

TAYSIDE JOINT POLICE BOARD

20 August, 2001

Report by the Chief Constable No. PB 37/2001

SUBJECT: COMPLAINTS AGAINST THE POLICE IN SCOTLAND - A CONSULTATION PAPER

Abstract: The Scottish Executive has recently circulated a consultation paper which puts forward proposals to enhance the independence of the investigation of complaints against the police in Scotland. There are two main proposed options for change, firstly the introduction of an Ombudsman type body or secondly an Independent Police Complaints body.

1. RECOMMENDATION

- 1.1 It is recommended that the Board
- (a) considers the consultation paper in order to determine the most effective manner in which the views of the Board can be collated and
 - (b) approve the establishment of a Working Group, comprising the Convener, Vice Conveners, one member from each Local Authority together with the Chief Constable (or nominee) to consider the matter and prepare a response on behalf of the Board

2. BACKGROUND

- 2.1 The Justice Minister Mr Jim Wallace indicated that there was a degree of public mistrust in the current system for investigating complaints against the police in Scotland. Accordingly the consultation document has been prepared and circulated for consideration and comment.
- 2.1 The procedures for handling complaints against the police in Scotland are regulated by statute, principally the Police (Scotland) Act 1967, the Police (Conduct) (Scotland) Regulations 1996 and the Police (Conduct) (Senior Officers) (Scotland) Regulations 1999.

The 1967 Act allows Scottish Ministers to make regulations governing conduct matters; enables a dissatisfied complainant to ask Her Majesty's Inspectorate of Constabulary (HMIC) to review the case; and requires police authorities and HMIC to keep themselves informed about the handling of complaints by forces. The Regulations under the Act set up a system for dealing with misconduct by police officers but do not set up a system that deals with complaints about the quality of service provided by the police or the force as a whole. Hence the view, quoted in A Fair Cop?, that the police "do not have a process for dealing with complaints. They have an internal discipline system...".

Where a criminal offence may have been committed, the matter must be reported to

the Regional Procurator Fiscal who will investigate and determine whether there should be criminal proceedings. Where a complaint is made against a chief officer, it is the responsibility of the police authority to handle the complaint. Any investigation is undertaken by the Chief Constable of another force and any hearing is chaired by an independent person. Criminal allegations, however, are a matter for the Regional Procurator Fiscal to investigate, regardless of the rank of the officer involved. The Criminal Justice System in Scotland provides a well-established process for the independent consideration of allegations of criminal conduct. **It is proposed that there should be no changes made to the independent investigation/oversight of the alleged criminal actions of police staff by the Regional Procurator Fiscal.**

For non-criminal complaints, or for those the Regional Procurator Fiscal has decided not to pursue, at present the independent element is provided in the review of the complaints systems by the involvement through statute of police authorities and HMIC, particularly HM Lay Inspector. The responsibilities of HMIC to a dissatisfied complainer additionally provide considerable scrutiny of investigations, often re-igniting relevant lines of enquiry. Notwithstanding the role of the police authority and HMIC, the view persists that independence in the investigation is lacking.

The Scottish Executive do not feel that giving a greater role to HMIC will lead to change in the public perception about the independence of the complaints process. Similarly, providing police authorities with additional responsibilities to become involved with the complaints process will do little to instil a perception of strengthened independence. Indeed, they already have a more involved role in respect of Chief Officer conduct issues, and there is no indication that public satisfaction is any greater or less with the way these are handled.

It puts forward two potential models for such an independent model in the police complaints process;

- an Ombudsman to look into the investigation of complaints, with a role wider than that currently undertaken by HMIC.
- a new independent Police Complaints Body with responsibility for handling all complaints in the first instance. Thus all complaints made would either be made to, or directly referred to, the new body to deal with.

The key differences in these approaches are the stage at which the independent element becomes actively involved in the process, and the impact that has. The Ombudsman option would enable any such body to stand apart from the processing and investigation of a complaint, allowing it to act as a fully independent judge of the complaints process.

The independent Police Complaints Body option would be actively involved in the processing and potentially the investigation of complaints. In those cases where a complainant was dissatisfied with the complaints process, the latter option would mean the new body would have to review its own actions and decisions, subject to scrutiny by the Scottish Parliament Ombudsman and the Courts.

The Ombudsman type body need not be restricted to the traditional role of examining maladministration in response to dissatisfied complainants, but could also be involved in an overview capacity in the handling of all non-criminal complaints. A public profile in sensitive cases could add to the confidence of the public that not only would the Regional Procurator Fiscal be considering the case from a criminal perspective, but that after that stage, independent scrutiny would continue until the point at which the Deputy Chief Constable considers the report. A comprehensive system of oversight might require that the body should be notified of;

- all complaints at the time they are recorded
- the results of any investigation
- the solution proposed
- the response to the complainant
- where a hearing is convened, the body should be able to be present in the role of observer to ensure that the proceedings are conducted fairly and impartially
- where a force declines to take any action in response to a complaint, the complainant would have a right of appeal to the body
- where a complainant is dissatisfied with the solution proposed by a force or any action taken in dealing with a complaint, he or she may apply to the new authority for a review

The body would have a number of options including:

- inquiring into the conduct of the complaint procedure
- ordering a fresh investigation
- requesting a force or authority to review its decision with a view to altering this in the light of any further inquiries

In addition, the body might be given a supervisory role in relation to further investigation following an application for review, by overseeing the fresh investigation for which it would have powers to appoint and direct police officers to assist it. Finally, the Ombudsman could carry out “random testing” of the measures taken to address individual complaints to help ensure high standards.

An alternative would be to give a new body responsibility for handling all complaints in the first instance. Thus all complaints made would either be made directly or referred to the new body to deal with. Subject to this, there are various options as follows;

- (1) the new body might determine whether there was a prima facie case for an investigation and then refer the matter to the police to deal with broadly as at present. It could however also undertake the supervisory role described as above or

- (2) the new body would refer less serious complaints to the police to deal with, but supervise the investigation of serious complaints, referring those involving criminal allegations to the Regional Procurator Fiscal. Its findings in relation to complaints involving misconduct would be referred to the police authority to deal with; or
- (3) the new body would supervise investigations into all complaints, or
- (4) the new body would undertake its own investigations into serious or all complaints.

Option (1) would introduce an independent element into the registering of complaints and determining whether an investigation was required. Option (2) would introduce an independent element into the supervision of the investigation of serious complaints, providing an opportunity for the authority to provide early remedies to the complaints most likely to be addressed by mediation and reconciliation where officers have erred in some way. This may be preferable to Option (3) which removes the supervisory responsibility for investigation entirely from senior police officers or the authority, but may risk introducing an element of delay into the handling of all complaints.

Options (1) to (3) rely on the use of serving police officers to undertake the investigation, whereas the last option, Option (4) envisages the new body employing its own investigation staff.

The Scarman Report into the Brixton Riots (1981) recognised that an important element in any complaints system was the capacity to deal with minor complaints quickly and effectively. In any organisation this will best be dealt with locally. The issues can be quickly identified, managers can retain ownership of the problem and it is in their interests to find a quick and satisfactory solution, and the inevitable bureaucracy brought by the systems and checks of an external organisation is avoided.

3. CURRENT POSITION

The consultation paper is presently being considered by the ACPOS Complaints and Conduct Sub Committee on which The Chief Constable is represented by the Deputy Chief Constable.

- 3.1 It is worthy of note that the independent role of the Regional Procurator Fiscal in criminal allegations will remain extant with the proposed changes affecting issues surrounding allegations of misconduct.

4. FINANCIAL IMPLICATIONS

- 4.1 Not known at this time although it is likely that an independent body would require the secondment of existing officers from the Scottish Police Forces.

5. CONSULTATION

- 5.1 The Clerk and the Treasurer have been consulted in the preparation of this report

6. CONCLUSION

- 6.1 This consultation process affords an opportunity to closely scrutinise which of the proposed options is likely to satisfy public perception and political will. The significant financial implications of a fully independent body will require careful examination in order to assess whether such a radical step is necessary and justified.

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NOTE: No background papers, as defined by Section 50D of the Local Government (Scotland) Act 1973 (other than any containing confidential or exempt information) were relied on to any material extent in preparing the above Report.