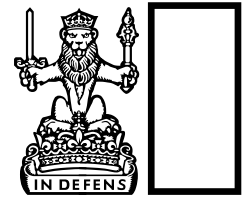


# Crown Office and Procurator Fiscal Service

Crown Office, 25 Chambers Street, Edinburgh, EH1 1LA  
Crown Agent's Office



Ms Christine Grahame  
Convenor  
Justice Committee

Tel: 0844 561 3201  
RNID Ttypetalk prefix: 18001

Sent by email

[Justice.committee@scottish.parliament.uk](mailto:Justice.committee@scottish.parliament.uk)

Date: 23 March 2015

Dear Ms Grahame

## **CRIMINAL ALLEGATION AGAINST THE POLICE**

Thank you for your letter of 10 February 2015 regarding criminal allegations against the police and the evidence that was given on this topic to the Justice Sub Committee on Policing on 5 February 2015.

I have noted the issues raised in your letter, and am grateful for the opportunity to respond, and to describe how the Crown Office and Procurator Fiscal Service deals with these sensitive cases.

All allegations of criminal conduct by police officers *acting in the course of their duties* are now reported to and investigated by a specialist team within COPFS, the Criminal Allegations Against the Police Division (CAAP-D) which is part of our Serious and Organised Crime Division (SOCD). This team is led by a senior prosecutor who directs the work of an experienced team of investigators and works closely with the Police Investigations and Review Commissioner (PIRC) and the Police Service of Scotland. All allegations reported to the Division are thoroughly and robustly investigated by the team and those who make the allegations participate in this investigative process, either by being interviewed by a member of the team or by being given the opportunity to review and update their original statement.

You may be aware that it is our long-standing policy that criminal proceedings can only be instructed against an on-duty police officer by Crown Counsel and only where there is sufficient credible, reliable and admissible evidence, and where proceedings are in the public interest. The Law Officers have recently given a personal commitment that in these circumstances Crown Counsel's Instructions (CCI) to raise criminal proceedings will only be issued by either the Lord Advocate or the Solicitor General therefore where there appears to be a sufficiency of evidence, a detailed report will be submitted by the CAAP-D team to the Law Officers for instructions. The Law Officers may also instruct further investigations before reaching a final decision.

This degree of investigation by the team and oversight and independent decision making by the Law Officers ensures that these important and sensitive cases are dealt

with appropriately, recognising the need to provide public reassurance that allegations against the police are investigated thoroughly and independently. It may help to illustrate this point by emphasising that the process of investigation and decision making in cases against police officers, regardless of the severity of the allegation, is, in many regards, more akin to the detailed investigation and preparation of our High Court prosecutions, such as murder and rape, than cases which are prosecuted in the summary courts on the strength of an initial report from the police.

Your correspondence makes reference to the statistics contained in the Police Investigations and Review Commissioner's Report on Police Complaints: Statistics for Scotland 2013/14, and in particular to the figure of 225 cases referred to COPFS in that period of which 6.7% led to proceedings being taken.

These statistics have to be viewed in the context of how criminal allegations against the police are investigated and reported to as compared to other criminal investigations. For other criminal cases, where the accused person is not an on-duty police officer, a report will normally only be submitted to the prosecutor where the police assess that there is a sufficiency of evidence to establish the commission of a crime and the perpetrator of that crime.

This is not the case when the allegation is made that a police officer committed an offence while on duty. In such cases, there is a statutory requirement that the matter be reported to the prosecutor where the Deputy Chief Constable considers that it can reasonably be inferred that a constable may have committed a criminal offence, irrespective of the question of sufficiency of evidence. That statutory requirement is contained with Regulation 9 of the Police Service of Scotland (Conduct) Regulations 2014. This obligation to report in these circumstances does not therefore arise from any instruction or policy issued by COPFS or by the Law Officers. In the same way that we adopt a thorough and detailed process for the investigation of such cases to main public confidence, this requirement of the police to report a wider range of cases strengthens public confidence that an allegation will be considered by an independent prosecutor. Viewed in that context, I would suggest that it is not surprising that the percentage of cases proceeded with is lower for cases involving on duty police officers as compared with other accused.

Furthermore, the statistics contained within the 2013/14 report relate only to cases referred to COPFS as a result of a complaint from a member of the public. CAAP-D deal with a significant number of reports alleging criminal conduct which do not arise from such a complaint. These include, for example, reports alleging commission of road traffic offences or breaches of data protection legislation.

COPFS data indicates that in 2013/14, 135 Police Officers were the subject of criminal reports where COPFS has received a Standard Police Report. Of these, 60 officers were the subject of Court proceedings: 30 were convicted, one was found not proven, 6 were found not guilty and 23 cases are ongoing. There has not yet been a final decision on whether or not to take proceedings in respect of a further 39 officers.

I am also aware that the investigation and reporting of alleged offences by police officers in relation to data protection legislation was the subject of some discussion during the evidence taken by the sub-committee.

An impression appears to have been given that access to computer systems by police officers for legitimate enquiry risked an officer being reported for breach of data protection legislation. I wish to make it clear that officers who access information or

interrogate systems for a legitimate policing purpose are not committing an offence and should not be reported to COPFS. Unauthorised access is however unlawful and a breach of the legislation. It is the case that the police hold very sensitive personal information and information about criminals and their victims as well as other witnesses. Unlike the days when such information was stored in hard copy registers, as at least one of the witnesses described for the sub-committee, a much greater volume and wider range of sensitive personal information is available to every police officer who is free to make use of the data for legitimate policing purposes. It is therefore appropriate that statutory offences enacted by Parliament to ensure that such data is not misused are appropriately enforced.

I should also emphasise that we are well aware of the impact that criminal allegations against police officers can have both on the individual officers themselves and also on the Police Service of Scotland. These cases are prioritised appropriately but it is important to recognise that many of them are complex and required detailed investigation. The creation of a specialist team to carry out this work has improved our liaison with the police and the PIRC and strengthened the expertise which we bring to bear on these cases.

I hope this information is helpful.

Yours sincerely



**Catherine Dyer**  
Crown Agent & Chief Executive