

Meeting	SPA Authority Meeting
Date	22 January 2021
Location	Video Conference
Title of Paper	Independent Review of Complaints Handling, Investigations and Misconduct Issues in relation to Policing
Presented By	Lynn Brown, Interim Chief Executive
Recommendation to Members	For Discussion
Appendix Attached	No

PURPOSE

The main purpose of this paper is to highlight those recommendations in the final report of the Independent Review of Complaints Handling which are directly applicable to the SPA; and to explain the means by which these are to be implemented.

1. INTRODUCTION

1.1 The final report of the Independent Review of Complaints etc. led by Dame Elish Angiolini, was published on 11 November 2020. The report incorporates, and substantially expands upon, Dame Elish's preliminary report issued in June 2019. At almost 500 pages, the final report consists of a comprehensive review of the current arrangements, detailed findings and a total of 81 recommendations (although a number of these reflect recommendations in the preliminary report).

1.2 Many of the recommendations in the final report are highly significant to the law and practice in relation to complaints and conduct, and the legislative functions currently performed by the SPA and other bodies. Implementation of a large number (over one third) of the recommendations will require legislative change. The rationale for such change is discussed throughout the final report, and the proposed legislative amendments are listed in a discrete chapter.

1.3 Since its publication, the final report has been considered by the Complaints and Conduct Committee, and also by Board members as a whole at two seminars, one of which was attended by Dame Elish and a member of her Review team. Discussions have also taken place between the SPA and Police Scotland in relation to how best to implement the recommendations. The Strategic Oversight Group (SOG) which includes senior representatives of the SPA, Police Scotland, the PIRC and the COPFS has also met to discuss the findings, and has agreed, in principle, to coordinate implementation of the recommendations across the four bodies.

1.4 On 21 December 2020, representatives of all four bodies, along with HMICS, met with the Cabinet Secretary for Justice to discuss implementation of the recommendations. There was broad agreement at the meeting that the SOG would play a role in coordinating implementation of the recommendations. Further discussions are to be held regarding the precise governance arrangements and the prioritisation of recommendations. In the meantime, the Scottish Government is to prepare an initial analysis of the recommendations following consultation with the SPA, Police Scotland, the PIRC, COPFS and HMICS.

1.5 In respect of both the preliminary and final reports, the SPA cannot simply confine itself to the implementation of only those recommendations listed in the "SPA" chapter of the report. Across both reports, there are only 12 recommendations specifically listed in relation to the SPA and, of those, three – which require legislative change - are effectively directed to the Scottish Government. However, there are

numerous other recommendations throughout both reports which are equally applicable, or relevant, to the SPA, including those which are directed specifically to other bodies. There are also a number of key observations in both reports which, while not formal recommendations, also require to be considered. Moreover, there are a large number of recommendations directed specifically to Police Scotland, implementation of which requires to be overseen by the SPA and its committees. It is therefore essential that both reports are considered fully in the round.

2. THE PRELIMINARY REPORT

2.1 The preliminary report contained a total of 30 recommendations. Of these, four were listed in the chapter dealing with the SPA, although as noted above many of the other recommendations and key observations were equally applicable or relevant to the SPA's functions. A brief summary of the recommendations directly applicable to the SPA is given below.

- Complaints against senior officers should be prioritised and dealt with by the SPA and the PIRC as speedily as is reasonable.
- Further training for the SPA's Complaints team should be consolidated and broadened.
- The Police Service of Scotland (Senior Officers) (Conduct) Regulations 2013 (the Regulations) should be clarified and expanded to provide for alternatives to suspension in relation to senior officers who are subject to investigation.
- The preliminary assessment of misconduct allegations against senior officers should take into account factors such as whether the allegation is made anonymously, or appears vexatious or malicious, and the Scottish Government should consider amending the Regulations to that effect.
- A senior cross-agency working group should be established involving the SPA, Police Scotland and the PIRC to develop appropriate and up to date guidance.
- All arrangements for auditing complaint handling practice should be coordinated.

2.2 Following publication of the report, each of the 30 recommendations, along with key observations, were collated and actions identified to ensure that those relevant to the SPA's functions were implemented as far as possible. Progress on completion of the actions has been reported regularly to the Complaints and Conduct Committee.

2.3 In total, 38 actions were identified in respect of those recommendations and key observations considered applicable or relevant

to the SPA. Of these, 13 related to the Complaints and Conduct Committee's oversight of those recommendations directed specifically to Police Scotland.

2.4 Some of the actions identified were capable of being completed by the SPA itself. Others required discussion with the SOG, or at the National Complaint Handling Development Group (NCHDG), which reports to the SOG and which comprises practitioners from the SPA, Police Scotland and the PIRC.

2.5 Many of the actions required changes to the SPA's Complaint Handling Procedures and Guidance on the Regulations. These included the prioritisation by the SPA of complaints about senior officers of Police Scotland; the approach to be taken to the preliminary assessment of misconduct allegations against senior officers under the Regulations; and the factors to be considered when determining whether or not a senior officer is to be suspended, including alternatives to suspension. The Complaints team has advised that consultation on the procedures and guidance is now complete. However, the intention is to await publication of the PIRC's revised statutory guidance on complaint handling, before the SPA's amended procedures and guidance are submitted to the Complaints and Conduct Committee for approval.

2.6 There are also outstanding actions in relation to the following:

- Agreement between the SPA, Police Scotland and the PIRC on the prioritisation and coordination of future complaint handling audits.

This issue is being progressed through the NCHDG. At its recent meeting on 11 January 2021, it was agreed that representatives would meet separately, hopefully in the next 2-3 weeks, to consider further a coordinated approach to audits by the SPA and the PIRC.

- Changes to the Complaints section of the SPA's website to make clear the complaints which the SPA does and does not deal with, and to make the complaints process simpler overall.

Various changes have been made to the Complaints pages of the SPA's website to clarify the SPA's role. Further changes, including a fully functional online complaints form, will be made as part of the current project to develop the SPA's website.

- Coordination of training between the SPA, Police Scotland and the PIRC, including training in mediation.

Efforts to develop coordinated training opportunities across the three organisations have been affected by COVID-19. However, Police Scotland recently established a short life working group on training, which will meet within the next 4 weeks. The outcome of the group's discussions will impact on future training opportunities for the SPA's complaint handling staff.

- A review by the SPA, Police Scotland and the PIRC of their respective "unreasonable actions" policies (which set out measures that may be taken in relation to complainants whose actions are considered unreasonable) to ensure they are consistent.

This issue is also being progressed through the NCHDG. A final draft of an unreasonable actions policy for adoption by all three bodies is expected to be presented at the next NCHDG meeting on 4 March 2021.

2.7 As well as pursuing completion of the remaining actions, a substantial amount of work has been undertaken in other areas, including implementation of an extensive Memorandum of Understanding (MoU) between the PIRC, Police Scotland and the SPA; and consultation on the PIRC's revised Statutory Guidance on Complaint Handling.

2.8. The MoU contains detailed provisions on all aspects of the PIRC's investigatory function, including referrals made by Police Scotland/the SPA of "serious incidents involving the police" (as defined in legislation); COPFS-directed investigations; and the investigation of alleged misconduct by senior officers of Police Scotland. The MoU was signed by the parties in August 2020.

2.9 An updated draft of the PIRC's Statutory Guidance on police complaints handling was issued to the SPA for comment in August 2020. The final version of the Guidance has been delayed slightly in order to address comments made by Dame Elish in her final report, but is expected to be issued in the near future.

3. THE FINAL REPORT

3.1 As with the preliminary report, the recommendations in the final report have been collated by the Complaints team and actions identified to implement those which are applicable or relevant to the SPA's functions, and which do not require legislative change. The implementation plan is presently in draft form and will be developed through discussions with the Complaints and Conduct Committee.

However, the current draft has been shared with the Scottish Government for the purposes of preparing its initial analysis of the recommendations.

3.2 The final report lists eight recommendations in the chapter which deals specifically with the SPA, although again there are other recommendations and observations elsewhere in the report which are equally applicable or relevant to the SPA. Three of the eight recommendations - concerning the removal of the SPA's complaints and conduct functions in relation to senior officers – require legislative change and are therefore a matter for the Scottish Government. Those recommendations directly applicable to the SPA which do not require legislative change are summarised below, along with initial views as to how these might be implemented.

- (1) The PIRC should work collaboratively with the SPA to agree and embed a proportionate and effective approach to the preliminary assessment of misconduct allegations against senior officers, until such time as this function is removed from the SPA.

3.3 Draft changes have already been made to the SPA's Guidance on the Conduct Regulations detailing the factors which the SPA may take into account in conducting preliminary assessments of misconduct allegations against senior officers. As noted above, these have been the subject of consultation and the revised guidance will be submitted to the Complaints and Conduct Committee for approval once the PIRC's statutory guidance is issued. Discussions will take place with the PIRC to establish what further collaborative work can be undertaken in this area, pending legislative change.

- (2) The Complaints and Conduct Committee should hold Police Scotland to account for delays in investigations into complaints and misconduct. Where there is evidence of excessive delays in PIRC investigations having an effect on policing in Scotland, the Committee should raise the matter with the PIRC.

The Review also recommends that the Chief Constable publish annually Police Scotland's performance in dealing with complaints against the timescales set out in the PIRC's statutory guidance; and that the Complaints and Conduct Committee scrutinise and hold to account Police Scotland's performance in this area.

3.4 Currently, Police Scotland produces to the Complaints and Conduct Committee a quarterly report containing detailed statistical and other

information on complaint and conduct matters. While these published reports include figures as to the number and nature of complaints, they does not contain details of the time taken to investigate complaints and alleged misconduct. Discussions will take place with Police Scotland with a view to the inclusion of this information in future reports, in order that the Committee may exercise appropriate oversight in this area.

- (3) To increase public confidence in the system, the Complaints and Conduct Committee should consider using its minutes as a means of sharing with the public more of their substantive discussions and how Police Scotland is being held to account in this area; and also whether some of the content within minutes of its private sessions, where some strategic and policy matters are discussed, can be included in the published minutes.

3.5 Implementation of this recommendation can be achieved by simple changes to minute-taking practice, and by reviewing the minutes of private sessions with a view to publication of items as appropriate.

- (4) The Complaints and Conduct Committee's scrutiny function should be reported on in the SPA's annual report, drawing out particular trends etc. and using complaints data as an indicator of communities' satisfaction or dissatisfaction with policing services.

3.6 Proposals on how this recommendation can be implemented will be submitted to the Committee by the Complaints team in due course.

- (5) Police Scotland and the SPA should consider expanding the collection of diversity data and the publication of information in order to enhance their understanding, and public understanding, of attitudes and concerns in different communities.

3.7 The SOG is considering ways in which the SPA, Police Scotland, the PIRC and COPFS can standardise the diversity data which each body collects. The SPA's online equality and diversity monitoring forms will also be enhanced as part of the current website development project.

- (6) The SPA and Police Scotland should consider together what role the Complaints and Conduct Committee or Policing Performance Committee may have in relation to the discussion of ethical issues in policing.

3.8 This recommendation will be discussed with Police Scotland and the outcome reported to the Policing Performance Committee.

- (7) The SPA should confirm each year in its annual report whether, based on an assessment by the Complaints and Conduct Committee, the Chief Constable has suitable complaint handling arrangements in place.

3.9 This recommendation is based on the SPA's duty under section 60(3) of the Police and Fire Reform (Scotland) Act 2012. Section 60(3) requires the SPA to keep itself informed as to the manner in which "relevant" complaints (broadly, non-criminal complaints about the police by members of the public) are dealt with by the Chief Constable, with a view to satisfying itself that the arrangements maintained by the Chief Constable in this connection are suitable.

3.10 The PIRC has a similar statutory duty under section 40A of the Police Public Order and Criminal Justice (Scotland) Act 2006. Section 40A provides that the PIRC must keep under review all arrangements maintained by the Chief Constable (and the SPA) for the handling of relevant complaints; and seek to secure that those arrangements are, among other things, efficient and effective.

3.11 Accordingly, any confirmation of the suitability of Police Scotland's arrangements for handling relevant complaints would be based on an assessment by the Complaints and Conduct Committee, as well as consultation with the PIRC.

- (8) Independent Custody Visitors should, as a matter of course, check with custody officers and with detainees that a third party has been notified of their detention.

3.12 This recommendation has been raised with the ICVS team, who have confirmed that the aide memoir provided to visitors already provides for such checks to be made. Visitors are also trained to ask if a third party has been notified and to confirm this with custody officers and staff.

3.13 The Complaints and Conduct Committee will play the primary role in overseeing implementation of those recommendations applicable or relevant to the SPA. However, the People Committee and Policing Performance Committee will also play a role where the recommendation relates more to their respective terms of reference. As noted above, the SOG will also play a role in the implementation of recommendations.

4. FINANCIAL IMPLICATIONS

4.1 There are no financial implications arising directly from this report, although implementation of some of the recommendations in Dame Elish's final report is likely to have financial implications.

5. PERSONNEL IMPLICATIONS

5.1 There are personnel implications arising from this paper in that implementation of many of the recommendations will impact on the way in which complaints about police officers and staff are dealt with.

6. LEGAL IMPLICATIONS

6.1 There are legal implications associated with this paper in that implementation of many of the recommendations will require legislative change.

7. REPUTATIONAL IMPLICATIONS

7.1 There are no reputational implications arising from this report.

8. SOCIAL IMPLICATIONS

8.1 There are no social implications associated with this report.

9. COMMUNITY IMPACT

9.1 There are no community implications associated with this report.

10. EQUALITIES IMPLICATIONS

10.1 There are no equalities implications arising directly from this report, although many of the recommendations in Dame Elish's final report do have such implications.

11. ENVIRONMENTAL IMPLICATIONS

11.1 There are no environmental implications associated with this report.

RECOMMENDATION

Members are requested to discuss the content of this report.