyone else in the discharge of their police duties....His impartiality would be jeopardised and public confidence in it shaken, if in this field he were to be made the servant of too local a body."*¹⁵
- 5.24** That does not mean that police officers are completely without the protection of employment law. Aspects of health and safety and working time regulations apply. Officers are also protected by the Sex Discrimination and Race Relations Acts. Given this, it has been argued that police officers should come under the protection of employment law in general and have access to employment tribunals as force support staff do. HMIC has examined the case for such a change in status from the perspective of simplifying the discipline regime so that all staff are subject to the one system based on employment law.
- 5.25** In essence, force policies dictate that, where the police officer or force support officer has been the subject of a criminal allegation, this is treated in the same fashion and investigated and reported to the APF. Indeed, this is called for by the Lord Advocate's Guidelines on the Investigation of Complaints against the Police:

"In addition to reports concerning regular and special constables, the Area Procurator Fiscal will investigate complaints involving criminal conduct by civilian support staff in the course of their employment. Such complaints about civilian support staff should, for the purposes of investigation and reporting, be treated as though the civilian employee was a constable."

- 5.26** This leaves little doubt as to a course of action and, invariably, a criminal allegation will be reported to the APF under whose direction an investigation will be carried out. An example of this, in practice, centres around a member of support staff who was employed as a custody assistant in a Scottish force. While in custody, a prisoner alleged that he had been assaulted by a police officer who had slammed a cell door hatch against his hand. In addition, it was alleged that the custody assistant forcibly twisted the prisoner's arm. In response, an IO was appointed and after full investigation a report was made to the APF alleging assault by both the police officer and the force support officer. Complaints against officers and staff in a custody environment are not rare and, as more support staff take on roles that involve interface with the public in potentially confrontational situations, it is likely they will increasingly be the subject of complaint.
- 5.27** Misconduct proceedings against a police officer will invariably have to wait until the criminal allegation has been dealt with. Employment law would, in isolation, allow for the force support officer to face discipline before criminal allegations have been dealt with and at least one force policy makes reference to this. However, with the requirement for complaints about support staff also to be reported to the APF, practice now dictates that discipline should await the outcome of the criminal allegations. HMIC has already discussed this issue under the response to Recommendation 5 (paragraph 1.18) and has suggested it be the subject of discussion between ACPOS and COPFS.
- 5.28** Nonetheless, the subsequent misconduct/discipline procedures are two very different processes with a significantly different range of options in terms of outcomes. An officer can be warned, may face a series of incremental pay reductions, may lose rank or be dismissed. The force support officer may receive verbal or written warnings or be dismissed.
- 5.29** In respect of non criminal allegations, e.g. incivility or failure to carry out duties properly, the same outcomes apply but the process which the police officer and the member of support staff will go through will vary significantly in terms of process and time, with the former often waiting months for the outcome while the latter may be dealt with in weeks.
- 5.30** In considering the scope for moving towards a system based on employment law for police officers, the view of DCC's and heads of Human Resource departments were sought. There was support for a harmonised system by all parties but such a system was seen as aspirational. The challenges of legislative enablement and contractual obligations were identified as standing in the way. Further, the differences in timescales and outcomes were also significant barriers. One head of HR identified that a simple complaint of incivility might be dealt with, in respect of a support officer, in 10 days while for a police officer it could take months. Among DCCs, there was a view that given the intrinsically different nature of the police officer's role then the scope for harmonisation was limited. The current regulations were seen as offering protection for both the officer and the organisation which should not be surrendered lightly.

-
- 5.31** Two forces were consciously trying to harmonise as far as possible through a number of measures. In part, the increasing influence of employment law on the police officer's environment was seen as a contributor. These included greater liaison between Complaints and HR departments and the carrying out of a joint investigation where appropriate, i.e. by staff from both departments, was seen as a way forward. However, one head of HR was of the view that the convergence was more likely to be towards the police model than the support staff model.
- 5.32** Considering the views and evidence available and the rationale behind the office of constable, HMIC is of the view that, whether or not it is desirable, and this is debatable, it is not practical for an officer to lose such a status. Accordingly, complete harmonisation is not, at this time, seen to be possible. However, forces should examine all policies and procedures and ensure that they are coherent in relation to the processes to be followed where both officers and support staff are subject to a complaint or an allegation of criminal conduct. The examples given of joint investigations and of greater liaison between Complaints and Human Resource functions are to be encouraged. Other measures identified by HMIC in this report should also contribute towards convergence, for example concurrency of investigations into misconduct and criminal allegations to speed up the process in relation to the police officer; adopting a holistic proactive approach to managing personnel, a move to mediation where appropriate, the adoption of the Code of Ethics as a template for organisational standards of behaviour and the overall thrust of the report to move the police complaint process towards one which contributes to a culture of continuous improvement and service delivery, that impacts positively on public and staff alike.

A Framework for the Future

- 5.33** The whole thrust of Part II of this report is that the time is right for a change in approach to police conduct at all levels from cadet to senior officer. A new police complaints system should be based on a consideration of the complaint as was previously quoted as "*a management tool to help improve services*"¹⁶ and not as a mechanism to apportion blame.
- 5.34** It is also acknowledged that the individuals who make up the service, those who hold the office of constable and those who do not, are subject to standards of conduct because of the nature of their job. The Scottish police service has been to the fore in promoting positive ethical standards but the Police Service of Northern Ireland has led the way. It was the first force in the United Kingdom to adopt such a code. Its Code of Ethics has been drafted to reflect the European Convention on Human Rights, relevant to United Nation standards and what is seen as best practice in ethical standards across a number of countries. The Code sets out the standards of conduct expected of police officers and as such has replaced the equivalent of the Police (Conduct) (Scotland) Regulations. HMIC reiterates the view expressed earlier (paragraph 1.82) that any review of the conduct regime presents an opportunity to integrate such principles or standards and provide practical value.

5.35 This report has considered in detail the current police complaints system. It argues that it has become a straightjacket that focuses on individual culpability where, often, fault lies with organisational systems and procedures. In order to break out of the straightjacket, what is required is a modern complaints system that meets the needs of both the police officer and the member of the public. It must be flexible enough to be able to examine all complaints, initially from a service delivery viewpoint and, through informed assessment, ensure they are dealt with appropriately by a range of methods. To do so, however, the legal framework which supports the current system must be reviewed to enable this fundamental shift in philosophy.

HMIC recommends that the current raft of rules and regulations be reviewed to take account of and address the issues that have been highlighted in both this report and its predecessor, as well as proposals for an independent police complaints body.

HMIC envisages a coherent set of rules and regulations, accompanied by detailed guidance, affecting all police officers from cadet to chief constable.

To formulate such a body of legislation and guidance, HMIC recommends the early establishment, by the Scottish Executive, of a working party of practitioners (Recommendation 16).

5.36 This review did not examine the Police (Efficiency) (Scotland) Regulations 1996. These regulations, “*make provision with respect to the assessment of the efficiency of constables of police forces in Scotland and establish procedures for cases in which a constable who is not performing satisfactorily may be dealt with...*”. While these regulations are aimed at performance and not conduct, they are inextricably part of the legal framework referred to earlier and a number of individuals consulted have suggested that they are under utilised. Accordingly, it makes sense that any review of rules should also consider these regulations.

5.37 HMIC recognises that the issues and ideas raised in this part of the report have the potential for significant change and will generate substantial debate. However, HMIC also believes there is a growing consensus that the current legal framework does not meet the requirements of a modern police complaints system and, with the anticipated introduction of an independent police complaints body likely within the next few years, the time is right to review it. However, it represents not just a change in systems and procedures but a change in culture. It will not be achieved easily but it is in the interests of all parties to the police complaints system to embrace it.

Recommendations Arising From Part II - “The Way Ahead”

RECOMMENDATION 7: HMIC recommends, in line with the philosophy of the similar recommendation as detailed in “A Fair Cop?”, that ACPOS agrees and publishes guidelines to deal with quality of service complaints that do not fall within the statutory definition set out in the regulations. The guidelines should encompass counting rules, enquiry procedures and the rights of complainers (paragraph 4.6).

RECOMMENDATION 8: HMIC recommends that ACPOS, assisted by the Scottish Executive, pilots the use of restorative justice techniques within the police complaints process in a Scottish force. If successful, consideration should be given by all forces to adopting such an approach as part of the police complaints system (paragraph 4.16).

RECOMMENDATION 9: HMIC recommends that all complaints Investigating Officers should be full time in the role as members of Complaints and Professional Standards departments (paragraph 4.20).

RECOMMENDATION 10: HMIC recommends that ACPOS enters into discussions with COPFS to seek agreement on a memorandum of understanding around the respective roles of the DCC and APF and the interface between them, to enhance informed decision making by both parties in proceedings with criminal and misconduct allegations (paragraph 4.28).

RECOMMENDATION 11: HMIC recommends that ACPOS enters into discussions with the Scottish Executive to consider appropriate statutory provision to safeguard the confidentiality of the Investigating Officer’s report (paragraph 4.31).

RECOMMENDATION 12: HMIC recommends that all Investigating Officers’ reports to the APF should contain both the complainer’s previous convictions and the subject officer(s) complaints history (paragraph 4.32).

RECOMMENDATION 13: HMIC recommends that all forces should be supported by a dedicated professional standards unit, capable of conducting robust proactive investigation (paragraph 4.34).

RECOMMENDATION 14: HMIC recommends that forces put in place new arrangements to manage the wide range of complaints received (paragraph 4.37).

RECOMMENDATION 15: HMIC recommends that the current role of assessors who may assist the chair should be amended to become part of a three person adjudicating panel (paragraph 5.10).

RECOMMENDATION 16: HMIC recommends that the current raft of rules and regulations be reviewed to take account of and address the issues that have been highlighted in both this report and its predecessor, as well as proposals for an independent police complaints body.

HMIC envisages a coherent set of rules and regulations, accompanied by detailed guidance, affecting all police officers from cadet to chief constable.

To formulate such a body of legislation and guidance, HMIC recommends the early establishment, by the Scottish Executive, of a working party of practitioners (paragraph 5.35).

Chapter 6 More Information and Statistics

Background to Data

- 6.1** The following section provides some statistical data and commentary on complaints recorded by the Scottish Police Service. The data are taken from statistical returns which forces complete and submit to HMIC annually¹⁷. For counting purposes, a complaint is defined as:

“any complaint made by, or on behalf of, any person against one or more on duty members of a police force and from which it may reasonably be inferred that any act or omission which was made or committed by any of the individuals concerned amounts, or may amount, to a criminal offence or professional misconduct.”

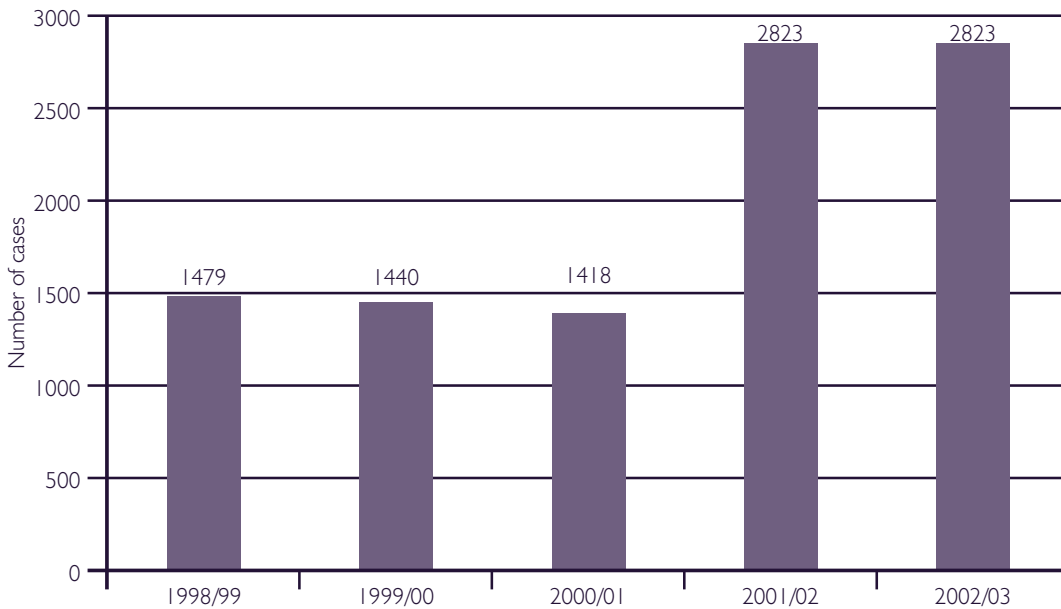
- 6.2** Any police officer who is off duty should not be counted, unless the officer has placed him/herself back on duty in order to deal with an incident and/or has made his/her identity as a police officer known to those present.
- 6.3** From 2001-02, this definition was extended to include all complaints categorised as minor and trivial, while still excluding quality of service cases. From the same time, complaints against all members of a force (i.e. support staff and special constables as well as police officers) were counted.

Complaint Cases Received and Disposed Of

- 6.4** A complaint “case” is a single investigation undertaken by an investigating officer into one or a group of incidents, following a complaint by one or more persons. Thus, where a person complains of an assault by an officer during arrest and that he was later subjected to threats at the police station, this would be investigated as one complaint case comprising two complaint allegations. Had a second person complained about the assault, this would still be investigated as one case, but there would then be two complainers. The year in which a complaint case is counted is the year in which it was first officially recorded as such, not the date of the incident complained of.

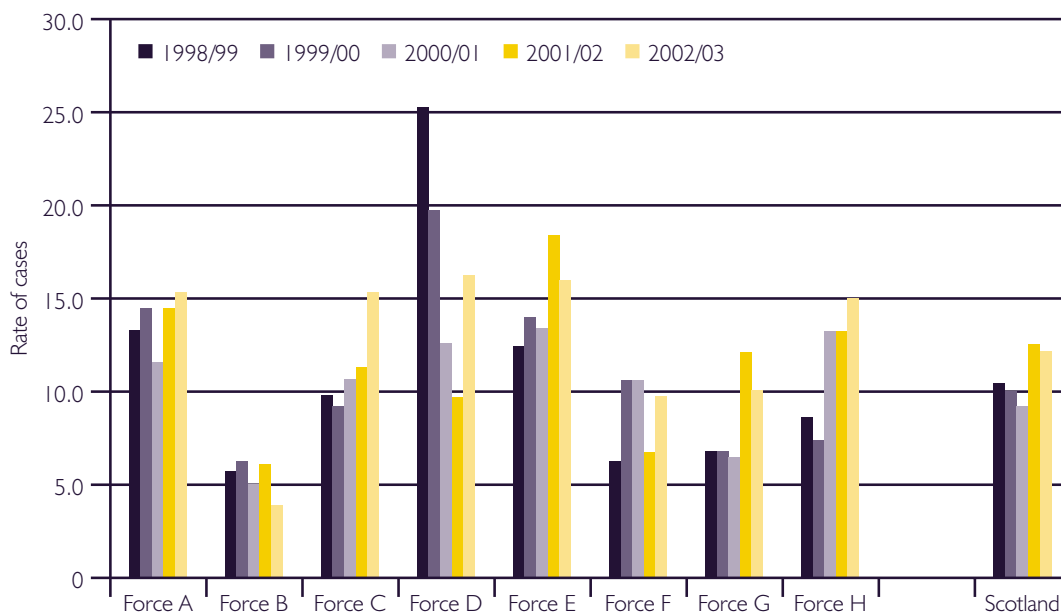
¹⁷ At the time of writing, ACPOS is undertaking an audit of counting conventions and procedures across the eight forces to ensure consistency of recording.

Figure 3: Number of complaint cases received by Scottish police forces in the last five years



6.5 Figure 3 shows fairly steady levels of recorded complaints against forces, either side of the period when the definition changed. After that time, the number of cases recorded across Scotland more or less doubled. This can mainly be attributed to the inclusion of minor and trivial complaints. Support staff and special constables account for roughly 30% of all staff, but for only around 4% of all recorded cases. Thus, the rise in rates per 100 members of staff is less pronounced, as can be seen in Figure 4. The variance in rates is referred to at paragraphs 1.11 and 1.12 of the report.

Figure 4: Complaint cases per 100 police officers (to 2000-01) and members of staff (from 2001-02)

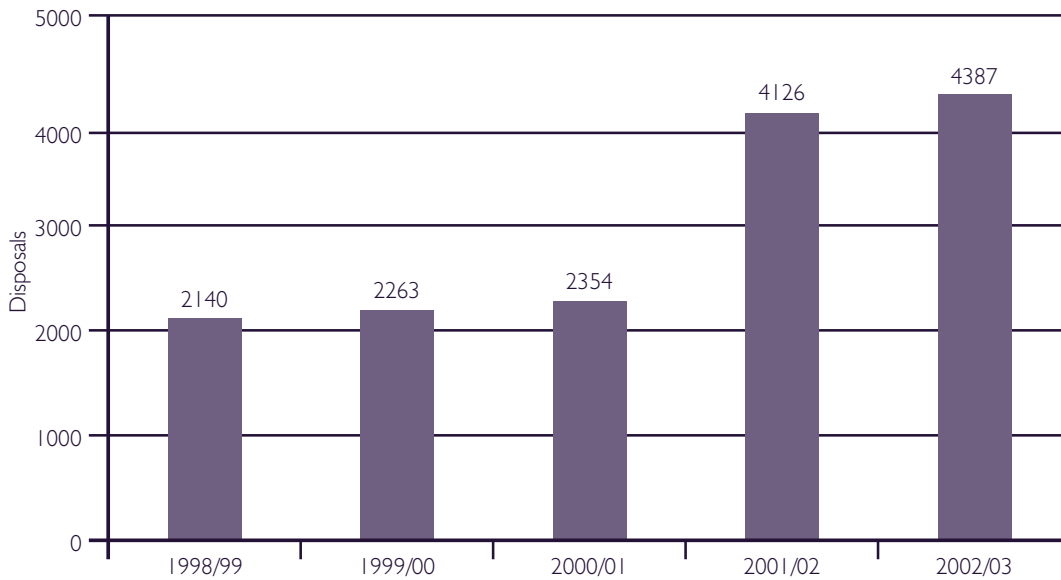


6.6 Typically, forces are unable to dispose of all complaints in the same year that they receive them. The rise in actual numbers recorded has exacerbated this situation, with the number outstanding by the end of the fiscal year up by almost a quarter (24.4%) on the average of the previous four years. And yet, the proportion of complaints forces have disposed of within the year has risen - from 63.9% in 1998-99 to 73.6% in 2002-03.

Allegations

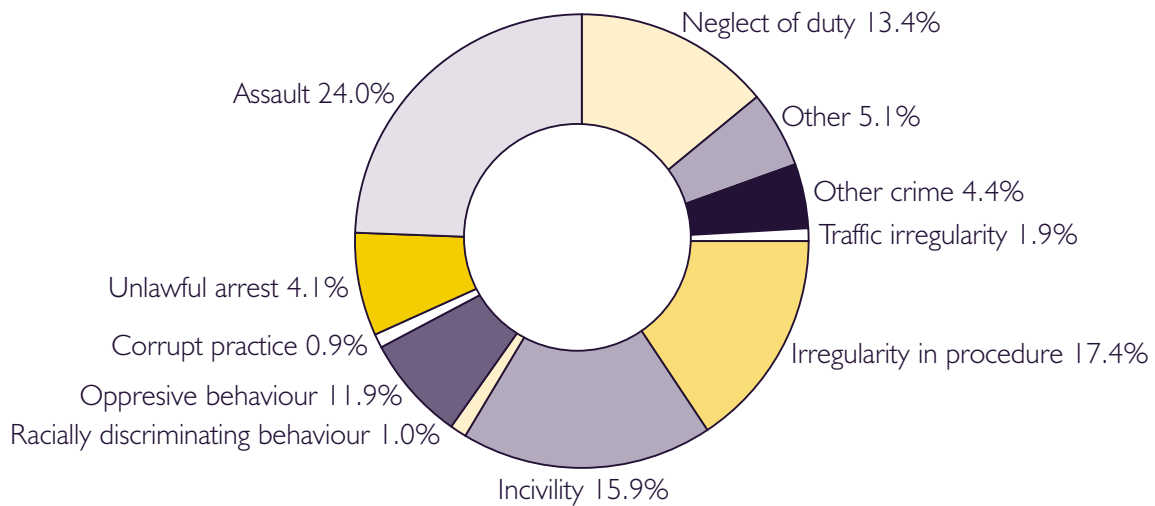
6.7 Over the last five years, the average number of allegations per case, for all Scotland, has remained at around 1.6. As a result, the 58% increase in cases disposed of is more or less matched by a 61% rise in completed allegations.

Figure 5: Number of complaint allegations disposed of by Scottish forces in last five years



6.8 For recording purposes, complaint allegations traditionally fall into one of eleven categories. Disposals of each, for the year 2002-03, are shown in Figure 6 below. Where a complaint leads to conduct proceedings, it is considered disposed of when the conduct hearing terminates and the punishment is communicated to the officer concerned. Otherwise, disposals occur when the appropriate officer has made the final decision not to take proceedings.

Figure 6: Share of disposals by allegation type, 2002-03

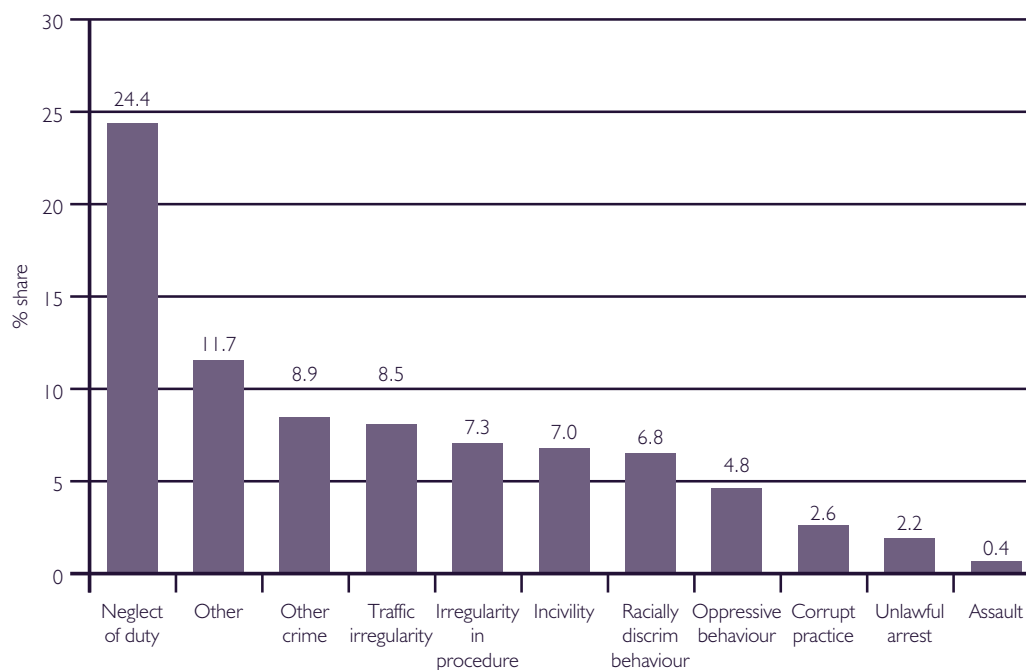


6.9 Accounting for just fewer than one in four disposals in the year 2002-03, assaults remain the most common category of allegation. Having said that, this share has been declining over the years, having stood at 40% in 1998-99. Where gradual, long term increases are evident is for incivility, neglect of duty and irregularity in procedure.

6.10 An allegation is substantiated where it has led either directly to a finding of guilt in criminal or conduct proceedings, or to the giving of corrective advice directly related to the original complaint. For the last five years at least, the proportion of allegations that go on to be substantiated has not exceeded 10 per cent. In 2002-03, this figure was 7.7 per cent.

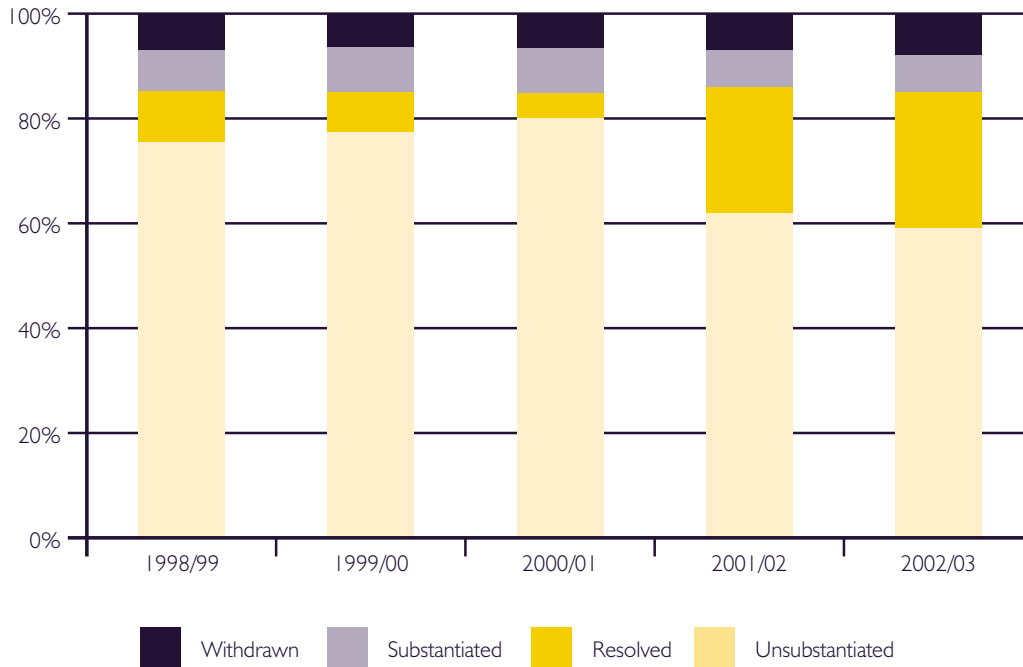
6.11 The proportion of allegations found to be substantiated, differs over time and by complaint type. Nevertheless, neglect of duty clearly and consistently shows the highest share of these, assault, the lowest. In more detail, over the last five years, allegations of neglect of duty have been substantiated in between 23% to 34% of instances; at the other end of the spectrum, shares of substantiated assault allegations have varied from between 0.4% to 1.2%.

Figure 7: Proportion of all allegations found to be substantiated, per complaint type, 2002-03



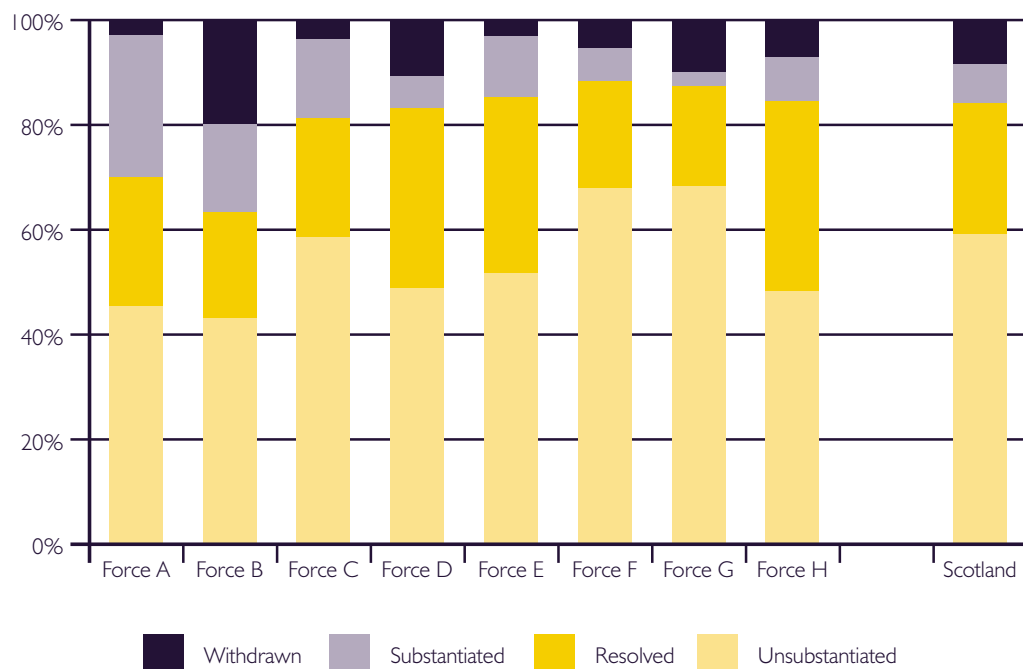
6.12 With the definition now extended to take in minor and trivial complaints, not surprisingly, the proportion of allegations resolved without resorting to more serious formal complaint procedures, has risen. Whereas shares of these too tended to remain below ten per cent, the last two years have seen informal resolutions now accounting for as many as one in four disposals. As a direct result of this, the proportion of allegations found to be unsubstantiated has declined, by a similar margin. Conversely, little has changed in terms of allegations that are subsequently withdrawn by complainers - at 7.4% in 2002-03, this remains similar to levels recorded in previous years.

Figure 8: Nature of allegation disposals, 1998-99 to 2002-03



6.13 The final figure in this section shows the pattern of disposals across forces. Again, while these tend on the whole to vary over time, there are some consistencies. For example, force G has had the lowest proportion of substantiated and amongst the highest share of unsubstantiated allegations for at least the five years examined here. Prior to the recent changes in definition, forces D and E reported some of the highest shares of disposals by informal resolution. While force C has typically recorded the lowest share of withdrawn complaints over the last five years.

Figure 9: Percentage shares of disposal types by force, 2002-03

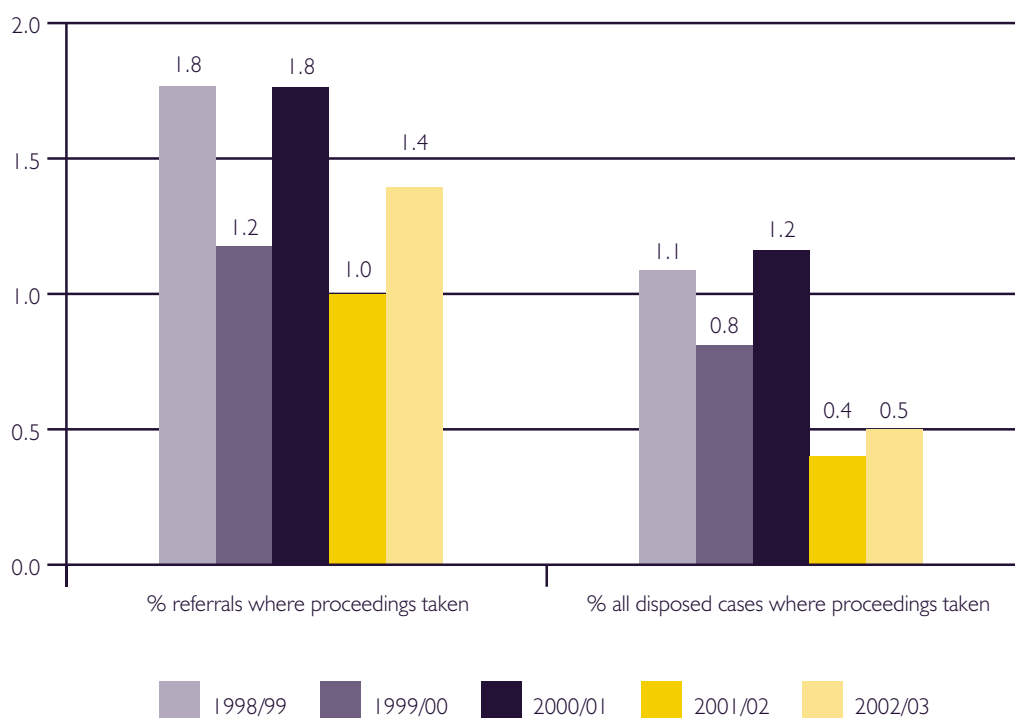


Referrals to the Procurator Fiscal

6.14 Any complaint alleging criminal conduct must be referred for consideration to the procurator fiscal. In 2002-03, a total of 939 such cases were identified from the overall total of 2,704 disposed of. Here again, the impact of including minor and trivial complaints is apparent, with 939 representing only a 5% rise in number on the previous four year average, against a 58% increase in the number of all cases disposed of in the same year. Thus, cases alleging criminal conduct now account for around one, as opposed to nearer two, in every three disposals.

6.15 Of these 939 referrals, proceedings took place in only 13 instances. Indeed, the proportion of referrals subsequently taken to proceedings is typically low, as shown in Figure 8 below. The same figure also shows a similarly overall downward trend in cases leading to proceedings as a percentage of all disposed cases.

Figure 10: Cases leading to criminal proceedings as (i) a percentage of all referrals and (ii) a percentage of all disposed cases



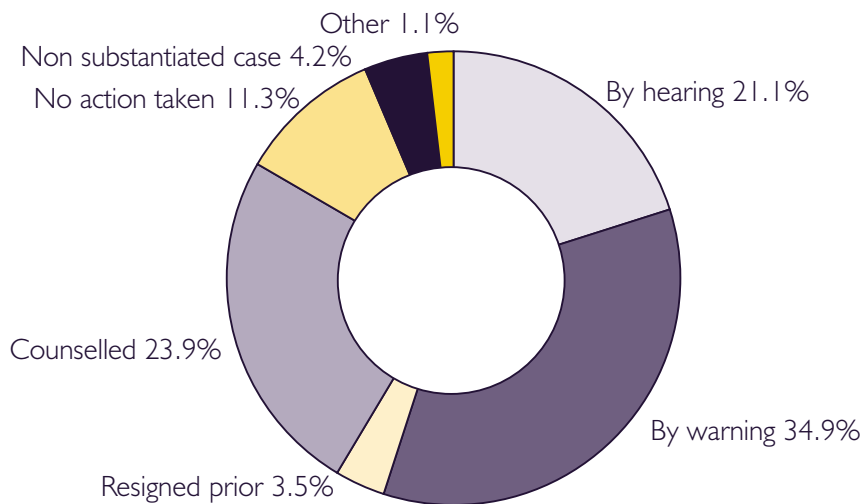
Professional Misconduct

6.16 Allegations of misconduct against a member of a force can arise from internal or external complaints. Appendix A of the Police (Conduct) (Scotland) Regulations 1996, itemises the categories of behaviour or conduct that constitute misconduct. These range from conduct likely to bring discredit on the police force or service, through neglect of duty, to having been found guilty by a criminal court of a criminal offence. In 2002-03, a total of 284 conduct cases were disposed of, showing a fall in number of nearly 11% on the previous four year average.

6.17 Conduct cases can be disposed of in a number of ways, including via warnings, counselling or conduct hearings. As has been the case recently, the most frequent disposal option for cases in this category is through the administering of warnings. For the last three years, these have accounted for approximately one in every three such disposals whereas previously they have represented less than one in four. Conversely, where counselling was at one point the most frequently adopted method, it now accounts for around a quarter of all conduct disposals.

6.18 More serious allegations may be disposed of by conduct hearing. These have also seen a decline, though to a smaller degree, while other disposal categories have experienced only fairly minor fluctuation. Figure 9 below, shows shares of disposal method as applied in 2002-03.

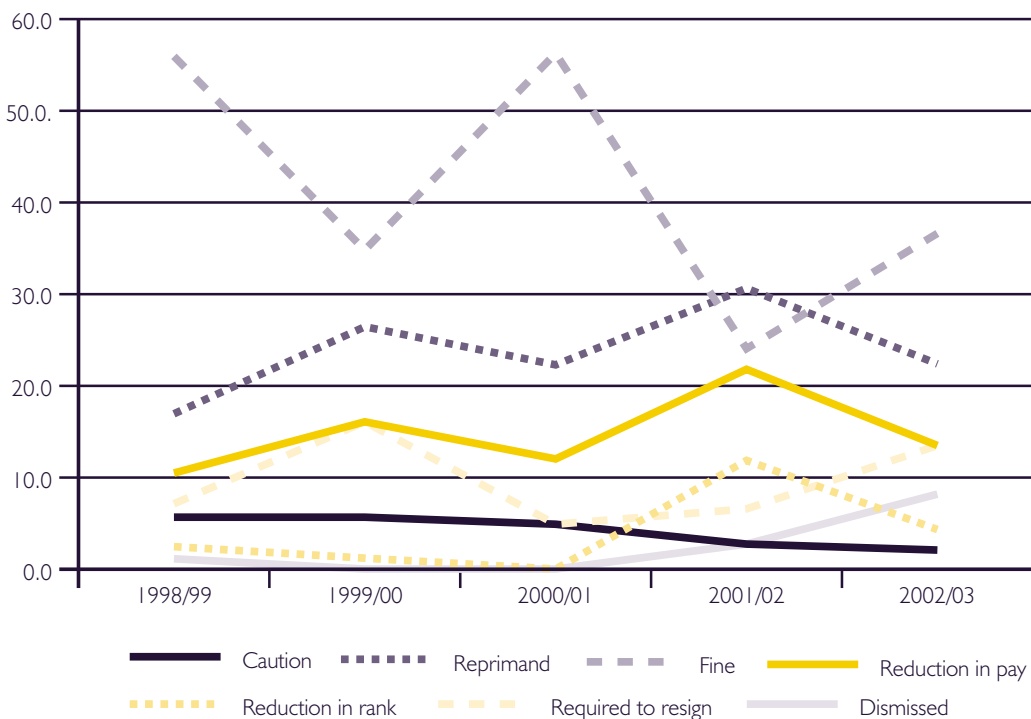
Figure 11: Percentage share of disposals for conduct cases, 2002-03



6.19 As the figure above shows, in 2002-03 just over one in every five conduct cases, or 60 in number, was disposed by a conduct hearing. Of these, just eight (13.3%) arose directly out of an external complaint only. Forty-six (76.7%) were internal conduct cases, while the remaining six (10%) were the result of other circumstances. In previous years too, the majority of cases have been internal conduct cases but the proportion arising from an external complaint continues a downward trend since a recent peak in 1999-00 of 43%.

6.20 Hearings where guilt is neither proven nor admitted are relatively uncommon. In 2002-03, just two, or 3.3%, fell into this category. Over the previous five years, the highest proportion recorded in this vein was 5.6% in 1999-00. Where guilt is proven or admitted, various, and if required, multiple, disposal options are available. These range from caution to dismissal. The most common response continues to be either to fine or to reprimand the member of staff involved. That said, the latest year has seen a rise in the number and percentage share of the two more severe penalties, namely being required to resign and dismissal. Figure 10 shows trends over the last five years.

Figure 12: Percentage share of disposals at conduct hearings, where guilt proven or admitted

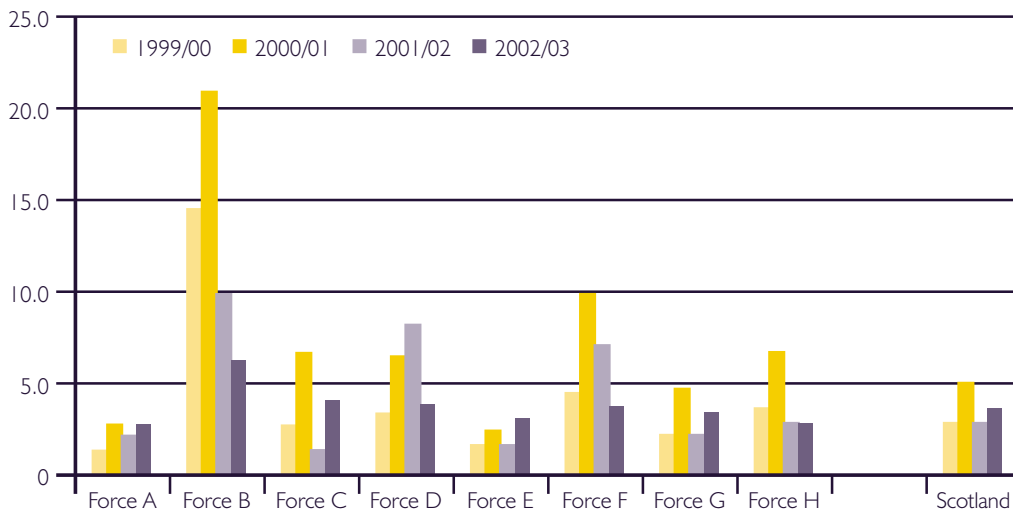


Dissatisfied Complainers

6.21 Finally, if a member of the public is dissatisfied with the way in which the force has handled a complaint, then he or she may refer the matter to HMIC which will then examine the force's handling of the complaint.

6.22 This final figure shows complaints received by HMIC from dissatisfied complainers, as a proportion of complaints disposed of by forces in the same year. It is recognised that these time periods may not actually concur, i.e. HMIC may receive a complaint in the year following that in which the force received it originally, and so the following is used only as an indicator of trends. By this definition, on average fewer than 5% of all complaints disposed of by Scottish forces, result in a dissatisfied complainer contacting HMIC.

Figure 13: HMIC complaints as a percentage of force complaints



APPENDIX 'A'

The Association of Chief Police Officers in Scotland (ACPOS)

Statement of Ethical Principles

All officers of the Scottish Police Service observe and support the following principles:

Integrity - will discharge their duties with fairness and honesty and will ensure that they do not place themselves under any financial or other obligation which might influence the performance of their duties. They will declare any private interests which may conflict with their duties and take steps to avoid such conflict.

Transparency - will perform their duties in an open and transparent manner, submit their decisions and actions to appropriate scrutiny and will respond positively to criticism. They will give reasons for their decisions and restrict information only when the wider public interest demands. They will be open and truthful about their actions while maintaining the confidentiality of information entrusted to them in accordance with the law.

Accountability - will remain accountable before the law and accept responsibility for their decisions and actions. They will guard against the abuse of the powers which their office affords them and will oppose and draw attention to malpractice and wrongdoing by others.

Responsibility - will accept personal responsibility for their own actions and omissions and act with resolve, tolerance and restraint in the discharge of their duties. They will ensure that their actions are at all times lawful, reasonable and proportionate and take ownership of those actions and decisions made in the course of their duties. They will take responsibility for observance of these principles and promote them through leadership and personal example.

Impartiality - will act fairly and impartially, without prejudice and solely in terms of the public interest. They will discharge their duties with objectivity and without favour or malice.

© Crown copyright 2004

Astron B35555 6-04

ISBN 0-7559-4209-4



9 780755 942091