

Scottish
Police
Authority
Complaints
Audit 2017

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1 Introduction

- 1.1** The Police Investigations & Review Commissioner (PIRC) has responsibility for:-
- Reviewing the Scottish Police Authority's (SPA) arrangements for the handling of complaints; and
 - Seeking to ensure that those arrangements are efficient, effective, demonstrate appropriate independence and are adhered to.¹
- 1.2** The SPA has responsibility to handle complaints about:-
- Senior officers of the Police Service of Scotland;
 - Members of the SPA's staff;
 - The SPA itself.²
- 1.3** The SPA's Complaints Department is responsible for the initial recording and assessment of complaints, gathering information about complaints, compiling reports for presentation to the SPA's Chief Executive Officer (CEO), the COPFS or an employee's line manager as appropriate, for consideration.
- The SPA's Complaints Department is staffed by a Complaints & Conduct Manager and 2 complaint handlers.
- 1.4** The SPA's CEO is responsible for the consideration, preliminary assessment and making the final determination in respect of relevant complaints and the preliminary assessment of misconduct allegations about a senior officer, presented to him by the SPA's Complaints Department. This function was performed by the SPA's Complaints and Conduct Committee up until January 2017.
- 1.5** In May 2014 the PIRC carried out an audit to establish the baseline of the SPA's handling of complaints. The audit, published in July 2014, made a number of recommendations for improvement of the existing procedures and practices. In January 2015, the PIRC carried out a follow-up audit to identify what progress the SPA had made in implementing the PIRC's recommendations.
- 1.6** That audit concluded that the SPA had made a number of improvements to its complaint handling procedures, information recording and management systems, timescales for handling complaints and quality assurance procedures.
- In order to ensure that the SPA's complaint handling arrangements are efficient, effective, demonstrate appropriate independence and are adhered to the PIRC undertook a further audit in July 2017.

¹ Section 40A of the Police, Public Order and Criminal Justice (Scotland) Act 2006 as amended

² Section 41 of the Police, Public Order and Criminal Justice (Scotland) Act 2006 as amended

2 Terms of Reference

2.1 The audit examined and assessed the following:

- The general state, effectiveness, efficiency and transparency of the SPA's current complaint handling procedures;
 - The SPA's process for assessment and differentiation between complaints that fell within its remit and those that did not;
 - The SPA's process for determining whether an allegation was a complaint and/or allegation of misconduct;
 - The SPA's processes for notification of those subject to complaint;
 - The SPA's process and rationale for determining whether an allegation could amount to misconduct or gross misconduct;
 - The SPA's timescales for complaint handling;
 - The level of investigation/enquiry undertaken by the SPA into 'relevant complaints';
 - The level of resource dedicated by the SPA to handling complaints about senior officers and the level of training provided to SPA complaint officers;
 - The SPA's recording and management system for 'relevant complaints'; and
 - The SPA's complaint handling quality assurance process.
-

3 Methodology

3.1 PIRC staff examined:

- The case files for all complaints received, processed and concluded by the SPA between 1st April 2015 and 31st March 2017 which were assessed by the SPA's Complaints Department to fall within the SPA's remit.
- The case files of a random sample of 20% of complaints received by the SPA between 1st April 2015 and 31st March 2017 which were assessed by the SPA's Complaints Department to be complaints which fell outwith the SPA's remit.
- The SPA's information recording and management systems
- The SPA's Complaint Handling Procedures, Version 2.2, March 2017

3.2 In addition to the above, the PIRC sought views from senior police officers who had been the subject of complaints and from members of the public who had submitted complaints about senior officers.

3.3 The audit examined 48 complaints which had been assessed, progressed and concluded by the SPA between 1 April 2015 and 31 March 2017. The 48 complaints comprised of 30 complaints about senior officers ('relevant complaints' and misconduct allegations), 14 complaints about SPA staff and 4 complaints about the SPA Board.

3.4 The audit found that during the same period the SPA assessed 335 complaints/enquiries which it considered fell outwith the SPA's remit. The audit examined a random sample of 20% of those files.

Figure 1

Volume of Complaints to SPA

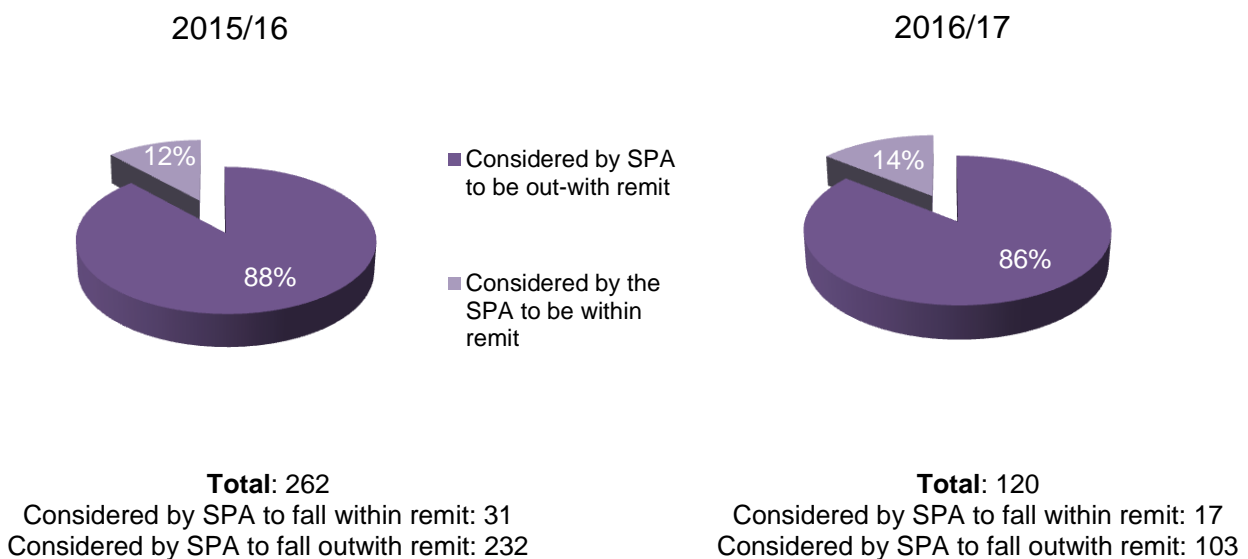
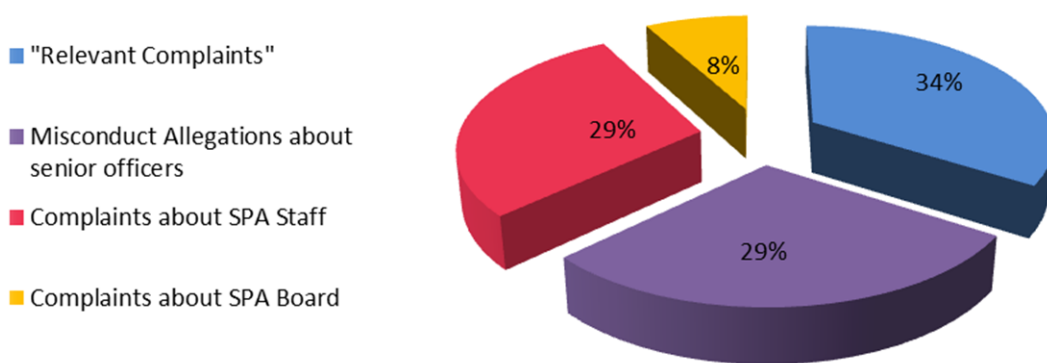


Figure 2

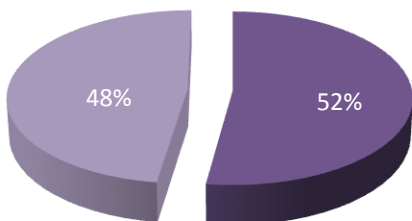
Types of Complaint to SPA

Complaints handled by the SPA between 1st April 2015 and 31st March 2017



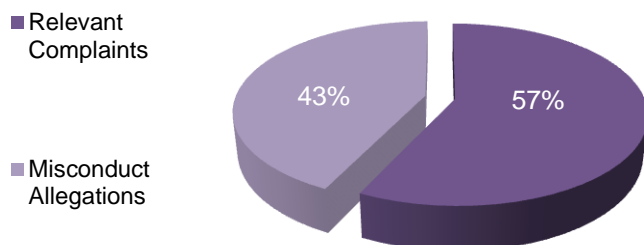
Breakdown of complaints about senior officers treated by SPA as 'relevant complaints' and misconduct allegations

2015/16



Total: 23
 'Relevant Complaints': 12
 Misconduct Allegations: 11

2016/17



Total: 7
 'Relevant Complaints': 4
 Misconduct Allegations: 3

4 SPA's Complaint Handler's Guidance document

4.1 The SPA has produced an internal guidance document for use by its staff, known as the SPA's complaint handling procedures ('the document'). The PIRC examined the latest version (2.2) of the document which was amended in March 2017 following revision of the SPA's governance framework.

4.2 The document details a six stage process, namely:

4.3 Stage 1 – Notification of the Complaint

The document details that at Stage 1, the SPA should initially record all correspondence as a "Contact" and thereafter assess it to determine whether the contact contains: - (i) a Complaint (defined as a statement of dissatisfaction that falls within the SPA's remit);(ii) an Enquiry (defined as a request for information);(iii) allegations of Conduct Issues (defined as allegations of misconduct about senior officers which are not made by a member of the public),(iv) Whistleblowing (not defined); or (v) Other (defined as a contact not classed as any of the above). In respect of whistleblowing, the document states that correspondence disclosing whistleblowing should be recorded as a contact but requires no further action by the SPA.

The document details that the SPA should aim to undertake the initial assessment of all "contacts" within 3 working days. In respect of cases of complexity or with a substantial amount of relevant paperwork submitted, the document details that the SPA should acknowledge the contact within 3 working days and thereafter provide an update on the progress of its initial assessment within 6 weeks (30 working days).

Examination of this document reveals that no timescales are provided for the SPA's handling of 'relevant complaints' or its preliminary assessment of misconduct allegations. Separate documentation within complaints files examined by the PIRC indicates that the SPA aspired to conclude its complaint handling within 40 working days.

4.4 Stage 2 – Recording and Initial Assessment

The document details that at Stage 2 the SPA should assess the complaint to determine whether (i) it falls within the SPA's remit;(ii) whether it is a "relevant complaint" or a misconduct allegation; or (iii) whether the allegation contains a criminal allegation, in which case it must be referred to the Crown Office & Procurator Fiscal Service (COPFS). The document details that 'complaints may or may not include allegations of misconduct about police officers or police staff. Such complaints will be assessed in terms of the appropriate Regulations or Procedures as noted in the chapter entitled Conduct/Misconduct.'

It further states that if a complaint about a senior officer is received, the SPA Complaints Department will inform the officer and provide him/her with an opportunity to comment on the allegations.

The document does not distinguish the process to be followed if:

- (i) the complaint is a "relevant complaint"³ or
- (ii) is an allegation of misconduct.

The document details that the SPA must establish and agree Heads of Complaint with the complainer to avoid ambiguity and disagreement about the crux of the complaint later on.

³ For definition of "relevant complaint" see para 5.1.1 p7

4 SPA Complaint Handler's Guidance document cont.

4.5 Stage 3 – Allocation and Enquiry

The document details that at Stage 3 if the SPA considers it requires additional information to progress the complaint, the SPA will contact the complainer with a request that the necessary documentation is provided within 15 days. The document provides for an initial extension of this period by 10 days and a final extension of 5 days.

The document details that where the complainer fails to respond to such a request, the SPA can determine the complaint on the available evidence, or alternatively close the complaint file and deem it to be abandoned due to the complainer's lack of co-operation. The document however provides that a file could be re-opened should the complainer provide additional evidence at a later stage.

4.6 The document states that the role of the SPA Complaints Department is to gather details of a complaint, carry out an initial assessment, provide a report which details the specifics of the complaint and forward it to (i) COPFS; (ii) the CEO or (iii) to an employee's manager, as appropriate. The document does not provide for the SPA's Complaints Department to undertake independent enquiry into 'relevant complaints', however it does acknowledge that in some cases, the SPA may be required to seek additional information from third parties, including Police Scotland.

The document indicates that it is the responsibility of the SPA's Complaints Department to compile all of the available information into a report which is then presented to the SPA's CEO for consideration and assessment.

The document details that reports in respect of "relevant complaints" should initially be presented to the Complaints and Conduct Manager for consideration before being presented to the CEO for determination.

In respect of misconduct allegations, the document provides that the CEO must undertake a preliminary assessment in terms of Regulation 8 of The Police Service of Scotland (Senior Officers) (Conduct) Regulations 2013.

The document provides that complaints about SPA staff should be intimated to the employee's line manager for enquiry and resolution.

The document details that complaints about the SPA Board, SPA Policies and Procedures or the quality of service provided by the SPA should be referred to the CEO for consideration.

The document does not detail who should make the final determination in respect of those complaints. It does however provide that any allegations of a breach of the SPA's Code of Conduct by any member of SPA Board should be referred to the Commissioner for Ethical Standards in Public Life in Scotland.

4.7 Stage 4 – Determination

The document provides that at Stage 4, the SPA must determine whether each complaint is upheld or not upheld. It lists a number of considerations that have to be taken into account during the final determination process and describes the procedures the SPA should follow on receipt of a PIRC investigation report into misconduct allegations in accordance with the applicable regulations.

4 SPA Complaint Handler's Guidance document cont.

4.8 Stage 5 – Identifying Organisational and Individual Learning

The document details that at Stage 5, any significant issues identified by the SPA during the complaint process should be addressed immediately to prevent reoccurrence and that any learning identified must be shared with the appropriate individuals/departments without delay.

4.9 Stage 6 – Notification to the Complainer

The document provides at Stage 6, that the SPA's final letter to the complainer must be clear and impartial. It must also communicate whether each individual allegation is upheld or not. The document details that in certain instances, where a complainer has made both criminal and non-criminal allegations, the SPA's notification to the complainer may be delayed pending the outcome of criminal investigations. This section provides guidance on the information to be included in the SPA's final response to the complainer and this includes a requirement for the SPA to provide the PIRC's contact details, as a signpost for complainers who are not satisfied with how the SPA has handled their complaint.

4.10 Finally, the document provides miscellaneous guidance on:

- Early resolution
- The role of the PIRC
- The relevant Legislation
- Process flow charts
- Examples of what could amount to misconduct or gross misconduct by senior officers

4.11 The PIRC audit found that:

- The document details that correspondence disclosing whistleblowing should simply be recorded as an incident of whistleblowing but that no further action is required by the SPA.
- The document does not provide definitive timescales for handling complaints or undertaking preliminary assessments of misconduct allegations.
- Whilst the document acknowledges that complaints about senior officers may amount to misconduct allegations it does not define a process for the assessment of complaints as potential misconduct allegations by the Complaints Department, or define who should assume responsibility for making such an assessment
- The document does not distinguish the separate processes to be followed in handling complaints that (i) contain misconduct allegations or (ii) do not contain misconduct allegations.
- The primary focus of Stage 3 of the process appears to centre on the SPA obtaining additional information and/or evidence from the complainer. The document makes no provision for the SPA's Complaints Department to carry out a thorough enquiry when dealing with 'relevant complaints'.
- The document does not identify who is responsible for determining complaints about members of the SPA Board, SPA Policies and Procedures or the quality of service provided by the SPA.
- Generally, the document lacks clarity, is difficult to follow and does not provide clear guidance on how SPA staff should progress the different categories of complaints that fall within the SPA's remit.

4.12 The PIRC recommends that:

- The SPA amend its guidance document (known as the Complaint Handling Procedures) to clarify the different processes which require to be followed when dealing with (i) 'relevant complaints'; (ii) misconduct allegations about senior officers; (iii) complaints about SPA staff and (iv) complaints about the SPA Board and thereafter adhere to these processes.
 - The SPA provides clear guidance to the Complaints Department to enable its staff to assess and determine whether the complaint is a (i) 'relevant complaint'; (ii) misconduct allegation about senior officers; (iii) complaint about SPA staff or (iv) complaint about the SPA Board and thereafter adhere to these processes. Additionally, a robust and documented quality assurance process should be introduced to underpin the assessment process.
 - That the SPA amend its guidance document (known as the Complaint Handling Procedures) to introduce timescales for the handling of (i) 'relevant complaints'; (ii) misconduct allegations about senior officers; (iii) complaints about SPA staff and (iv) complaints about the SPA Board and thereafter adhere to these timescales.
 - The SPA amend its guidance document (known as the Complaints Handling Procedures) to remove the burden of proof from members of the public who make complaints about senior officers.
 - The SPA implement a robust and properly documented quality assurance process in relation to all complaint handling matters.
 - The SPA amend its guidance document in order to ensure that it includes robust procedures for dealing with contacts assessed as 'whistleblowing'.
-

5 Review of SPA's Complaint Handling processes

5.1 'Relevant Complaints'

- 5.1.1** A "relevant complaint" is defined in Section 34 of the Police, Public Order and Criminal Justice (Scotland) Act 2006 as an expression of dissatisfaction about an act or omission by the SPA, Police Service or by a person who, at the time of the act or omission, was a person serving with the police. It goes on to say that an act or omission need not be one occurring in the course of person's duty, employment or appointment in order to fall within the definition of a "relevant complaint". The Act provides that those who can make a "relevant complaint" are : a) a member of the public who claims to be the person in relation to whom the act or omission took place; b) a member of the public who claims to have been adversely affected by the act or omission; c) a member of the public who claims to have witnessed an act or omission; or d) a person acting on behalf of a person falling within definitions a) to c). However section 34 (3) stipulates that a "relevant complaint" does not include a statement made by a person who has served or is serving with the police, about the terms and conditions of their service with the police, or any statement which includes an allegation of criminality.
- 5.1.2** Between 1 April 2015 and 31 March 2017 the SPA handled 30 complaints about senior officers. Sixteen of these complaints were assessed by the audit as complaints that fall within the definition of 'relevant complaints' about senior officers, 12 in 2015-16 and 4 in 2016-17⁴.
- 5.1.3** In terms of Stage 1 of the SPA's guidance document the SPA has a target to acknowledge receipt of complaints within 3 working days. The PIRC audit found that in 13 of these 16 cases the SPA achieved its target.
- 5.1.4** In terms of Stage 2 of the SPA's guidance document, the SPA is required to agree Heads of Complaint with the complainer. The PIRC audit found that the SPA did this in only 4 of the 16 cases. The audit found that in the remaining 12 cases there was no clear agreement nor any attempt to agree Heads of Complaint. The PIRC audit noted that 4 of the 12 complaints were either withdrawn or abandoned by the complainer.
- 5.1.5** The audit found that in 14 of the 16 cases the complainer was asked to provide evidence in support of their complaint or allegation and that the complainer's inability to provide evidence was used by the SPA as a basis for determining the outcome of the complaint or, in some instances, to discontinue any complaint assessment and/or enquiry⁵.
- 5.1.6** The audit found that the average time taken by the SPA to conclude a 'relevant complaint' enquiry between 1st April 2015 and 31st March 2017 was 92 days, with the longest enquiry taking 266 days. Only 7 of the 15 complaints were concluded within the aspirational target of 40 working days. Of those, 3 complaints were deemed to be abandoned and 3 were closed without any final determination on whether or not to uphold the complaint⁶.

⁴ The remaining 14 complaints about senior officers were assessed by the audit as potential misconduct allegations

⁵ It is expected that complaint handlers would make enquiries with the complainer to ascertain details of the complaint. However, complaints must be accepted in good faith and the onus of gathering evidence and making relevant enquiries rests with the complaint handler.

⁶ It is noted that none of the versions of the SPA complaint procedures guidance provide timescales for handling relevant complaints, but additional paperwork contained within the files indicates that the SPA aspired to a 40 working days target. This is in line with Police Scotland's complaint handling procedures.

5 Review of SPA's Complaint Handling processes contd.

5.1.7 The audit found that some senior officers were informed of 'relevant complaints' about them whilst others were not.

5.1.8 The audit found that only 2 of the 16 files contained evidence of sufficient enquiries by the SPA's Complaints Department. The audit further found that 4 'relevant complaints' were withdrawn or abandoned by the complainers and in 9 'relevant complaints' the SPA had carried out insufficient or no enquiry.

5.1.9 None of the 16 'relevant complaints' about senior officers were upheld by the SPA during the period between 1 April 2015 and 31 March 2017. Three 'relevant complaints' were not upheld and there was no final determination made by the SPA in 9 complaints (4 of these 9 were deemed to be withdrawn or abandoned by the complainer). A further 4 'relevant complaints' were presented to the SPA's Complaints and Conduct Committee/CEO as misconduct matters but all were assessed not to amount to misconduct/gross misconduct. No further consideration of these 4 'relevant complaints' was undertaken.

5.1.10 Overall, the PIRC audit found that:

- In the majority of cases examined, there was no determined effort by the SPA to agree Heads of Complaint with the complainer.
- The lack of timescales within the guidance document resulted in some 'relevant complaints' taking a long time before reaching a conclusion, without any reasonable explanation being offered by the SPA for the delay.
- The SPA Complaints Department had an inconsistent approach to informing senior officers about 'relevant complaints' against them.
- The vast majority of the 'relevant complaints' files did not contain any evidence of a thorough complaint enquiry.
- The final responses issued by the SPA to the complainers contained insufficient information about what evidence had been gathered, what analysis there was of the information gathered and how the SPA reached its final decision.

5.1.11 The PIRC recommends that:

- The SPA amend its guidance document (known as the Complaint Handling Procedures) to clarify the different processes which require to be followed when dealing with (i) 'relevant complaints'; (ii) misconduct allegations about senior officers; (iii) complaints about SPA staff and (iv) complaints about the SPA Board and thereafter adhere to these processes.
- The SPA provide clear guidance to the Complaints Department to enable its staff to assess and determine whether a complaint is a: (i) 'relevant complaint'; (ii) misconduct allegation about senior officers; (iii) complaint about SPA staff; or (iv) complaint about the SPA Board; and thereafter adhere to these. Additionally, a robust and documented quality assurance process should be introduced to underpin the assessment process.
- The SPA amend its guidance document (known as the Complaint Handling Procedures) to introduce timescales for the handling of (i) 'relevant complaints'; (ii) misconduct allegations about senior officers; (iii) complaints about SPA staff and (iv) complaints about the SPA Board and thereafter adhere to these timescales.
- The SPA's Complaints Department adhere to its guidance document (known as the Complaint Handling Procedures) which requires agreement of Heads of Complaint with complainers.

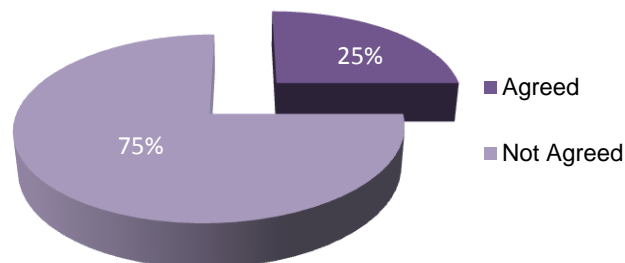
5 Review of SPA's Complaint Handling processes contd.

- The SPA amend its guidance document (known as the Complaints Handling Procedures) to ensure that the SPA's Complaints Department conduct a thorough complaint enquiry.
- The SPA amend its guidance document (known as the Complaints Handling Procedures) to remove the burden of proof from members of the public before the matter is progressed.
- The SPA implement a robust and properly documented quality assurance process in relation to all complaint handling matters.

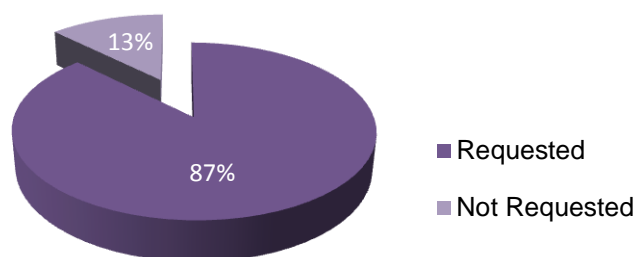
Figure 3

'Relevant Complaints' about Senior Officers

% of 'Relevant Complaints' in which Heads of Complaint were agreed by the SPA with Complainer



% of 'Relevant Complaints' in which the SPA requested evidence from complainer



% of "Relevant Complaints" in which there was evidence that the SPA undertook sufficient preliminary enquiry

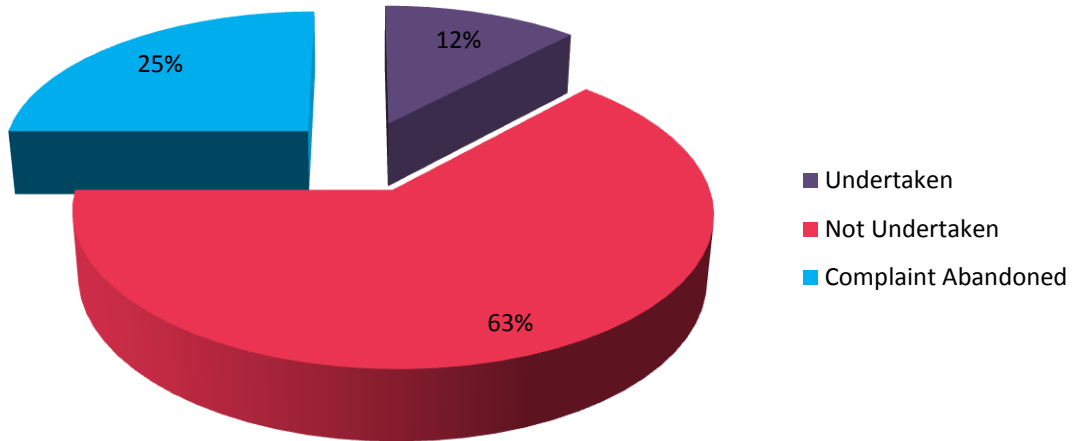
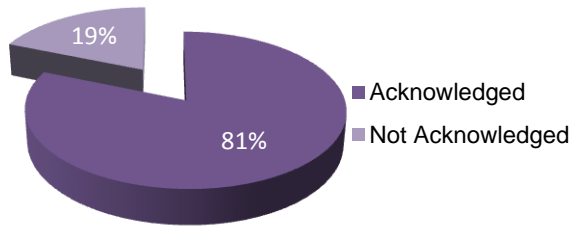
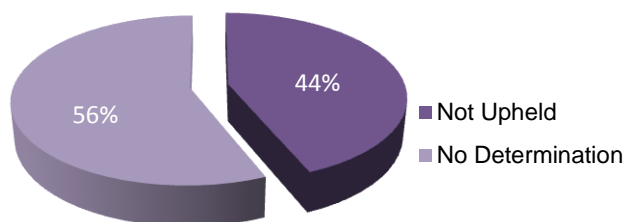


Figure 3 cont.

% of 'Relevant Complaints' acknowledged by the SPA within 3 days



Outcomes of 'Relevant Complaints' about senior officers



5 Review of SPA's Complaints Handling processes cont.

5.2 Misconduct Allegations

- 5.2.1** A misconduct allegation is defined in the document as an allegation or complaint about a senior officer which amounts to a breach of the Standards of Professional Behaviour as detailed in Schedule 1 of the Police Service of Scotland (Conduct) (Senior Officers) Regulations 2013.
- 5.2.2** Allegations from members of the public or serving police officers which disclose a breach of Schedule 1 of the Police Service of Scotland (Conduct) (Senior Officers) Regulations 2013 may be treated as misconduct allegations.
- 5.2.3** When a misconduct allegation about a senior officer comes to the attention of the SPA, the SPA must carry out a preliminary assessment of whether the conduct contained within the allegation, would, if proved, amount to misconduct, gross misconduct, or neither.⁷ This assessment is currently delegated to the SPA's CEO. If the SPA assesses that the conduct if proved, amounts to misconduct or gross misconduct and requires investigation, then the SPA must refer the misconduct allegation to the PIRC.
- 5.2.4** The audit found that between 1st April 2015 and 31st March 2017, the SPA received 14 complaints about senior officers that should, in the view of the audit, have been progressed as potential misconduct allegations against senior officers - 11 in 2015-2016 and 3 in 2016-2017. The SPA Complaints Department in fact only referred 7 of those 14 cases to the Complaints and Conduct Committee/CEO.
- 5.2.5** In terms of the document, the SPA has a target of 3 working days in which to acknowledge receipt of misconduct allegations. The PIRC audit found that in 9 of the 14 misconduct allegations the SPA met this target. On 2 occasions the SPA failed to meet the target and as 3 allegations were submitted to the SPA anonymously no acknowledgement was possible.
- 5.2.6** The audit found that the SPA's Complaint Department, in following the guidance in the document, approached 3 complainers in order to agree Heads of Complaint. Whilst this is appropriate guidance in relation to 'relevant complaints' there is no provision in The Police Service of Scotland (Senior Officer) (Conduct) Regulations 2013 for this action in relation to misconduct allegations.
- 5.2.7** The audit found that in 9 of the 14 misconduct allegations, the SPA Complaints Department asked the complainer to provide information amounting to evidence in support of the allegations before the allegation was progressed.
- 5.2.8** The audit found that in 8 misconduct allegations, the SPA's Complaints Department did not carry out sufficient enquiries to establish details of the misconduct allegations to enable or assist the SPA with a preliminary assessment. It is considered that sufficient enquiries were undertaken in 5 cases and the SPA deemed that 1 case was abandoned through a lack of engagement by the complainer

⁷ Regulation 8, Police Service of Scotland (Senior Officers) (Conduct) Regulations 2013

5 Review of SPA's Complaints Handling processes... cont.

5.2.9 In 6 of the 7 misconduct allegations presented to the Complaints and Conduct Committee/CEO, it was decided that the conduct complained about would not, if proved, amount to misconduct or gross misconduct. In one instance the allegation was assessed as conduct that would, if proved, amount to misconduct and the matter was referred to the PIRC for investigation. One allegation was deemed abandoned by the SPA due to failure by the complainer to engage. Two complaints/allegations were delayed pending criminal proceedings or parallel misconduct proceedings against the senior officer. One allegation was referred to Police Scotland to deal with. The final 3 allegations were not presented to the Complaints and Conduct Committee/CEO, as the SPA Complaints Department determined that the complainers did not provide sufficient evidence to prove or substantiate the allegations.

5.2.10 The PIRC audit found that the average time taken by the SPA's Complaints Department to conclude the handling of misconduct allegations about senior officers was 210 days.

5.2.11 Overall, the PIRC audit found that:

- There appeared to be a lack of clarity in the document in distinguishing between the applicable process to be followed in the SPA's initial handling of misconduct allegations and 'relevant complaints' leading to confusion by the Complaints Department in applying the relevant procedures and regulations.
- The SPA's Complaint Department, in following the guidance in the document, inappropriately sought to approach complainers who had made misconduct allegations, to agree Heads of Complaint.
- No timescales were identified in the document for progressing misconduct allegations, leading to unreasonable delays.
- There was an inconsistent approach by the SPA's Complaints Department to informing senior officers of the existence of misconduct allegations about them.
- The SPA's Complaints Department sought information amounting to evidence from complainers to support the misconduct allegations made, which it is considered exceeds the requirements of the SPA's role.

5.2.12 The PIRC recommends that:

- The SPA amend its guidance document (known as the Complaint Handling Procedures) to clarify the different processes which require to be followed when dealing with (i) 'relevant complaints'; (ii) misconduct allegations about senior officers; (iii) complaints about SPA staff and (iv) complaints about the SPA Board and thereafter adhere to these processes.
- The SPA provide clear guidance to the Complaints Department to enable its staff to assess and determine whether the complaint is a (i) 'relevant complaint'; (ii) misconduct allegation about senior officers; (iii) complaint about SPA staff or (iv) complaint about the SPA Board and thereafter adhere to these processes. Additionally, a robust and documented quality assurance process should be introduced to underpin the assessment process.
- The SPA amend its guidance document (known as the Complaint Handling Procedures) to introduce timescales for the handling of (i) 'relevant complaints'; (ii) misconduct allegations about senior officers; (iii) complaints about SPA staff and (iv) complaints about the SPA Board and thereafter adhere to these timescales.

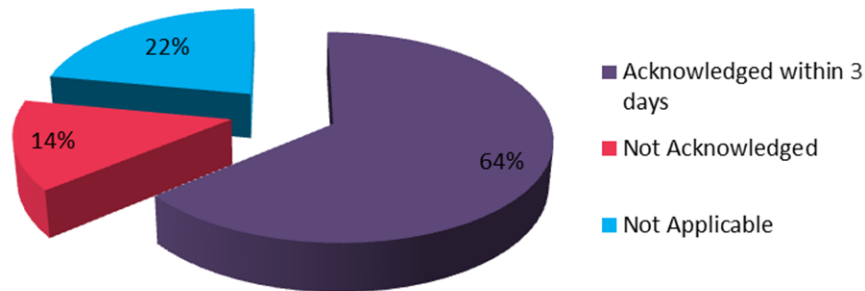
5 Review of SPA's Complaints Handling processes... cont.

- The SPA Complaints Department adhere to the procedural provisions of The Police Service of Scotland (Senior Officers) (Conduct) Regulations 2013 in respect of all aspects of allegations of misconduct about senior officers and amend its guidance document (known as the Complaints Handling Procedures) to reflect this.
- The SPA establish a three member panel to undertake Regulation 8 preliminary assessment of misconduct allegations. The panel should hold experience and knowledge of the relevant statutory provisions, Conduct Regulations, Performance Regulations and Police Scotland's Grievance Procedures. In accordance with the current governance structure the decision and the reasoning of the panel should be presented to the Complaints and Conduct Committee/CEO for approval.
- The SPA amend its guidance document (known as the Complaints Handling Procedures) to remove the burden of proof before the matter is progressed.
- The SPA implement a robust and properly documented quality assurance process in relation to all complaint handling matters.

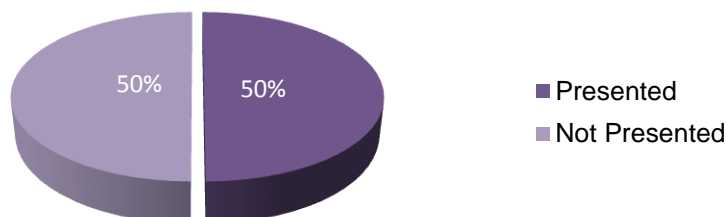
Figure 4

SPA Complaints: Senior Officers – Misconduct Allegations

% of Misconduct Allegations about senior officers acknowledged by the SPA within 3 days



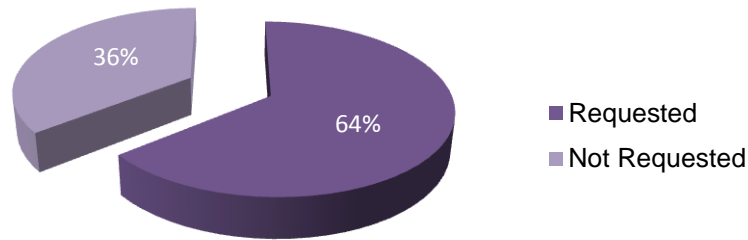
% of Misconduct Allegations about senior officers presented to the Complaints & Conduct Committee/CEO for preliminary assessment



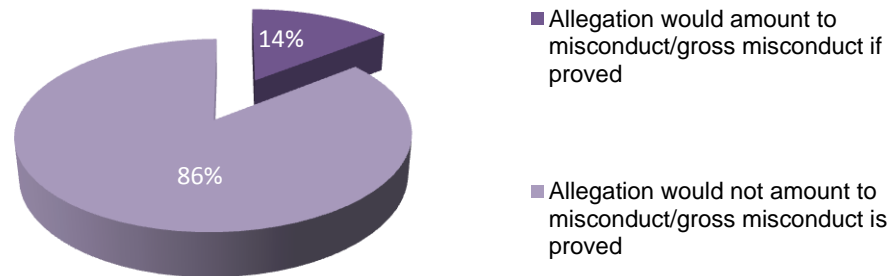
5 Review of SPA's Complaints Handling processes... cont.

Figure 4 cont.

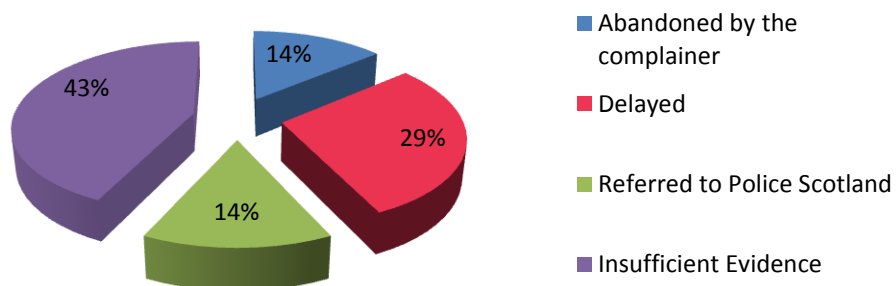
% of Misconduct Allegations where the SPA requested evidence from the complainers



Outcome of preliminary assessment of Misconduct Allegations presented to the SPA's Complaints and Conduct Committee/CEO



Reason for Non-Presentation of Misconduct Allegations to the SPA's Complaints and Conduct Committee/CEO for preliminary assessment



5.3 Complaints about SPA Staff

- 5.3.1** Between 1 April 2015 and 31st March 2017, the SPA handled 14 complaints about SPA Staff. In each of the years 2015-16 and 2016-17 the SPA received the same number of complaints about staff (7 complaints).
- 5.3.2** In terms of the guidance document the SPA has a target of acknowledging complaints within 3 working days. In 12 of the 14 cases the SPA met this target.
- 5.3.3** The SPA agreed Heads of Complaint in only 1 complaint out of 14. The audit found that 2 of the complaints were of a criminal nature, and one other complaint was resolved at a very early stage via telephone contact with the complainer.
- 5.3.4** In 4 of the 14 cases examined, the complainer was asked to provide evidence to the SPA in support of their allegation. It is noted that in 2 of those cases the necessary information was readily available to the SPA. In 7 cases the complainers were not asked to provide evidence and 3 further complaints were either investigated by an external body or resolved at an early stage.
- 5.3.5** On average, the SPA took 124 days to conclude its handling of complaints about its staff between 1 April 2015 and 31 March 2017. In 2015-16 the average time to conclude complaints about SPA staff was 162 days. In 2016-17 it was 86 days.
- 5.3.6** The PIRC considers that the SPA Complaints Department conducted sufficient enquiries in 6 out of the 14 cases during their complaint handling process. There was no evidence that sufficient enquiries were undertaken in order to resolve the complaints in 6 cases. Another 2 complaints were criminal allegations and were investigated by Police Scotland.
- 5.3.7** Of the 14 complaints made about staff, 4 were upheld and 3 were not upheld. On 5 occasions the files were closed before any decision was made on whether or not the complaints were upheld. Two of the complaints were referred to Police Scotland for investigation leading to the submission of reports from Police Scotland's Professional Standards Department to the SPA following investigation.
- 5.3.8** Overall the PIRC audit found that:
- The SPA Complaints Department did not adhere to the agreement of Heads of Complaint provisions stated within its complaint handling guidance document.
 - A lack of clearly stated timescales for handling of complaints about SPA staff resulted in unreasonable delays.
 - The files examined by the PIRC did not demonstrate that there was a documented Quality Assurance process in relation to the final responses to the complainers.
 - In 4 cases there was no decision on whether or not the complaint was upheld.
- 5.3.9** The PIRC recommends:
- The SPA amend its guidance document (known as the Complaint Handling Procedures) to clarify the different processes which require to be followed when dealing with (i) 'relevant complaints'; (ii) misconduct allegations about senior officers; (iii) complaints about SPA staff and (iv) complaints about the SPA Board and thereafter adhere to these processes.

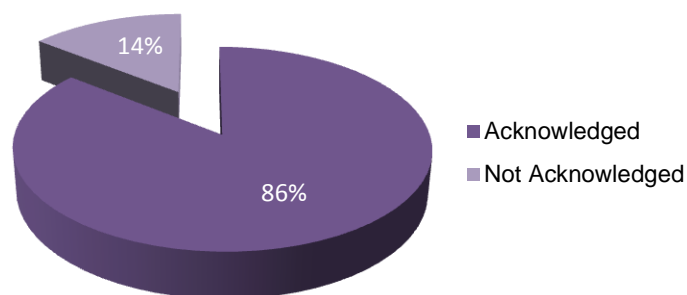
5 Review of SPA's Complaints Handling processes... cont.

- The SPA provide clear guidance to the Complaints Department to enable its staff to assess and determine whether the complaint is a (i) 'relevant complaint'; (ii) misconduct allegation about senior officers; (iii) complaint about SPA staff or (iv) complaint about the SPA Board and thereafter adhere to these processes. Additionally, a robust and documented quality assurance process should be introduced to underpin the assessment process.
- The SPA amend its guidance document (known as the Complaint Handling Procedures) to introduce timescales for the handling of (i) 'relevant complaints'; (ii) misconduct allegations about senior officers; (iii) complaints about SPA staff and (iv) complaints about the SPA Board and thereafter adhere to these timescales.
- The SPA's Complaints Department adhere to its guidance document (known as the Complaint Handling Procedures) which requires agreement of Heads of Complaint with complainers.
- The SPA implement a robust and properly documented quality assurance process in relation to all complaint handling matters.
- The SPA Complaints Department assume responsibility for compiling the final response to complainers about SPA staff, to ensure consistency.

Figure 5

SPA Complaints: SPA Staff

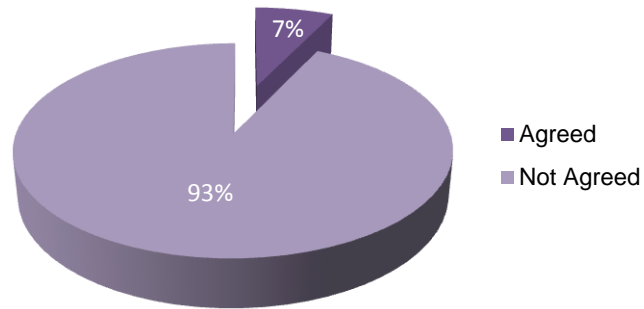
% of Complaints about SPA staff acknowledged by the SPA within 3 days



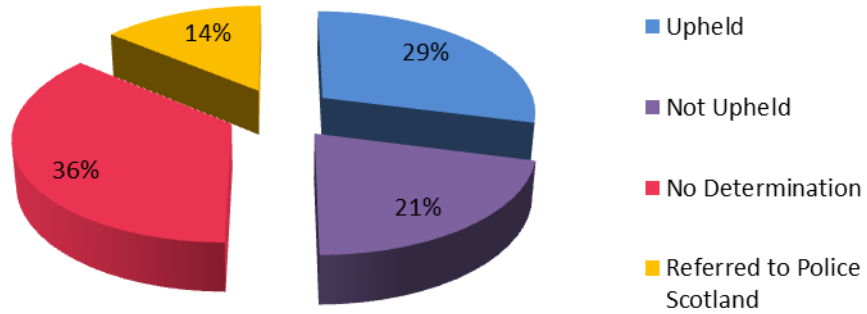
5 Review of SPA's Complaints Handling processes... cont.

Figure 5 cont.

% of the complaints about SPA staff in which Heads of Complaint were agreed with the complainer



Complaint Outcome



5.4 Complaints about SPA Board

- 5.4.1** Between 1st April 2015 and 31st March 2017 the SPA received 4 complaints about the SPA Board. One complaint was received in 2015-2016 and 3 were received in 2016-2017.
- 5.4.2** Two complaints were acknowledged within the agreed 3 day time limit, whilst 2 complaints were not.
- 5.4.3** There was no evidence of attempts to agree Heads of Complaint in any of the files examined.
- 5.4.4** In 3 out of 4 files the complainers were asked to provide evidence in support of their complaints.
- 5.4.5** The average time taken by the SPA to conclude complaint handling about SPA Board members was 154 days. Only one complaint was concluded within the SPA aspirational 40 working days target. It is noted however that this file was closed by the SPA as it was considered that complaint was not "competent".
- 5.4.6** There was no definitive decision reached by the SPA on whether any of the complaints were upheld or not upheld.
- 5.4.7** Overall, the PIRC found that:
- The SPA received a very limited number of complaints about the SPA Board.
 - Lack of timescales within the current complaint handling guidance document resulted in unreasonable delays in dealing with such complaints.
 - The SPA Complaints Department did not adhere to the agreement of Heads of Complaint provisions stated within its complaint handling guidance document.
 - The fact that the document lacks clarity about who is responsible for the final determination in this type of complaint has resulted in organisational confusion and indecision.
- 5.4.8** The PIRC recommends that:
- The SPA introduce an effective and clearly defined complaints process for the handling of complaints made about the SPA Board, Chief Officer and Chair. The new process must clearly state who is responsible for the final determination of such complaints.
 - The SPA implement a robust and properly documented quality assurance process in relation to all complaint handling matters.
 - The SPA amend its guidance document (known as the Complaint Handling Procedures) to introduce timescales for the handling of (i) 'relevant complaints'; (ii) misconduct allegations about senior officers; (iii) complaints about SPA staff and (iv) complaints about the SPA Board and thereafter adhere to these timescales.
 - The SPA's Complaints Department adhere to its guidance document (known as the Complaint Handling Procedures) which requires agreement of Heads of Complaint with complainers.

5.5 Complaints considered by SPA to be outwith its remit

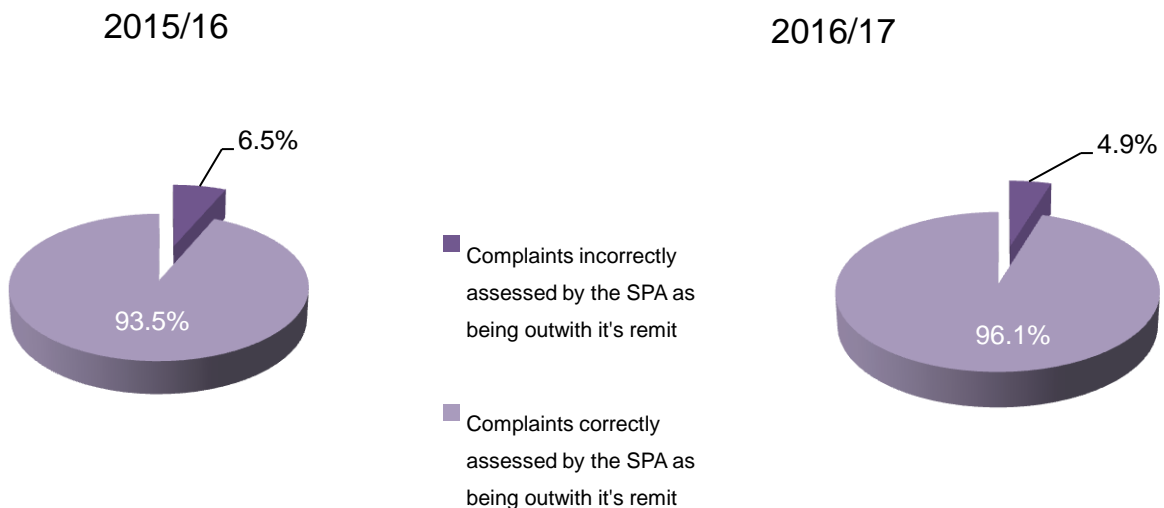
5.5.1 The PIRC examined a random sample of 20% of complaints or contacts received by the SPA which the SPA assessed as being outwith its remit. Between 1 April 2015 and 31 March 2017, the SPA assessed 335 complaints/contacts as being outwith its remit – 232 in 2015-16 and 103 in 2016-17. Accordingly, 46 files relating to the year 2015-16 were examined in the PIRC audit and 21 files in respect of the period 2016-17.

5.5.2 The audit found that 3 of the 46 files from the 2015-2016 sample were assessed incorrectly. In relation to the 2016-2017 sample, 1 of the 21 files was assessed incorrectly.

It is recognised that the numbers of incorrectly assessed files is relatively low (6.5% and 4.9% respectively). However, if this level of incorrect assessment is projected onto the overall number of complaints assessed during these years, there is a potential that up to 19 complaints from members of the public were incorrectly assessed by the SPA and as a result, not progressed appropriately.

Figure 7

20% random sample of Complaints considered by SPA to be outwith its remit by Financial Year



6 SPA's Complaint Handling Resources and Systems

6.1 SPA's Information Management System

- 6.1.1** The audit examined the current information management system utilised by the SPA and found that a "master" spread-sheet records all of the necessary information about the complaints, i.e. dates when received, acknowledged and responded to, type of complaint and type of complainer (i.e. a member of the public or a police officer) complainer's contact details, nature of allegations, etc. The system also provides the SPA Complaints Department with the appropriate monthly statistics to enable the team to manage the workload efficiently and in addition calculates the time it takes to acknowledge, respond and conclude complaint handling.
- 6.1.2** In addition to the spread-sheets, each individual complaint is assigned an individual folder within the general Complaints Team folder on a shared computer drive. All of the documentation relevant to a specific complaint is scanned and stored within the individual complaint folder. A further folder stored on the shared drive contains information about Complaints and Conduct Committee meetings. It is noted that within this folder, the SPA keeps a record of individual complaints that were presented to the Committee, and a further electronic folder contains copies of minutes of the Committee meetings.

6.2 SPA's Complaint Handling Resources

- 6.2.1** The current Complaints Department consists of a Manager and 2 complaint handlers. During the relevant 2 year period the SPA received, progressed and concluded 47 complaints⁸. Accordingly, it is considered that the current level of resource dedicated by the SPA to complaint handling is sufficient.
- 6.2.2** Consultation with the SPA Complaints Department revealed that no staff had undertaken any formal complaint handling training since taking up post. Nor is there any formal or structured annual training or continuing professional development programme available to staff. Since 2013, there has been little relevant training provided to the Complaints Department.

⁸ Additional 10 complaints that were still pending determination at the time of the audit and 5 enquiry files were excluded from the audit

7 Consultation

- 7.1** As part of this audit, the PIRC sought views on the SPA's complaint handling process from the Scottish Chief Police Officers Association (SCPOSA), senior officers against whom complaints had been made and members of the public who had made complaints to the SPA between 31st March 2015 and 1st April 2017.
-

SCPOSA and Senior Officers

- 7.2** The most common concern expressed by the SCPOSA and senior officers was their perceived lack of transparency and clarity surrounding the SPA processes. They also expressed grave concerns about the length of time taken by the SPA to deal with complaints and to undertake preliminary assessments in misconduct allegations.

This group expressed concern about the lack of communication between the SPA and senior officers who were the subjects of complaint. The audit identified that the level of communication by the SPA with senior officers was inconsistent. In some instances, subject officers were invited to address the allegation/complaint but in others, no invitation was extended. In a number of cases, the SPA did not notify the subject officers about the complaints and the first that the officers became aware of the complaints made about them was through media coverage. In other cases the officers were notified.

It was evident from the consultation with SCPOSA and senior officers that there is a significant lack of confidence in the SPA's complaints processes by this group. They also expressed unease that responsibility for the preliminary assessment of misconduct allegations currently rests with the SPA's CEO who, in their opinion lacks the knowledge, experience and expertise in this field.

Members of the Public

- 7.3** The audit sought the views of members of the public who had submitted complaints to the SPA about senior officers between 31st March 2015 and 1st April 2017. The respondents expressed a view that the SPA staff who dealt with their complaints were polite and courteous. Their common concerns, however, centred around the lack of transparency of the SPA's processes and the lack of clear timescales. They expressed concerns about a perceived lack of understanding by the SPA complaint handlers of the issues complained about; a lack of provision of explanation to them about the processes and how the SPA had reached decisions on their complaints and a lack of updates on the progress of their complaints. This group also expressed concerns about the time it took the SPA to deal with their complaints and the impersonal nature of the SPA's processes (ie. all contact with them was undertaken via email).
-

8 Conclusions

➤ The general state, effectiveness, efficiency and transparency of the SPA's current complaint handling procedures

8.1 The PIRC concludes that:

- The SPA's current complaint handling procedures are neither effective nor efficient and lack transparency.
- The average time taken to conclude complaints and preliminary misconduct assessments is excessive and disproportionate to the level of enquiry undertaken or required of the SPA.
- The unnecessary burden of proof placed on the complainers by the SPA makes the process almost inaccessible to members of the public.
- The final decisions made by the SPA lacked clarity and transparency and in many cases did not contain sufficient explanation to demonstrate how the decision was reached.
- The current procedures for dealing with the four distinct categories of complaints are compressed into a single document and are confusing and difficult to follow.

➤ The SPA's process for assessing and differentiating between complaints that fell within its remit and those that did not

8.2 The PIRC concludes that:

- The lack of clearly defined guidelines and understanding by the SPA's Complaints Department of what constitutes a 'relevant complaint' resulted in the potential for up to 19 complaints/enquiries out of a total of 335 being incorrectly assessed between 1 April 2015 and 31 March 2017.
-

➤ **The SPA's process for determining whether an allegation is a complaint and/or allegation of misconduct**

8.3 The PIRC concludes that:

- There is a lack of defined process or consistent approach by the SPA's Complaints Department to the assessment of complaints.
- Most, if not all complaints about senior officers were initially considered by the SPA's Complaints Department as potential misconduct allegations.
- A determination by the SPA's Complaints and Conduct Committee/CEO that the conduct complained about did not amount to misconduct or gross misconduct was thereafter relied upon to terminate the complaint. As a result, the SPA did not carry out additional complaint handling or enquiry beyond the Regulation 8 Assessment.

➤ **The SPA's process for notifying senior officers subject to a complaint**

8.4 The PIRC concludes that:

- A lack of understanding caused by unclear guidance in the document has resulted in organisational confusion as to whether the matter should be dealt with as a 'relevant
- There is an inconsistent approach to notifying senior officers about misconduct allegations and 'relevant complaints' made about them. In some instances, senior officers were not notified but in other cases they were notified sometimes at the beginning or on occasions at the end of the process.
- There is no consistency in the level of information provided to senior officers.
- In some instances, the senior officers were provided with the opportunity to address the complaint/misconduct allegation⁹.
- complaint' or an allegation of misconduct and as a result what process should be followed.

⁹ In terms of Conduct Regulations, the subject officer must receive formal notification of the misconduct allegation once it has been determined that an investigation is required and an investigator has been appointed (Regulation 12). Accordingly there is no statutory requirement to notify a senior officer about the allegation and ask him/her to comment on the allegation until after Regulation 8 assessment has been carried out and an appropriate investigator has been appointed.

In relation to 'relevant complaints', the senior officer must be made aware of the complaint and given an opportunity to address it if he/she wishes to do so.

➤ The SPA's process and rationale for determining whether an allegation if proved would amount to misconduct, gross misconduct or neither

8.5 The PIRC concludes that:

- The document does not include a specific or defined process to assist in the Complaints Department determining whether an allegation if proved would amount to misconduct, gross misconduct or neither. Instead it contains a list of the types of conduct that if proved would amount to misconduct.
- In many instances a lack of evidence supplied by the complainer to support an allegation was used as a reason to close a complaint file without further enquiry or, where appropriate, referral to the SPA's Complaints and Conduct Committee for assessment in terms of Regulation 8.
- On occasions the lack of evidence provided by a complainer was used by the SPA's Complaints and Conduct Committee as the determining factor on which a decision was made to close an allegation i.e. the assessment was an assessment of evidence provided by the complainer rather than an assessment that if proved, the nature of the allegation and the conduct would amount to misconduct.
- Whilst it is expected, the SPA will make enquiries with a complainer prior to beginning the preliminary assessment process in order to clarify vague allegations or allegations lacking in specification, it is inappropriate for the SPA to insist that the complainer provides sufficient evidence to prove the allegation.
- The formal decision making function for Regulation 8 preliminary assessments originally rested with the SPA's Complaints and Conduct Committee but was then transferred to become the responsibility of the SPA's CEO. Files examined during the audit did not provide details of the SPA's decision making process.

➤ The SPA's timescales for complaint handling

8.6 The PIRC concludes that:

- Until March 2017 the Complaints Department followed the internal guidance document (known as Complaints Handling Procedures Version 1.0). The document provides that an initial assessment and acknowledgment of all complaints will be carried out within three working days. It also provides that in complex matters this assessment stage can be extended but the complainer should be updated after six weeks.
- No further timescales are specified for complaint handling. However, file documentation suggests an aspirational target to resolve complaints within 40 working days.
- The current Guidance document Version 2.2 replicates the timescales in Version 1.0.
- The average timescales for dealing with 'relevant complaints' and/or misconduct allegations is excessive and disproportionate to the level of enquiry carried out into complaints by the SPA. As the SPA's Complaints and Conduct Committee previously met only once every three months, complaints/misconduct allegations about senior officers were usually dealt with outside the aspirational target of 40 working days¹⁰.

➤ The level of investigation/enquiry undertaken by the SPA into relevant complaints

8.7 The PIRC concludes that:

- Only 12% of "relevant complaint" files demonstrated that a sufficient level of enquiry was undertaken by the Complaints Department. This is due to the fact that the SPA initially considered most complaints as misconduct allegations.
- A number of 'relevant complaints' about potential managerial failings of senior officers were not investigated as the SPA adopted the approach that senior officers could not be held responsible for the actions, omissions or failings within their departments simply by virtue of their position as the head of the department, unless the complainer could provide direct evidence of the senior officer's improper motive.
- Such an approach deprived members of the public of the opportunity to hold senior officers to account for potentially serious alleged managerial failures.

¹⁰ Only 1 complaint and 1 misconduct allegation about senior officers were properly concluded or assessed within 40 days during the relevant two year period.

➤ **The SPA's resources dedicated to handling complaints about senior officers and the training provided to complaint handlers**

8.8 The PIRC concludes that:

- The current Complaints Department consists of a Manager and 2 complaint handlers who during the relevant 2 year period received, progressed and concluded 48 complaints. It is considered that the current level of resources dedicated by the SPA to complaint handling is sufficient.
 - No staff had undertaken any formal complaint handling training since taking up post. Nor was there any formal or structured annual training or continuing professional development programme available to staff.
 - Since 2013, there has been little relevant training provided to the Complaints Department.
-

➤ **The SPA's recording and management system for 'relevant complaints'**

8.9 The PIRC concludes that:

- The current information management system utilised by the SPA was examined onsite. It is considered that the current system is comprehensive and fit for purpose.
 - The current system does not use any specifically designed complaint handling software but the necessary information is carefully stored on Excel spread-sheets and captures all of the necessary data.
-

➤ **The SPA's complaint handling quality assurance process**

8.10 The PIRC concludes that:

- There is a lack of recorded quality assurance procedures within the current complaint handling process. Almost every file contained records which showed that meetings had taken place with the Complaints Department Manager but there was no record of the discussion about the progress of the complaint.
 - The audit identified a lack of procedures in place to demonstrate that quality assurance checks were performed by the Complaints Department Manager.
-

9 Recommendations

Recommendation 1

- 9.1** The SPA amend its guidance document (known as the Complaint Handling Procedures) to clarify the different processes which require to be followed when dealing with (i) 'relevant complaints'; (ii) misconduct allegations about senior officers; (iii) complaints about SPA staff and (iv) complaints about the SPA Board and thereafter adhere to these processes.
-

Recommendation 2

- 9.2** The SPA provides clear guidance to the Complaints Department to enable its staff to assess and determine whether a complaint is a (i) 'relevant complaint'; (ii) misconduct allegation about senior officers; (iii) complaint about SPA staff or (iv) complaint about the SPA Board and thereafter adhere to these processes. Additionally, a robust and documented quality assurance process should be introduced to underpin the assessment process.
-

Recommendation 3

- 9.3** The SPA amend its guidance document (known as the Complaint Handling Procedures) to introduce timescales for the handling of (i) 'relevant complaints'; (ii) misconduct allegations about senior officers; (iii) complaints about SPA staff and (iv) complaints about the SPA Board and thereafter adhere to these timescales.
-

Recommendation 4

- 9.4** The SPA's Complaints Department adhere to its guidance document (known as the Complaint Handling Procedures) which requires agreement of Heads of Complaint with complainers.
-

Recommendation 5

- 9.5** The SPA Complaints Department adhere to the procedural provisions of The Police Service of Scotland (Senior Officers) (Conduct) Regulations 2013 in respect of all aspects of allegations of misconduct about senior officers and amend its guidance document (known as the Complaints Handling Procedures) to reflect this.
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Recommendation 6

- 9.6** The SPA establish a three member panel to undertake Regulation 8 preliminary assessment of misconduct allegations. The panel should hold experience and knowledge of the relevant statutory provisions, Conduct Regulations, Performance Regulations and Police Scotland's Grievance Procedures. In accordance with the current governance structure the decision and the reasoning of the panel should be presented to the Complaint and Conduct Committee/CEO for approval.

9 Recommendations cont.

Recommendation 7

- 9.7** The SPA amends its guidance document (known as the Complaints Handling Procedures) to remove the burden of proof before the matter is progressed.
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Recommendation 8

- 9.8** The SPA amend its guidance document (known as the Complaints Handling Procedures) to ensure that the SPA's Complaints Department conduct a thorough enquiry.
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Recommendation 9

- 9.9** The SPA implement a robust and properly documented quality assurance process in relation to all complaint handling matters.
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Recommendation 10

- 9.10** The SPA amend its guidance document in order to ensure that it includes robust procedures for dealing with contacts assessed as 'whistleblowing'.
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Recommendation 11

- 9.10** The SPA Complaints Department should assume responsibility for compiling the final response to complainers about SPA staff, to ensure consistency.
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Recommendation 12

- 9.11** The SPA introduce an effective and clearly defined complaints process for the handling of complaints made about the SPA Board, Chief Officer and Chair.
-



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