

Northern Joint Police Board

Minutes of Meeting of the **Complaints Working Group** held in Council Headquarters, Glenurquhart Road, Inverness on Thursday, 1 November 2007 at 10.30 a.m.

Present

Representing the Highland Council

Mr W J Ross
Mr G M Smith
Mr D Chisholm
Mr I Renwick
Mr N Donald
Mr B Murphy

Representing Comhairle nan Eilean Siar

Mr I Mackenzie

Representing Orkney Islands Council

Mr A Drever
(substituting)

Representing Shetland Islands Council

Mr A Duncan

Officials in attendance:

Mr G Sutherland, Deputy Chief Constable
Chief Inspector A MacLean
Mrs R Moir, Assistant Clerk

Mr W J Ross in the Chair

1. Apologies for Absence

An apology for absence was intimated on behalf of Mr R Leslie, Orkney Islands Council.

2. Minutes of Previous Meeting

There had been circulated and were **NOTED** Minutes of Meeting of the Finance and Policy Working Group/Complaints Study Group held on 5 March 2007, previously circulated to the meeting of the Northern Joint Police Board on 30 March 2007.

3. Complaints Against the Police – Professional Standards and Conduct Unit

Chief Inspector Andrew MacLean made a presentation to the Working Group on the Regulations governing the handling of complaints against the Police and the work of Northern Constabulary's Professional Standards and Conduct Unit.

In introducing his presentation, Chief Inspector MacLean emphasised that it was part of the Unit's role to encourage Northern Constabulary staff to be committed to ethical policing and to act with integrity. In outlining the framework within which the

complaints handling process operated, he drew attention to the relevant legislation, the Lord Advocate's Guidelines, the ACPOS Code of Practice and the Northern Constabulary's own Force Manual and procedures. These procedures, together with the Lord Advocate's Guidelines and the ACPOS Code, had been developed in the context of the Police (Conduct) (Scotland) Regulations 1996, which stated that within each Force the Deputy Chief Constable would set up procedures to deal with misconduct by police officers. These Regulations did not define a complaint as such and the definition developed through the Guidelines and the Code was:

“Any complaint made by or on behalf of any person against one or more on-duty members of a Police Force from which it might reasonably be inferred that any act or omission which had been made or committed by any of the individuals concerned amounted or might amount to a criminal offence or professional misconduct.”

The Police, Public Order and Criminal Justice (Scotland) Act 2006 had established the position of Police Complaints Commissioner for Scotland (PCCS). In terms of that Act, the Commissioner had powers to look into any “complaint” that was in writing (including emails) and which expressed dissatisfaction in relation to a Police Authority, Police Force or person serving with a Police Force. This new definition was not restricted to on-duty behaviour and could for example include complaints concerning policy matters as well as particular policing incidents. The Act empowered the Commissioner to direct a Force to reconsider a complaint. However, while the 2006 Act set out those areas where the PCCS would have competence, it was anticipated that Police Forces would continue to operate the definition derived from the 1996 Regulations set out above and to record matters accordingly. In response to a question, the Deputy Chief Constable explained that it was the view of ACPOS that the PCCS could not insist that the police record as a formal complaint a matter not falling under the existing operational guideline definition.

A Force could receive complaints directly from the complainer. Complaints could also be made via third parties, such as a Solicitor, Member of Parliament or parent. All complaints were recorded on a specific form; however, it was not always clear whether a matter raised in correspondence constituted a formal complaint or not.

Chief Inspector MacLean advised Members that around 80% of complaints received came from ordinary members of the public who believed they had a genuine complaint. Often these related to a perceived or actual lack of explanation, tact or professionalism, examples of the latter being an officer's manner, language or insensitivity. A minority of complaints, however, were not necessarily genuine and could arise from malice, or be tactical in the hope that the making of a complaint might influence the handling of an investigation into that individual. A very small minority of complaints alleged criminality on the part of an officer.

Chief Inspector MacLean explained that complaints were in the first instance referred to the relevant Area Commander, who, if a complaint was considered to be minor or trivial, would have the authority to deal with the matter locally, for example by explanation or by attempting conciliation. There was, however, no definition of what was a minor or trivial complaint; this was therefore a matter of judgement. More serious complaints would require a full investigation by the Professional Standards

and Conduct Unit, while any complaints inferring criminality were referred to the Area Procurator Fiscal.

More serious cases would involve the appointment of an Investigating Officer and, whether or not there were ultimately criminal proceedings and perhaps a criminal conviction, such cases could lead to misconduct proceedings. The Investigating Officer appointed would hold at least the rank of Inspector and would not be lower in rank than the officer being investigated. In certain circumstances it might be appropriate to appoint an Investigating Officer from another Police Force. In investigating the complaint, the officer would interview the complainer and any witnesses and would also seek any other independent evidence such as CCTV or medical evidence. He would also examine the officer's own account of the incident, taking into account any crime reports and entries in the relevant police notebooks.

Chief Inspector MacLean outlined the timescales that normally applied to the various stages of the process. Where a matter was referred to the local Area Commander, he would have 12 days in which to respond to the Deputy Chief Constable. The Deputy Chief Constable would refer an allegation of criminality to the Area Procurator Fiscal (APF) within 14 days of the complaint being made. The APF would normally indicate within 7 days whether or not he considered there was any inference of criminal activity. If there were, the matter would go to full enquiry for around a further 10 weeks. Even if the APF determined that there was no inference or criminality, the matter could lead to misconduct proceedings. In certain circumstances indicated in the Force Manual and Procedures the officer might be suspended from duty while the investigation was carried out. A complaint investigation could be a stressful time for the officer involved. At its conclusion a letter would be sent to the complainer explaining its outcome and a follow-up visit could be made if thought appropriate.

Chief Inspector MacLean then presented a number of statistical charts showing the total numbers or complaints received in recent years, their breakdown by Area Command and by category, with a comparison of 2006 figures against those in 2007 to date.

During discussion, the Chairman reminded Members that the agenda for each Board Meeting included a note of the number of complaints received since the previous meeting, together with an indication of the number of letters of appreciation received. The latter generally more than outweighed the complaints numbers. The Deputy Chief Constable emphasised that the Professional Standards and Conduct Unit made every effort to be fair to all parties involved and to reach an appropriate and consistent conclusion.

In response to a question, the Deputy Chief Constable outlined the available punishments that could be imposed on an officer found guilty of some form of misconduct and also the appeal options available to him/her in such circumstances. In response to a further question as to how an Investigating Officer from an outside force would be chosen, the Deputy Chief Constable explained that this was effectively arranged on a rotational basis and generally involved only those Forces which had the capacity to second officers to an investigation team.

After discussion, the Working Group **NOTED** the position.

4. Complaints against the Police – Correspondence from Her Majesty’s Inspectorate of Constabulary

In the Thematic Inspection on Complaints (A Fair Cop), published in April 2000, HMIC indicated that there would be value in passing correspondence with dissatisfied complainers for the information of the Northern Joint Police Board.

There had been circulated:

- copy letters submitted by HMIC in relation to two complaints referred to HMIC
- Report No. CWG1/07 by the Deputy Chief Constable on the handling by the Constabulary of those complaints
- copy letters from the Deputy Chief Constable to HMIC in response to the latter’s findings in these cases.

Mr I Mackenzie declared a non-financial interest in the first complaint due to a family relationship with the officer in question and left the room during this part of the discussion. Mr A Duncan declared a non-financial interest in the second complaint due to the reference made to Freemasonry and left the room during this part of the discussion.

In speaking to this item, the Deputy Chief Constable emphasised the need for the Force’s actions to be proportionate and to represent Best Value. Where matters appeared to arise from a misunderstanding, the Force would do its best to clarify this. Where he or Chief Inspector MacLean did not consider that an allegation received made a reasonable inference of misconduct, they would respond accordingly. It was also reasonable to take into account the history of a particular complainer. On the other hand, where complaints did identify learning points, these would be disseminated throughout the Force.

After discussion, the Working Group **NOTED** the position.

5. Complaints against the Police – Correspondence from the Police Complaints Commissioner for Scotland (PCCS)

There had been circulated and was **NOTED** Report No. CWG2/07 by the Deputy Chief Constable outlining a number of complaints from dissatisfied complainers that had been referred to the Police Complaints Commissioner for Scotland and on which his findings were awaited.

6. National Issues

There had been circulated Report No CWG3/07 by the Deputy Chief Constable providing Members with an update on current and developing national issues in relation to complaints against the Police. The Deputy Chief highlighted again the role of the recently-established Police Complaints Commissioner for Scotland and the types of issue in relation to which his involvement could be anticipated. It would take time for the full impact of these new developments to become apparent.

The Working Group **NOTED** the position.

7. Shadowing of Investigating Officers

There had been circulated Report No CWG4/07 by the Deputy Chief Constable highlighting the role of the Investigating Officer in relation to complaints against the Police and recommending that Members be given the opportunity to “shadow” investigations.

In speaking to the report, the Deputy Chief Constable indicated that he hoped to provide an opportunity for at least some Members of the Working Group to acquire a more in-depth knowledge of the procedures used in investigating complaints that were not referred to the Procurator Fiscal. Members would not themselves be actively involved in the investigation process, but would have an opportunity to review the file or discuss progress with the relevant Investigating Officer. It was not his intention that there should be any blurring between the scrutiny role of the Board and his own responsibility for the process and its outcome. While the detail of how the system would best operate remained to be agreed, he wished to gauge Members’ interest.

The Chairman indicated that he was in principle supportive of the suggestion. It could provide a means of assisting Members to fulfil their responsibility to satisfy themselves as to how the Force investigated complaints. Greater knowledge would assist effective scrutiny and, where appropriate, challenge. Logistics suggested that perhaps only 3 to 4 Members would be involved, initially at least. The question of potential costs had to be recognised, although it was likely that much of the contact could be by correspondence, telephone, or video-conferencing. Face to face contact could perhaps be arranged to fit with other Board meetings and commitments, all with a view to keeping costs to a minimum. He suggested that Working Group Members interested in taking up the Deputy Chief Constable’s invitation notify the Clerk’s Office of their interest, with a view to taking this matter forward.

The Working Group **AGREED** to recommend that a process permitting a number of Working Group Members to shadow complaints investigations be established.

The meeting ended at 12.30 p.m.