



JUSTICE IN POLICING

A JOINT THEMATIC REVIEW OF THE HANDLING OF
CASES INVOLVING AN ALLEGATION OF A CRIMINAL
OFFENCE BY A PERSON SERVING WITH THE POLICE.

HM CROWN PROSECUTION SERVICE INSPECTORATE
HM INSPECTORATE OF CONSTABULARY

EXECUTIVE SUMMARY

JANUARY 2007



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HM Crown Prosecution Service Inspectorate

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INTRODUCTION

This is the report of a review conducted jointly by Her Majesty's Crown Prosecution Service Inspectorate (HMCPISI) and Her Majesty's Inspectorate of Constabulary (HMIC) to analyse and assess the quality of handling of cases involving alleged criminal misconduct by a person serving with the police (sometimes referred to as police complaints cases).

Purpose of the review

The purpose of the review has been to analyse and assess the quality of handling of cases involving an allegation of criminal conduct by a person serving with the police. This has included:

- The timeliness of investigations, submission of papers to the CPS and decision making;
- The quality, integrity and consistency of decision making and casework handling generally; and
- The relationship, in the context of police complaints cases, between CPS Headquarters (Policy Directorate and Special Crime Division), CPS areas, the Independent Police Complaints Commission (IPCC) and Professional Standards Departments (PSD).

Methodology and key issues

The review team comprised a lead HMCPISI legal inspector and two assistant legal inspectors. HMIC provided two inspectors to the team who had previously worked on the baseline and thematic assessment of professional standards departments. Although led by HMCPISI, this review was a joint effort particularly in the fieldwork phase.

The following key issues were considered:

- Policy and management – including allocation, monitoring and tracking of cases;
- Review – timeliness and quality of review decisions;
- Case preparation – quality of case handling; and
- Stakeholder and confidence issues – including communication and complaint handling.

The review was structured in a manner which allowed inspectors to trace a case through handling by a PSD or IPCC to the relevant CPS Area or Special Crime Division (SCD) to examine where the points of tension within the system were, and to better understand where and why delays occurred.

Overview

The Crown Prosecution Service (CPS) has a statutory duty to consider the outcome of all investigations where a person serving with the police is alleged to have committed a criminal offence. The importance of this work is far greater than its modest volume might imply. Many cases involving complaints against the police have a high profile at either national or local level. In addition, public confidence requires that the criminal law ought to operate with the police disciplinary system to provide a robust but fair and proportionate response to the full range of potential misconduct. Generally speaking, fairness in the context of criminal law means that

persons serving with the police should be treated no better or no worse than any other citizen, subject to the need to take account of circumstances which are specific to those that serve with the police and the powers they exercise.

This review has focussed on the overall process of investigating such cases (referred to generally as “police complaint cases”), including the quality of the CPS work in the discharge of its statutory duty (both as regards the decision making and in handling), how they are managed and the effectiveness of the arrangements for maintaining public confidence. Overall, we have found that the arrangements for investigating and handling police complaint cases result in sound decision-making and case preparation notwithstanding a number of weaknesses, mainly in the manner in which they are managed. Those weaknesses are attributable for the most part to the lack of any clear and consistent ownership of policy or operational issues within the directorates of CPS Headquarters. There is no monitoring or measurement of these cases, which has resulted in a fragmented approach to performance and management issues.

There is clear evidence from this review of the need for the police and the CPS to work more closely together to consider the future management and conduct of investigations and prosecutions. In particular, there is a need for more structured arrangements for recording cases, and monitoring and analysing outcomes which can be the basis of joint performance management arrangements through which concerns raised by properly interested groups such as those representing complainants and the Police Federation can be addressed. In addition, Chief Officers, the IPCC and the CPS should ensure that they have mechanisms in place to monitor the outcomes of investigations and prosecutions so as to identify any bias which may exist, whether from the perspective of a complainant or that of a person who is the subject of an allegation.

We conclude that the handling of cases involving complaints against persons serving with the police currently operate outside the main CPS business processes to an unacceptable extent. This needs to be addressed and a system of regional units, possibly aligned to independent police complaints commission regions, should be considered as a possible way forward.

Conclusions

The framework for the investigation and consideration of cases involving alleged criminal misconduct by persons serving with the police is set out in the Police Reform Act 2002 which stipulates that any such case shall be referred to the CPS where a criminal offence ‘may’ have been committed. A series of service level agreements between CPS Areas and police forces (based on a model agreement developed by the Association of Chief Police Officers (ACPO) and CPS Headquarters) ought to govern day to day working arrangements under which the majority of cases are dealt with by CPS areas through ‘cross border’ arrangements. The balance (the more serious and difficult cases) are handled within the Special Crime Division at CPS headquarters. The rationale for this approach is that there must be overt independence as regards the decision maker and the person about whom the complaint is made.

These arrangements do not operate satisfactorily. A lack of clarity surrounds the criteria for referral of cases to the CPS. Many practitioners consider that the threshold for referral by the 2002 Act is too low and there are, as a result, different interpretations being developed which are intended to avoid cases being sent to the CPS unnecessarily.

The service level agreements between the CPS and police forces have not been as effective or implemented as consistently as intended. They should be living documents customised to suit the needs of both organisations. Opportunities have been missed with the result that, in addition to substantial variations as to the circumstances in which cases are submitted to the CPS, there is a lack of understanding about the appropriate 'gateways' to obtaining CPS advice arising from:

- the statutory extension of the Police complaints regime to include persons serving with the police; this now includes other staff irrespective of whether the allegation arises from a complaint or not and whether it arises in the course of duty or even within the area of the employing force; the fact that the statutory regime applies may easily be overlooked;
- the establishment of statutory charging arrangements, whereby the majority of cases are submitted to the CPS for consideration prior to charge, has resulted in different arrangements even within police force areas. Submission to a duty prosecutor under a statutory charging scheme meets the requirements of the 2002 Act for reference to the CPS but it does not correspond with the 'cross bordering' arrangements intended to ensure that cases involving persons serving with the police receive considerations by a CPS lawyer unconnected with the force to which the individual belongs
- as the result of the wide range of circumstances now covered by the police complaints regime, files may emanate from the Professional Standards Departments (who deal with most complaints arising out of duty situations), from Borough or Basic Command Units, or from the Independent Police Complaints Commission established by the 2002 Act with the power to investigate cases which are serious or have a significant public interest or organisational learning aspect to them

The standard of files submitted by the police vary considerably. In many instances files are built to a standard specification which exceeds what is required to enable the CPS to make a properly informed decision. Thoroughness of investigation and file preparation should not be compromised, but early consultation with designated lawyers in the CPS could yield dividends in ensuring that unnecessary work is not undertaken and that time is saved where appropriate. Against this, there were two crucial aspects in which many files were found not to comply with the requirements of Service Level Agreements. The provision of the service record of the person being considered for prosecution did not take place. Also, the provision of antecedents to decision makers did not occur in a significant minority of cases.

PSDs do keep records of the length of time an investigation takes from complaint to file submission. HMIC have commented previously on the different ways forces interpret the 120 day target in which they aim to complete the investigation. This is because the time runs and is suspended at key moments in the process. There have been inconsistencies in the interpretation of when the clock stops and starts. Cases and circumstances vary so substantially that there can be no fixed time limit for an investigation or the submission of files. In this

review, inspectors marked as timely a file which was submitted within four weeks of the last interview of the suspect or receipt of the last piece of significant evidence. Of those, where the date of submission to the CPS could be established, half were submitted in a timely manner.

An historical consequence of the devolution of police complaints cases from CPS Headquarters to the Areas has been to place them largely outside the standard arrangements for case tracking or recording under the Compass Case Management System (CMS), introduced progressively since 2003. The result is that the CPS cannot quantify the number of police complaint cases which it handles save in relation to CPS London and the Special Crime Division at CPS headquarters. This also means that there can be no meaningful oversight of those cases or assessment of the resources devoted to the current arrangements and the cost of handling such cases.

Although the capacity and functionality of the CMS are both substantially greater than those of the previous computerised case tracking system, it is not employed in a manner which would enable CPS to track police complaints cases (assuming they were all properly registered) as a discreet body of work, or to abstract information about performance in relation to those cases. As a result, the CPS is unable to respond effectively to criticisms by the police service and other stakeholders on issues such as timeliness or lack of even-handedness. In particular, the CPS has no data on which to draw to respond in a comprehensive manner to suggestions by the National Black Police Association that its decision-making is susceptible to bias.

Despite the absence of management information as to the quality of decision making, the vast majority of decisions as to whether to prosecute examined in this review reflected a proper application of the principles set out in the Code for Crown Prosecutors. Of the 209 examined, inspectors considered that the decision reached was wrong in only four cases. This is a margin of error broadly comparable with that found in relation to casework generally. The reasons for decisions are not always recorded as fully as they should be. In some files examined by inspectors, the lawyer repeated or referred to the narrative in the police report and did not complete a fresh analysis of the evidence or a full review note.

Inspectors identified two specific issues relating to decision-making by the CPS:

- The use of common assault and assault occasioning actual bodily harm charges is frequently problematic because of the length of time investigations may take and the statutory time limit applicable to common assault cases. In many circumstances, there are barriers to shortening the investigation such as the operation of the sub judice principle. This report therefore recommends a change of legislation either by extending the time limit applicable in the particular circumstances or by providing for the laying of a protective information. This is a procedure which enables the putative prosecutor to give notice that proceedings are being considered and time ceases to run for the purpose of the time limit.
- A lack of clarity on the part of CPS lawyers as to the extent to which it is appropriate to take into account the likely outcome of any disciplinary proceedings when determining whether a prosecution would be in the public interest. The current approach seems unduly cautious and further guidance by CPS Policy Directorate is needed.

There are concerns about the timeliness of decisions made by the CPS. These are not restricted to the Special Crime Division (SCD) but the evidence suggests that delays on referral to the SCD are of most concern to stakeholders. These are high profile, long running, complex cases and unexplained delays have a disproportionate impact on how effective the system is seen to be. During the period April 2005 to March 2006, 248 of 552 cases were the subject of decisions within the target of 28 days from receipt of the completed file. Although the nature and complexity of the casework often makes exceeding that target inevitable, inspectors saw several instances where the file had apparently and inexplicably received no attention from the reviewing lawyer for several months after it had been received. Where there are unavoidable delays, the impact can to some extent be mitigated by more effective communication.

Police complaint cases are notable for the absence of any effective recording or analysis of outcomes; this needs to be addressed. The level of scrutiny of CPS decisions in these cases from stakeholders and special interest groups makes it important that there is an ability to produce performance data and cogent analysis. This is essential to ensure that the processes and the outcomes are not only fair but are seen to be fair to complainants and those serving with the police.

The standard of communication from the CPS to complainants and/or victims is variable and there is scope for considerable improvement. Channels of communication also need to be developed and kept open with other key stakeholders such as PSDs and the IPCC. There are tensions present within the system at the moment, particularly regarding timeliness, for which there does not appear to be any natural outlet.

Recommendations

Inspectors made the following recommendations:

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1. Police forces and CPS Areas should ensure that they have in place an up-to-date signed SLA. It should be regularly reviewed and updated. (Paragraph 4.5) The SLAs should clearly set out the different arrangements for advice in cases involving police officers and others, on and off duty conduct, behaviour outside force area, and matters investigated by PSDs, the IPCC, and officers based on division in a Basic (or Borough) Command Unit (BCU). (Paragraph 4.8)

 2.
 - (a) The criterion for referral of a case to the CPS contained within Schedule 3, paragraph 24 of the Police Reform Act 2002, that a criminal offence 'may' have been committed, be reviewed by the Home Office and replaced by a clearer test which requires CPS consideration of cases only when there is some evidence on which a decision to prosecute could be based. (Paragraph 4.18)
 - (b) These revised requirements should be balanced by creating a right on the part of the complainant to have a decision by a police force not to submit a file to the CPS reviewed by the IPCC. (Paragraph 4.18)

 3. File builds by the police and IPCC need to be proportionate, and in appropriate cases, designated lawyers in the CPS should guide investigators as to their requirements. (Paragraph 4.22)

 4. There should be a national flag put on to Compass CMS to identify, track and monitor those cases where a criminal offence is alleged to have been committed by a person serving with the police (save for minor road traffic incidents). (Paragraph 5.8)

 5. The flagging of cases on Compass CMS should be designed to allow monitoring to take place to inform local managers of timeliness issues, patterns of outcomes, and casework lessons and themes. (Paragraph 5.9)

 6. PSDs and their CPS counterparts should formalise a joint performance management regime based on a national template developed by ACPO and CPS Headquarters. (Paragraph 5.16)

 7. SCD should establish a point of contact where Area prosecutors may seek guidance and advice on specialist issues likely to arise in the devolved casework. (Paragraph 6.9)

 8. Chief Crown Prosecutors should satisfy themselves that systems are in place to ensure that decisions made on these cases are consistent and subject to peer or line management review. (Paragraph 6.15)

9. CPS guidance on the public interest factors in these cases should reflect the fact that decision-makers can and, in some circumstances, should take account of likely disciplinary outcomes. This guidance needs to be kept under review. (Paragraph 6.20)

10. Where sub judice is likely to be an issue, there should be early consultation and advice as between the investigating officer, IPCC (where involved) and the CPS. (Paragraph 7.16)

11. CPS Policy Directorate should review the relevant charging standard on assaults to ensure that it addresses sub judice situations more effectively. (Paragraph 7.27)

12. The Home Office should bring forward legislation to extend the limitation period for summary only offences, or to provide for protective informations, in discreet defined circumstances, where an investigation cannot be conducted due to sub judice factors. (Paragraph 7.28)

13. Chief Officers and the CPS should ensure that they have mechanisms in place to monitor prosecution decision-making and case outcomes so as to identify any bias which may exist, whether from the perspective of a complainant or that of a person who is the subject of an allegation. (Paragraph 8.11)

14. Letters to complainants should set out a proper explanation of the decision made, including reference to the relevant evidence considered. A copy of this letter should be sent to the PSD or IPCC as appropriate. In addition unless some aspect of the letter is inappropriate to release e.g. it contains reference to private or confidential circumstances, a copy should be supplied to the Coroner (Paragraph 9.5)

15. The CPS should endeavour to establish closer liaison between Areas and the IPCC and to facilitate a better understanding on the part of lawyers of the IPCC's role. (Paragraph 10.8)

16. The CPS should identify a single person within CPS Headquarters to take responsibility for ownership of policy and operational issues, with a view to ensuring that arrangements will continue to be appropriate for changing circumstances and to ensure that other stakeholders, such as national interest groups and those who represent complainants, officers, and police staff are consulted and engaged in that process. (Paragraph 10.8)

17. The CPS should consider whether cases relating to alleged criminal conduct by persons serving with the police would be managed better within regional units, possibly aligned to IPCC regions. (Paragraph 10.12)

Suggestions

Inspectors made the following suggestions:

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1. Service level agreements (SLAs) should clearly set out the different arrangements for advice in cases involving police officers and others, on and off duty conduct, behaviour outside force area, and matters investigated by PSDs, the IPCC, and officers based on division in a Basic (or Borough) Command Unit (BCU). (Paragraph 4.8)
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2. All files submitted to the CPS relating to a person serving with the police should be accompanied by an MG3 bearing the relevant Unique Reference Number (URN) (together with an indicator as to the status of the proposed defendant as a person serving with the police) and should be registered on the Compass CMS system. (Paragraph 5.8)
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3. SCD should migrate from the CAMS case recording system to CMS as planned and ensure that staff and managers are trained in its use and functionality. (Paragraph 5.14)
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4. There should be no requirement to confine police complaints work to CCPs, Unit Heads or Special Casework Lawyers. Instead, CCPs should designate in writing those lawyers who are to undertake this work on the basis of their ability, experience and training. (Paragraph 6.5)
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5. Lawyers who undertake this work in Areas should receive training on legal and policy issues. If necessary, Learning and Development Branch should be approached to assist in devising a programme. (Paragraph 6.6)
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6. Training needs should be considered locally on a joint basis with CPS, the IPCC and the police to cover issues of mutual interest. (Paragraph 6.8)
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7. CPS guidance on the Data Protection Act and the offence of misconduct in a public office should be revisited with a view to setting out more clearly the aggravating and mitigating features of offences and the circumstances in which they are likely to be committed. (Paragraph 6.23)
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8. CPS Areas nominate a member of their support staff to be a single point of contact to deal with administrative issues arising out of the cross-border arrangements. (Paragraph 6.29)
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9.
 - (a) Clear and simplified time scales should be incorporated within the SLAs and protocols commensurate with the importance and complexity of the file sent to the CPS. The “weighting” of such cases needs to be clear and set out in the SLAs.
 - (b) In the more serious and complex cases, there needs to be a mechanism for reporting on progress to stakeholders at agreed stages or on significant events in the life of a case. (Paragraph 7.19)

10. Police/IPCC and CPS should create structured mechanisms for the exchange of information on outcomes, significant cases, and where there are clear lessons to be learnt. (Paragraph 8.6)

11. CPS lawyers should be prepared to hold a meeting with complainants when circumstances merit it, in order to explain their decisions. (Paragraph 9.5)

12. PSDs should ensure that any person or group representing a complainant is kept fully informed of progress on a case, and that their details are passed to the CPS with the investigation file. The CPS should involve a complainant's representative fully in any communication with the complainant. (Paragraph 9.7)

13. The identity of designated lawyers and/or a single point of contact should be made known to the police PSDs, to BCUs, and to the regional offices of the IPCC. (Paragraph 10.2)

14. The CPS should consider the appointment of a suitably senior and qualified lead to take forward responses to the Taylor review, to coordinate policy developments and oversee the introduction of a performance regime. (Paragraph 10.8)

Good Practice

Inspectors found the following examples of good practice:

File Allocation:

At SCD lawyers are available for early advice in cases likely to result in planned arrests such as enquiries into alleged corrupt activities. They advise on evidence-gathering techniques such as integrity tests. They then own the file and remain a point of contact throughout the case.

File Recording:

In the Police Complaints Unit (PCU) of CPS London an administrator had a specific duty to allocate, track and monitor caseload.

Performance information and management:

The PCU actively manages its performance. It uses CMS to produce data, particularly on timeliness, and holds quarterly performance meetings with the police. These meetings discuss file standards, trends, disclosure and other matters of mutual concern – the fact that reliable performance data can be drawn on undoubtedly drives these meetings and sets them in a meaningful context and arguably provides a model for introduction elsewhere should restructuring be a consideration.

Training:

The CCP for South Wales devised a training programme for lawyers in his Area – this was delivered to lawyers in July 2005

Disclosure under the Criminal Procedure and Investigations Act 1996:

The PCU is proactive in seeking out related files and court transcripts so that lawyers have full information as to the surrounding circumstances of the allegation made.

Timeliness – Police:

In Leicestershire and Cambridgeshire PSDs, complaints are subject to early assessment and then placed into categories which, depending on perceived severity, are assigned differing levels of investigation.

Timeliness – sub judge:

In some cases, lawyers had been proactive in seeking to make decisions on both the complaint and the related allegation of criminal conduct by the complainant. All the case material could be reviewed, and a consistent and timely decision made on both.

Timeliness – CPS:

The PCU interprets the timescales in its SLA in a consistent manner and in dialogue with the Metropolitan Police so as to produce meaningful performance statistics on timeliness

Relationships with complainants:

In some Areas, the CPS lawyer sent the PSD a copy of the letters they sent to the complainant advising on and giving reasons for decisions made. This assisted in ensuring consistency in the information being delivered to the complainant.

Greater Manchester CPS assisted the PSD in drafting a form of words to be used in communicating decisions to those whose conduct has been complained of. This specifically points out that the decision could be reviewed in the light of any further information and evidence becoming available.