



Complaints and Conduct Committee

Public Rolling Action Log

Action No	Action	Action Owner	Status	Expected Date of Completion	Update/Comments
Meeting Held 5 June 2025					
20250506-CCC-001	PS Performance: Report back to the committee on key trends and data in relation to the high level of complaints in Dumfries & Galloway and Tayside and how Police Scotland are responding to this.	Chief Superintendent Helen Harrison	OPEN	4 Sept 2025	26.08.25: Verbal update to be provided at the meeting. Propose ongoing.
20250506-CCC-002	PS Performance: Review how Police Scotland can improve performance within Irregularity in Procedure.	T/ACC Lynn Ratcliff	OPEN	4 Sept 2025	26.08.25: Verbal update to be provided at the meeting. Propose ongoing.
20250506-CCC-003	PS Performance: Take forward a piece of work that to have a closer look at Front Line Resolution (FLR) to identify how a greater level of success can be achieved, particularly by looking at other sectors out with policing and how they handle complaints to assist	Superintendent James Mann	OPEN	4 Sept 2025	26.08.25: Benchmarking across other organisations is ongoing. Propose ongoing.

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Action No	Action	Action Owner	Status	Expected Date of Completion	Update/Comments
	Police Scotland to gain a higher level of resolution.				
20250506 -CCC-004	Operation Glade: Consider the name of this report for future report, taking into consideration public transparency.	T/ACC Lynn Ratcliff	OPEN	4 Sept 2025	26.08.25: Report has been renamed to Complaints Handling Backlog (see Item 7 on the agenda) Propose to Close
20250506 -CCC-005	Operation Glade: Take forward an audit in the backlog of complaints, share the Terms of Reference for this audit with members and provide an update to the next committee.	DCC Alan Speirs	OPEN	4 Sept 2025	26.08.25: Audit is ongoing. Update to be provided at a future meeting. Terms of Reference attached. Propose ongoing.
Meeting Held 27 February 2025					
20252702 - CCC-001	PIRC Report: Ensure the full SPA Board are made aware of the Revision to Law for Corroboration and the wider implications in relation to policing practice.	Chief Superintendent Helen Harrison	ONGOING	5 June 2025 Sept 2025	28.05.2025 - PSD SSD Engaging with CJSD requesting a report be made available to highlight the wider implications of the changes to corroboration to the SPA Board. 05.06.2025: The Chair advised that she would be keen that this action is completed ahead of the next committee meeting. 26.08.25: Briefing paper attached.

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Action No	Action	Action Owner	Status	Expected Date of Completion	Update/Comments
					Propose to Close
20252702 - CCC-003	Workplan: Work with Police Scotland colleagues to produce a proposal for Member consideration in respect of the frequency of reports, noting an opportunity to spread reporting over the year and make agendas more focused.	Darren Patterson	ONGOING	5 June 2025 Sept 2025	28.05.2025 - SPA officials have met with PS to discuss principles for future reporting, covering both content of standing quarterly/annual reports and scheduling of agreed additional reports. Following receipt of proposals from PS, SPA officials will share with Members seeking agreement to implement. Propose ongoing.
Meeting Held 14 November 2024					
20241411 - CCC-001	Performance: Link in with Policing Together colleagues and report back on the level of investigation in relation to allegation outcomes for discriminatory behaviour. Within this feedback include data linkages (user satisfaction, complaints and protected characteristics) to gain an understanding of what is being recorded, particularly during stop and search and vehicle stops.	Chief Superintendent Helen Harrison	ONGOING	Feb 2025 5 June 2025 Sept 2025	21.02.25: Policing Together progressing dip sample review of relevant investigations. Awaiting feedback and will provide update at next meeting. 28.05.25 - Review by Policing Together is still on going. 26.08.25: No update provided. Propose ongoing
20241411 - CCC-002	Performance: PSD staff to link in with SPA staff to take forward a dip sampling piece of work in relation	Chief Superintendent Helen Harrison/ Darren Paterson	ONGOING	Feb 2025 5 June 2025	21.02.25: From Police Scotland – awaiting results of action 1 and will then progress further discussion.

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Action No	Action	Action Owner	Status	Expected Date of Completion	Update/Comments
	to discrimination to ensure an extra level of assurance in this area.			Sept 2025	28.05.2025 - This action awaits the outcome from 20241411-CCC-001 (above). 26.08.25: No update provided. Propose ongoing

Scottish Police Authority

Complaints Management

Terms of Reference - Final

July 2025

SIGN OFF

ON BEHALF OF BDO LLP

SIGNATURE: Claire Robertson

TITLE: Head of Risk Advisory Services - Scotland

DATE: 23.07.25

ON BEHALF OF SCOTTISH POLICE AUTHORITY

SIGNATURE: Darren Patterson

TITLE: Head of Workforce Governance

DATE: 23.07.25

ON BEHALF OF POLICE SCOTLAND

SIGNATURE: Chief Supt Helen Harrison

TITLE: Professional Standards Department

DATE: 23.07.25

BACKGROUND

Background

The Scottish Police Authority (SPA) is responsible for handling complaints about senior officers. Under Section 60 of the Police and Fire Reform (Scotland) Act 2012, the SPA must establish effective arrangements for managing these complaints and consult others on their suitability.

The Police Investigations & Review Commissioner (PIRC) sets out guidance to ensure that police complaints in Scotland are handled efficiently, fairly, and transparently. This guidance aims to build public confidence by promoting a system that is accessible and responsive, valuing complaints as opportunities for learning and improvement. It provides practical advice for police officers and bodies on best practices, ensuring that complaints are resolved quickly and effectively, while adhering to equality duties and fostering good relations within diverse communities.

In May 2021, the complaints handling model shifted from local to national ownership, causing stress on the system and reputational issues. Despite some mitigating actions, a root cause analysis by the SPA and Police Scotland could help identify solutions to improve non-criminal complaint handling by the Professional Standards Team.

As of 1 May 2025, there is a backlog of 1,041 unallocated non-criminal complaints, reduced by 299 since the last meeting of the SPA Complaints and Conduct Committee in February 2025. These are categorised as follows: Cat A+ (4), Cat A (406), Cat B (525), and Cat C (106). Over three months, 2,095 new complaints were recorded. Of these, 49% (844) were resolved through Front Line Resolution, 6% (106) progressed to criminal complaints, and 8% (133) to non-criminal investigations.

Following an increase in the number of complaints, BDO has been requested to conduct an 'advisory' style review over Complaints Management, outside of the agreed Internal Audit plan for 2025/26.

EXCLUSIONS/LIMITATIONS OF SCOPE

The scope of the review is limited to the areas documented under the scope and approach. All other areas are considered outside of the scope of this review. As this is an 'Advisory' style review, we will not be providing assurance over design or operational effectiveness of internal controls.

We will not be reviewing, nor providing advice or assurance over the outcome of complaints and subsequent investigations. Criminal related complaints are deemed out of scope for this review. We are reliant on the honest representation by staff and timely provision of information as part of this review.

Purpose of Review

The purpose of this review is to provide management and the Audit, Risk and Assurance Committee (ARAC) with advice over the end-to-end processes relating to the management of non-criminal complaints.

Scope

Phase 1: Process Walkthroughs

We will conduct an end-to-end system walkthrough over the processes in place to handle non-criminal complaints at Police Scotland.

The output from this phase of work will be a detailed process map outlining the end-to-end complaints management process. We will also produce a Risk and Control Matrix (RACM) which documents the controls in place for each of the named processes. Where applicable, we will provide control design related recommendations where improvements can be made.

Phase 2: Controls Testing

The following scope areas will be reviewed to assess the underlying controls in place to handling non-criminal complaints. We will also review a sample of 20 complaints throughout this phase of work.

1. Definition of a Complaint;
2. Accessibility;
3. Roles and Responsibilities;
4. Communication;
5. Complaints raised by Third Parties;
6. Outcomes and remedies;
7. Case Load Management / Reporting
8. Continuous learning and improvement

The output of phase 2 will be a final report providing detailed findings and recommendations for improvement, to support Police Scotland in enhancing its processes over Complaints Management.

Internal Audit will bring to the attention of management any points relating to other areas that come to their attention during the audit. A closing meeting will be held to discuss findings emerging from the review prior to issue of the draft report.

PHASE 1: PROCESS WALKTHROUGHS

The table below outlines our approach we will undertake during phase 1 of this review:

SCOPE AREA	APPROACH
Process Mapping	<p>We will conduct an end-to-end system walkthrough over the processes in place to handle non-criminal complaints at Police Scotland.</p> <p>Specifically, we will:</p> <ul style="list-style-type: none">• Walkthrough the end-to-end process of complaints handling, from receiving a complaint to resolving a complaint;• Walkthrough the processes that ensure complaints are clearly logged / categorised and monitored with a clear audit trail maintained, in line with PIRC statutory guidance• Walkthrough how the case load of on-going complaints are managed, and the escalation processes that exist; in line with PIRC statutory guidance. <p>The output from this phase of work will be a detailed process map outlining the end-to-end complaints management process.</p> <p>We will also produce a Risk and Control Matrix (RACM) which documents the key controls in place for each of the named processes above. Where applicable, we will provide control design related recommendations where improvements can be made; for example, where there may be duplication in processes (e.g. use of centurion/recording), or where the use of Artificial Intelligence / Automation can be used.</p>

PHASE 2: CONTROLS TESTING

The table below outlines the areas which will be covered as part of this review, the key inherent risks associated with the areas under review and our high-level approach to test the controls and processes in place to mitigate the risks outlined:

SCOPE AREA	KEY RISKS	APPROACH
Definition of a Complaint	The definition of a complaint may not be sufficient or accurate to ensure the best response to the public, resulting in inconsistencies in complaint handling affecting public confidence.	<ul style="list-style-type: none">• Review the complaints policy and/or PIRC statutory guidance and confirm whether it defines what a complaint is and what is excluded from being a complaint.• Assess whether the definition is clear and recognises the difference between a service request (pre-complaint), survey feedback and a formal complaint.• We will also review the accessibility of the complaints policy and how it has been communicated to staff and stakeholders.
Accessibility	There may be limited or no channels for members of the public to make a complaint, or members of the public are not aware of the channels available for making complaints	<ul style="list-style-type: none">• Through interviews, determine the channels available for the public to make a complaint and the ways in which these are communicated to the public.• Confirm whether the Police Scotland website includes information on how to raise a complaint.• Review the complaints policy / PIRC statutory guidance to determine whether the various complaint channels are captured and confirm whether the policy details how complaints received via social media channels will be dealt with.
Roles and Responsibilities	Relevant members of staff may not be aware of their roles and responsibilities, and there may be no designated complaint officer or equivalent in place with autonomy to resolve complaints.	<ul style="list-style-type: none">• Confirm whether Police Scotland has an assigned individual or team that is responsible for complaints handling and that their roles and responsibilities are documented.• Through interviews assess complaints handling staff's understanding of their roles and responsibilities and determine whether any relevant complaints handling training has been undertaken.• Assess whether there are any single points of failure and whether there are succession plans in place to ensure complaints handling will continue to operate effectively if staff members become absent or leave the organisation.
Communication	Complaints may not be responded to and resolved in line with PIRC guidance, leading to poor customer satisfaction and damage to Police Scotland's reputation.	<ul style="list-style-type: none">• For a sample of 20 complaints (<i>Covering a range of scenarios as defined by phase 1</i>), review the date that the complaint was made and was closed to determine the time taken to resolve the complaint, and confirm whether this meets the timeframes set out in PIRC guidance.• Confirm for the sample whether Police Scotland communicated with the member of the public at the completion of each stage of the process to advise them of the complaint stage, outcome, proposed remedy, outstanding actions and how to escalate the matter if the member of the public is dissatisfied.

PHASE 2: CONTROLS TESTING

SCOPE AREA	KEY RISKS	APPROACH
Complaints raised by Third Parties	Members of the public may be unable to complain via a representative, are given inaccurate or unclear advice, or have their cases refused without Police Scotland communicating the reason for the refusal to the members of the public.	<ul style="list-style-type: none"> Confirm whether members of the public can complain via a representative and whether this is clearly documented on the Police Scotland website or other channels. Through interviews, identify how staff ensure the complaints process is fair. For the sample of complaints, assess how the complaint was handled and whether Police Scotland actively listened to and managed the escalate of the complaint in line with the policy and assess whether the reasons for this were valid and confirm that an explanation was provided to the individual.
Outcomes and remedies	For complaints made as a result of things that have gone wrong, appropriate steps are not taken to remedy the situation and ensure the individual is satisfied with the outcome, leading to complainant dissatisfaction and increased risk of the same incidents reoccurring.	<ul style="list-style-type: none"> For the sample of complaints confirm whether the complaint was resolved in line with the complaints policy, with appropriate steps taken to address the complaint. Confirm that Police Scotland acknowledged and apologised for any failure identified and informed the members of the public of the actions taken to prevent the issue from reoccurring.
Case Load Management / Reporting	Inefficient management of case loads and backlogs can hinder timely resolutions and failing to escalate older complaints risks overlooking significant issues.	<ul style="list-style-type: none"> Review how complaints are categorised and prioritised. For the sample of complaints, confirm whether these were actioned in line with due process. Review how the current case load / backlog of complaints are managed; and identify any areas for improving the process. Assess how older complaints are identified and escalated for the attention of management. Review the level of reporting / KPIs utilised to support the management of complaint handling. Identify areas where the organisation could benefit from further data-driven insights. Assess the level of automation used throughout complaints management processes.
Continuous learning and improvement	The root causes of complaints may not be identified, captured and used to inform training or policy change if required, to prevent future occurrence.	<ul style="list-style-type: none"> Through interviews determine how Police Scotland analyses the root cause of complaints, identifies trends, and uses this information to inform improvements. Obtain examples of reporting to Board and management to assess how lessons learned are shared and the extent to which complaints are discussed. Determine whether Police Scotland provides members of the public with feedback on complaints received and actions taken to learn and improve from these.

KEY CONTACTS, TIMELINE & LOCATION

KEY CONTACTS				
BDO LLP				
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Super-intendent James Mann	Super-Intendent Complaints Handling	Audit Sponsor	E: james.mann@scotland.police.uk	

PLANNED TIMELINE	
AUDIT ACTIVITY	DATE
Scoping meeting	24/06/2025
Terms of reference agreed	23/07/2025
Documentation request deadline	23/07/2025
Fieldwork commencement	23/07/2025
End of fieldwork	15/08/2025
Closing meeting	15/08/2025
Issue of the draft report	29/08/2025
Receipt of management responses	12/09/2025
Draft report discussion meeting	17/09/2025
Issue of final report	19/09/2025
Audit committee date	12/11/2025
By accepting this Terms of Reference document, you are agreeing to the timing of this audit	

LOCATION

We plan to complete this engagement using a blended approach. We will use a combination of video conferencing facilities and emails; plus on site visits to walkthrough and observe processes. We will endeavour to limit the amount of time required of key colleagues.

The staff listed above will be contacted during the fieldwork to assist in completion of the assignment. All these staff will be contacted prior to fieldwork to agree the timing of our visit and should be issued with a copy of this terms of reference. It is important that staff involved with the assignment are notified. To assist us in planning the logistics of the assignment, including provision of documents and meeting organisation the above audit coordinator has been nominated.

ALLOCATION & FEES

ALLOCATION

This is a 45-day allocation, split as follows:

AREA	DAYS
Planning	2
Fieldwork	38
Reviewing and Reporting	5

FEES

ACTIVITY	DAYS	Rate (£)	COST (£)
Total estimated Cost of Review	45	£540	£24,300

Sample sizes will be determined following the completion of our walkthroughs using our Internal Audit Methodology; for example, if a control is performed daily, we may select a sample of fifteen and if monthly a sample of two to three.

Internal Audit will bring to the attention of management any points relating to other areas that come to their attention during the audit. A closing meeting will be held to discuss findings emerging from the review prior to issue of the draft report. Once the report and recommendations have been agreed following discussions with management, a summary of the findings will be presented to the Audit Committee at its next meeting.

BUDGET & ASSUMPTIONS

We will charge fees for this assignment in line with our agreed Engagement Letter, including any subsequent changes agreed with you. Our fees for this engagement are set at £24,300 (excluding VAT), this includes planning, delivery, report writing and management review. This fee represents a total of 45 days on a blended day rate of £540. See the table to the left-hand side for a full breakdown of the fees.

The fees are based upon our estimate of the time required to complete the engagement. These costs have been calculated on the assumption that we will receive all information outlined on this page by the dates specified and that we will be granted access to all key personnel.

The allocation outlined to the left-hand side above is based upon our estimate of the time required to complete the engagement outlined within this document. If the scope of work changes, we will communicate with management any predicted over-or-underspend, before invoicing. In addition, we assume for the purposes of estimating the number of days of audit work that there is one control environment, and that we will be providing assurance over controls in this environment. If this is not the case, our estimate of audit day allocation may not be accurate.

TIMING CHANGES AND CANCELLATION

In accepting this Terms of Reference document, you are agreeing to the timing of this audit specified in this document. We will make every effort to accommodate timing changes or cancellation of the audit however any changes within 3 weeks of the start of the fieldwork may result in fees being charged in respect of the audit. Changes with more than 3 weeks' notice will be accommodated at no extra charge.

ACCESS TO INFORMATION & COLLEAGUES

Any unreasonable delay in gaining access to required information or key colleagues will place audit timings at risk and may result in additional fees to you. Any such charges would be notified to you and agreed at the time the issue is identified.

FOR MORE INFORMATION:

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BRIEFING PAPER FOR INFORMATION OF SCOTTISH POLICE AUTHORITY COMPLAINTS AND CONDUCT COMMITTEE

FOR INFORMATION	
For Publication	Yes
Date	4 September 2025
Author / Approved by	ACC Lynn Ratcliff, Professionalism and Assurance
Attachments: Yes: Appendix 1 – Note on the Lord Advocate’s References	

CORROBORATION – LORD ADVOCATES REFERENCES

PURPOSE

To provide an update to the Scottish Police Authority with an overview of the Lord Advocates References and its subsequent impact on Police Scotland in terms of changes to the interpretation of corroboration. (Action 20252702-CCC-001)

BACKGROUND

Introduction

Following a review instructed by the Lord Advocate, Law Lords examined the origins and development of the requirement for corroboration. This is known as the Lord Advocate’s References.

The Lord Advocate’s References reiterates the requirement for corroboration in Scots criminal law.

Nothing has changed in relation to the law in terms of the need for corroboration but the interpretation of what constitutes corroboration, and what elements of the crime require to be corroborated have changed. The specifics are detailed in the Note on the Lord Advocate’s References (**Appendix 1**). An early assessment indicated this ruling would increase the number of persons being investigated in circumstances where otherwise a crime may not have been established, or persons being charged in circumstances where previously there would have been an insufficiency of

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evidence. The ruling does not change the burden of proof (beyond reasonable doubt) required at trial to secure a conviction.

The References provide meanings of *res gestae* and *de recenti* statements:-

- A *res gestae* statement is one made during the crime itself; or having a “close association” with it.
- A *de recenti* statement is an account given by a complainer after, but as a reaction to, the event itself.

The significant points to note from the decisions are:

- i. What requires to be proved by corroborated evidence is **the case** against the accused i.e. (i) the crime itself and (ii) that the accused was the perpetrator. There is no requirement to prove the separate elements in a crime by corroborated evidence.
- ii. Distress which is observed soon after a crime (*de recenti*) can corroborate the complainer’s account of rape, including penetration.
- iii. Evidence of a *de recenti* statement made by the complainer and accompanied by distress can corroborate the complainer’s account. Neither the distress nor the *de recenti* statement is from the same source as the complainer’s testimony.
- iv. A *res gestae* statement can be any statement which has a “close association” with the crime and may extend to statements made shortly after the crime.
- v. A *de recenti* statement is corroborative on its own in the absence of distress.
- vi. A *de recenti* statement can provide corroboration of both the commission of the crime and the identity of the perpetrator.
- vii. A statement will no longer be regarded as *de recenti* when it ceases to be “recent” following upon the commission of the crime or is not made to the first natural confidante. However, greater and considerable latitude should be given in sexual offences and cases involving children.

Corroboration National Working Group

In response to the Lord Advocate’s Reference on corroboration the Corroboration National Working Group has been established led by Police Scotland with members from across various areas of policing, SPA Forensic Services and representatives from the Crown Office and Procurator Fiscal Service (COPFS). The remit of this group is to:

- review the changes to the interpretation of the law of corroboration and its impact on criminal investigations within Scotland
- identify the training needs and requirements across Police Scotland
- develop an effective communications strategy to ensure all officers and staff are aware of impact on threshold for reporting of crime/offences to COPFS
- build framework for review of historical reported investigations when requested by COPFS or victims

The first meeting of the group took place on 23 January 2025 and was chaired by the Divisional Commander of Criminal Justice Services Division (CJSD).

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To date there have been three meetings of the group with a focus on the following workstreams:

- Communications – to Police Scotland Officers and Staff with regards to the Lord Advocates References on corroboration and what these mean with reference to report writing.
- Training – incorporating the Lord Advocates References on corroboration into existing Probationer and Detective Training and how training is delivered on a wider scale to front line operational police officers.
- PSD Investigations – Impact on cases reported to COPFS by Police Scotland Professional Standards Unit (PSD).
- Specialist Inputs – The provision of tailored inputs to specialist departments within Police Scotland by COPFS.
- Historical Investigations – early conversations have taken place within individual business areas on the issue of historical investigations and this topic will be discussed further at the next meeting of the group.

Impact Factors

Whilst a formal impact assessment across Police Scotland has still to be carried out through the Corroboration National Working Group, the following impact factors of the Lord Advocates References on corroboration have been identified:

CAAPD/PIRC Investigations

The Police Independent Review Commission (PIRC) have significantly changed their working practices, following the introduction of the Lord Advocate's References on corroboration.

Consequently, PIRC have instructed that all referrals will require to be investigated and reported to CAAPD, unless incontrovertible evidence exists that a crime was not committed (e.g., BWV clearly records that a crime did not occur as alleged).

Furthermore, given this ruling, PIRC will no longer provide a sufficiency of evidence grading of their reports to CAAPD. Previously, this grading (Category 1-5) enabled PSD to advise the subject officers and gave a strong indication of the likely COPFS outcome, allowing for a level of reassurance and appropriate welfare provision.

In this respect, figures received by PIRC has shown a marked increase in referrals from 1 January 2025. Despite this change to process, CAAPD do not foresee a significant increase in criminal prosecutions, as they will continue to carefully consider the quality of the evidence available and make recommendations based on an assessment of public interest.

There is concern around the potential impact on Police Officers in terms of timescales for investigations following the changes given that the threshold for reporting cases may be lower.

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In this respect there will be an impact on the length of time officers are subject to criminal allegations, which may have implications for their welfare and career progression. It is anticipated that officers would likely be subject to a criminal allegation for 11 and a half months which would increase if CAAPD were to instigate criminal proceedings, which is a significant amount of time.

The change to processes and the impact this may have on subject officers, witness officers, Divisions and the wider organisation is still under review subject to discussions between PSD Senior Management Team, PIRC and CAAPD.

Local Policing

With reference to the impact on Local Policing Divisions, concern has been expressed in terms of the increase in cases submitted by divisional officers to COPFS. These concerns have been acknowledged, and this will be monitored by Local Policing who will feed back to the Corroboration National Working Group, however to date there has been no significant issues or concerns highlighted in terms of demand or impact.

Whilst the new references apply to all crime types and offending, it is anticipated that not all cases will be impacted by the changes, and it will primarily apply to the reporting of more serious offences.

Specialist Crime Division

In terms of impact on Major Crime, Local Crime and Public Protection, SCD are currently in the exploratory stage of the implications of the Lord Advocate's References on corroboration. All core participants within SCD are aware of the changes and are looking at how this can be embedded in local practice.

From a Public Protection perspective, the Lord Advocate's References on Corroboration has affected rape and wider sexual crime investigations.

In this respect, SCD Public Protection have held initial discussions with COPFS, following publication of the changes, as it was anticipated that rape and sexual crime would be the area of business largely affected.

As a result of initial discussions, COPFS attended Police Scotland's Rape and Sexual Crime SIO (Senior Investigating Officer) Forum and provided a presentation on the Lord Advocates References 1 to 3 to those in attendance.

The inference from the presentation and discussions with COPFS was that whilst technically there will be "more" sufficiency in an increased number of cases, these will still have to be tested at court. In this regard, Police Scotland should not be reporting anything to COPFS based on the references alone without a thorough investigation covering all angles which is what would happen for serious offences.

Furthermore, COPFS have encouraged SIOs to contact them at an earlier stage of an investigation to discuss what has been obtained evidentially prior to reporting.

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Initial assessments predicted that there would be more cases reported on less evidence. However, in practical terms, further investigative work should continue to be undertaken to report only as and when there is a sufficiency (as before the Lord Advocate's references).

SCD Public Protection's position is that the references remain as guidance\direction for SIOs across Rape and Sexual Crime, Child Protection and Domestic Abuse investigations and need to be considered on a case-by-case basis, correlated to the facts, circumstances and aspects of distress within the offence.

Training Leadership and Development

There will be an initial increase in workload for Training Leadership and Development (LTD) as they incorporate the Lord Advocates Reference on Corroboration into Probationer Training lesson notes of which there are over 100. This will result in approximately 700 probationers being trained in the changes. In addition, LTD highlighted concerns about how this training would be delivered nationally. In this respect work is ongoing with SCD Public Protection to look at having the changes incorporated into upcoming Domestic Abuse Matters Training.

Forensic Support

Early discussions have taken place in relation to the impact of the Lord Advocate's References on corroboration and whether it may assist in reducing the demand on forensic services. In particular, this is with reference to examinations of evidence for sexual offences where consent is the main focus of the investigation. Discussions between Forensic Services and COPFS are ongoing at this time to assess the implications of the changes to the interpretation of corroboration for cases involving forensic examination/evidence.

Communication Strategy

A communications strategy was agreed and consisted of a dedicated Intranet Page containing a power point presentation with operational policing scenarios allowing Police Officers to self-brief on how the changes to the interpretation of corroboration would impact upon their roles. In addition, line manager and shift briefings have been made available to provide practical context to the changes.

Moreover, COPFS have provided bespoke inputs to specialist business areas within Police Scotland including the Domestic Abuse Task Force, Training Leadership and Development, Forensic Services and Criminal Justice Services Division.

CONCLUSION

In conclusion, there will require to be a detailed impact assessment completed in the future to identify the impact and demand as the references are relatively new.

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The decision in Lord Advocate's Reference 1 of 2023 was issued on 18 October 2023; and the decision in Lord Advocate's References 2 & 3 was issued on 30 October 2024. The decisions in the three references are interlinked and are considered together in more detail below.

General

Lord Advocate's Reference Number 1 of 2023

The court examined the origins and development of the requirement for corroboration. The court's examination demonstrated that corroboration was originally understood to mean that two witnesses were needed to prove a case. Those witnesses did not have to be eyewitnesses; they could be speaking to solely circumstantial evidence, if that evidence, when taken together, pointed to the guilt of the accused. Where a complainer gave eye witness evidence, it could be corroborated if there was evidence from someone else that supported or confirmed the complainer's testimony. In the early 20th century, the courts and legal textbooks began to treat corroboration as a requirement to have two witnesses to speak to individual facts in a case, characterised as "essential", "fundamental" or "crucial", rather than the case as a whole. This, in the view of the court, caused corroboration to become overly technical and complex, particularly in sexual offence cases, whereby lack of consent and the act of intercourse were treated as distinct, essential facts. It is the case against the accused that requires to be proved by corroborated evidence. That means (i) that the crime libelled was committed and (ii) it was the accused who committed it. (para 235) There is no requirement to prove the separate elements in a crime by corroborated evidence. (para 235) Distress, observed by a third party de recenti, can corroborate the complainer's account that she was raped. Penetration does not require to be separately corroborated. (para 236) A de recenti statement made when a complainer is in a state of distress when taken together are proof of fact as corroboration. (para 237) Where primary evidence comes from a complainer or other eyewitness who speaks to the events libelled, corroboration of the commission of the offence may be found in any evidence which supports or confirms the evidence given by the complainer or eyewitness. (para 239) A witness testifying to the de recenti distress of a complainer is capable of corroborating direct evidence from a complainer that she has been raped. (para 240)

Lord Advocate's Reference 1 of 2023 at paragraph 1 reiterates the requirement for corroboration in Scots criminal law:

"There is no dispute that 'no-one shall in any way be convicted on the testimony of a single witness'...Corroboration is required"

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This means the requirement for corroborated evidence both of (i) the crime itself and (ii) that the accused was the perpetrator. However, Lord Advocate's References 1-3 go on to set out what requires to be corroborated; and what now amounts to corroboration.

The significant points to note from the decisions are:

- i. What requires to be proved by corroborated evidence is **the case** against the accused i.e. (i) the crime itself and (ii) that the accused was the perpetrator. There is no requirement to prove the separate elements in a crime by corroborated evidence (Reference 1 at paragraph 235)
- ii. Distress which is observed soon after a crime (de recenti) can corroborate the complainer's account of rape, including penetration (Reference 1 at paragraph 236)
- iii. Evidence of a de recenti statement made by the complainer and accompanied by distress can corroborate the complainer's account. Neither the distress nor the de recenti statement is from the same source as the complainer's testimony (Reference 1 at paragraph 237)
- iv. A res gestae statement can be any statement which has a "close association" with the crime and may extend to statements made shortly after the crime (Reference 1 at paragraphs 73, 230, References 2 & 3 at paragraph 102)
- v. A de recenti statement is corroborative on its own in the absence of distress (References 2 & 3 at paragraph 110)
- vi. A de recenti statement can provide corroboration of both the commission of the crime and the identity of the perpetrator (References 2 & 3 at paragraphs 109, 110)
- vii. A statement will no longer be regarded as de recenti when it ceases to be "recent" following upon the commission of the crime or is not made to the first

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natural confidante (References 2 & 3 at paragraph 110). However, greater and considerable latitude should be given in sexual offences and cases involving children (References 2 & 3 at paragraphs 54, 74, 104)

Where the primary evidence comes from a complainer or other eyewitness, corroboration of the commission of the offence may be found in any evidence which supports or confirms the evidence which the complainer or eyewitness has given (Reference 1 at 239). That may come from a variety of sources including but not limited to:

- a second eye witness
- audio or video recordings
- social media/text messages and emails
- an admission by the accused
- other circumstantial evidence
- things said or done during the *res gestae*
- distress on its own or in combination with a *de recenti* statement made by the complainer to a third party
- a *de recenti* statement, not accompanied by distress, which is made by the complainer to a third party

Distress

Provided the distress was caused by the incident, there is no fixed time within which the distress must be seen - what is important is that the distress is attributable to the incident itself.

The value of distress lies in its spontaneity, independence and relationship to the incident. The shorter the interval between the incident and the distress being shown, the more likely it is that the distress is spontaneous and independent, and so evidence of what occurred. The longer the interval, the more important it is to examine what happened during the intervening period.

It is perhaps most likely to be the case that distress will be accompanied by some form of *de recenti* statement related to the distress. However, there may be some occasions where distress is seen on its own e.g. a distressed complainer seen on public space CCTV or distress in a child too young to explain what has happened to them. As long as the distress can be linked to the crime, the distress is still corroborative.

Res gestae and de recenti statements

A res gestae statement is one made during the crime itself; or having a “close association” with it.

A de recenti statement is an account given by a complainer after, but as a reaction to, the event itself.

Both res gestae and de recenti statements are corroborative themselves. It is not necessary for either type of statement to be accompanied by distress for it to be corroborative.

Where the corroboration of a complainer’s account comes solely from a de recenti statement, care must be exercised in assessing the terms of that account. The de recenti statement should be an unfeigned reaction which arose spontaneously as a result of the incident. The ability or motivation to invent a story must be discounted. The credibility and reliability of the de recenti statement and the circumstances in which it was made, including the relationship between the parties as it impacts on the question of identification, must be carefully considered to negate any suggestion of fabrication or exaggeration motivated by any pre-existing conflict or ill-will between the parties.

Identification

Something said as part of the res gestae can provide corroboration of evidence of identity.

A de recenti statement can provide corroboration of both the commission of the crime and the identity of the perpetrator if it refers directly or by inference to the accused as being responsible.

Time

A de recenti statement should be “recent” to the commission of the crime or have occurred on the first reasonable opportunity to speak to a natural confidante. It will not be admissible if it is not recent or is not made to the first natural confidante (References 2 & 3 at 110, 104).

This suggests that a two-stage approach might be applicable to assess admissibility:

- (i) is the de recenti statement recent?
- (ii) if not, has it been made to a first natural confidante?

Therefore, a statement can still be regarded as corroborative, even if it is not “recent” in the normal understanding of that word, if it has been made to the first natural confidante.

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By way of example, References 2 & 3 at paragraphs 65 and 105 refer to the case of Robert Henderson (1836) 1 Swin 316 where the complainant, having been raped on Wednesday, did not disclose to the people who were in her house that night but disclosed to two natural confidantes on the Friday and the following Wednesday. Despite the statements not being “recent”, they were admitted in evidence as given to the first natural confidantes.

The extent of what may be regarded as “recent” will depend on the facts and circumstances of each case. It should generally be made so close in time to the commission of the crime that the ability or motivation to invent or concoct a story can be discounted. Therefore, where there has been a lapse of time, which has raised a substantial risk of concoction, the statement may be regarded as inadmissible i.e. not admissible because it is no longer regarded as being a *de recenti* statement (References 2 & 3 at 105).

A much wider latitude in time will be allowed for *de recenti* statements in sexual offences or offences involving children. The court variously referred to “greater” or “considerable” latitude in such cases, for example:

- *“Greater latitude in terms of time and circumstance is allowed with the de recenti statements of complainants in sexual offence cases and with those of children”* (References 2 & 3 at 54)
- *“...greater latitude is given to complainants in sexual offence cases...”* (References 2 & 3 at 74)
- *“...a considerable latitude is allowed in cases of sexual offending...”* (References 2 & 3 at 104)

The extent of such a latitude will depend on the facts and circumstances of each case but the court has recognised that the *“circumstances of each individual complainant and their reaction in the aftermath of an offence may vary enormously from one individual to another”* (Reference 1 at 16).