

Scottish Women's Rights Centre
Response to the call for evidence on Police Complaints Handling,
Investigations and Misconduct Issues

13 March 2019

Overview

The Scottish Women's Rights Centre (SWRC) is a unique collaborative project that provides free legal information, advice and representation to women affected by violence and abuse. The SWRC exists because of abuses of power and because a gap persists between women's experience of violence and abuse and their access to justice. The SWRC strives to fill these gaps by working with specialist solicitors and experienced advocacy workers. Informed by our direct work with victim/survivors of violence and abuse, we seek to influence national policy, research and training to improve processes and systems, and ultimately to improve the outcomes for women who have experienced gender-based violence (GBV).

We recognise that people of any gender can be affected by abuse and violence (including sexual violence). However, statistics show that these crimes are more often committed by men against women. Also, as the SWRC specifically supports women aged 16 and over, when we talk about victim/survivors in this response we will generally refer to women. Despite this, we are aware – and do acknowledge – any person can be subjected to these crimes.

The focus of our response is on complaints against Police Scotland by women who have reported GBV, and the Police Scotland and Police Investigations and Review Commissioner (PIRC) complaints handling processes, as the majority of police complaints we hear about or are involved in are within these processes.

We also note that we hear of good experiences with the police, but will focus our response on the areas we see improvements are required, based on what is reported to us by women who have experienced GBV and our own direct experience.

Causes of complaints to the police

In our experience, generally the reason women who have experienced GBV choose to make a complaint to the police is because they feel they have experienced multiple negative issues with the police in their response to a report of a crime, or in the process

of the investigation of a crime. Women report submitting complaints based on a combination of:

poor service, such as:

- poor communication – not having the process or timescales adequately explained to them, not being kept updated throughout an investigation, not understanding or knowing what is going on during an investigation, unscheduled attendances (including of uniformed officers) at residence/work/education facilities to undertake unexpected interviews or to request evidence without clear explanation as to why this is necessary; feeling as though they have to repeatedly initiate contact with police officers themselves for updates and to request that they take necessary steps;
- inappropriate comments or questioning, particularly relating to sexual offences;
- unnecessary and avoidable retraumatisation throughout the investigation;
- interviews taking place in inappropriate settings without support, and not being adequately informed of their rights to request support or an interview location where they feel comfortable;
- forensic medical examinations being undertaken in inappropriate settings, and by male examiners¹; and

concerns about inadequate investigation or substantive failings in an investigation, such as:

- failure to interview certain witnesses;
- a perception that evidence which could have been obtained has not been sought;
- conducting suspect interviews by prior arrangement, or interviewing family members prior to interviewing the suspect, thereby allowing the suspect to concoct a defence or evade arrest;
- statements being noted in the language of the interviewing officer rather than the words of the complainer, as well as information being omitted from statements;
- not adequately responding to women's concerns about their safety or risk of further harm.

Women who have experienced GBV advise us that they choose to complain to the police because:

- they reach a point where they feel the investigation is not being progressed or dealt with appropriately, and they believe the only way to resolve this and move matters forward is to make a complaint;
- they feel aggrieved because they have reported incidents and the police have failed to act upon these;

¹ We note that a separate consultation is being undertaken in relation to this

- they (and, where relevant, their children) have continued to experience violence or abuse despite reporting earlier incidents to the police;
- an investigation has concluded without the perpetrator being charged or without a report to the Crown Office and Procurator Fiscal Service (COPFS) and they do not have confidence that there has been an adequate investigation;
- they have been arrested themselves on the basis of false allegations (for example in situations of stalking and/or domestic abuse) as a result of dual reporting and/or where they have taken measures to protect themselves against an incident of abuse;
- alternatively, we hear from women who have complained because they wish to improve the experiences of others who report crimes of a similar nature in the future.

We note that many women who feel they have had poor experiences with the police choose not to make a complaint. Women report that this can be for a variety of reasons; for example, not wishing to negatively impact an ongoing investigation, not wishing to put themselves through more stress, not wishing to complain about a service they may need to seek protection from in the future, not seeing the point in doing so and/or having had a previous poor response to a complaint; and because often women who have experienced GBV cannot face a further prolonged and potentially distressing process having already experienced trauma and had the courage to report. We note that it can be intimidating to complain about a state body such as the police.

Information about how to make a complaint and access to support

In our view, the information about how to make a complaint is clear on Police Scotland's website, and it is helpful that there is a link to this information on the Home page of the website. However, we have received information to suggest inconsistent practice from Police Scotland staff when a complaint is reported to them and the way they inform members of the public about the complaints process.

The definition of a complaint about the Police includes "*A statement (whether oral, written or electronic) expressing dissatisfaction about an act or omission by the Authority, by the Police Service or by a person who at the time of the act or omission was a person serving with the Police.*" This suggests that any statement about dissatisfaction should be treated as a complaint – in our experience this does not happen, but this would not, in fact, be realistic. However, if someone expresses dissatisfaction to an officer or staff member within Police Scotland they should certainly be told about the complaints process.

In our experience, there is a lack of support available to women who wish to make a complaint to the police in Scotland. This is particularly problematic for people who have experienced trauma and may struggle to engage with and access formal processes, face further retraumatisation in making a complaint and may struggle to cope with the process. This can at times result in missing the deadline for application for review to the PIRC. However, in our experience the PIRC tend to be willing to allow extensions in such circumstances, which is a strength of the current arrangements. For some, the lack of support may result in giving up on the process altogether. We note that having

support could improve people's ability to get the relevant information across in an appropriate manner and could result in better outcomes. We note that some services are able to assist women who have experienced GBV with the police complaints process (for example the Rape Crisis Advocacy Service in relation to rape and sexual assault, and the SWRC Advocacy Service in relation to any type of GBV).

Appropriate opportunities to get case across and fair hearing

Firstly, we note there is no hearing in relation to police complaints (unless the nature of the complaint amounts to misconduct or criminal conduct).

It appears to us that the opportunity for individuals to get their case across is limited by the manner in which complaints are dealt with by Police Scotland, and then by the limitations of the PIRC. We suggest that Police Scotland's process for establishing the heads of complaint should be reviewed. As far as we understand, this is either undertaken through completion of a "Heads of Complaint Form" or by someone within Police Scotland taking a statement. This places reliance on the correct questions being asked. In our experience, responses to complaints focus on responding to each specific allegation made, often instead of addressing the underlying issue. The focus of the complaint handling should be to resolve the person's complaint in a satisfactory manner for that person. Accordingly, consideration should be given to the issues being complained about, and the context in which the complaint is being made. The complaints process should be sufficient to draw out the grievance the individual has.

It appears that, particularly in more complex cases (such as one alleging a failure to adequately investigate a report of GBV), the main overarching sentiment of the complaint can be lost in a very rigid complaints process. This could be further exacerbated by complaints handlers lacking sufficient expertise dealing with these types of complaint (see below).

Strengths and weaknesses of the current arrangements for complaints handling, investigations and misconduct in relation to policing in Scotland

The strengths are that the Police Scotland complaints process and PIRC complaints handling review process are straightforward and accessible. However, it appears to us that the key weaknesses are as follows:

Police Scotland Complaints Process

The process appears to be too rigid, and set up to deal with individual complaints rather than appropriately identify, track and target systemic issues.

The outcomes of the process are not satisfactory. None of them appear to relate to rectifying or resolving matters for the individual making the complaint. Where an apology is given, from what we are told by women who have been through this process, this often does not give confidence or reassure that the issues will be addressed and not happen again, even if it is stated that training will be recommended. This could be due to the manner in which the outcome is communicated (in our experience, this is often a formulaic response). Alternatively, if there are no consequences and only apologies are given within a complaint response, women tell us that these do not come across as genuine. Further, women report to us that their

confidence in positive change occurring as a result of their complaints can be undermined by some of the issues they have complained about being repeated during the handling of the complaint (such as poor communication, retraumatisation and so on).

In our experience, responses to complaints invariably do not acknowledge the impact the problems may have had (or indeed may not have had) on the individual investigation. If multiple complaints are upheld in relation to poor standards of service throughout an investigation, but without an explanation about what that may have meant for the outcome of the investigation, this may leave the complainer feeling that, if things had been done correctly, the outcome of the investigation may have been different. This may or may not be the case.

It is our understanding that the investigation of rape and serious sexual crime can only be conducted by a senior investigating officer (SIO) of a rank no lower than Detective Inspector. Further, SIOs receive specific training in respect of the investigation of rape. This is due to the fact that it is a specialised area and requires enhanced skills and knowledge, including training in relation to the impact of trauma. Accordingly, there should be a requirement that a complaint regarding whether or not a rape investigation has been conducted appropriately should be determined by an officer who has the requisite investigatory skills or knowledge to adequately or efficiently determine this (i.e. an SIO who has undergone enhanced training in respect of rape investigation). The same requirement should apply in relation to allegations of this nature relating to other crime types where such specialist knowledge, skills and training are necessary.

Further, where the complaint relates to concerns around an inadequate investigation, there should be a mechanism to review the case and/or refer the case for further investigations (this could be similar to the Victims' Right to Review a decision of the COPFS not to prosecute). If a complaint regarding an inadequate investigation is not upheld, a full and adequate explanation should be given to the individual as to why that is.

Many people making complaints to the police will have experienced trauma, but from what women tell us, the complaints process is not trauma-informed. This is reflected in the manner in which complaints are dealt with and responded to. For example, consideration should always be given to positions of vulnerability and/or the impact of trauma on the person's abilities and needs when interacting with the police, particularly in the immediate aftermath of a crime, and complaint-handlers should bear this in mind when assessing allegations. Timescales should be clearly explained at the beginning of the process, and adhered to, and people should be warned about potential for delay and the reasons for that. Possible outcomes and limitations of the process should be explained at the outset. In our experience, responses to complaints are very similar in wording and terminology and they appear to be pro-forma type responses. Perhaps due to this format, responses which we have seen do not appear to have been drafted in an empathetic, sensitive way. Based on what women report to us, this may serve to perpetuate the feelings of dissatisfaction. Further, the response can at times cause

retraumatisation, for example by including unnecessary detail regarding a sexual assault and/or a suspect.

From what women report to us, and in responses we have seen, complaints relating to comments made by police officers in face to face situations appear to often not be upheld unless there are independent witnesses or other evidence. Women who have experienced GBV report to us that this perpetuates the feeling of not being believed. It may be that if there is an increase in use of recording equipment (for example recording of statement-taking), these types of complaints may decrease. Further, more sensitively worded, bespoke, trauma-informed responses to complaints may reduce the impact of such findings.

Consideration could be given as to whether it would be appropriate to extend the Frontline Resolution process. Given that in some circumstances people complain during an investigation in the hope of progressing the investigation, it may be that a less formal interim step could resolve the complaint in such circumstances. However, we are aware that the PIRC has noted that Frontline Resolution is only appropriate in complaints that are “minor or trivial in nature” and has criticised the police for using this inappropriately. Accordingly, if this option is to be considered, it may be that guidance and training would be required in order to ensure that this is undertaken in an appropriate manner, in appropriate circumstances. Further, any interim step such as this would require to be fair and transparent, dealt with by someone who is suitably trained and qualified, the outcome should be put in writing and there should be a clear process for escalating the complaint if the outcome does not resolve matters.

Additionally, a number of women wish to highlight issues to the police, perhaps to advise them how they felt as a result of a question asked or a line of questioning for example. Those issues are clearly not complaints against the police per se but rather, helpful feedback to the police to assist in shaping responses and services in the future. As far as we are aware, there is little scope for such feedback to be fed in to professional learning, other than through the Rape Crisis Scotland feedback process which relies on women agreeing to take part in this, and of course the focus of which is on sexual crime rather than other forms of GBV.

The PIRC

In our view, the remit and powers of PIRC should be widened and strengthened. Women often submit a complaint to the police in relation to the standard of the police investigation and, largely for the reasons outlined above, women report to us that the police response is inadequate. The only recourse available may be to apply to the PIRC whose only remit is to look at whether the complaint has been handled appropriately. Meanwhile, there is no means by which the woman can pursue her original objective, namely to have someone address the investigatory shortfalls.

Accordingly, many women who have experienced GBV can be reluctant to apply to the PIRC for a review. In our experience, if a woman in such circumstances chooses to apply to the PIRC for a review, although the application form itself is straightforward it can be time-consuming and difficult to complete. This is largely due to the shortfalls

of the police complaints process as outlined above. For example, there may be many allegations which she is unhappy with Police Scotland's handling of.

In our view, the decisions of PIRC can provide some helpful comments and recommendations. However it is concerning that the PIRC does not appear to have the ability to impose any recommendations on Police Scotland, or ensure compliance with their decisions. Further, the PIRC could have a role in identifying systemic issues and making recommendations in this regard.

At present (and for some time) the PIRC appear to have had a substantial backlog and this affects their ability to meet deadlines, which can cause difficulty.

What is the impact of the weaknesses, how do they arise and how can they best be addressed?

The impact of weaknesses include: undermining confidence in police investigations of, and responses to, allegations of GBV; retraumatisation and further negative impacts on individuals who may continue to feel as though their allegations have not been properly investigated, and they have not been believed, rather than providing adequate explanation, reassurance and resolution.

These can be addressed through the following:

- Review Police Scotland's process of taking information about complaints to ensure the key concern of the complainer is identified, in order for this to be addressed;
- Review the process of responding to complaints to ensure the process and responses are trauma-informed;
- Review the available outcomes and in particular consider extending these to allow for a review of the investigation by an independent officer and/or referral for further investigations in appropriate circumstances (for example if this could result in a suspect being charged, similar to the Right to Review);
- Implement a system for monitoring complaints to identify, track and target systemic issues, and for feedback and training to be given within Police Scotland to address these issues;
- Widen the remit and increase the powers of the PIRC to allow for consideration of substantive complaints, enforcement of decisions and potentially the identification of systemic issues.

In our view, these changes would improve confidence in policing and improve practice in addressing GBV in Scotland.