

Justice Sub-Committee on Policing
Police Scotland’s internal complaints procedure
Briefing from the Scottish Police Authority

Briefing on SPA Complaints Handling

1. Background – Complaint remits across the different policing bodies

Police Scotland	<p>Responsible for handling complaints about:</p> <ul style="list-style-type: none"> • Police Scotland itself; • staff members of Police Scotland; and • Police officers below the rank of Assistant Chief Constable i.e. Police Constable to Chief Superintendent ranks.
Scottish Police Authority (SPA)	<p>Responsible for handling complaints about:</p> <ul style="list-style-type: none"> • the SPA itself; • staff members of the SPA; and • senior police officers of the rank of Assistant Chief Constable (ACC) rank and above i.e. ACC, Deputy Chief Constable (DCC) and Chief Constable (CC). <p>Complaints about Senior Officers may be dealt with as ‘relevant complaints’ (as defined in the Police Public Order and Criminal Justice (Scotland) Act 2006) or as ‘misconduct allegations’ (as defined in the Police Service of Scotland (Senior Officers) (Conduct) Regulations 2013).</p> <p>The SPA is also required by statute to keep itself informed as to the manner in which ‘relevant complaints’ are dealt with by the Chief Constable, with a view to satisfying itself that the arrangements maintained by the Chief Constable for handling ‘relevant complaints’ are suitable. The SPA does this through:</p> <ul style="list-style-type: none"> • Dip sampling complaints across the 3 regions and specialists services; • Receiving automatic notification of complaints made against Anti-Corruption members of staff, for further independent review; and • Receiving and reviewing reports into Police Scotland’s complaint handling performance.
Police Investigations & Review Commissioner (PIRC)	<p>The PIRC is responsible for reviewing the manner in which the SPA and Police Scotland (among other police bodies) handle ‘relevant complaints’.</p> <p>The PIRC is also responsible for keeping under review the SPA and the Chief Constable’s arrangements for the handling of ‘relevant complaints’ and must seek to ensure that those arrangements are efficient, effective, demonstrate an appropriate independence, and are adhered to.</p> <p>The PIRC also assesses ‘misconduct allegations’ about Senior Officers which are referred to it by the SPA, and may investigate such allegations.</p>
Her Majesty’s Inspectorate of Constabulary (HMICS)	<p>HMICS has no formal role to play in complaints handling, but may inspect any matter relating to the SPA and Police Scotland as it considers appropriate.</p>

2. SPA Complaints Handling Process

It should be noted that the SPA Complaints Handling Procedures are currently being reviewed by a multi-agency Working Group, established following the PIRC's 2017 audit of the SPA's complaint handling arrangements. The following sections detail the processes currently in place, however the SPA will update the Justice Sub-Committee on any significant changes arising from the output of the Working Group.

All complaints received by the SPA are firstly assessed by the SPA Complaints Team which comprises one Manager and two Co-ordinators. The team is overseen by a Director and the SPA Legal & Compliance Team provide legal advice and assurance to the complaints function.

On receipt of a complaint, the SPA Complaints Team firstly determine if it is within the remit of the SPA and thereafter the complaint is managed in line with relevant procedures and legislation i.e.

- Complaints about the SPA itself and members of its staff are dealt with according to the SPA Complaints Handling Procedures and the PIRC's Statutory Guidance on Complaints Handling.
- Relevant complaints and misconduct allegations about Senior Officers are dealt with according to the PIRC's Statutory Guidance on Complaints Handling and the Senior Officer Conduct Regulations, respectively.

In relation to complaints and misconduct allegations about senior officers, the SPA Complaints and Conduct Committee ("the Committee") will determine whether or not to uphold the complaint and whether it is appropriate to consider the complaint under the Senior Officer Conduct Regulations. The processes for dealing with complaints about senior officers of Police Scotland are explained in more detail below.

2.1 Senior Officer Conduct Regulations

The Senior Officer Conduct Regulations set out procedures for dealing with 'misconduct allegations' about Senior Officers.

On receipt of a complaint about a senior officer, the Committee must firstly assess whether the complaint amounts to a "misconduct allegation" as defined in the Regulations i.e. any report, allegation or complaint from which it can reasonably be inferred that any conduct of the senior officer may amount to misconduct or gross misconduct. To assist in its decision-making, the Committee receives professional advice from SPA officers, including the Complaints and Legal & Compliance teams.

- "Conduct" is defined in the Regulations as including acts and omissions.
- "Misconduct" means conduct which amounts to a breach of the Standards of Professional Behaviour, as set out in the Regulations.
- "Gross Misconduct" means a breach of the Standards of Professional Behaviour so serious that dismissal may be justified.

In the event that it is concluded that a complaint amounts to a "misconduct allegation", a decision must be made by the Committee as to whether the conduct alleged by the complainant would, if it were proved, amount to misconduct, gross misconduct or neither.

In the event that it is concluded that the alleged conduct would, if proved, amount to neither misconduct or gross misconduct, the Committee may take no action; take improvement action (defined in the Regulations as "action intended to improve the conduct of the senior officer") or refer the matter to be dealt with under the Police Service of Scotland (Senior Officers) (Performance) Regulations 2016.

In the event that it is concluded the alleged conduct would, if proved, amount to misconduct or gross misconduct, a decision must be taken by the Committee as to whether the misconduct allegation is to be investigated. If the allegation is to be investigated, it must be referred to the PIRC. If it is not to be investigated, the Committee may take no further action or take improvement action (as defined above).

The Regulations provide that where a “misconduct allegation” is referred to the PIRC, the PIRC must itself assess whether the alleged conduct would, if it were proved, amount to misconduct, gross misconduct or neither. If the PIRC concludes that the alleged conduct would, if proved, amount to gross misconduct, it *must* investigate the allegation. If the PIRC concludes that the alleged conduct would, if proved, amount to misconduct, the PIRC *may* investigate the allegation, but it may also refer to the allegation back to the SPA with such recommendations as are considered appropriate.

Where the PIRC decides that the alleged conduct would, if proved, amount to neither misconduct or gross misconduct, it *must* refer the allegation back to the SPA (with such recommendations as are considered appropriate).

In the event that the PIRC refers a misconduct allegation back to the SPA, the SPA may investigate the allegation; take improvement action; or deal with the matter under the Performance Regulations.

2.3 Relevant Complaints

If a complaint about a senior officer does not contain an allegation of misconduct, or if it is concluded in terms of regulation 2 of the Regulations that the complaint does not amount to a “misconduct allegation”, the SPA will determine if the complaint is a “relevant complaint” as defined in the 2006 Act.

If it is concluded that a complaint is a “relevant complaint” about a senior officer, the SPA will deal with the complaint in accordance with its Complaint Handling Procedures and the PIRC’s Statutory Guidance on Complaints Handling.

3. SPA Governance Framework

The Committee performs many of the SPA’s functions in relation to the handling of complaints. These include:

- Considering and determining complaints about the SPA, its staff and senior officers of Police Scotland;
- Monitoring the handling of relevant complaints by the SPA and Police Scotland;
- Ensuring that the SPA has suitable arrangements for handling relevant complaints;
- Keep itself informed of the manner in which relevant complaints are dealt with by the Chief Constable with a view to satisfying itself that those arrangements are suitable; and
- Performing certain functions under the Senior Officer Conduct Regulations.

The Committee was stood down in December 2016, following a review of the SPA Corporate Governance Framework and most functions, in terms of complaint handling and the Senior Officer Conduct Regulations, were delegated to the SPA Chief Executive Officer (CEO). The process for handling complaints did not change after the Committee was stood down; however, the decision-making responsibilities moved from the Committee to the then CEO.

As an early action within the wide-ranging programme of improvement initiated by the Chair of the SPA, the Committee was reinstated in January 2018. To the end of April 2018, the Committee has met formally six times and held two workshops. Committee meetings are held in public unless the subject for discussion requires the meeting, or a particular item, to be dealt with in private session, in accordance with the SPA Governance Framework. All of the Committee meetings held to date have been in private session, due to the nature of the matters that were considered; however, the forthcoming meeting to be held on 25 May 2018 will have both public and private sessions.

4. Governance and Oversight

Membership of the Committee is made up of the following SPA Board members:

- Matt Smith, Chair
- Iain Whyte
- Caroline Stuart
- Grant Macrae

Over the past five months, the Committee has discharged its statutory responsibilities in terms of complaint handling in a number of ways, including:

- Making decisions in relation to complaints about senior officers, many of which were high profile, attracting a great deal of media attention;
- Approving the mandate of a multi-agency working group to review and strengthen overall complaints procedures;
- Approving a workplan for the coming year which sets out its requirements to ensure transparent oversight and scrutiny of the SPA and Police Scotland's complaints handling.