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POLICE PRACTICE IN COMPLAINT INVESTIGATIONS

INTRODUCTION

3.1 This chapter addresses terms of reference (2)(a) to (2)(d), which requires the Commission to inquire into, and report upon

- (2) irrespective of the existence or adequacy of standards or procedures as a matter of Police policy, the practice of Police in the investigation of complaints alleging sexual assault by members of the Police or by associates or the Police or by both, in particular, but not limited to,—
 - (a) the practice of Police in relation to the investigation of complaints alleging sexual assault by members of the Police or by associates of the Police or by both in Kaitaia and Rotorua (or other relevant localities) at the material times:
 - (b) the current practice of Police when investigating complaints alleging sexual assault by members of the Police or by associates of the Police or by both:
 - (c) whether Police practice has met and now meets the applicable Police standards and procedures (if any):
 - (d) what requirements (if any), both at a local level and at the level of Police Headquarters, have been in place, or are now in place, to ensure that Police practice complies with any relevant standards and procedures:

This chapter is divided into three sections addressing first component (2)(a), next (2)(b) and (2)(c) together, and then (2)(d). My recommendations are presented at the end of the chapter.

Background details of relevance to this chapter

Time frame. The period of interest to the inquiry was determined in March 2004 to be the 25 years from 1 January 1979. The Commission considered police investigations of relevant complaints that had been made since January 1979.

Parties to the inquiry. The Commission formally recognised four parties to the inquiry: New Zealand Police, Police Complaints Authority (PCA), Police Association, and Police Managers' Guild.

Submitters. Of those who approached the Commission directly about the police investigations into their complaints, 10 submitters were considered to fall within the terms of reference and directions.

Witnesses. The Commission heard evidence from Police Commissioner Robert Robinson, a range of other New Zealand Police staff, the Police Complaints Authority, the president of the Police Association, and various specialist witnesses.

Operation Loft. Staff from the New Zealand Police Professional Standards section at the Office of the Commissioner carried out a comprehensive search of police records to identify all cases that related to the Commission's terms of reference (known as Operation Loft). As part of Operation Loft, Professional Standards staff members were asked to locate and retrieve any files that related to allegations of sexual offending by police or associates of the police since 1 January 1979. All these files were provided to the Commission for review.



PRACTICE IN INVESTIGATION OF SPECIFIC COMPLAINTS: CONSTRAINT ON INQUIRY

- 3.2 Term of reference (2)(a) required the Commission to inquire into, and report upon
- (2) irrespective of the existence or adequacy of standards or procedures as a matter of Police policy, the practice of Police in the investigation of complaints alleging sexual assault by members of the Police or by associates of the Police or by both, in particular, but not limited to,—
 - (a) the practice of Police in relation to the investigation of complaints alleging sexual assault by members of the Police or by associates of the Police or by both in Kaitaia and Rotorua (or other relevant localities) at the material times:
- 3.3 This term of reference directed the Commission to examine the practices related to investigation of alleged offences in Kaitaia and Rotorua involving Ms Nicholas and Ms Garrett. However, the alleged offences in question were the subject of fresh criminal investigations at the time the Commission commenced its work. The Commission became conscious of the potential for its work to contaminate those (and other) inquiries or place them or any subsequent prosecutions in jeopardy. On 21 April 2005, the Government announced it would alter the mandate of the Commission so that it could complete its work without prejudicing any criminal prosecutions and ongoing investigations.
- 3.4 The Order in Council of 2 May 2005 providing directions to the Commission effectively amended the terms of reference and prevented the Commission from inquiring into Ms Nicholas's or Ms Garrett's allegations about the way their complaints were first investigated. The criminal processes were not completed within sufficient time for me to consider the several investigations involving their complaints. Further potential criminal prosecutions were also relevant. I am therefore constrained from addressing term of reference (2)(a) in any way. Full details of these events are set out in Appendix 2 of this report, paragraphs A2.31 to A2.44.



PRACTICE IN COMPLAINT INVESTIGATION

3.5 This section addresses terms of reference (2)(b) and (2)(c), which require the Commission to inquire into, and report upon

(2) irrespective of the existence or adequacy of standards or procedures as a matter of Police policy, the practice of Police in the investigation of complaints alleging sexual assault by members of the Police or by associates of the Police or by both, in particular, but not limited to,—

...

(b) the current practice of Police when investigating complaints alleging sexual assault by members of the Police or by associates of the Police or by both:

(c) whether Police practice has met and now meets the applicable Police standards and procedures (if any):

3.6 The focus of term of reference (2)(b) is the current practice of the police. Term of reference (2)(c) requires me to consider whether police practice (not necessarily current practice) has met and now meets applicable police standards and procedures. The two terms of reference are distinct but are conveniently considered together. I have chosen to address them by considering each of the following stages or aspects of the investigation of a complaint¹⁹⁵ alleging sexual assault by a member of the police or a police associate:

- the process of making a complaint
- the appointment of an investigating officer
- conduct of the investigation
- determination of whether criminal charges should be laid
- managing relationships and communications with complainants and related agencies.

3.7 For each stage or aspect, I have endeavoured to do the following:

- describe the current standards and practices, having regard to the difficulties (discussed in Chapter 2) in clearly articulating some aspects of police standards and procedures
- examine how the cases of nine of the ten submitters were dealt with¹⁹⁶
- consider evidence from the Operation Loft files that appears to illustrate issues concerning past practice
- where necessary, identify areas to be addressed for the future.

3.8 As explained in Chapter 1, I examined the submitters' cases in formal hearings, at which evidence was presented by the police and other parties and, in some cases, the submitters themselves. The hearings gave me an insight into the submitters' experiences, which I have

¹⁹⁵ In general, a criminal investigation begins with a complaint or other information regarding an alleged offence through to the conduct of a prosecution or other action: Detective Superintendent Malcolm Burgess, Brief of evidence, 9 November 2006, p. 3.

¹⁹⁶ The case of Submitter J is discussed in Chapter 6.

taken into account when deciding how best to present their cases in this report and to identify lessons that can be learned for future practice. Unless otherwise stated by way of footnote reference, the evidence discussed in this report arose from those hearings.

- 3.9 The mention of an Operation Loft file indicates that the recorded case is, in my opinion illustrative of trends and types of behaviour that need to be considered when current practice is being reviewed or when new practices, standards and procedures are being developed. The mention of a particular example does not mean that the matters raised by that example were common or widespread throughout the police.

THE PROCESS OF MAKING A COMPLAINT

- 3.10 Between 1993 and 2003 the number of allegations of sexual misconduct by police officers has been relatively stable at around 10 per year on average.¹⁹⁷ In 2004, the number of allegations of sexual misconduct increased to 42, falling back to 24 in 2005. The higher figures in these years are thought by the police to be the result of the publicity arising from the establishment of this Commission of Inquiry into Police Conduct and from the investigation arising out of Ms Nicholas's complaint. These events prompted other complaints and resulted in an increased number of (mainly historical) complaints.¹⁹⁸ If that is so, it suggests that for whatever reason, an indeterminate number of individuals have in the past felt unable to come forward with allegations of sexual misconduct by police officers, despite the existence of the Police Complaints Authority (PCA) and other independent authorities (such as court registrars, members of Parliament, and ombudsmen) who are able to receive complaints. A few such individuals approached the Commission. However, their complaints could not be reviewed because my terms of reference allowed consideration only of cases that had been investigated by the police.¹⁹⁹
- 3.11 This kind of under-reporting is a recognised feature of sexual offending generally, and not just when the alleged offender is a police officer. Many victims of sexual violation do not report the incident or minimise the severity of the act²⁰⁰ and it is not uncommon for there to be a surge of complaints after publicity regarding particular types of crime.
- 3.12 Dr Jan Jordan, an expert witness specialising in women's experience of reporting rape offences to the New Zealand Police, explained that rape can have "such a profound and traumatic impact on the victims that it negatively affects their willingness to report and their ability to do so convincingly".²⁰¹ A sexual assault complaint necessarily requires the disclosure of very personal information to the police and potentially in a court of law. However, the trauma experienced by a complainant may make it difficult to complain, and they may not always tell the police everything. I was told that complainants may well struggle to say, "I have been raped", which is why the police "need really good training and sensitivity right from the start".²⁰²

197 Detective Superintendent Malcolm Burgess, Brief of evidence, 29 November 2005, Appendix 3.

198 Detective Superintendent Malcolm Burgess, Transcript of hearing, 29 November 2005, p. 18.

199 See Appendix 2 paragraph A2.16.

200 Dr Jan Jordan, *The Word of a Woman? Police, Rape and Belief*, Palgrave MacMillan, Basingstoke, UK, 2004, p. 19.

201 Dr Jan Jordan, Senior Lecturer, Institute of Criminology, Victoria University of Wellington, Brief of evidence, 3 November 2005, p. 4.

202 Dr Jan Jordan, Senior Lecturer, Institute of Criminology, Victoria University of Wellington, Transcript of hearing, 3 November 2005, p. 22.

- 3.13 The sensitive and distressing nature of any complaint of sexual assault may also affect when a complaint is made. There were examples among the files of complainants who did not go straight to the police, but where the complaint surfaced in some indirect way, for instance when other complaints came to light.²⁰³
- 3.14 A 2001 file provides an example of a woman who did not immediately make a complaint. It seems the main reason for this was because she was ashamed of what had happened. However, in her statement she also said, “I did not think that anyone would believe me.” Similarly, the first person she told about the incident stated, “She said to me, they won’t believe me because I’m a known criminal and that fella is a cop.”²⁰⁴
- 3.15 The perception that the police will not believe or will not investigate an allegation of sexual assault against a member or associate of the police has featured in a number of files that I reviewed.²⁰⁵ This perception appears to arise from
- an awareness that making a complaint against a police officer is a complaint against an authority figure within the community (this status may extend to a police associate), and hence the complainant may be concerned that the alleged offender will be seen as having greater credibility than she or he
 - the fact that the complaint is made to the very organisation to which the alleged offender belongs, or with which he or she has close and friendly associations.
- 3.16 There are strict policies and procedures under current practice designed to ensure that a complaint against a member of police, once made, is taken and investigated. Indeed, the police submitted strongly that, although sexual offending is always a very daunting crime to report, there are no particular barriers to making complaints of sexual offending involving police officers or police associates.²⁰⁶ The investigations into allegations of sexual assault against members of the police that I reviewed indicated that the applicable policies were generally complied with in the majority of cases.
- 3.17 Nevertheless, I believe the existence of the perception on the part of some complainants that the police will not believe or will not investigate an allegation of sexual assault against a member or associate of the police may add to the difficulty that some people have in first making a complaint, meaning that they may struggle, perhaps for years, before mustering the courage to do so.

Current practices for making and receiving complaints

Making a complaint of sexual assault against a member of police

- 3.18 Various agencies and processes can be used to make a complaint about a police officer. Complaints of sexual assault by police officers can be made to any of the following:
- the PCA²⁰⁷

203 For example, Operation Loft files LT 67, LT 86, LT 94, and LT 139.

204 Operation Loft file LT 64.

205 See for example, Operation Loft files LT 52, LT 64, LT 72, LT 118, LT 121, LT 125, LT 185, and LT 198.

206 New Zealand Police, Submissions in response to draft report, 20 June 2006, pp. 28–33, and New Zealand Police, Submission (“Comments on seven new extracts (circulated on 8 September 2006), and on proposed interim report regarding police disciplinary system”), 27 October 2006, pp. 5–7.

207 Police Complaints Authority Act 1988, section 14(3).

- any member of the police²⁰⁸
- the registrar or deputy registrar of any District Court (where the complaint is in writing)²⁰⁹
- an ombudsman²¹⁰
- a member of Parliament.²¹¹

3.19 According to the police website, complaints can be made in any of the following ways:

- verbally, in which case the substance of the complaint will be written down by the police officer taking the complaint
- by way of a written statement, taken by a commissioned or non-commissioned police officer
- by way of a letter prepared by the complainant to any of the organisations or positions listed above
- by completing a complaint form provided by the PCA and available at some police stations or at the office of the PCA
- online at www.pca.govt.nz.²¹²

The new PCA website contains a complaint form, which can either be completed online or be posted to the PCA.²¹³ I discuss the making of oral complaints to the PCA in Chapter 4.

3.20 Where a sexual assault complaint has been made to a registrar or a deputy registrar of the District Court, an ombudsman, a member of Parliament, or the PCA it will be referred to the police for investigation because New Zealand Police is the only body within New Zealand with a prosecutorial function in respect of sexual assault allegations. Although the PCA has had the resources to conduct its own investigations since 2003, the secrecy provisions within the Police Complaints Authority Act 1988 (PCA Act) prevent any of the material gathered by its investigators from being used in criminal prosecutions or disciplinary proceedings.

3.21 Just over half of all sexual assault complaints (excluding sexual harassment complaints) against police members between 2000 and 2005 were made by the complainant approaching the police directly (40 of 79 complaints, or 50.6 percent). Eight sexual assault complaints against police officers were made to the PCA (10.1 percent) and 25 complaints (31.6 percent) alleging sexual assault by a police officer were made either as a result of someone contacting the police on the complainant's behalf (for example, a family member, friend, or support agency) or as a result of the police becoming aware of a rumour that a sexual assault had occurred. Six complaints (7.6 percent) were as a result of police inquiries.

208 Police Complaints Authority Act 1988, section 14(3).

209 Police Complaints Authority Act 1988, section 14(3).

210 Police Complaints Authority Act 1988, section 14(3).

211 New Zealand Police website, www.police.govt.nz, accessed 28 September 2006. Note that the Police Complaints Authority Act 1988 does not specify that a complaint against a member of police can be made to the Minister of Police.

212 New Zealand Police website, www.police.govt.nz, accessed 28 September 2006.

213 Police Complaints Authority website, www.pca.govt.nz, accessed 28 September 2006.

3.22 As outlined in paragraph 2.97, the police have an obligation to receive complaints about police members. In particular, as relevant to current police practice, general instruction IA104(4) directs

Every complainant shall be received and his or her complaint taken when he or she calls at the station, community policing centre or other Police office. The complainant shall not be asked to return or call another day to deal with some other staff member or section.²¹⁴

3.23 Indeed, I was told by Assistant Police Commissioner Peter Marshall,

All Police officers can and should be able to receive a complaint. If the Commission has evidence that particular complainants were sent away pending the availability of other staff, then this was inappropriate. In some stations, it may take some time for the complainant to be seen by a CIB officer, but even then the officer that the complainant initially approaches should take “holding action”, such as filling out the initial complaints notification form and ensuring the complainant is being properly looked after while CIB staff arrive.²¹⁵

3.24 If a police district receives a complaint alleging sexual assault by a police member, it is required to record the complaint and notify Professional Standards at the Office of the Commissioner, which subsequently notifies the PCA.

3.25 The PCA is required under its enabling legislation to give direction on all complaints against police officers. Although the PCA Act does not prevent the police from commencing or continuing any investigation into a sexual assault complaint against a member of police,²¹⁶ it is the PCA that decides how a complaint against a police officer should be handled. Under section 17 of the PCA Act, the PCA decides whether to investigate the complaint itself, defer action until after the police investigation of the complaint has been completed, oversee the police investigation of the complaint, or take no action with regards to the complaint.

3.26 It is current police practice to request that the PCA defers action where a complainant alleges that a serious criminal offence has been committed. This is intended to ensure that the secrecy provisions in the PCA Act are not engaged and the police are able to use evidence gathered during the investigation in any subsequent criminal or disciplinary proceedings.

3.27 The PCA has agreed with this course of action in the majority of complaints since 2000; however, the PCA generally requires the police to advise it of all developments of consequence in the course of the investigation and requires the matter to be included in the police district’s monthly reporting schedule.²¹⁷

214 New Zealand Police, General instruction IA 104, “General Guidelines for Receiving Complaints”, *Ten-One*, No 90b, 28 April 1995, republished 2002.

215 Assistant Police Commissioner Peter Marshall, Brief of evidence, 7 November 2005, p. 9.

216 Police Complaints Authority Act 1988, section 22.

217 See Chapter 4 for further discussion of the Police Complaints Authority and its interaction with New Zealand Police.

Making a complaint of sexual assault against an associate of the police

3.28 There are no specific police procedures regarding the acceptance and conduct of an investigation into an allegation of sexual assault by a police associate. I was told, “investigation of associates of Police follow the same process as any investigation of criminal offending”, although “the suspect’s association with the Police may require special steps to be taken ... on a case by case basis, having regard, among other things, to the exact nature of the association”.²¹⁸

Evidence of past practice when receiving a complaint

Complaints against members of the police

3.29 An assessment of the Operation Loft files indicates that in the vast majority of cases the police took a complaint against a police member promptly and professionally in accordance with the standards and practices applicable at the time. In only a few instances did the initial police member approached not take the complaint immediately.²¹⁹ According to the police, “Many of those cases where questions of non-compliance arose could be explained by the particular circumstances of the case”.²²⁰

3.30 For example, in a 1984 case the complainant (while being held overnight in the police station cells) made allegations of indecent exposure to two constables and a senior police officer. A further senior police officer was also advised of the allegation. Despite the complainant specifically asking one of the constables how to make a complaint, the complaint was not taken until the complainant returned to the police station the following day with her solicitor.²²¹ Indeed one of the officers responded to the complainant’s attempt to make a complaint with a grossly insensitive remark, and all failed to take her complaint seriously.²²² The police acknowledged that the officer’s actions were extremely insensitive.²²³ However, because of her earlier bizarre and abusive behaviour they submitted, “it was not immediately apparent to the Police that her allegation was meant to form the basis of a genuine complaint”.²²⁴

3.31 In a 2003 file a complainant made an allegation of an indecent assault to a sergeant, and the sergeant chose not to take a complaint, instead directing the complainant to contact a senior member in the morning. Regarding this, the district commander reported,

Sergeant [name] should have taken a complaint from [the complainant] rather than refer her to another officer. I will have her advised of that, but by way of advice rather than formal counselling.²²⁵

218 Detective Superintendent Malcolm Burgess, Brief of evidence, 11 December 2006, p. 3.

219 For example, Operation Loft files LT 93, LT 137, and LT 163.

220 New Zealand Police, Submission (“Comments on seven new extracts (circulated on 8 September 2006), and on proposed interim report regarding police disciplinary system”), 27 October 2006, p. 8. (For comment on the provision of references to quotations, submissions, and other information provided by the parties, refer to “Notes for readers” in the Appendices.)

221 Operation Loft file LT 137.

222 Operation Loft file LT 137.

223 New Zealand Police, Submissions in response to draft report, 20 June 2006, p. 61.

224 New Zealand Police, Submission (“Comments on seven new extracts (circulated on 8 September 2006), and on proposed interim report regarding police disciplinary system”), 27 October 2006, p. 10.

225 Operation Loft file LT 93.

The allegation in this case was made against one of the officers who was transporting the complainant to the police station and while the complainant was being transported. No mention of the complaint was made to the staff who processed the complainant at the police station. The complainant did not actually make the complaint until eight weeks later when she rang the station. She then failed to keep her appointments to be interviewed. The police attributed this failure to the fact that there was a warrant for her arrest.²²⁶

Complaints against associates of the police

3.32 The vast majority of complaints against associates of the police were also appropriately taken. However, I did receive evidence from one submitter (Submitter A) that the police had failed to take her complaint of rape when she initially approached the police in 1982 or 1983. Instead of taking the complaint, the police officer brought the alleged offender into the same room to discuss the allegations with her.²²⁷ (The police later agreed that this was extremely insensitive.²²⁸) I note that the complainant received a police apology when her complaint was reinvestigated in the mid-1990s. The circumstances of this case are set out more fully in paragraphs 3.123 to 3.129.

Areas to be addressed

3.33 The evidence presented before this Commission illustrates the willingness of the police in the vast majority of cases to accept and investigate sexual assault complaints against police members or associates of the police, and where appropriate, to prosecute the alleged offender. However, the evidence also showed, understandably perhaps, that some complainants may perceive that the police will not believe or will not investigate a complaint of sexual offending by a police member or associate of the police. Indeed, in one case that was what a complainant said she was told when she went to the station to lay a complaint against an officer.²²⁹

3.34 Although the police rightly point out that it is not possible to overcome the reticence of all potential complainants,²³⁰ I believe it is important to address this perception as far as possible.

3.35 It is absolutely critical for the prospects of successful prosecution of offending such as rape that the complaint is received as soon as possible after the offence is committed.

3.36 The police must take active steps to facilitate victims coming forward, either in person at the police station or by telephone, and especially when an alleged offender is a member of the police. As discussed in paragraphs 2.137 to 2.139, there is also a need for greater effort in educating the public about the complaints process. It is important that members of the public are aware that there are processes in place to enable them to complain about a member of the police and that these processes will ensure that their complaint is investigated fairly and impartially.

226 Operation Loft file LT 93.

227 Operation Loft file LT 69.

228 New Zealand Police, Submissions in response to draft report, 20 June 2006, p. 61.

229 Operation Loft file LT 217. Despite extensive inquiries the police were unable to identify the officer alleged to have made this statement and do not accept that it is necessarily true.

230 New Zealand Police, Submissions in response to draft report, 20 June 2006, p. 28.

- 3.37 Outside organisations such as Doctors for Sexual Abuse Care (DSAC) or Rape Crisis can also provide support and encouragement to complainants and help clarify any concerns that the police do not believe or investigate complaints against members or associates of the police.
- 3.38 This issue also demonstrated to me the importance of ensuring that there is wide public awareness of the existence and functions of the PCA, and that the PCA is easily accessible to complainants throughout New Zealand.

APPOINTING AN INVESTIGATING OFFICER

- 3.39 Evidence provided to the Commission demonstrated strong awareness of the need to appoint a suitably qualified officer to investigate a complaint of sexual assault against a police officer or police associate, although a limited application of the Adult Sexual Assault Investigation Policy (ASAI Policy) requiring a trained investigator. The key issue in many cases is how best to ensure that the investigating officer has the necessary independence from the person complained against (and other parties), as well as the necessary skill and experience.
- 3.40 “Independence” is a broad concept, but I use it here in the sense that a police investigator must at all times act objectively and impartially towards the complainant, the person complained against, and other persons; and that there should be no room for any suggestion that an association of some kind between an investigator and any other person has influenced the conduct or outcome of an inquiry.

Importance of independence

- 3.41 It is well recognised in the conduct of public affairs, especially in a small country like New Zealand, that a public official’s personal circumstances, knowledge, and associations will inevitably from time to time conflict with the performance of his or her official duties. Not all such “conflicts of interest” require the official to withdraw from the particular matter at hand. Some conflicts are of such a minor nature that they can be managed adequately through disclosure and the application of a professional attitude. The ability to identify and deal with low-level forms of conflict is an integral element of an official’s “independence of mind”, and every public organisation is expected to have ethical guidelines and management systems to support that. But at the other extreme, it is accepted that other forms of conflict of interest – such as those of a financial nature or those involving close relationships with affected persons – require an official to withdraw and play no part in the matter at hand.
- 3.42 Drawing a line between the two extremes is neither possible nor desirable. There are many types of behaviour or association that may give rise to a conflict of interest. It is a matter of judgment, having regard to the particular circumstances, as to whether the interest needs only to be disclosed by the official and managed by the organisation concerned or whether it disqualifies the official from any involvement.
- 3.43 However, independence does not only involve the application of legal and ethical standards. It can also involve matters of perception. Different perspectives cause different perceptions, and what an official or an organisation regards as an acceptable level of independence may differ from what the public, the news media, or politicians perceive as such. External

perceptions may not always be reasonably held, but the fact that they are held, and/or that the official or organisation does not acknowledge them, can ultimately result in a loss of credibility and damage to reputation. This is another concern that was raised with me.

Importance of independence when investigating complaints involving police and associates

- 3.44 Independence as described above is of course fundamental to all police investigations, but it is an especially important consideration in the planning and investigation of complaints against police officers. Not only are the risks to an independent investigation more visible and acute because of its necessarily “internal” nature, but also the possibility of adverse perceptions from outside the organisation is inherently greater. The fact that the investigation may be overseen or reviewed by the Police Complaints Authority limits the risk of adverse perception but, as my inquiry shows, it does not exclude it altogether.
- 3.45 Independence is also especially important in cases involving allegations of sexual misconduct by police officers, or sexual offending by officers or police associates. In her evidence, Dr Jan Jordan from the Institute of Criminology at Victoria University of Wellington discussed the key role of the investigating officer in the investigation of sexual assault complaints generally:
- the police occupy such a pivotal role as gatekeepers to the criminal justice system, a structural position that currently gives them massive discretion regarding case investigation.²³¹
- 3.46 It is of paramount importance that the officer investigating a complaint against either another police officer or a police associate is independent, and perceived to be independent, of the officer or associate he or she is investigating. Independence is particularly at risk if the investigator was personally involved in the matter that is the subject of the complaint, or has a relationship or association (past or present) with the subject of the complaint, the complainant, or some other person such as a key witness. Conflicts of interest of these kinds inevitably give scope for a perception that the investigator does not have the necessary independence for the investigation. A lack of independence can also compromise the investigator’s objectivity in actuality – for example, by making the investigator more susceptible to improper pressure or favouritism (implicit or explicit) from the police officer who is associated with the subject of the investigation, and/or the officer’s colleagues or family.
- 3.47 Ultimately, independence is central to the reputation of the police and the public’s trust in the police to make impartial decisions. A decision that is, or appears to be, influenced by other interests damages the reputation of both the individual officer and the organisation as a whole.
- 3.48 Independence risks can be addressed to some extent by ensuring that the investigator has sufficient experience and seniority to manage perception issues²³² and sufficient objectivity *in fact* to ensure the investigation is carried out in a fair and proper manner. But simply

231 Dr Jan Jordan, Senior Lecturer, Institute of Criminology, Victoria University of Wellington, Brief of evidence, 3 November 2005, p. 13.

232 Detective Superintendent Malcolm Burgess, Transcript of hearing, 11 December 2006, p. 6.

“managing” the conflict in this way is not the right approach if the relevant legal and ethical standards dictate withdrawal from the matter altogether. Indeed in some cases the perception of a conflict may cause such difficulties that it just makes good sense for the officer to stand aside, irrespective of whether there is a legal or ethical responsibility to do so. These are matters that ought to be covered by policies and procedures so as to ensure sound and principled decision-making and oversight (not to mention knowledge of the relevant legal and ethical standards) by senior officers.

Standards and procedures relating to independence

Complaints involving police officers

3.49 The review of standards and procedures in Chapter 2 of this report shows an evolving understanding since 1979 of the need to consider issues of independence, especially when appointing investigators of complaints involving police officers, and to ensure that all complaints are investigated fairly and appropriately. In particular,

- The requirement that a member not investigate a complaint in which he or she was personally involved (except in a case of a minor administrative nature), nor be involved in reviewing his or her own decisions, has been a common feature of general instructions at least since 1980. It is now enshrined in general instruction IA110.
- A 1984 directive gave formal recognition to the principle that police officers who are the subject of complaints of criminal offending should be treated no more (or less) stringently than members of the general public with regard to arrest or charge. The directive also stated that an offence that may be trivial when committed by a member of the public may be serious if committed by an officer, and that charging decisions should be made by the district commander.²³³
- Since 1991, general instructions have detailed the process that police must follow for complaints of any nature against police officers (whether involving alleged misconduct or criminal offending). The instructions entrust the district commander with responsibility for appointing an officer of appropriate rank to investigate a complaint involving a police officer, and to recognise the need for the investigator to have sufficient independence. General instruction IA108 now requires the district commander to give “consideration, in appropriate circumstances” to appointing an investigator from outside the section or the district as the particular case may require.
- In November 2005, in response to the Commission of Inquiry into Police Conduct, Police Commissioner Robert Robinson directed district commanders to consult the National Manager: Professional Standards about the appointment of complaint investigators, to determine whether the investigator should be appointed from outside the district concerned. The directive applies in all cases except those addressed by the District Complaint Resolution process.²³⁴ In evidence to the Commission, Police Commissioner Robinson said the objective of the requirement was to achieve consistency across districts and ensure the future impartiality of investigators.²³⁵

233 New Zealand Police, Headquarters circular, “Criminal and Disciplinary Proceedings Against Members of the Police”, June 1984.

234 New Zealand Police, Memorandum from Police Commissioner Robinson to Office of the Commissioner executive and district commanders, 24 November 2005.

235 Police Commissioner Robert Robinson, Transcript of hearing, 28 November 2005, pp. 18–19.

- General instruction IA101 states that New Zealand Police’s reputation is its most critical asset, that setting high professional standards for themselves will enable police to promote and defend that reputation, and that the primary objective of any internal investigation must be to leave a complainant and a member under investigation each in the belief that he or she has been treated fairly.

Complaints involving police associates

- 3.50 General instructions IA101 to IA132 apply only to the investigation of complaints involving police officers. But independent investigation is also important in cases involving police associates. Indeed it is arguably more so because cases involving associates will not be subject to the independent scrutiny the PCA undertakes in respect of complaints involving police officers. The term “police associate” is not always easy to define in practice, and requires a case-by-case consideration. I note that there are no formal police standards, procedures, and policies regarding the identification of associations between police officers and suspects, or for the conduct of the resulting investigations. Instead, the investigation of allegations of criminal offending, including allegations of sexual assault, by police associates follows the same process as any investigation of sexual offending.
- 3.51 The police acknowledged that an association between a suspect and police may require special steps to be taken to ensure that the investigation is (and is seen to be) fair and objective,²³⁶ but submitted that the issue is properly governed by general provisions involving the avoidance of conflicts of interest, and that flexibility is important to enable potential conflicts to be resolved on a case-by-case basis.²³⁷

Summary of the applicable standards

- 3.52 The current applicable standards and practices can perhaps be summarised in the following five statements of principle:
- Complaints involving police officers or police associates should be investigated in the same manner and to the same standard (having regard to their degree of seriousness) as those involving ordinary members of the public.
 - The fact that an allegation involves a police officer, rather than an ordinary member of the public, is relevant to its seriousness and the consequent degree of independence and rigour required in an investigation.
 - Independence, although fundamental to all investigations, needs special consideration in any investigation of a police officer or a police associate because of risks such as conflicts of interest and openness to improper influence or favouritism.
 - A perception of a lack of independence can be just as damaging to the integrity of an investigation involving a police officer or an associate, and hence the credibility of the police, as an actual lack of independence.
 - Ensuring the independence of investigations requires experience and judgment (especially when placed alongside the needs for prompt and efficient investigation of a complaint) and decision-making at a high level of seniority.

236 Detective Superintendent Malcolm Burgess, Brief of evidence, 11 December 2006, p. 3.

237 New Zealand Police, Submissions regarding police associates, 4 September 2006, p. 2.

Current practice when appointing an investigator of a complaint against a police officer

- 3.53 The issue of independence most commonly arises at the time an officer is appointed to investigate a complaint. Superintendent Wildon told me that historically the police have taken the view that it is necessary to bring in an investigator from another part of the country only in unusual or particularly serious cases, but that in recent times greater care has been taken in selecting investigators to ensure they have no personal or professional relationship with the member under investigation. He said that although Professional Standards is tasked with overseeing and reviewing the handling and outcome of all complaints against serving police officers, most inquiries are conducted within the district where the complaint arose. Districts are responsible for organising the inquiry and for making preliminary recommendations as to how complaints should be resolved. Districts maintain their own complaints registers, and most have dedicated complaints managers.²³⁸
- 3.54 Superintendent Wildon explained to me the involvement which Professional Standards had in the appointment of a complaint investigator before Police Commissioner Robinson's directive of November 2005, noted above, that district commanders consult the National Manager: Professional Standards (in all but non-serious cases) about the appointment of complaint investigators. When a complaint is made to a police district, the district commander must notify Professional Standards as promptly as possible so that the complaint can be logged and the PCA notified. When a complaint is initially directed to the PCA and is to be referred to the police for investigation on its behalf, the PCA refers the matter to Professional Standards. In either of these situations, practice before November 2005 would almost always involve Professional Standards referring the matter back to the relevant district for investigation, unless it considered the investigation clearly needed to be led by an investigator from outside the relevant district. In those cases, it would forward the complaint to an appropriate external investigator directly. This situation would arise, for example, in cases where senior staff in the relevant district have a conflict of interest and should not take any further part in the resolution of the complaint. It may also arise in particularly serious cases, or cases where the alleged offender was of a senior rank.²³⁹
- 3.55 In his brief of evidence, prepared in November 2005, Superintendent Wildon said that his office had not until that time had a role in the appointment of the lead investigator for a complaint, even though from time to time a district would seek advice. He considered that position would change as a result of the November 2005 directive.²⁴⁰ This contrasted with his oral evidence to the Commission, in which he said that the directive was not the result of ineffective consultation about the appointment of investigators but that

I think there is good consultation with districts. It's very common for us to speak about the appointment of an investigator and it's happened for some time.²⁴¹

238 Superintendent Stuart Wildon, New Zealand Police National Manager: Professional Standards, Brief of evidence, 21 November 2005, pp. 2–5.

239 Superintendent Stuart Wildon, New Zealand Police National Manager: Professional Standards, Brief of evidence, 21 November 2005, pp. 3–4.

240 Superintendent Stuart Wildon, New Zealand Police National Manager: Professional Standards, Brief of evidence, 21 November 2005, p. 5.

241 Superintendent Stuart Wildon, New Zealand Police National Manager: Professional Standards, Transcript of hearing, 21 November 2005, p. 41.

3.56 In further evidence to the Commission in December 2006, Detective Superintendent Burgess also described the directive as having formalised established practice. Speaking of practice since the directive had taken effect, he said that under the consultation requirement district commanders now discuss serious matters with the Professional Standards national manager; and, for example, as a result of such consultations, he had personally maintained oversight of staff from one district who had travelled to other districts to conduct investigations at the request of those districts' commanders.²⁴²

Relevant factors in making appointments

3.57 As noted in paragraph 3.49, general instruction IA108 requires the district commander to give consideration to the appointment of an investigating officer from outside the station, town, or district where the incident occurred and/or where the alleged offender worked. However, a range of other factors may also need to be considered in this decision. Detective Superintendent Burgess summarised the factors in his evidence as follows:

The appointment of investigators will take into account the seriousness of the allegation, how recently the alleged offence has occurred and the urgency with which any inquiry should be commenced. This process will also take account of the amount of information known about the allegation, the availability of independent investigators and the degree of independence required by the circumstances.²⁴³

3.58 The urgency of the inquiry may also affect the timing of the decision on an appropriate investigator. Detective Superintendent Burgess explained that after the initial contact with the complainant it is usual, particularly in urgent situations, for a preliminary interview to be arranged as part of a "holding action" after receipt of the initial complaint, and this may on some occasions be conducted by the officer to whom the complaint is first made.²⁴⁴

3.59 However, using investigators from another district is expensive, and because of the reduction in the number of districts (and the consequent increase in their size), there are many cases where the district commander can appoint a suitably senior officer from a different centre within the same district who can conduct the inquiry without any suggestion of bias. Superintendent Wildon also said that the evolution of the complaint investigation system has also emphasised the various levels of review of inquiry files and the independence and seniority of those who review the inquiry and the proposed resolution.²⁴⁵

3.60 Detective Superintendent Burgess told me that, if a matter is to be investigated inside the district instead of by an external appointment, it is acceptable for the complaint to be investigated by a senior officer such as the district Professional Services manager, an area commander, or a crime manager.²⁴⁶ However, I also heard evidence from three district commanders, who explained how they decide whom to appoint to undertake an investigation into a complaint against a police officer.

242 Detective Superintendent Malcolm Burgess, Transcript of hearing, 11 December 2006, p. 8.

243 Detective Superintendent Malcolm Burgess, Brief of evidence, 11 December 2006, p. 4.

244 Detective Superintendent Malcolm Burgess, Brief of evidence, 11 December 2006, p. 5.

245 Superintendent Stuart Wildon, New Zealand Police National Manager: Professional Standards, Brief of evidence, 21 November 2005, pp. 3–5.

246 Detective Superintendent Malcolm Burgess, Transcript of hearing, 11 December 2006, p. 9.

- 3.61 Superintendent Grant Nicholls, District Commander, Eastern Police District, informed me that he expects most of the less serious complaints, concerning such things as the attitude and language of police members, to be investigated by the immediate line supervisor of the member complained of and for the supervisor to take appropriate action to monitor future performance. In more serious cases, Superintendent Nicholls will discuss with the area commander and/or the district crime service manager about the appropriate investigator to conduct the inquiry. In most instances the investigator appointed will be a non-commissioned officer. Where the allegation is of serious misconduct or criminal behaviour, close consideration is given to the appointment of an investigator from outside the area, or for the most serious matters, outside the district.²⁴⁷
- 3.62 Superintendent Mark Lammas, District Commander, Central Police District, informed me that the appropriate choice of investigating officer will vary depending on the circumstances of the case. Most complaints can be resolved within the area where they arise, and in those cases he delegates the appointment of the investigating officer to the area commander. Indeed, in cases that do not fall into the most serious category it is not unusual for an investigating officer to have already been assigned by the area commander. In that situation, Superintendent Lammas will review the appointment but intervene only if he considers the area commander's choice to be inappropriate; for example, if the investigator does not have the necessary skill level for the investigation, or is too close to one of the participants to be seen to be independent. Superintendent Lammas takes the view that the necessary degree of distance between the investigator and the alleged offender increases with the seriousness of the allegations. He noted that the other advantage of having area commanders take responsibility for appointing investigators where the complaint can be resolved locally is that they are more aware of which investigators are available (as affected by matters such as leave or workload).²⁴⁸
- 3.63 Where Superintendent Lammas believes that a complaint is too serious to be resolved locally, he will direct the choice of investigator, either by name or by rank and location. Superintendent Lammas told me that it is not difficult in a district the size of Central to find, where necessary, a senior investigator from another centre who has no working relationship with any of the people involved in a particular inquiry.²⁴⁹
- 3.64 The situation is slightly different in Auckland City Police District where an independent Professional Standards section (previously known as a District Complaints section) has been operating since the early 1980s.²⁵⁰ Under this system, the manager of Auckland Professional Standards receives all complaints made about any member of the Auckland police, assesses them, and assigns them to a dedicated inspector to either undertake or oversee the investigation.²⁵¹ Superintendent Gavin Jones, Acting District Commander, Auckland City Police District, emphasised the importance of safeguarding the independence of the investigation:

247 Superintendent Grant Nicholls, District Commander, Eastern, Brief of evidence, 14 November 2005, pp. 3–4.

248 Superintendent Mark Lammas, District Commander, Central, Brief of evidence, 14 November 2005, pp. 2–3.

249 Superintendent Mark Lammas, District Commander, Central, Brief of evidence, 14 November 2005, p. 3.

250 Superintendent Gavin Jones, Acting District Commander, Auckland City, Brief of evidence, 17 November 2005, p. 3.

251 Superintendent Gavin Jones, Acting District Commander, Auckland City, Brief of evidence, 17 November 2005, pp. 3 and 4.

Where allegations are serious, consideration is always given to arranging for the investigation to be undertaken by someone who is independent of the Police member complained about. The reasons for this are two-fold. Firstly, to ensure that there are no conflicts of interest and secondly to ensure that the integrity of the investigation is maintained. ...

Ensuring independence in an investigation is not a particular problem in Auckland because of the size of the region. It is reasonably easy to identify a competent investigator who does not know the individual complained about.²⁵²

- 3.65 I believe there are many positive examples of practice from these and other districts. For example, it is apparent that some police districts attempt to ensure that the complainant is happy with the investigating officer appointed. An example is offered in a letter from the investigating officer in the Wellington Police District to a complainant:

The Police Complaints Authority requires that you are satisfied with the investigator appointed to carry out the enquiry. If you have any problems with me being appointed to investigate your matter, could you please let me know when you contact me to make the appointment?²⁵³

- 3.66 Superintendent Lammas informed me that he endeavours to accommodate a complainant's wishes if he or she expresses a particular desire for an investigator from another part of the district. In most cases the investigating officer discusses his or her appointment with the complainant, and Superintendent Lammas receives written confirmation, on a standard form, signed by the investigating officer, either of the complainant's assent to that appointment or of any reasons why there is an objection. If an objection is lodged he considers that, and on most occasions will arrange for another investigator to be appointed.²⁵⁴

- 3.67 The impression from all of this evidence is that practice varies between districts in terms of how an investigator is appointed and by whom, and what degree of independence from the member under investigation is needed. A similar picture emerged from my review of police files. In many instances files did not indicate where the investigating officer was based and, consequently, it was difficult for me to ascertain if the investigating officer could be considered sufficiently independent of the alleged offender. However, in those cases where proximity could be observed there seems to have been considerable variation of practice as to the extent to which independence issues were considered, the types of factors that were considered, and when a file was assigned to an investigating officer from outside the station, town, or district where the incident occurred and/or where the alleged offender worked. The following examples illustrate the point.

252 Superintendent Gavin Jones, Acting District Commander, Auckland City, Brief of evidence, 17 November 2005, p. 4.

253 Operation Loft file LT 172.

254 Superintendent Mark Lammas, District Commander, Central, Brief of evidence, 15 November 2005, p. 3.

Evidence from the submitters' cases

The appointment of an investigating officer in Submitter H's case

- 3.68 In 2001 Submitter H reported to the police that she believed her partner, a police officer, had indecently assaulted a child. She expressed a number of concerns to the Commission about the subsequent police investigation. These included that, contrary to the recommendation of the Child Abuse Unit that had carried out the initial investigation, the interview was conducted by a detective stationed at the same police station as the alleged offender. The submitter considered the working relationships between the investigators and the alleged offender created a barrier to an objective investigation. She also felt that her complaint was neither taken seriously nor investigated thoroughly, and that she and her family had little or no assistance from the local police when the alleged offender continued to harass them for some time afterwards.
- 3.69 Submitter H's complaint was taken by the local Child Abuse Unit. The detective inspector responsible for investigating the case told the Commission that he considered the allegation to be extremely serious and that it needed to be thoroughly investigated within as short a time frame as possible. Officers from the Child Abuse Unit conducted the preliminary investigation, including taking statements from Submitter H and others, and arranging a medical examination of the child.
- 3.70 Having completed this preliminary investigation, one of the officers responsible made a "strong recommendation" to the detective inspector that the interview of the alleged offender should be conducted by someone from outside the district, or at the very least by a senior police officer who was not from the area where the alleged offender worked. He recorded that Submitter H was a "convincing witness" and that the explanation the alleged offender had given another witness about his actions was "unlikely".²⁵⁵
- 3.71 The detective inspector discussed this recommendation with his superior. In his covering report to his superior he had recorded his view that, at that stage, there would not be sufficient evidence to warrant prosecution unless the alleged offender made an admission of criminal sexual activity. That underlined the importance of the interview and any statement obtained.
- 3.72 Despite this, the detective inspector and his superior decided that it was not necessary to bring in someone (who would have to be of the rank of detective senior sergeant or above) from outside the district. They gave the job to a detective senior sergeant in the station where the subject worked (however the police told me that the subject was primarily based at a community policing office and was only nominally attached to the station). Because that officer had only recently taken up his position in the station, they were satisfied that there was no conflict of interest and that the interview would be conducted "professionally and without prejudice" (that is, impartially).
- 3.73 The police said in their submissions on this case that the selection of an interviewing officer for an internal investigation will always be a matter of judgment for the senior officers charged with oversight of the inquiry. However, they accepted that, with hindsight and

255 Operation Loft file LT 68.

despite the interview being an “unremarkable one about which there can be no suggestion of bias”, it was “tempting to disagree” with the decision not to engage an interviewer from outside the district. Although it would, in the police’s view, have made no difference to the outcome, the choice of a different investigator “would have avoided the allegation that [the interviewing officer] somehow contrived to protect [the alleged offender] because they were nominally attached to the same station”.²⁵⁶

Other examples from the Operation Loft files

- 3.74 In some instances the files very clearly show that the independence issue was addressed. For example, in a 2002 case involving an allegation of indecent assault, the alleged offender was based (and the incident occurred) in one Bay of Plenty town, and it was considered inappropriate to appoint an investigating officer from that town. An investigating officer was appointed from another Bay of Plenty town.²⁵⁷ In another (1997) case, involving allegations of disgraceful conduct in a South Island city, an investigating officer was appointed from a North Island city.²⁵⁸ In a 1993 case involving an allegation of indecent assault, the PCA noted, “This was a serious complaint and I am glad to see that it was assigned to a senior officer from outside the District to investigate.”²⁵⁹
- 3.75 In other files it appears that the investigator was a local officer, who knew the alleged offender and/or witnesses. This was the position in a 1983 case where the complaint was made by the alleged offender’s wife, from whom he had become separated, and involved allegations of indecent assault of their children. In his report the investigator stated that earlier in the year, while in the Police Club, the alleged offender had outlined some of his domestic problems to him.²⁶⁰
- 3.76 There is a danger that confidentiality may be compromised if a complaint is investigated locally. In one of the cases referred to in paragraph 3.29 above, dating from 1995, the complaint was referred back to the station at which the alleged offender was based after the complainant first attempted to lodge the complaint at a different station. A lack of confidentiality within the station meant that soon after the complaint had been received and a preliminary interview with the complainant had been arranged, the alleged offender learned informally from a colleague that a complaint had been made against him. This resulted in the alleged offender approaching the complainant and attempting to dissuade her from proceeding with the complaint.²⁶¹
- 3.77 Some of the cases involved the investigating officer also being the supervisor of the alleged offender. In a 1998 file involving allegations of indecent assault, the area controller wrote a letter to a small town station formally appointing the supervisor of the alleged offender as the investigating officer:

The complainant in this matter takes issue with the manner in which she was dealt with by [name] of your staff on [date] 1998.

256 New Zealand Police, Submissions, 11 July 2005, pp. 6–7.

257 Operation Loft file LT 73.

258 Operation Loft file LT 152.

259 Operation Loft file LT 122.

260 Operation Loft file LT 135.

261 Operation Loft file LT 163.

You are hereby appointed the Investigating Officer in relation to this complaint and I draw your attention to General Instructions IA114(4) & (6)(a) which relates to visiting the complainant at the commencement of and completion of the investigation.²⁶²

3.78 In another 1998 file involving allegations of indecent assault made by a member of the public whom the officer concerned was “cultivating” as a police informant, the sub-area manager sought an outside area investigator but the district manager directed him to appoint an investigator from within his own resources.²⁶³ It is not clear from the file what the reasons for this were. But surprisingly, a local investigator was appointed who appears to have had management responsibility for the alleged offender and also had had some peripheral involvement in the case in that capacity. The report to the PCA from Internal Affairs states,

[The alleged offender had] sought guidance from [the investigating officer] on general matters as it relates to cultivating and operating informants, however he should have more fully briefed the [investigating officer] on his dealings with the complainant. The fact that [the investigating officer] had some involvement does not disqualify him from the internal enquiry. His involvement was in the giving of generic advice as I have said, and he was unaware of the specific details and the complainant’s identity.²⁶⁴

It emerged in evidence that some of the investigating officer’s guidance had been given after he had been appointed to investigate the complaint.²⁶⁵ This could be seen as a breach of the spirit if not the letter of general instruction IA110, even if the guidance was peripheral to the subject matter of the complaint itself. Counsel assisting discussed this point with Detective Superintendent Burgess, who agreed that the officer ought not to have discussed the matter with the alleged offender in his supervisory capacity after he had been appointed to investigate the complaint.²⁶⁶

3.79 In a 2000 case concerning an allegation of indecent assault, the supervising officer of the alleged offender was conscious that it was inadvisable that he should have any role in the investigation. In a report he noted,

I am aware that [the complainant] has made a complaint to the Police regarding the actions of [the alleged offender] recently, and as he works under my supervision I have taken this matter no further [than] recording the brief facts on the attached job sheet.²⁶⁷

However, he was subsequently appointed as the investigating officer, conducted all interviews, and took all statements relating to the allegations, including that of the alleged offender.²⁶⁸ The police accepted that the case raised perception issues that should have been managed, but noted that the investigation was undertaken satisfactorily.²⁶⁹

262 Operation Loft file LT 92.

263 Operation Loft file LT 177.

264 Operation Loft file LT 177.

265 Detective Superintendent Malcolm Burgess, Transcript of hearing, 11 December 2006, p. 25.

266 Detective Superintendent Malcolm Burgess, Transcript of hearing, 11 December 2006, pp. 23–26.

267 Operation Loft file LT 33.

268 The area controller in this case reported that he maintained an overview of the investigation; however, it is not apparent from the file what this amounted to.

269 New Zealand Police, Submissions in response to draft report, 20 June 2006, pp. 46–47.

- 3.80 There is a question about whether it is appropriate in principle for an officer's supervisor to become involved in complaint investigation. Superintendent Nicholls said in his evidence that it is acceptable in minor cases involving such things as the attitude and language of police members, where the immediate line supervisor of the member can take appropriate action to monitor future performance (see paragraph 3.61). I accept that evidence. But involving a supervisor is not appropriate in a serious case that requires formal investigation, not only because the existence of a supervisory relationship would be likely to compromise the investigator's objectivity in the investigation but also because that involvement could compromise his or her ability to take action following the investigation (for example on whether disciplinary action should be taken) or be perceived to do so. As a matter of principle, it seems preferable for the investigatory and supervisory roles to be separated, in all but "minor" complaints.
- 3.81 The PCA's view is that the investigating officer would not usually be the supervisor of the member of police who is the subject of a complaint, except on rare occasions and only with the approval of the complainant.²⁷⁰ I would encourage this practice as good policy.

Practices involving police associates

Current practice

- 3.82 As noted at paragraph 3.50, cases involving associates are investigated in the same way as any other police investigation. Detective Superintendent Burgess said in evidence,

This entails the laying of a complaint, conducting an investigation, assessing whether or not there is evidence to mount a prosecution and if so, conducting a prosecution, though the suspect's association with the Police may require special steps to be taken to ensure that the investigation is (and is seen to be) fair and objective. These measures can only be determined on a case by case basis, having regard, among other things, to the exact nature of the association. For example, if the suspect were a child of a Police officer who worked in another part of the country and who did not know the investigating staff, it is unlikely that any special steps would be required. On the other hand, if the suspect were the child of an officer well known to local CIB staff, it is likely that steps would need to be taken to avoid any perception of partiality; one way of doing this, subject to any investigative steps that needed to be taken immediately, would be to bring in an investigation team from another district.²⁷¹

- 3.83 Some instances of association are immediately recognised without difficulty. However, as the relationship becomes more remote the question is less susceptible to quick and easy answer.

Evidence of past practice

- 3.84 Independence issues arose in a number of the files I reviewed involving allegations against police associates. The case of Submitter A (discussed at paragraphs 3.123 to 3.129) is perhaps the clearest illustration of a failure (which the police fully acknowledged by way

270 Police Complaints Authority, Submission in response to the draft interim report on the PCA, 30 October 2006, p. 5.

271 Detective Superintendent Malcolm Burgess, Brief of evidence, 11 December 2006, pp. 3–4.

of apology to the complainant) to address a conflict of interest involving a police associate. In that case the associate was clearly well known to the officer who received and dealt (inadequately) with the complaint. Another case, from 1991, illustrates the importance of addressing the independence issue. It involved complaints of indecent assault on two boys under the age of 12. The case was locally investigated. It was acknowledged that the alleged offender belonged to a club that involved police members, that he was “a regular drinker in the [town name] Police Club” and “also a close friend of Police officers at [town name]”, and that the file was not well investigated or documented until it was reviewed by the investigator’s supervisor.²⁷²

- 3.85 A 1995 case involved a charge of sexual violation by rape against the son of a police officer, which was locally investigated.²⁷³ Detective Superintendent Burgess said in respect of that decision,

My observation would be that perhaps we weren’t as rigorous in applying the degree of independence in 1995 that we tend to apply now. However, it would be my view that in those particular circumstances that file should have been investigated by someone other than the [local CIB], even in 1995.²⁷⁴

It is positive to note that on receipt of the recommendations by two local officers that there was insufficient evidence to prosecute, a senior officer recognised the conflict of interest and the need for independent legal advice to determine whether to proceed with prosecution. After first requesting further investigation, the legal section recommended that there was “a clear prima facie case which must be placed before the court.”²⁷⁵ A trial occurred six months later and the accused was acquitted.

Commission comment on independence of appointees

- 3.86 The evidence from the files supports Superintendent Wildon’s evidence (see paragraph 3.53) that greater care has been taken in recent times to ensure the independence of the investigating officer. There is no doubt that most decisions about appointing a suitable officer now involve the application of experienced judgment and a sound knowledge, not only of the needs of the investigation but also of the ethical issues involved in identifying and managing conflicts of interest.
- 3.87 Despite that, I was struck by the variety of different practices when appointing an investigating officer and by the frequency of cases where a district commander has chosen not to have a complaint investigated externally because of, first, the additional costs to the district and, secondly, reasons of urgency. I accept these are relevant factors that must be placed alongside the need for a fully independent investigator to be appointed. On the other hand, they intensify the risks that principled decision-making will be sacrificed in the interests of pragmatism and that the appointment will not be perceived as sufficiently independent. Ultimately, this may not serve the interests of police credibility and reputation.

272 Operation Loft file LTA 3.

273 Operation Loft file LTA 42.

274 Detective Superintendent Malcolm Burgess, cross-examined by Mr Kieran Raftery, Transcript of hearing, 29 November 2005, p. 32.

275 Operation Loft file LTA 42.

Making appointments in urgent cases

- 3.88 The impact of urgency on the timing of the appointment of an investigator in a case involving sexual assault deserves some discussion. The case of Submitter D (discussed at paragraphs 3.143 to 3.149) in 1995 is a good illustration of how judgments have been made about this issue. In that case the investigation was undertaken by a member from the station from which the alleged offender had just transferred, and the interview was conducted by the acting head of the CIB. The investigation was undertaken by a member of police from the station from which the alleged offender had just transferred, and the alleged offender was immediately interviewed by the acting head of the CIB. I was informed that the police had to make a speedy choice between interviewing the alleged offender immediately, which meant using a senior officer, or involving someone from outside the district, which would have resulted in a delay of several hours. The latter option risked the alleged offender leaving for another city (with possible loss of forensic evidence) or learning the detail of the evidence and tailoring a story to fit. As a result the district commander chose to have the alleged offender interviewed immediately. I was informed that the investigating officer had not worked with the alleged offender, had never had a relationship with him outside work, and, because of the officer's transfer away from the station, did not need to be concerned about a future working relationship.
- 3.89 In another case, involving an allegation in 1995 of sexual violation by rape, the area controller acknowledged "earlier directives that an officer from outside the District should be called in to investigate in serious criminal charges like this",²⁷⁶ but he explained that speed of action was essential which was why he appointed a local investigator.
- 3.90 But speedy action will not always be paramount. Though no doubt certain aspects of an investigation require prompt action (for example, scene and medical examinations when the complaint is of a recent nature, and a preliminary interview), other aspects will not necessarily be prejudiced by a short delay. Indeed, Dr Jordan told me that some delay in the taking of the formal statement from the complainant might be preferable. In Dr Jordan's view, better evidence may be obtained as a result of some delay, and this would also allow time for a specialist interviewer to be used, which produces a better result all round.²⁷⁷ The ASAI Policy also includes reference to the possibility of delay to accommodate the needs of the victim and to allow for a trained investigator to become available.
- 3.91 Moreover there will be a point, after the completion of necessary preliminary inquiries and "holding actions", where the choice of investigator for the formal stages of the investigation can be put to the district commander for consideration (in consultation with the Professional Standards national manager) without the need for urgency to get in the way of a principled decision.

Guidance on police associates

- 3.92 I am also concerned about the lack of guidance on conflicts of interest in respect of police associates. Conflicts of interest almost invariably involve differing circumstances

²⁷⁶ Operation Loft file LT 56.

²⁷⁷ Dr Jan Jordan, Senior Lecturer, Institute of Criminology, Victoria University of Wellington, Transcript of hearing, 3 November 2005, pp. 11–12.

and relationships, and it is impossible to attempt to define all such circumstances and relationships at the outset. I agree with the police that each case needs to be considered on its merits and that it is not possible to produce a precise definition of an “associate”.²⁷⁸ But the judgment as to whether the chosen investigator has, and is perceived to have, the necessary degree of independence from the person under investigation is just as difficult, if not more so, than in cases involving complaints against police officers.

3.93 I appreciate the evidence given by Detective Superintendent Burgess about the special steps that may be taken to ensure that an investigation involving a police associate is (and is seen to be) fair and objective and the likelihood that independence issues arising in investigations into associates will be picked up in the review of the file by a senior police officer, for example the district complaints manager. However, after considering the police evidence and submissions on this point I do not agree these procedures are sufficient. In the absence of formal police standards, procedures, and policies regarding the conduct of an investigation into an allegation of sexual assault, or indeed any offending, by a police associate, investigating officers are having to exercise their judgment in a vacuum about important matters such as

- identifying when the subject of an allegation is a police associate
- recognising when there is a potential not only for bias but also for the perception of bias in an investigation of a police associate
- deciding how to deal with this, including matters such as the appointment of an investigating officer and the briefing of the victim
- communicating with police officers, as appropriate, regarding the investigation, to ensure that the integrity of the investigation is preserved
- deciding whether to inform superior officers of the nature of the investigation and any measures being taken to protect its integrity.

3.94 The examples I saw involved investigations undertaken by police officers stationed within the same area as the alleged offender. It is my view that the more recent cases involving associates have been well investigated. But I am concerned about the number of cases in which the police do not appear to have taken adequate steps to manage conflicts of interest, or perceived conflicts of interest involving associates, and ensure that the investigations are undertaken by officers who are sufficiently removed from the alleged offender, and who are seen by the complainant and the general public to be sufficiently removed from the alleged offender.

3.95 Counsel assisting explored this issue with Detective Superintendent Burgess, who acknowledged,

perhaps the perception issue is not triggered quite as noticeably when it is an associate as it is when the subject of the investigation is a Police Officer and potentially I guess because the investigation of a Police Officer automatically comes within the jurisdiction of the PCA with that independent oversight, whereas the other matters will find their way through the courts.²⁷⁹

²⁷⁸ New Zealand Police, Submission in response to draft report, 4 September 2006, p. 2. See also comment on the term “police associates” in “Use of terms” in Chapter 1.

²⁷⁹ Detective Superintendent Malcolm Burgess, Transcript of hearing, 29 November 2005, p. 33.

- 3.96 As mentioned earlier, the lack of independent oversight by the PCA of a criminal investigation involving a police associate would, in my opinion, suggest that even greater care needs to be taken where the alleged offender is an associate of the police to ensure that there is no perception of partiality. Although I am not suggesting that these matters always need to be sent outside the district in which the complaint was made, it is important that they are investigated by officers who are independent, and seen to be independent.

Areas to be addressed

- 3.97 It is important that the issue of independence is carefully managed – both in the appointment of an investigating officer and throughout the ensuing investigation – and that decisions are made in a transparent and principled way that makes them capable of withstanding external scrutiny.
- 3.98 The evidence generally shows thorough and impartial investigative practice, despite the investigator in many cases not being from outside the district where the police officer was stationed or the associate was based. It is also positive to note that in many of the cases I considered there clearly was an awareness of the need for an independent investigating officer (and one who is perceived to be independent). This was reinforced by the evidence I heard from the three district commanders and other senior officers.
- 3.99 The evidence presented to me from the three district commanders on their approaches to the appointment of an investigating officer indicated a range of practices, and overall was very positive. It was also pleasing to hear from Detective Superintendent Burgess in November 2006 that the directive of November 2005 from the Commissioner of Police is resulting in a good level of consultation with, and oversight by, Professional Standards. But I am concerned about the number of earlier examples from the files showing less than ideal consideration of the independence issue. I am also concerned about the ongoing risk of pragmatic rather than principled decision-making and the consequent potential for perceptions that investigating officers are not sufficiently removed from the alleged offender to meet the necessary standards of independence. These conclusions together have brought me to the view that the independence of investigations into complaints against police officers and police associates would benefit from a new general policy, to include guidelines and procedures, on independence and identifying and managing conflicts of interest in respect of complaints involving police officers and police associates. I believe there are three reasons why a policy is desirable:
- It would improve the quality of decision-making and ensure that matters of principle are properly considered and weighed against matters of practicality. Currently, the difficult judgments that are revealed by the discussion of the cases are exercised in something of a policy vacuum. This is especially the case for complaints involving police associates, but decisions in cases involving police officers would also be better served if comprehensive guidance were available. It is a widely accepted principle of public law that policy guidance and procedural direction enhance the exercise of discretionary judgment. In my experience, most organisations have comprehensive guidance about such things, and I think the police would obtain similar benefit from them.
 - It would reduce the risk of accusations of bias and improper influence, and/or allegations of inadequate investigation. If the complainant, the officer (or police associate)

complained against, or any officer who has a personal relationship or association with the person who is the subject of the complaint, can see that the investigating officer has been appointed in accordance with a clear set of policy guidelines, and has been consulted in the course of that process, he or she is much less likely to harbour concerns about the independence of the investigation.

- More generally, it would enhance public confidence in the system by which the police investigate complaints involving police officers and associates. The more transparent and principled a decision-making process is, the more easily it can be defended if the need arises. This ultimately preserves the credibility of the decision-making body.

- 3.100 I envisage that a policy designed to safeguard independence in respect of complaints of sexual offending involving police officers or police associates would encourage a consistent practice of identifying any independence issues at the outset of an investigation of a complaint involving a police officer or a police associate, with the aim of ensuring a high degree of transparency and national consistency. This would enhance the benefits to be achieved from Police Commissioner Robinson's directive of November 2005 that district commanders consult with the Professional Standards national manager as to the appointment of investigating officers in serious complaints. In the case of complaints against police officers, the guidelines and procedures forming part of the policy would not replace the existing requirements of general instructions IA100 to IA132, but would flesh them out with the particular aim of assisting the exercise of judgment, especially when issues of cost and investigatory efficiency are involved. It may be preferable to have a separate set of guidelines and procedures in respect of police associates.
- 3.101 A unified policy would have the further advantage of bringing together some of the positive initiatives found in the districts and applying them nationally. For example, the practice of ensuring that the complainant has no reasonable objection to the officer appointed to investigate his or her complaint was a local initiative and it is not clear whether this has been adopted throughout the country. I believe that this is a useful initiative that would empower complainants and help to prevent perceptions that the investigation of their complaint and the conclusions reached were not impartial.
- 3.102 I therefore recommend that a policy be prepared that, amongst other things, identifies the essential requirements of independence in the investigation of complaints involving police officers or police associates, identifies the range of factors that could give rise to a conflict of interest, and provides guidelines and procedures to assist police officers (including supervisors, officers potentially conflicted, and investigators) to identify and then adequately manage actual or perceived conflicts of interest. For example, in my experience, it is the practice in some organisations for there to be regular requests to staff to identify whether they have conflicts of interest in respect of particular matters.
- 3.103 I also consider that the national ethics training programme is a useful basis on which to increase understanding within the police of independence issues, including those involving conflicts of interest. I heard evidence from Mr Phillip Weeks, a former police officer, now a non-sworn member, who manages Crime and Safety Training at the Royal New Zealand Police College. Along with another colleague, he helped develop the programme

entitled “Making Ethics Real”.²⁸⁰ Many of the hypothetical ethical dilemmas posed for discussion during the programme involve consideration of issues of conflict of interest. The police submitted that the programme also provides clear guidance on the need to avoid involvement in cases where there is a potential conflict of interest, or where subordinates may have a conflict.²⁸¹

- 3.104 I believe there is some potential to enhance the contribution the programme makes in this area. Although the hypothetical examples deal with different types of conflict of interest, there is no mention of the concept itself nor any general description of what types of relationships, associations, or other factors may give rise to a conflict of interest. The absence of a general policy or instruction on conflicts of interest (as there is, for instance, in the case of other examples dealing with rewards, gratuities, gifts, and koha) makes it less easy to interpret the hypothetical examples. Neither is there a hypothetical example that squarely addresses the types of potential conflict of interest I have identified from the files discussed above, regarding the investigation of a fellow police officer or police associate.
- 3.105 I therefore recommend that the “Making Ethics Real” training programme be expanded to directly address this topic. I note that a specific policy on independence would also facilitate the ability of this programme to foster understanding of all aspects of the independence issue.

CONDUCT OF A SEXUAL ASSAULT INVESTIGATION

- 3.106 Detective Superintendent Burgess informed me that, having received and recorded the complaint or other information regarding an alleged offence, it is the responsibility of the investigator to complete inquiries that prove or disprove the allegation. These inquiries may include
- a statement of complaint from the alleged victim
 - statements from witnesses
 - scene examinations with a view to corroborating the complaint and obtaining forensic evidence
 - medical or other forensic examination of victims and suspects (In inquiries involving sexual allegations, it is almost always appropriate for a medical examination to be carried out.)
 - identifying and interviewing the suspect or suspects. (Suspect interviews normally take place after all other relevant inquiries have been completed, although that is not always the case. Ordinarily, the interviewer wants to have as much information as possible available to him or her before conducting the interview. There will be occasions, however, where investigators will determine that it is more appropriate to speak to the suspect sooner rather than later.)²⁸²
- 3.107 Detective Superintendent Burgess also informed me that the time frame for investigations, and for the various steps within an investigation, could vary enormously. This was readily apparent in the investigation files that I examined: the quickest investigation undertaken

280 I discuss this in some detail in Chapter 6, especially at paragraphs 6.181 to 6.190.

281 New Zealand Police, Submission in response to draft report, 4 September 2006, p. 3.

282 Detective Superintendent Malcolm Burgess, Brief of evidence, 12 July 2005, pp. 3–4.

between 2000 and 2005 was completed in less than a day (in the sense that the charge was laid on the same day that the complaint was laid); the longest investigation was completed in 547 days; the average investigation took 204 days; and the median was 159 days. (The measure here is the number of days between the complaint being laid and the alleged offender being charged or the file sent to the PCA, where this could be determined.)

Current best practice in sexual assault investigations

- 3.108 The elements of an investigation, as outlined by Detective Superintendent Burgess, are the same throughout the districts. A statement is taken from the complainant, medical and scene examinations are conducted where appropriate, relevant witnesses are identified and interviewed, and the alleged offender (where identified) is also interviewed.
- 3.109 I heard evidence on current practice from Detective Sergeant Tusha Penny, officer in charge of the Lower Hutt child abuse team, how an inquiry into a sexual assault allegation should be undertaken. Although Detective Sergeant Penny had no specific experience with investigating sexual assault allegations against police officers, I set out her explanation as an example of what is considered good practice in investigating sexual assault complaints.
- 3.110 According to Detective Sergeant Penny every inquiry unfolds slightly differently, and the course of the inquiry will initially depend on the way that the complainant presents. If her team is called out because a sexual assault has just happened, the first step, assuming that the victim is safe and is in a condition to talk to the police, is to obtain preliminary details of the offence. Detective Sergeant Penny informed me that it is vital that the police learn the basic details of the offending before anything else happens. Accordingly, an officer will ask the victim what happened, whether he or she knows the offender, where the scene is, whether there were any witnesses, and whom the victim would like to support him or her. This allows the inquiry to swing into action immediately. Preserving the crime scene and obtaining forensic evidence are very important, and in order to do this the police need to arrive there as quickly as possible.²⁸³
- 3.111 After these preliminary details have been taken, and assuming the victim is happy for the police to do so, the police will contact a support person for the complainant, either from a professional agency such as the Rape Counselling Network or anyone else whom the complainant nominates.²⁸⁴
- 3.112 The police then explain to the victim what is going to happen next. Detective Sergeant Penny acknowledged the need for this explanation to be clear and careful. One way of minimising the distress that the inquiry process causes victims is to make sure that they understand well in advance what is going to happen and why it is important.²⁸⁵
- 3.113 While part of the police inquiry team examines the scene, the police priority as far as the victim is concerned is arranging the forensic medical examination. It is always necessary to take a very detailed statement from the victim, but this can wait a day or two. On the other hand, the sooner the victim is examined by a doctor, the greater the likelihood that

283 Detective Sergeant Tusha Penny, Brief of evidence, 3 November 2005, p. 3.

284 Detective Sergeant Tusha Penny, Brief of evidence, 3 November 2005, p. 3.

285 Detective Sergeant Tusha Penny, Brief of evidence, 3 November 2005, p. 3.

forensic evidence will be located. The other reason that the police consider it important to complete the medical examination quickly is because it is only once this has been done that the victim can wash and begin the process of recovery. Detective Sergeant Penny noted that in the majority of cases a member of DSAC conducts this examination.²⁸⁶

- 3.114 Detective Sergeant Penny told me that what happens next will depend on matters such as the hour of the day and how the victim is coping. In most cases, and especially if it is late and the victim is exhausted, the police will take her home and make an appointment to take a full statement within a day or two. Sexual assault complainants in the Lower Hutt area will usually be interviewed in the child abuse suite at the Lower Hutt Station, which has more comfortable and non-threatening surroundings than the rest of the station, or at the house of the Hutt Rape Counselling Network (HRCN). The police will warn the victim at the outset that the interview will take several hours, and may extend over several days, because it will be necessary for the victim to tell the police everything in considerable detail.²⁸⁷

Compliance with the ASAI Policy

- 3.115 As discussed above, the police will contact whomever the complainant nominates as her or his support person. This person will not necessarily be from an identified sexual assault support group or trained sexual assault coordinator.

- 3.116 I received evidence from Ms Angela Brott, Co-ordinator of the Women's Refuge and Sexual Assault Resource Centre Marlborough, that she was concerned that the police did not always contact appropriate support agencies when dealing with a sexual assault complainant:

It is my view that it is more appropriate for a trained sexual abuse counsellor to act as the victim's support person than it is for a friend or a family member to fill this role. ...

In addition, we occasionally come up against a detective who does not believe that our agency should be called. These cases frustrate me because I know the victim will not be getting all the assistance she is entitled to. I believe that it should be mandatory for investigating staff to call us in to assist.²⁸⁸

- 3.117 I was concerned by this evidence because the ASAI Policy requires the police to ensure the victim has a support person from an identified sexual assault support group or trained sexual assault counsellor with them during the interview process and is given appropriate information.

- 3.118 Although the ASAI Policy is a national policy, I understand from Dr Jan Jordan that there is still a "continuing lack of predictability and consistency regarding the police's response".²⁸⁹ She said,

it's very hard to guarantee still that it's not going to be a lottery for a rape complainant in terms of who she gets, who handles her case and

286 Detective Sergeant Tusha Penny, Brief of evidence, 3 November 2005, p. 3.

287 Detective Sergeant Tusha Penny, Brief of evidence, 3 November 2005, pp. 3–4.

288 Ms Angela Brott, Co-ordinator, Women's Refuge and Sexual Assault Resource Centre Marlborough, Brief of evidence, 2 November 2005, p. 5.

289 Dr Jan Jordan, Senior Lecturer, Institute of Criminology, Victoria University of Wellington, Brief of evidence, 3 November 2005, p. 10.

what kind of reception she gets, and that need to get away from it being like Lotto is I think one of the most important challenges, to try and find ways of having the structures in place and having the monitoring in place to ensure greater consistency ...²⁹⁰

3.119 I suspect that the lack of consistency referred to by Dr Jordan arises from a failure to fully implement the ASAI Policy (as discussed in Chapter 2).

3.120 Ms Brott, coordinator of a Marlborough support agency for victims of sexual assault, told the Commission,

it is also hard to have detectives who have been through the training programme always available – it can be enough of a struggle in Blenheim to have CIB staff available at all times. Having said that, my experience is that most detectives are naturally good at dealing with victims of sexual assaults, and treat victims with empathy and consideration.²⁹¹

Ms Brott also told me, “The only cases that I know of where things have gone wrong are cases where non-CIB staff have had to become involved in the investigation.”²⁹²

3.121 However, the roll-out of the adult sexual assault investigation training course, the appointment of a national coordinator, and an increased awareness of the ASAI Policy should result in greater consistency of approach throughout the entire organisation, and ensure that best practice is occurring in all instances.

Evidence of police practice when undertaking an investigation

3.122 The increasing professionalism disclosed in current practice is readily apparent in the files I reviewed, irrespective of whether the alleged offender was a police member or a police associate. However, some instances of past practice showed a standard of investigation that was less than could be expected, even having regard to the standards and practices applicable at the time.

Police practice in the investigation of submitters’ complaints

The investigation of Submitter A’s allegations

3.123 Submitter A’s complaint was made to the police shortly after two episodes of alleged offending in 1982–1983. However, the police failed to investigate it. The incident was effectively shelved, or buried. In my view a reasonable inference from the file is that the reason for this was the close association between the man accused and the local police personnel. A reading of the police files associated with a later criminal investigation of this complaint (undertaken in 1994–1995) reveals that at about the same period other allegations were made about the same offender (in relation to his stepdaughters) by the offender’s partner; these allegations were similarly ignored.

290 Dr Jan Jordan, Senior Lecturer, Institute of Criminology, Victoria University of Wellington, Transcript of hearing, 3 November 2005, pp. 33–34.

291 Ms Angela Brott, Co-ordinator, Women’s Refuge and Sexual Assault Resource Centre Marlborough, Brief of evidence, 2 November 2005, p. 6.

292 Ms Angela Brott, Co-ordinator, Women’s Refuge and Sexual Assault Resource Centre Marlborough, Brief of evidence, 2 November 2005, p. 4.

- 3.124 In 1996 an investigation, focusing on the police action (or inaction) in the early 1980s, was instigated by an assistant commissioner after a meeting between police and Submitter A's member of Parliament. This investigation was undertaken by a Rotorua detective inspector who recorded the following:
- 1.9 It is clear from extensive interviews conducted with residents and Police Officers stationed at [place name] in the early 1980's, that the Police Service provided to that town, at that time, was inadequate and superficial.
 - 1.10 It is also apparent that the Police were reluctant to accept that there might be any wrong-doing on the part of [the alleged offender].
 - 1.11 It is also readily apparent that the victim [Submitter A], has been severely affected by her experiences at [place name]. The rape itself has had a profound effect upon her and has impacted on the way she now leads her life.
 - 1.12 This whole set of circumstances has been exacerbated by the lack of Police action at the time which has had a compound effect on the victim.
 - 1.13 While there is clear evidence of dereliction of duty on the part of the Police members involved, there is no opportunity to seek redress or undertake disciplinary proceedings.
 - 1.14 One of the members involved, [name], was actually subjected to disciplinary proceedings for dereliction of duty not long after these series of events and any attempt at disciplinary proceedings in respect of him would be met with a "autrefois convict".
 - 1.15 The recommendation at the end of the body of the report on this matter will be that [Submitter A], [and the mother and her two daughters], all of whom have been affected by the offending of [alleged offender], should be recipients of an official Police apology in the name of the Commissioner of the New Zealand Police.²⁹³
- 3.125 In hearings before me, the police acknowledged that their handling of Submitter A's complaint, when it was first made in the early 1980s, represented "serious dereliction of duty on the part of the officers involved. There is no excuse for this."²⁹⁴
- 3.126 The police did, however, do their best to rectify the situation when the complaints resurfaced in the 1990s. First, an investigation into the criminal allegations raised by Submitter A and by the alleged offender's stepdaughters was undertaken by members of the Rotorua Sexual Abuse Team in 1995–1996. The investigation resulted in charges being laid against the alleged offender in both cases. He was convicted and sentenced to nine years' imprisonment in 1996 in respect of his stepdaughters. However, he was acquitted in October 1996 in respect of Submitter A's allegations.
- 3.127 It is impossible to say with certainty that the alleged offender would have been acquitted in relation to the complainant's allegations had he been tried in 1983–1984. No relevant medical records could be found by the time the matter came to trial, and the complainant's

293 Operation Loft file LT 69.

294 New Zealand Police, Submission, 31 August 2005, p. 2.

doctor had since died. The odds of acquittal would undoubtedly have been lower had written or oral medical evidence been available, even if its sole effect was to show that the complainant had visited her doctor within a short time of the alleged offending. The odds would have been lower still had the medical evidence been in the form of notes confirming the trauma of which Submitter A complained. The whereabouts of notes (if any were made) remains a mystery. Nevertheless, the investigation undertaken by the Rotorua Sexual Abuse Team in 1995–96 was thorough and complied with the standards and procedures laid out in the Manual of Best Practice.

- 3.128 Secondly, in a letter dated 14 February 1997, Assistant Police Commissioner Scott made a frank and unreserved apology “both personally and on behalf of the Police Department” to Submitter A.²⁹⁵ Counsel for New Zealand Police told me,

From the point of view of the Police, Assistant Commissioner Scott’s apology represented a binding acknowledgement that the organisation had let [Submitter A] down badly, and had fallen well short of the standards that it sets for itself.²⁹⁶

- 3.129 This was followed by a personal apology by the Commissioner of Police some time later.

The investigation of Submitter B’s allegations

- 3.130 The allegation in Submitter B’s case was that the police officer in question had abused a position of trust in relation to a young woman who was placed in his foster care and who later bore his child.

- 3.131 The alleged abuse began when the complainant was 15, and included allegations of indecent and other forms of sexual assault. After her child was born, the subject of the complaint repeatedly denied paternity, but eventually admitted it. Although an apparently consensual relationship continued between the complainant and the subject of the complaint for a number of years, there was a regular pattern of complaints including allegations of assault and threats.

- 3.132 The initial investigation undertaken in 1985 when Submitter B was 17 years old and was the result of Submitter B’s lawyer contacting the police on her behalf complaining of intimidation. A statement was taken from Submitter B, which included indecent assault allegations and details of the sexual nature of the relationship before she turned 16. I was concerned at the initial response of the inspector assigned to this investigation, who told the alleged offender that if the paternity issue which brought the complaint to the attention of the police “was rectified the complaint could be satisfactorily resolved without the [complainant’s] statement becoming official.”²⁹⁷ The police were unable to ascertain who authorised this statement, but offered the following suggestion:

a likely explanation arises from the nature of [Submitter B’s lawyer’s] original complaint on [Submitter B’s] behalf. [Submitter B’s lawyer] sought Police intervention to prevent [the alleged offender] from intimidating [Submitter B]....²⁹⁸

295 Operation Loft file LT 69.

296 New Zealand Police, Submission, 31 August 2005, p. 4.

297 Operation Loft file LT 148.

298 New Zealand Police, Submission, 10 August 2005, p. 9.

- 3.133 I note in this respect that general instruction J80, in force at the time, directed police members to make every reasonable effort to resolve complaints as soon as practicable and a generous interpretation of the inspector's actions would suggest that this is what he was attempting to achieve.²⁹⁹
- 3.134 Nevertheless, when it became apparent that the alleged offender would not admit to paternity, the inspector initiated a criminal investigation after a subsequent interview with Submitter B. The police submitted to the Commission of Inquiry into Police Conduct that the investigation was an exceptionally thorough one. In the course of the investigation, the investigators (although based in the district in which the complaint originated) “interviewed well over 30 witnesses” and “examined a large number of documents and established covert surveillance” of the police officer complained about.³⁰⁰
- 3.135 As far as can be ascertained the investigation, although flawed, complied with applicable police standards and procedures. (However, see my comments on the exercise of the discretion to prosecute in relation to this case at paragraphs 3.191 to 3.198.)

The investigation of Submitter C's allegations

- 3.136 Submitter C's complaint was of rape by an on-duty police officer. The matter was complicated by the fact that Submitter C had no recall of complaining to the police about the matter at the time (1989). The police have no record of any complaint dating from 1989. However, a victim support worker claimed (in 2004) that she had accompanied Submitter C when a complaint was lodged with the police in 1989. I am unable to resolve the matter.
- 3.137 However, there was an investigation into this incident in 1991. This investigation was at the police's initiative after rumours about the officer concerned having boasted of having sexual intercourse with Submitter C in a police car whilst on duty. A full investigation was launched into the allegations. Submitter C, who later said she was frightened of what would happen to her because she had been in possession of cannabis on the night of the alleged incident, denied the encounter.
- 3.138 Nevertheless, the police continued with the investigation and interviewed a number of witnesses. Only one police officer interviewed was able to provide relevant information; however, others were aware of the rumours. (I note, however, that a second police officer, who was interviewed both in 1991 and when the matter was reinvestigated in 2004, provided more detailed information in his statement in 2004 than in 1991.)
- 3.139 Given Submitter C's denial of the incident in 1991, and the lack of evidential information available, the police decision not to charge the member with a criminal or disciplinary offence is understandable. However, this officer is a good example of someone who appears to have engaged in the sort of behaviour that, although it may fall short of criminal offending, was entirely inappropriate in the employment/discipline context. I will deal with this issue at greater length in Chapter 5.

299 New Zealand Police, General instruction J86, “[Internal Investigations] General Guidelines”, *New Zealand Police Gazette*, 15 April 1981.

300 New Zealand Police, Submission, 10 August 2005, p. 3.

3.140 In 2004, Submitter C was approached by members of the police after they received information that suggested the original investigation into her complaint had not been properly undertaken. Submitter C told the Commission that the approach came out of the blue, that she was not advised of the purpose of the visit, and that she found it quite intimidating.

3.141 The alleged offender had in fact died in the interim.

3.142 It appears that Submitter C was not adequately notified that there was a formal investigation into her complaint, and a review of it by the PCA. Counsel for the police told me,

The complainant should be kept fully informed throughout the course of any inquiry into his or her complaint. This is one of the requirements of the Adult Sexual Abuse [sic] Policy, and represents good practice in any investigation, whether into sexual offending or not. ... if [Submitter C] was not kept informed that inquiries were undertaken as a result of her complaint then she should have been, though it is apparent that she knew [the alleged offender] had committed suicide, and accordingly could not have expected that any proceedings would follow.³⁰¹

The investigation of Submitter D's allegation

3.143 Submitter D had a relationship with a police officer in 1995 after the officer was involved in his professional capacity in domestic difficulties between the submitter and her former husband. (The officer was to be a witness in a court case against the submitter's ex-husband.) The submitter alleged that the officer raped her. She laid a complaint with the police the same day, after being encouraged to do so by a nurse at her local hospital.³⁰²

3.144 The investigation of Submitter D's complaint was conducted in a professional way. In accordance with the standards and procedures set out in the Manual of Best Practice, immediate steps were taken to secure the scene and gather forensic evidence, as well as to obtain an account from the alleged offender before there was any opportunity for him to leave the area or learn the detail of the evidence gathered. The officer concerned did not return to work after the complaint; in the months between the alleged rape and his subsequent disengagement he was either on sick leave or on formal stand-down.

3.145 Detective Superintendent Burgess gave me his assessment of the investigation:

Most of the steps that I would expect in an inquiry of this kind were completed in the initial investigation. Some additional inquiries were later completed at the request of Crown Law. I believe that all relevant inquiries were completed to allow an assessment of the available evidence in support of criminal or disciplinary charges. In this instance it was determined that there was insufficient evidence to warrant a criminal prosecution but that disciplinary charges should be laid. I concur with that assessment.³⁰³

3.146 One area where the alleged offender's status as a police officer had an impact on the inquiry was the fact that he telephoned the investigating officer, more than once, with

301 New Zealand Police, Submission, 6 September 2005, p. 11.

302 Operation Loft file LT 1.

303 Detective Superintendent Malcolm Burgess, Brief of evidence, 12 July 2005, p. 4.

the clear intention of influencing the investigation in his favour. I was pleased to note the investigating officer was well aware of what the alleged offender was seeking to do, and told him that he would “play [the inquiry] straight down the middle”. My assessment of the file indicates that this is exactly what the investigating officer did.

- 3.147 Submitter D’s understanding of the investigative process, and its conclusions, was different from that of the investigators. In this case the investigating officer was a member of a team that specialised in undertaking sexual assault allegations. The complainant’s statement was taken in the presence of a support person and was delayed a number of times to accommodate the complainant’s needs. Nevertheless, as part of any thorough investigation the investigating officer was required to put things that the police had learned and inconsistencies in the complainant’s statement to her in order to learn the complainant’s explanation for any apparent inconsistencies. I accept that failure to do so would mean that the investigating officer would be remiss in his or her duties. Apart from the obvious impact on the merits of the investigation, failure to put such questions could potentially result in the complainant experiencing much greater distress when she was faced with these questions in cross-examination by defence counsel.
- 3.148 Although Submitter D’s complaint was investigated correctly, I was concerned about her experience of the investigation and the effect it had on her. For example, she had the impression that the detective who took her initial statement was angry with her for having made a complaint about a policeman, and did not understand her reaction to the explanation given by the alleged offender for what had happened. She was also upset about the way items of evidence were removed from her bedroom after the alleged rape, and said that she had never received back a number of private journals and diaries. The police accepted that the documentation regarding these items was not completed properly, but said the investigating officer was confident they were returned.³⁰⁴ It is impossible to determine from the police files what the truth of this matter is; however, I believe that the police should have recognised the significant personal value of these items and taken particular care when handling them. I note, however, that the police reject any suggestion of insensitivity or unprofessional behaviour towards Submitter D.
- 3.149 In hindsight, it may have been that communication between Submitter D and the police was hampered by Submitter D’s medical condition, which was at that time undiagnosed. Although I cannot determine the truth of these matters, I am concerned about the distress that the investigation caused her and I note that investigations need to be sensitive to the many forms of disability or impairment that may affect complainants.

The investigation of Submitter E’s allegations

- 3.150 The complaint in Submitter E’s case was that a diversion officer (who had been dealing with the complainant’s husband) had used his position to take advantage of her at a time when she was vulnerable and had engaged in sexual activity with her. It was acknowledged that this activity was consensual.³⁰⁵

304 Submitter D, Statement of evidence, 24 June 2005, pp. 5–6; New Zealand Police, Submission, 12 July 2005, pp. 8–9.

305 Operation Loft file LT 126. For information on diversion, see footnote 22.

3.151 Detective Superintendent Burgess reviewed the file relating to this complaint:

In this case, [the investigating officer] took most of the steps that I would expect in an inquiry of this kind. While he might have gone further, and sought out potential witnesses, I do not believe that this would have affected the evidential outcome. I note that he sought advice on this case, including legal advice. It was not unusual to seek legal advice, either from the local legal adviser, or from the Crown. That practice is still adopted today.³⁰⁶

3.152 The investigation into Submitter E's complaint was generally handled in accordance with the standards and procedures in place within police at the time. Because the act complained of was entirely consensual there was limited prospect of criminal charges. Nevertheless, the police recognised the inappropriate nature of the liaison and commenced an internal inquiry, obtained psychological and legal advice, and recommended that the alleged offender face disciplinary charges as a result. Those charges were pre-empted by the decision of the alleged offender to retire from the police. Submitter E had a strong sense of injustice about this. Again, this is a subject to which I return in Chapter 5.

3.153 The general inappropriateness of the type of behaviour that this complaint evidences will be discussed more fully in Chapter 6.

The investigation of Submitter F's allegations

3.154 Submitter F's evidence to the Commission was that she was raped in 1997 by a recently retired police officer during an overnight assignment with colleagues (who included two serving officers).³⁰⁷ She said that she was so devastated by what happened that she did not immediately lay a complaint. Soon afterwards, however, a local detective sergeant heard rumours of the incident and approached Submitter F about it. Unfortunately (even if understandably) she said she felt unable to tell the full story to him and alleged only that she had been subjected to an indecency. She told me that later, in 1998, and with the assistance of a lawyer, she felt able to tell her full story.

3.155 Submitter F also told the Commission that she had been intimidated and treated inappropriately when she was interviewed during the police investigation. The police officers concerned rejected these allegations in evidence to the Commission.³⁰⁸

3.156 The police inquiry that eventuated appeared to follow appropriate procedures. It included the execution of warrants at the alleged offender's address and at the place of the alleged incident, and a forensic examination and acoustics testing at the place where the complainant alleged that the offending took place.

3.157 The district commander recognised the potential for allegations that the investigation was biased in favour of the alleged offender and dealt with this matter by appointing a detective inspector from a different district who had no personal association with any of the participants.

306 Detective Superintendent Malcolm Burgess, Brief of evidence, 8 July 2005, p. 3.

307 Operation Loft file LT 4.

308 New Zealand Police, Submissions, 19 August 2005, p. 2.

3.158 I was initially concerned at the time taken to interview the alleged offender in this case. However, I was informed that this decision was based on a desire to have all evidence available to the investigating officer before this interview took place, and I accept that.

3.159 A detective inspector who reviewed this investigation on behalf of the PCA in 1999 was critical of the police for failing to initiate a more thorough inquiry after the complainant's informal discussions with a detective sergeant in 1997 after the latter had approached her about rumours that he had heard. In their submissions to me the police rejected this criticism as unfair. They offered the following explanation:

modern practice in sexual cases places a premium on ensuring that the complainant retains control of the process, and does not feel that she is being forced to make a formal complaint before she is ready to do so. To place pressure on the complainant in these circumstances risks re-victimising her; victims of sexual offending will often take some time to summon the mental strength to set in motion what is almost always a very difficult and stressful process. It was important that [the complainant] understand her options, and that the Police would support her if she chose to formalise her complaint. On the other hand, it was important that she understood that it was entirely up to her whether she decided to proceed officially or not.³⁰⁹

3.160 Unfortunately Submitter F had told the detective sergeant only that the alleged offender had tried to have sex with her and that she had resisted. Had her original complaint been of rape, he might well have taken steps to preserve possible forensic evidence in anticipation of Submitter F gaining the confidence to complain formally. This would have included trying to persuade her to undergo a medical examination.³¹⁰

3.161 Submitter F later made a complaint to the PCA that the detective sergeant who first approached her about a possible offence had in fact been a friend of the alleged offender, and had discouraged her from making a complaint. It was clear that the detective sergeant did know the alleged offender. However, the PCA (after an investigation by a police inspector, and the PCA's own assessment of the files) found that the officer had acted appropriately and had taken advice on how he should handle the matter. I discuss in more detail in Chapter 7 the difficulties and appropriate response of the police when faced with rumours of sexual assault against police members.

The investigation of Submitter H's allegation

3.162 One of Submitter H's concerns about the investigation of her complaint (see paragraphs 3.68 to 3.73) was the alleged offender had six weeks' notice that he was to be interviewed about the matter. The police did not accept that there was any prejudice as a result of the delay in interviewing the alleged offender. The alleged offender was aware of Submitter H's complaint from the outset because she had told him about it.

3.163 In general the investigation into Submitter H's allegation was conducted in an appropriate manner and in accordance with the Child Abuse Policy. The police appear to have taken Submitter H's subsequent complaints of harassment seriously, and believed that they had

309 New Zealand Police, Submissions, 19 August 2005, p. 6.

310 New Zealand Police, Affidavit (Operation Loft file LT 4), 27 July 2005, p. 5.

been addressed by the issue of a warning and trespass notices to the alleged offender. The police told me that after this the submitter indicated that the “drive bys” had become far less frequent and that she had not made any notes of them.

- 3.164 Submitter H told me she did not receive copies of the trespass notices so had no assurance that the alleged offender had been properly served and did not feel that she could use them if she needed to. The police submitted that copies of the notices were placed on the file at the local police station for ease of reference if any breach was reported and that it was standard for a further copy to be provided to the complainant. They said that if Submitter H did not receive a copy then that was an oversight and if she had drawn their attention to that then copies would immediately have been made available to her. I cannot resolve this issue.
- 3.165 Police Internal Affairs and the PCA also became involved in the matter. As required, the local superintendent notified Internal Affairs of the inquiry by telephone at the outset, but there was no further follow up for some months. This resulted in a delay in referring the matter to the PCA, as required by both legislation and the general instructions. The police accepted that they should have alerted the PCA to the inquiry within days of Submitter H’s complaint being received – even though the PCA note in accordance with standard practice they would have deferred any investigation until the criminal inquiry was completed. (I discuss the timeliness of the notification to the PCA in paragraphs 4.51 – 4.58.)

The investigation of Submitter I’s allegation

- 3.166 Submitter I made an allegation of physical assault by a number of police officers in 1986. This was investigated at the time and is not the subject of my inquiry. In 2003, he alleged for the first time that he had been sexually violated during the same incident that he complained about in 1986. It is this investigation that comes within my terms of reference.
- 3.167 When Submitter I made this allegation, there was discussion between him, his lawyer, and an officer about how it should be advanced. The discussion appears to have given rise to a misunderstanding. Submitter I told the Commission that he thought the police would be approaching him for an interview, that he waited some four months before writing to them, and that although an interview followed soon afterwards he did not understand the cause of the delay. However, the police produced a statement by Submitter I’s lawyer in which he said that Submitter I had been very distressed at that time of the initial discussion, that the officer had dealt with the matter in a professional and sympathetic manner, and that he (the lawyer) had advised Submitter I to reflect on things and contact the police, either directly or through him, if he wanted to take it further.
- 3.168 The detective sergeant who investigated the matter reviewed the 1986 file, spoke to several of the original witnesses, and went to considerable lengths to find a recent complaint witness to whom Submitter I may have spoken. In addition, he travelled overseas to interview the two alleged offenders.
- 3.169 Counsel for the police submitted that the investigation had been exemplary:
The way the Police treated [Submitter I’s] complaint was as close to a model response as any the Commission has seen. In addition to

conducting a careful and thorough inquiry, Detective Sergeant [name] kept [Submitter I] informed of progress throughout, and telephoned to advise him of the results of the trip to Australia. He also personally explained why he would not be recommending a prosecution. Professional Standards and the PCA were fully informed, and [Submitter I's] Official Information Act request was actioned promptly. It is submitted that [Submitter I] has no cause for complaint.³¹¹

- 3.170 The investigation into Submitter I's allegation appeared to meet the standards, and comply with the procedures, set out in police policy.

Examples of police practice from the Operation Loft files

- 3.171 An example of an inadequate recording of a complainant's statement can be found in a 1991 investigation involving an associate of the police. The interviews of the complainants in this investigation were not carried out or recorded with any sort of accuracy.³¹² Detective Superintendent Burgess agreed that in these circumstances a video interview or question and answer statements detailing exactly what was alleged would have been preferable to job sheets with the investigating officer's interpretation on them.³¹³

- 3.172 An example of the police failing to explore all avenues of inquiry is provided by a 1988 case when the investigating officer failed to address the Crown solicitor's recommendations that further enquiries be made.³¹⁴ Indeed, when this file was reconsidered by the police in 2004 as part of Operation Loft, the district commander stated,

Originally it was referred to the Crown for a legal opinion and it was returned with some comments concerning enquiries that needed to be carried out in relation to a possible witness/offender. There is no indication that this has been done.

A further point to know is that [the alleged offender] is currently before the courts on another matter. The officer in charge of that case is [name]. The circumstances surrounding that offending is very similar to the offending identified on this file.

The Operation Loft recommendation is that this matter be referred back to the district for further investigation.³¹⁵

- 3.173 Similarly a complainant in a 1998 case was contacted again in 2004 when it became apparent that the original interview with the alleged offender had been inadequate.³¹⁶ In this case the investigating officer had failed to put the substance of the allegations to the alleged offender.

Areas to be addressed

- 3.174 Various witnesses, doctors, volunteers, and police specialists in sexual abuse informed me of changes that had been made to the processing of complaints of sexual assault over recent

311 New Zealand Police, Submission, 9 September 2005, pp. 5–6.

312 Operation Loft file LTA 3.

313 Detective Superintendent Malcolm Burgess, Transcript of hearing, 11 December 2006, p. 31.

314 Operation Loft file LT 151.

315 Operation Loft file LT 151.

316 Operation Loft file LT 40. See also, Detective Superintendent Malcolm Burgess, Brief of evidence, 29 November 2005, p. 7.

years. The evidence I have heard leads me to conclude that the police have made great strides forward in both the practice and the conduct of investigations of sexual assault over the past 25 years. Where there were failings, they occurred only in a very small minority of cases and in most instances were picked up by the police's internal review processes. I discuss these review processes in more detail later in this chapter.

3.175 There are issues relating to communication with complainants. Again, these are discussed later in this chapter.

EXERCISE OF THE DISCRETION TO PROSECUTE

3.176 New Zealand Police is the only body in New Zealand with a prosecutorial function in relation to sexual assault allegations. The discretion to prosecute is guided by the Solicitor-General's Prosecution Guidelines, issued in 1992.

3.177 Detective Superintendent Burgess told me, "the average [annual] prosecution rates for all sexual offending in New Zealand since 1980 is 39.8% with a low of 26.8% and a high of 54.5%."³¹⁷ These figures compared favourably with the prosecution rates of overseas countries.

3.178 Nevertheless, I was interested to learn of several cases where the police were satisfied that the incident complained of had occurred, but were unable to lay criminal charges for a variety of reasons including

- the vulnerability of the complainant (for example, in a case involving an intellectually disabled woman the police chose not to lay charges on the advice of medical specialists who informed them that the complainant would not be able to withstand the rigours of the court process and her ability to manage in the community would be adversely affected as a result)³¹⁸
- the disposition of the complainant (for example, in a number of cases the complainant did not want to give evidence in court)
- the credibility of the complainant (which may be undermined by such things as mental illness or previous convictions for dishonesty offences).

Current practice governing the exercise of the discretion to prosecute

3.179 As mentioned in Chapter 2, a Crown solicitor's decision to lay criminal charges is governed by the Solicitor-General's guidelines. According to the guidelines there are two major factors that a prosecutor must consider before deciding to initiate a prosecution: evidential sufficiency and the public interest. These principles apply with equal force where the suspect is a police officer or associate of the police.

3.180 The police are similarly guided by the Solicitor-General's guidelines. Witnesses appearing before the Commission told me that the police can lay charges only where there is some chance of success in securing a conviction and that, in their view, it is neither in the public interest nor in the complainant's interest to proceed with a prosecution where there is a

317 Detective Superintendent Malcolm Burgess, Brief of evidence, 29 November 2005, p. 6.

318 Operation Loft file LT 75.

high likelihood that the trial will end in acquittal.³¹⁹ Detective Superintendent Burgess told me,

where there is a clear evidential basis for or against a criminal charge being laid then that decision will often be made by the investigating officer. Where the evidence is not so clear or where the nature of the crime alleged is more serious, it is now common for legal advice to be sought. This will often include independent external legal advice.

The decision to prosecute a criminal charge is subsequently reviewed by the Crown Solicitor or by the Police Prosecution Centre. The Crown Solicitor is independent of Police. The Prosecution Centre is centrally managed from Police Headquarters and maintains a degree of independence from the investigative arm of Police. The Prosecution Centre may make decisions on files relating to associates of Police ... While this is a Police decision it forms no part of the investigative process.³²⁰

- 3.181 Detective Inspector Stephen Rutherford, Crime Manager for the Counties Manukau CIB, explained the reasons why his staff will take a matter to court only if they are likely to get a conviction:

I expect my staff to only take a case to Court if we consider we have a good show of getting a conviction. There are a number of reasons for this. First, I do not want to waste time and resources. Secondly, we must be fair to the suspect. Thirdly, and most importantly, I will not lightly put a complainant through the trauma of a Court case unless I feel that there is sufficient evidence to support the charge. The judicial process can leave a complaint feeling re-traumatised and re-raped emotionally.³²¹

Members of police

- 3.182 The decision whether to charge a member of police with sexual offending is made either in the district where the allegation was investigated or when the file is reviewed by Professional Standards at the Office of the Commissioner.
- 3.183 According to Superintendent Wildon, at the completion of a sexual assault investigation into a member of police, the investigator prepares a summarising report, which should outline the course of the inquiry, summarise the available evidence on each aspect of the complaint, and make appropriate recommendations regarding the outcome. This should include the investigator's view of whether the complaint should be upheld and, if so, what action might be appropriate as a consequence. The investigator's report is then passed to the district complaints manager, who prepares a short report either concurring or disagreeing with the initial recommendation. In some districts the district complaints manager passes the file directly to Professional Standards; in other areas the file goes first to the district

319 Detective Superintendent Malcolm Burgess, Transcript of hearing, 29 November 2005, p. 16; Superintendent Stuart Wildon, New Zealand Police National Manager: Professional Standards, Brief of evidence, 21 November 2005, pp. 7–8.

320 Detective Superintendent Malcolm Burgess, Brief of evidence, 11 December 2006, p. 9.

321 Detective Inspector Stephen Rutherford, Brief of evidence, 17 November 2005, p. 4.

commander for a further review. In many cases, the district also arranges for legal advice to be taken from the local legal section and sometimes from the local Crown solicitor.³²²

- 3.184 If the district takes the view that criminal charges are appropriate, it is common for the alleged offender to be charged without further reference to Professional Standards at the Office of the Commissioner. The full file will be referred at a later date to Professional Standards for a formal review of the investigation, and then to the PCA for external review; but this will not occur until all criminal proceedings have concluded.³²³
- 3.185 When reviewing an investigation where charges have not been laid at district level, Superintendent Wildon and his staff at Professional Standards at the Office of the Commissioner will consider if the district was correct not to lay charges. I was informed that it is not uncommon in serious cases for the file to be sent to the Crown Law Office for legal advice, even if advice has already been taken at district level.³²⁴
- 3.186 If Professional Standards concludes that criminal charges should be brought (and this will generally be a decision reached in consultation with an assistant commissioner or above), then the matter is referred back to the district for prosecution. Where Professional Standards concludes that criminal charges should not be laid, then the whole file, including all the various reports prepared up to that point, is referred to the PCA for a final external review.³²⁵
- 3.187 According to section 28(2)(b) of the PCA Act 1988, the PCA may, if it disagrees with the police's decision, recommend that criminal proceedings be considered or instituted against any member of the police. It cannot, however, direct the police to do so. I was informed, "The police have taken and continue to take the view that these decisions are matters for them."³²⁶
- 3.188 Superintendent Wildon described the police awareness of complainants' possible reactions to a decision not to lay charges against a member of police:

In making recommendations as to whether a prosecution should be commenced, my staff and I are always conscious of the need to prove criminal ... charges beyond reasonable doubt. It is inappropriate to bring charges in cases where a conviction is unlikely. Even so, the Police are always highly aware of the possibility, if the final decision is that no charges should be brought, that the complainant or others will accuse us of having "covered up" the offending on behalf of the subject of the complaint. This kind of allegation is an occupational hazard. No matter how hard the Police try to explain decisions carefully to complainants, and to have numerous independent reviews of the file to ensure that the decision is fair in every case, as long as the Police have primary responsibility for investigating their own members it will be very

322 Superintendent Stuart Wildon, New Zealand Police National Manager: Professional Standards, Brief of evidence, 21 November 2005, p. 6.

323 Superintendent Stuart Wildon, New Zealand Police National Manager: Professional Standards, Brief of evidence, 21 November 2005, p. 6.

324 Superintendent Stuart Wildon, New Zealand Police National Manager: Professional Standards, Brief of evidence, 21 November 2005, p. 7.

325 Superintendent Stuart Wildon, New Zealand Police National Manager: Professional Standards, Brief of evidence, 21 November 2005, p. 7.

326 Superintendent Stuart Wildon, New Zealand Police National Manager: Professional Standards, Brief of evidence, 21 November 2005, p. 7.

difficult to eliminate this perception entirely. This is one of the reasons why we often engage Crown Law in serious or difficult cases.³²⁷

Associates of the police

3.189 The decision whether to charge an associate of the police with sexual offending is generally made at district level because these investigations are not subject to the same review processes as those involving members of the police. The decision will of course be reviewed as part of the usual prosecutorial or supervisory functions. These processes are discussed in more detail in the next section of this chapter.

Evidence of police practice concerning the discretion to prosecute

3.190 I was able to observe the application of the discretion to prosecute in a number of files, including those of some submitters. The submitters' cases illustrate the range of issues involved in the discretion in cases involving sexual assault, and the adequacy of the standards and procedures involved.

Actions after the investigation of Submitter B's allegations

3.191 In 1985, it was determined that there was not enough evidence to sustain a criminal charge against the officer who was the subject of Submitter B's complaint (see paragraphs 3.130 to 3.135). Although there was no direction in the police policy documents that a charge should be laid only where there was a greater than 50 percent chance of conviction, I was informed that this represented good practice in 1985 as it does now.³²⁸ The investigating officer summed up the position:

1.3.1 I am quite satisfied with respect to [Submitter B's] credibility and that she is telling the truth in respect to this offence. I believe it is relevant that she was not aware that the circumstances constituted a criminal offence.

...

1.3.3 Throughout this entire enquiry I have found [Submitter B's] statements to be consistent and in many circumstances corroborated. As can be appreciated, with the passage of time, the recollection of dates and times has been difficult.

1.3.4 [Submitter B's] credibility however, would be a crucial issue and considering her delinquent and truant behaviour prevailing at the time, a reasonable doubt would not be difficult to create in [the alleged offender's] favour.

1.3.5 I therefore believe that a prosecution in all probability would fail and accordingly recommend that no prosecution be undertaken in respect of this crime.³²⁹

3.192 As counsel for the police acknowledged,

327 Superintendent Stuart Wildon, New Zealand Police National Manager: Professional Standards, Brief of evidence, 21 November 2005, pp. 7–8.

328 New Zealand Police, Submission, 10 August 2005, p. 4.

329 Operation Loft file LT 148.

Viewed by today's standards, the decision not to prosecute [the alleged offender] in 1985 for indecently assaulting [Submitter B] was a conservative one. That said, there can be no doubt that the decision was made in good faith following a very thorough inquiry, on the recommendation of an officer who was most sympathetic to [the complainant]. At that time, Judges were required to warn juries of the danger of convicting on the uncorroborated word of the complainant, and the decision, which was reviewed by the local legal officer, was an unremarkable one in that context.³³⁰

3.193 Although I understand the reasoning behind the decision not to prosecute the subject of Submitter B's allegations in a criminal court, I was concerned that the 1985 investigation did not result in disciplinary charges relating to the sexual relationship with Submitter B. (I do note, however, that the alleged offender faced other disciplinary charges.) The police addressed this issue in submissions to me and acknowledged, "The failure to pursue disciplinary charges arising from the sexual relationship, either in 1985 or [later], was unfortunate. The Police do not seek to defend it."³³¹

3.194 Submitter B's complaint was reconsidered in the early 1990s. I was concerned that the inspector who undertook this task believed that the "intervention of a Tribunal Hearing in 1985 precludes my reconsideration of acts occurring before 1985".³³² Counsel for New Zealand Police informed me,

[This decision] ... was wrong. The inspector appears to have been under the misapprehension that [the alleged offender] was formally warned as result of his sexual association with [Submitter B] up to and including 1985. In fact, the 1985 warning related only to a specific incident of assault.³³³

3.195 The inspector did, however, consider whether charges based on the post-1985 sexual relationship could be the subject of criminal or disciplinary charge. He concluded that consensual activity while the alleged offender was off duty had "little to do with [the officer's] employer",³³⁴ namely the police, and that the police would struggle to prove, beyond reasonable doubt, Submitter B's allegation that some of the activity occurred while the alleged offender was on duty. As counsel for the police told me,

The basis for this decision was similar to the basis of the 1985 decision: while the Police had no doubt about the accuracy of [Submitter B's] account, it was unlikely that they could prove the allegation to the required level.³³⁵

3.196 Submitter B's complaint was brought to police attention again in 1996. The police considered whether it was possible to bring charges against the officer concerned under section 131 of the Crimes Act 1961 (sexual intercourse with a girl under care and protection)³³⁶ but found that "There was no evidence capable of supporting such a charge;"³³⁷

330 New Zealand Police, Submission, 10 August 2005, pp. 4–5.

331 New Zealand Police, Submission, 10 August 2005, p. 5.

332 Operation Loft file LT 148.

333 New Zealand Police, Submission, 10 August 2005, p. 6.

334 Operation Loft file LT 148.

335 New Zealand Police, Submission, 10 August 2005, p. 6.

336 Section 131 of the Crimes Act 1961 was subsequently amended by the Crimes Amendment Act 2005 section 7 to "Sexual conduct with dependent family member".

337 New Zealand Police, Submission, 10 August 2005, pp. 6–7.

3.197 This review did not, however, give detailed consideration to a charge of indecent assault, and the police do not dispute that a more careful consideration of a charge of indecent assault should have been undertaken. As the police told me,

In 1996, the need for a corroboration warning had been removed (though the fact that such a warning would have been given was not among [the original investigating officer's] main reason for recommending that [the alleged offender] not be charged). It would have been preferable for the Police to re-examine the evidence that might have supported a charge of indecent assault and formed their own assessment in light of the more "complainant friendly" environment that followed the 1986 reforms. The reference in the report to delay, and the public interest, indicates that the outcome may have been the same, but this exercise should nonetheless have been undertaken.³³⁸

3.198 I agree with these comments. Moreover, the consequences of police inaction and wrong decisions may have contributed to (or at least failed to mitigate) Submitter B's ongoing difficulties.

Actions after the investigation of Submitter D's allegations

3.199 Though the initial police inquiry into Submitter D's case (see paragraphs 3.143 to 3.149) was completed in little more than one month, it took approximately five months before the final decision not to prosecute could be made, and a further two months before disciplinary charges were brought. The delay in this case arose because of, first, the decision to seek an independent review from the Crown Law Office on whether criminal charges should be laid; secondly, the need to undertake further inquiries at the request of the Crown law Office; and thirdly, the need to prepare separate disciplinary charges (and have them approved by the Deputy Commissioner of Police) once it had been finally decided not to lay criminal charges. Completion of these steps took from the start of July 1995 until 20 December 1995. Disciplinary charges were served on the officer on 19 January 1996.

3.200 The Deputy Solicitor-General offered the opinion that a conviction was unlikely (a conclusion that accorded with that of the police), and as a result no charge was laid. Nevertheless, the Crown Law Office recognised that the behaviour of the alleged offender appeared to

seriously call into question his fitness to serve as a Police Officer. The relationship with [the complainant] began while he was responsible for a case in which [her] daughter was alleging assault by her father. [The complainant] and her ex-husband had a history of bitter custody conflict. A successful prosecution was clearly very important to [the complainant]. In these circumstances it was most wrong for the officer in charge of the case to undertake a sexual liaison with [the complainant] prior to the conclusion of the case.³³⁹

3.201 On the same day as disciplinary charges were served on the officer, he applied to disengage from the police. Those charges therefore did not proceed. I will discuss this matter further in Chapter 5 because it seems to me to be inappropriate that the employment situation of an officer in the circumstances cannot be dealt with more expeditiously.

338 New Zealand Police, Submission, 10 August 2005, p. 7.

339 Operation Loft file LT 1.

Actions after the investigation of Submitter F's allegations

3.202 The police concluded that there was insufficient evidence to warrant laying a charge in respect of Submitter F's complaint (see paragraphs 3.154 to 3.161). The detective inspector assigned to the investigation provided an explanation to the Commission:

... my initial inclination was that the matter should be placed before the Court, though this was only because I did not want there to be any suggestion that we had declined to prosecute [the alleged offender] because he was a former Police officer. I considered the chances of a conviction to be very slim, given the obvious shortcomings in [the complainant's] account, and the absence of any significant corroboration. [The complainant] had given a number of conflicting statements, which would undoubtedly have been seized on and exploited by defence counsel. Had [the alleged offender] not been a former Police officer, I would have recommended that no charges be laid, without taking the trouble to seek a legal opinion.³⁴⁰

A Crown solicitor reviewed the evidence and advised that a conviction would be unlikely. (I note that Submitter F had serious misgivings as to the conduct of the investigation by the police, and therefore in the evidence given to the Crown solicitor to review.) The Solicitor-General's guidelines, issued in 1992, confirm that it is not generally in the public interest to prosecute where a conviction is unlikely, and the police's decision not to lay charges in this case was based on the advice provided by the Crown solicitor acting in accordance with these guidelines.

Actions after the investigation of Submitter G's allegations

3.203 The exercise of the discretion on whether to bring disciplinary charges also arose in the case of Submitter G, who complained of an inappropriate, very intimate, body search whilst in police custody in August 1997.³⁴¹

3.204 The police investigation into this matter was completed competently and expeditiously. Submitter G's complaint was received by the PCA in early November 1997. It was immediately referred to the police for investigation. The investigation was undertaken by an inspector; and his report recommending that the complaint be upheld was completed by 12 December 1997. The district commander agreed with his recommendations, and Internal Affairs reported to the PCA on 31 December 1997 confirming that the complaint had been upheld.

3.205 Counsel for the police told me that the body search of this complainant was an unfortunate incident that the Police regret. The actions of the officers were not the product of any improper motive, and they were seeking to eliminate what may otherwise have been a serious danger in the cellblock. Nonetheless, it should not have happened.³⁴²

³⁴⁰ New Zealand Police, Affidavit (Operation Loft file LT 4), 26 July 2005, p. 4.

³⁴¹ Operation Loft file LT 212.

³⁴² New Zealand Police, Submission, 8 September 2005, p. 2.

3.206 The senior sergeant who ordered the search was subsequently counselled.³⁴³ However, the other members did not face any form of disciplinary sanction. I note that the inspector who conducted the investigation was confident that lessons had been learned and there would be no recurrence. Although recognising that the decision not to invoke any sanction against those members was a matter of judgment, I nevertheless found the decision surprising.

Areas to be addressed

3.207 My conclusion on current police practice is that the decision to prosecute or not is generally made in accordance with the applicable standards and procedures, and takes into account all the admissible evidence available to the police at the time. Although some of the files raise other concerns with aspects of police practice, I believe the New Zealand public can be confident that, in the words of counsel for the Police Association, “there is not in fact a significant level of criminal sexual activity within the Police Force which has gone untried.”³⁴⁴

3.208 Despite this, a number of the submitters and complainants in the files expressed concern that the person complained of had not been charged with criminal or disciplinary offences. Some of these complainants appeared to have little knowledge or understanding of why the person against whom they had made their complaint had not been charged. Little, if any, of the reasoning behind the decision not to charge, or the reasons why the person complained of could avoid disciplinary charges by leaving the police, had been understood by the complainant at the time. I address this issue in the next section.

COMMUNICATION AND MANAGEMENT OF COMPLAINTS

3.209 An investigation of alleged sexual offending is a complex and sensitive process, which needs effective management to ensure that all required steps are taken in a timely and efficient way, that all available resources (both within the police and with support agencies) are engaged and able to contribute to the necessary level, and that parties are kept adequately informed of progress throughout. These aspects of an investigation are important, not only because of the need for all available resources to be put to the best use, but also because of the need to ensure that the particular needs and interests of complainants in sexual cases are addressed. When the person complained of is a member of the police, the communication and management of complaints is of particular importance because of the greater potential for suspicion on the part of the complainant and the greater risks to New Zealand Police as an organisation.

Communication with complainants

3.210 A particular concern of some submitters (and other complainants) was the adequacy of communication with them during the course of the investigation. For example, in a 1991 file, regarding a complaint of sexual harassment, the complainant was critical of the lack of communication:

343 At this time counselling was included in general instruction IA 122 as a possible disciplinary action. It involved recorded advice intended to guide a staff member towards improved conduct or performance.

344 New Zealand Police Association, Opening remarks on behalf of the Police Association, 5 December 2005, p. 2.

Since that date I have not been contacted personally or received any written notification of how my complaint has been handled or even if the person complained of has been spoken to by [the investigating officer].

I am distressed that this incident has occurred and especially that I have been subjected to this offensive and indecent behaviour in my work place. I feel that I should have been informed and that a six week delay has caused me more distress.

...

[The investigating officer] concluded the interview by telling me that if I had any queries I should contact him. However, like any complainant, I do not think that it should be up to me to be contacting him to find out how my complaint is being handled.³⁴⁵

- 3.211 Similarly, in response to a 1993 case involving allegations of sexual violation by rape and indecent assault, the PCA reported to the Commissioner of Police as follows:

... I am not satisfied on the evidence so far before me that this young and somewhat fragile complainant has had fully explained to her the very real statutory safeguards offering wide protections to a complainant in a sexual violation prosecution and trial.³⁴⁶

- 3.212 The police explained to me that communication with complainants has always been the responsibility of investigators. They considered practices had improved in the past decade:

This aspect of investigations has generally improved since the enactment of the (now repealed) Victims of Offences Act 1987 and the Victims Rights Act 2002. The Victims Rights Act places statutory obligations on Police and other parties to provide information to victims. The improvement in communication also reflects improvements in Police investigation practice – the Manual of Best Practice, Volume 2, identifies the requirements on investigators to keep victims informed of the progress of investigations.³⁴⁷

- 3.213 Communication is especially important in respect of the latter stages of an investigation, and more so if a decision is made not to proceed with criminal charges or other disciplinary action. The police explained to me that it is the responsibility of the officer in charge of the investigation to explain to the complainant the reasons for not proceeding with a charge.³⁴⁸

- 3.214 However, a failure to communicate a decision not to lay charges can have its origins in poor internal communication. This is illustrated by a 2003 case concerning a charge of indecent assault made against an associate of the police. The charge was reduced to assault and the offender was offered diversion, which he accepted. The complainant subsequently made a complaint to the PCA, believing that the offender was treated leniently because he was an associate of the police. The complaint was enquired into, and the investigating officer found that the outcome was appropriate. However, he reported,

345 Operation Loft file LT 136.

346 Operation Loft file LT 98.

347 Detective Superintendent Malcolm Burgess, Brief of evidence, 29 November 2005, p. 8.

348 Detective Superintendent Malcolm Burgess, Brief of evidence, 29 November 2005, p. 8.

I was of the opinion that Prosecutions did not sufficiently inform the officer in charge of the case or the complainant as to why this course of action occurred, and that is why she made this complaint.

...

I also apologised to the complainant for the fact that the circumstances surrounding the prosecution had not been properly explained to her at the time and she accepted this.³⁴⁹

3.215 I was told by Ms Brott that part of her role was to explain these decisions to complainants:

It is also part of my job to help explain difficult decisions to the victim. Early on in the process, I explain to the victim that the Police will not put her through the trauma of a prosecution unless they are confident that they have a good case. This helps prepare the victim for the possibility that the Police will decide that they do not have enough evidence to take the case to Court. Victims are sometimes upset if this decision is made, but in my experience will usually accept it if they have been prepared for that possibility from early on in the process, and if the reasons for the decision are carefully explained. The important thing is ensuring that the victim does not think that she has been disbelieved. My role, in this situation, is helping the victim to understand that it is OK that the case has not gone to court.³⁵⁰

3.216 Clear lines of communication with complainants will inevitably be of even greater importance when investigations take longer than expected. As noted earlier in this chapter, the average investigation was found to take approximately six and a half months.³⁵¹ The absence of clear lines of communication with complainants also may lead to suspicions that the police are “protecting their own” or that the complaint is not being taken seriously because it is against a police officer.

3.217 The police told me that, irrespective of the level of communication, it is inevitable that a number of complainants could not accept that their alleged assailant was not going to be charged and were understandably upset by the decision.³⁵² One support service provider told me that the police were very good at explaining the process to the victim and decisions not to bring charges.³⁵³ But such decisions can be hard to understand, even when communicated sensitively to a complainant. Given the risks associated with any suggestion that the police have been tardy in carrying out internal investigations, have failed to investigate a complaint to the required standard, or have failed to communicate decisions adequately to complainants, I believe it is important that complainants and their support people are given

- realistic expectations at the start of an investigation about when key milestones are likely to be met

349 Operation Loft file LT 15.

350 Ms Angela Brott, Co-ordinator, Women’s Refuge and Sexual Assault Resource Centre Marlborough, Brief of evidence, 2 November 2005, p. 4.

351 The longest investigation was completed in 547 days and the average investigation took 204 days (see paragraph 3.107).

352 Superintendent Stuart Wildon, New Zealand Police National Manager: Professional Standards, Transcript of hearing, 21 November 2005, pp. 76–77.

353 Ms Irene Livingstone, Hutt Rape Counselling Network, Brief of evidence, pp. 4–5.

- regular updates on progress, and advance notice if the investigation is likely to be delayed for any reason
- assistance in understanding the reasons for any decision not to proceed with a prosecution or other disciplinary action, including where a police member resigns before charges proceed.

3.218 The Police Association submitted that police members under investigation as alleged offenders are also inadequately communicated with:

The frustrations expressed by complainants heard by the Commission is directly mirrored by comparable frustration from those who are aware, that they are under investigation and yet they receive no feed back as to the outcome of that inquiry. Obviously, if they are to be charged either with a criminal offence or a disciplinary offence, then that provides an end to the inquiry. Far more problematic, are those inquiries which simply stop.³⁵⁴

Obviously the level of communication with an alleged offender requires careful judgment. However, I agree that, in what will inevitably be a stressful situation for both complainant and alleged offender, it is vital that the police maintain clear lines of communication with all parties as appropriate.

Relationship with sexual assault support groups

3.219 As the preceding discussion of communication with complainants illustrates, improved relationships with support groups such as HELP, Rape Crisis, and DSAC have led to significant improvements in the overall service to complainants. However, the benefits are wider than that. The involvement of support people usually means the police response is of a more consistent and higher quality. It also assists in the gathering of evidence, in particular dealing with the forensic interview process and any medical examination. It also provides assistance to the complainant in starting her recovery from the trauma itself, and in dealing with the difficult issues that may arise in the course of an investigation (such as, for example, a conclusion by police that there is insufficient evidence to prosecute).

3.220 Such support groups are clearly an essential part of a good service for people who are the victims of sexual assault. It is important to stress that the police are not a social service, and that although officers are expected to show sensitivity and empathy to victims of alleged crimes, too close a relationship with the complainant can prejudice their duties to investigate and, if appropriate, pursue a criminal prosecution.

3.221 Hence the need for outside organisations to provide support, facilities, and services to victims of sexual assault. I heard from several witnesses that where such groups are adequately resourced and professionally run they can significantly transform the experience of victims of sexual assault, providing them with essential and sympathetic support through a potentially distressing police investigation, and assist them to begin their recovery. I also heard that where constructive relationships exist between support groups and the police this assists the progress of the investigation, aids the gathering of evidence, and ensures that the complainant's needs are catered for throughout.

354 New Zealand Police Association, submission in response to draft report, 14 June 2006, p. 4.

3.222 However, it is also clear that such good working relationships are not a matter to be left to chance. I heard evidence that the quality of these partnerships varied across the country and had developed on an ad hoc basis.³⁵⁵ Creating and maintaining good working relationships requires considerable attention on the part of both the police and the organisations at a local and regional level. There is an important distinction between support groups and the police that needs to be maintained to ensure that the respective roles of each remain clear. A careful, systematic, and professional approach to the relationship needs to be a high priority for police. I would expect to find an openness and respect for each other's roles.

Funding issues

3.223 It is a matter of considerable concern that support services do not appear to have adequate or consistent funding. The support groups exist on a mixture of grants from Government departments and private fund-raising. By way of comparison, I note that Victim Support services are 60 percent funded by the Government through the Ministry of Justice, and I believe a similar secure funding base should be established for the volunteer services for victims of sexual assault.

3.224 Representatives of DSAC told me that there is inadequate funding for their work and most of their time is given voluntarily. I was told that the Auckland District Health Board funds two and a half days of doctors' time per week; for the remainder of the week doctors are expected to provide their services free. Again, a case needs to be made for a better funding regime for these services.

3.225 Although I am not in a position to comment on where funding for support groups best comes from, it is important that it be nationally consistent and adequate to ensure support services are available to all people who find themselves victims of sexual assault.

Complaint management

3.226 Differences emerge between districts in respect of the mechanisms for managing a complaint. When reading the recent investigation files provided by the police, I was struck by the many examples of good practice, particularly from Central, Canterbury, and Southern Police Districts. In particular, I note the high level of oversight of internal investigations in the Central, Canterbury, and Southern Police Districts, where, for example, investigating officers are sent letters reminding them of the requirements under the general instructions regarding internal investigations.³⁵⁶ These letters may also specify the time frames in which an investigation is to be completed and time frames for updating the district commander or district complaints manager. The same or similar practices may occur in other districts, but this is not apparent from the files I reviewed. I believe that a high level of oversight is a useful way to manage complaints and would like to see the practice of reminding investigators of their obligations (and monitoring compliance) applied consistently throughout the country.

355 Dr Jan Jordan, Senior Lecturer, Institute of Criminology, Victoria University of Wellington, Transcript of hearing, 3 November 2005, p. 14.

356 For example, Operation Loft file LT 42.

3.227 The letters given to investigating officers did not, however, include reference to the other relevant policy documents that govern the investigation of sexual assault complaints against police officers, namely the Adult Sexual Assault Investigation Policy and the “Sexual Offences” section of the Manual of Best Practice. Given that it is still early in the roll-out of the adult sexual assault investigation training, it is advisable that the requirements of the ASAI Policy are set out early in the investigation so that all internal investigators know exactly what is expected of them. This would ensure that a complainant received all the benefits to which he or she is entitled under the policy, for example having a qualified support person present during interviews with the police, and being interviewed in an area that is comfortable, secure, private, and safe – and not in a suspect interview room. Although I did not receive evidence suggesting that the latter situation had happened since the policy had been implemented, there nonetheless remains a real possibility of complainants being disadvantaged unless the attention of investigating officers is specifically drawn to the policy and manual at the outset of all such investigations.



ENSURING COMPLIANCE WITH STANDARDS AND PROCEDURES

3.228 This section addresses term of reference (2)(d), which requires the Commission to inquire into, and report upon

(2) irrespective of the existence or adequacy of standards or procedures as a matter of Police policy, the practice of Police in the investigation of complaints alleging sexual assault by members of the Police or by associates or the Police or by both, in particular, but not limited to,—

...

(d) what requirements (if any), both at a local level and at the level of Police Headquarters, have been in place, or are now in place, to ensure that Police practice complies with any relevant standards and procedures:

3.229 This term of reference requires me to consider how the police, both at district and headquarters levels, ensure that their practice complies with relevant standards and procedures.

3.230 There were two prime areas that seemed to me to be relevant in considering this term of reference:

- the internal complaints review structure, which is designed to ensure that complaints against members of the police are investigated properly and that all relevant standards and procedures for internal investigations are complied with
- the management and assurance structures and systems that New Zealand Police has in place to ensure that police practice complies with the relevant standards and procedures across the country.

3.231 In this section, I have also considered how the police supervise smaller and rural stations to ensure consistency of practice. This is because, as a result of reading the files, I had concerns about some instances of inappropriate behaviour in these types of stations going unchecked for some time.

3.232 I also explore the concept of constabulary independence in this section, and whether it has any implications for ensuring compliance with the relevant standards and procedures.

MONITORING THE INVESTIGATION OF COMPLAINTS AGAINST THE POLICE

3.233 The police operate an internal complaints review structure designed to ensure that complaints against members of the police are investigated properly and that all relevant standards and procedures are complied with. This system is managed through the Professional Standards section at the Office of the Commissioner and involves at least two levels of review before a complaint file is forwarded to the PCA for an independent external review.

- 3.234 I was told that before 1983 and the establishment of Internal Affairs (now known as Professional Standards) there was no national section responsible for overseeing or reviewing internal complaints. Complaints were handled entirely at district level and there was no mechanism for ensuring consistency of approach from district to district.³⁵⁷ One of the objectives of the current centralised Professional Standards section is to try to ensure that similar cases are resolved in a consistent way throughout the country. A reviewer will assess the investigator's recommendation, both in light of his or her professional experience, and against other similar cases that have been through Professional Standards.
- 3.235 Under the current system there are, at a minimum, four or five levels of oversight of the investigation of complaints against police officers:
- the area controller or manager, who may supervise the investigator
 - the district professional standards manager (also known as the district complaints manager), who reviews the investigation
 - in some districts, the district commander, who may review the investigation
 - Professional Standards section at the Office of the Commissioner, which also reviews the investigation
 - independent review of the investigation by the PCA.

Monitoring of complaints against police officers at district level

- 3.236 Investigations are monitored by the area controller or manager, who supervises the investigator. The files indicate that the area controller or manager provides day-to-day advice and assistance on the progress of the investigation.
- 3.237 The investigator is required to provide a monthly update to the district professional standards manager regarding the progress made with the investigation. This may be forwarded through the investigator's area controller or manager. I was informed that, during the course of an investigation, "It is normal for the member to provide ongoing feedback on progress of the investigation and to co-operate with the Professional Standards group."³⁵⁸ The district professional standards manager subsequently forwards a schedule regarding the progress of all complaints to Professional Standards at the Office of the Commissioner, which forwards the schedule to the PCA.
- 3.238 The level of information contained within the monthly updates to district professional standards managers differs between districts. I was told that there is no national monthly reporting template used consistently throughout the country.³⁵⁹ Instead, two district commanders, Superintendent Lammas and Superintendent Nicholls, have developed their own templates for investigators to use when providing an update on the progress of the investigation.³⁶⁰ Superintendent Lammas believes that the benefits of using his form are

357 Superintendent Stuart Wildon, New Zealand Police National Manager: Professional Standards, Brief of evidence, 21 November 2005, p. 2.

358 Inspector Neil Banks, Professional Standards, Canterbury, Brief of evidence, 14 November 2005, pp. 3–4.

359 Superintendent Grant Nicholls, District Commander, Eastern, Transcript of hearing, 15 November 2005, p. 54.

360 Superintendent Mark Lammas, District Commander, Central, Transcript of hearing, 15 November 2005, p. 72; and Superintendent Grant Nicholls, District Commander, Eastern, Transcript of hearing, 15 November 2005, p. 54.

that the investigators “have to answer the hard questions like what have they done in the last month, what is remaining to be done, how long is it going to take, ...”.³⁶¹ He did, however, acknowledge, “maybe some of the districts have something better.”³⁶²

- 3.239 I heard no evidence from other districts of similar models, nor am I aware of any from my assessment of the files. Considering the practical advantages of a nationally consistent reporting mechanism, I am surprised that these templates are not utilised elsewhere. Although this is a minor example, it illustrates my concern that there is no national consistency of approach. There is nothing peculiar to the Central or Eastern Police Districts that warrants them taking a different approach on this matter from other districts. Although district initiative is to be applauded, best practice should be shared and, where appropriate, nationalised.
- 3.240 At the completion of an investigation, the investigator prepares a summarising report, which outlines the course of the inquiry, summarises the available evidence on each aspect of the complaint, and makes recommendations on the outcome and appropriate disposal of the complaint. The investigating officer’s manager or area commander subsequently checks this report and the complaint file before forwarding it to the district professional standards manager.
- 3.241 It is the role of the district professional standards manager to review the file and prepare a short report either concurring or disagreeing with the investigating officer’s findings and recommendations. This may also include obtaining legal advice from either the local police legal section or sometimes from the Crown solicitor. The files indicate that the police will generally err on the side of caution and take legal advice wherever there is a question regarding whether or not to prosecute a member accused of sexual assault.³⁶³
- 3.242 In some districts the district professional standards manager passes the file directly to Professional Standards at the Office of the Commissioner. In others the complaint is forwarded to the district commander for review. Central Police District is in a unique situation in that the district commander undertakes the role of district professional standards manager himself.³⁶⁴ As a result all complaints against members of the police come to his office and all investigations are overseen by him.
- 3.243 By comparison, in other districts, for example in Canterbury, Eastern, and Auckland Central Police Districts, a complaints manager oversees all internal investigations, and as a general rule files do not get reviewed by the district commander, although the district commander is kept informed of the progress of an investigation into any serious allegation.³⁶⁵ This is not meant as a criticism of either method of operating, but is an illustration of the differences of approach taken by districts. Although it may not be possible for all district commanders

361 Superintendent Mark Lammas, District Commander, Central, Transcript of hearing, 15 November 2005, p. 72.

362 Superintendent Mark Lammas, District Commander, Central, Transcript of hearing, 15 November 2005, p. 72.

363 For example, Operation Loft file LT 36.

364 Superintendent Mark Lammas, District Commander, Central, Brief of evidence, 15 November 2005, p. 5.

365 Inspector Neil Banks, Professional Standards, Canterbury, Brief of evidence, 14 November 2005, p. 4; Superintendent Grant Nicholls, District Commander, Eastern, Brief of evidence, 15 November 2005, p. 3; and Superintendent Gavin Jones, Acting District Commander, Auckland City, Brief of evidence, 17 November 2005, p. 3.

to take on the same role as the district commander of Central Police District, I can readily see the merits in his approach. As Superintendent Lammas observes,

I believe that my personal involvement in each complaint raises District standards, both in the investigation of complaints and generally in terms of behaviour. For example, anyone with ambition for promotion in my district will know that I have seen every complaint file that is generated. They know that the way they personally behave as members of Police, report complaints, undertake investigations and make recommendations on those investigations form part of the picture I develop of my staff.³⁶⁶

- 3.244 Time and workload constraints mean that it is generally not feasible for district commanders to oversee the investigation of all complaints against members of their staff. It is, however, important for district commanders to be aware of all complaints received about their staff in order to monitor the health of their staff and district and to ensure that all complaints are dealt with properly.

Monitoring of complaints against police officers at national level

- 3.245 As noted earlier, Professional Standards at the Office of the Commissioner is charged with overseeing and reviewing the handling and outcome of all complaints against serving police officers, on behalf of the PCA.³⁶⁷ As part of this role, and during the investigation of the complaint, Professional Standards requires districts to provide monthly updates regarding the progress of the investigation. These are usually short updates and are forwarded by Professional Standards to the PCA so that the PCA, too, can monitor the progress of an investigation.
- 3.246 I noticed, when reviewing the investigations into allegations of sexual assault by members of police, examples of districts failing to provide monthly updates to Professional Standards at the Office of the Commissioner or failing to complete the investigation within the required three-month time frame specified in police policy documents.³⁶⁸ As a result the police failed to update the PCA regularly on the progress of these complaints. In the majority of these instances, Professional Standards took steps (even if not always on a monthly basis) to remind the district of their obligation to provide these updates or provide reasons why the investigation had not been completed. However, this action was usually taken several months after the updates had ceased.³⁶⁹ This suggests that, even though the investigation of a complaint against a member of the police is monitored by Professional Standards, the effectiveness of this monitoring may be limited. I was told by Superintendent Wildon that the present system works as well as it can with the resources it has; however, there are generally around 200 files awaiting attention at any given time.³⁷⁰
- 3.247 Professional Standards at the Office of the Commissioner receives the full file and all reports after it has been reviewed by the district professional standards manager and at the conclusion of the inquiry (or any criminal proceedings). The file is subsequently reviewed

366 Superintendent Mark Lammas, District Commander, Central, Brief of evidence, 15 November 2005, p. 5.

367 Superintendent Stuart Wildon, New Zealand Police National Manager: Professional Standards, Brief of evidence, 21 November 2005, p. 2.

368 These policies are referred to in paragraphs 2.48 and 2.122.

369 For example Operation Loft files LT 154, LT 32, LT 65, and LT 120.

370 Superintendent Stuart Wildon, New Zealand Police National Manager: Professional Standards, Brief of evidence, 21 November 2005, p. 13; and transcript of hearing, pp. 55 and 56.

by a senior officer (or by contract staff, such as a retired senior officer). Superintendent Wildon described the review process:

The reviewing officer is expected to consider all aspects of the inquiry, including the way that it was handled by the investigator. I am aware of cases, even during my relatively brief time at Professional Standards, where the reviewing officer has sent the file back to the District for further investigation, or for certain participants to be re-interviewed. Before making any assessment of the recommendation, the reviewer must be satisfied that the inquiry was both objective and thorough. The reviewer then assesses the investigator's recommendation, both in light of his or her professional experience, and against other similar cases that have been through Professional Standards; one of the objectives of a centralised Professional Standards section is to try to ensure that similar cases are resolved in a consistent way throughout the country.³⁷¹

3.248 In cases where it is difficult to determine if there is sufficient evidence to support a criminal charge, Professional Standards may seek independent legal advice from Crown Law. If a decision is made to charge an alleged offender the file is referred back to district for prosecution.

3.249 If Professional Standards concludes that no action, either criminal or disciplinary, should be taken, then the whole file, including all of the various reports prepared up to that point, is referred to the PCA for a final external review. Superintendent Wildon outlined this stage:

if, as usually happens, the file has been handled properly at District level, and the recommendation is a sound one, the reviewing officer will usually add little more than a short letter noting his or her agreement. On the other hand, if further work is required, or the reviewer does not agree with the District's recommendation, a longer more detailed report will be prepared.³⁷²

Adequacy of the Professional Standards review mechanisms

3.250 It is apparent from the files that I reviewed that the Professional Standards review process plays an important part in ensuring that investigations are conducted appropriately. In particular, it ensures that appropriate witnesses are spoken to, all avenues of inquiry are followed up and that appropriate general instructions are complied with. For example, in one file an investigating officer had failed, in his letter to the complainant, to advise her of her right to contact the Police Complaints Authority if she had concerns about the investigation. This oversight was picked up by the district commander who rectified the situation. The investigator was also notified of the need to comply with this general instruction in the future.³⁷³

3.251 There does not, however, appear to be any mechanism within the Professional Standards system for ensuring that the investigation of a complaint complies with relevant policies and instructions other than the general instructions relating to internal investigations.

371 Superintendent Stuart Wildon, *New Zealand Police National Manager: Professional Standards*, Brief of evidence, 21 November 2005, pp. 6–7.

372 Superintendent Stuart Wildon, *New Zealand Police National Manager: Professional Standards*, Brief of evidence, 21 November 2005, p. 7.

373 Operation Loft file LT 95.

3.252 Although the Professional Standards oversight process provides a structured check on investigations involving complaints against police officers, including complaints of sexual assault, neither it nor the audit and assurance processes appear to have considered that those investigations do not in many cases comply with the ASAI Policy; in particular, investigators specifically trained in adult sexual assault investigation are not routinely used. It does not appear that the ASAI Policy features in the “audit” thinking. It is also of concern (as will be noted in Chapter 7) that an inappropriate statement can be recorded on a file and go unnoticed despite going through various levels of checking and review.³⁷⁴

MONITORING THE INVESTIGATION OF COMPLAINTS AGAINST ASSOCIATES OF THE POLICE

3.253 There is no equivalent review system in place for dealing with complaints against police associates. Instead the same review process that is applied to any allegation of sexual offending is used. This means if charges are laid the review will form part of the “normal prosecutorial function”. If charges are not laid the investigation is reviewed as part of the “supervisory review function”.³⁷⁵

3.254 I saw examples of both types of review functions in operation and it is apparent that these systems will in most instances identify if there have been any flaws in the investigation. For example a 1995 case involving an allegation of sexual violation by rape was sent to the police legal section for review in order to determine whether charges should be laid. The file was returned to the investigating officer requesting further investigation into “major discrepancies of fundamental importance between [the complainant’s] statement and that of the suspect.”³⁷⁶ Similarly further inquiries were undertaken in a 1991 investigation after the officer in charge of the station reviewed the file.³⁷⁷

3.255 Although I recognise the likelihood that inadequacies in an investigation will be identified as part of the prosecutorial or supervisory review function, I remain concerned at the lack of formal policies and procedures governing an investigation into an associate of the police. As I have mentioned earlier the lack of independent oversight of these types of cases suggest that greater care must be taken to ensure that they are, and are perceived to be, independent. I reiterate my earlier comments that investigations into police associates (and members of the police) would benefit from a new general policy on independence and identifying and managing conflicts of interest.

NATIONAL CONSISTENCY, DISTRICT AUTONOMY, AND CONSTABULARY INDEPENDENCE

3.256 I was told that there are various mechanisms through which the Commissioner of Police ensures that district practice complies with relevant standards and procedures. The police consider that the most significant way in which effective oversight is achieved is through the chain of command. District commanders are charged by the police commissioner with ensuring that each police district conforms to national policy; in turn, district commanders

374 Operation Loft file LT 200.

375 Detective Superintendent Malcolm Burgess, Transcript of hearing, 11 December 2006, pp. 5-6.

376 Operation Loft file LTA 42.

377 Operation Loft file LTA 3.

place responsibility on their area commanders to ensure that this occurs. Counsel for the police told the Commission that districts are subject to performance management reviews, as well as internal and external audits, to ensure that the “output” of each station, sub-area, area, and district is constantly monitored.³⁷⁸ Any issues raised by the internal and external audits, as well as operational and administrative risks that have been identified, are reported to the recently established Assurance Committee (see paragraph 3.262 below), which is chaired by the Commissioner of Police.

3.257 Under the current police management and organisation structures the district commanders have the mandate, delegations, and responsibility for the operation of their districts.³⁷⁹ Although this structure grants the district commanders considerable autonomy (including the autonomy to develop appropriate policies and procedures to meet local needs), I was told that they do not act in isolation.³⁸⁰ New Zealand Police sets limits on district discretion:

The Police expect districts to follow national policy, however they do not have any difficulty with individual districts having their own way of doing things, provided the organisation’s desired outcomes are achieved, local policing needs are met and district policies do not conflict with national policies.³⁸¹

3.258 The 12 district commanders have geographic operational responsibility for their areas but also sit as members of the Police Executive Committee and share collective responsibility for strategic and policy decisions within the organisation.³⁸² The Police Executive Committee makes recommendations to the Commissioner of Police, who takes the decisions, based on the executive committee’s recommendations, collegially with his deputies.³⁸³

3.259 District commanders are required to prepare an annual district plan, which provides strategic direction for the district over a 12-month period. They are required to file weekly reports on events that have occurred within their district. Police Commissioner Robinson required district commanders to immediately appraise him of any significant event occurring within their districts via an email to the Office of the Commissioner and the commissioner’s support group (including the Board of Commissioners and other key managers within the Office of the Commissioner).³⁸⁴ District commanders are also subject to a performance appraisal undertaken annually by the Deputy Commissioner of Police, with a progress meeting held six monthly.

3.260 I was told that under Police Commissioner Robinson, the district commanders had three- or four-monthly videoconferences with the commissioner, the deputy commissioners, key managers, and, on occasion, external experts. During these meetings Police Commissioner Robinson would explore some aspect of the district’s performance. This could involve a detailed exploration of either some aspect of policy and the implementation thereof, or it could involve an operational issue regarding a particular crime type.³⁸⁵

378 New Zealand Police, Closing submissions, 16 December 2005, pp. 44–45.

379 Police Commissioner Robert Robinson, Brief of evidence, 28 November 2005, p. 10.

380 Police Commissioner Robert Robinson, Brief of evidence, 28 November 2005, p. 10.

381 New Zealand Police, Closing submissions, 16 December 2005, p. 44.

382 Police Commissioner Robert Robinson, Brief of evidence, 28 November 2005, p. 10.

383 Police Commissioner Robert Robinson, Brief of evidence, 28 November 2005, p. 11.

384 Superintendent Grant Nicholls, District Commander, Eastern, Transcript of hearing, 15 November 2005, p. 47.

385 Superintendent Grant Nicholls, District Commander, Eastern, Transcript of hearing, 15 November 2005, p. 47.

3.261 The Commission heard that, in addition to the normal management reporting, the Organisational Performance Group provides an audit of various aspects of policing and performance in each district every six months. This group looks at a range of criteria, which will in the future include adherence to the Adult Sexual Assault Investigation Policy.³⁸⁶ The Organisational Performance Group can spend up to three days in the district interviewing staff, and going through files and records.³⁸⁷ The group subsequently produces a report for the Commissioner of Police, which is provided to the Police Executive Committee member responsible for the district and to the district management team. The Police Executive member then meets with the district commander and his or her management team to discuss the report.

The Assurance Committee

3.262 As part of the review of the governance arrangements he instituted in 2005, Police Commissioner Robinson broadened the role of the previous Audit Committee and reconstituted it as an Assurance Committee. Police Commissioner Robinson told me that the Audit Committee had outlived its usefulness and that he had in the past year revamped it.³⁸⁸ The Assurance Committee is made up of the Commissioner of Police, the two deputy commissioners, and three external members.³⁸⁹ This committee “monitors both the internal and external auditing to which the Police are subject, and assists in the identification and monitoring of risks that the organisation may face.”³⁹⁰ Police Commissioner Robinson said that the committee met on a monthly basis in the current initial phase, and added, “I would anticipate once the Committee has greater confidence and assurance around our own operation it will probably become a quarterly meeting.”³⁹¹

Constabulary independence

3.263 Some interpretations of the concept of constabulary independence suggest that it means that police districts have complete autonomy regarding how they apply policies within their own boundaries. Dr Warren Young from the Law Commission disputed this interpretation and explained the concept of constabulary independence as follows:

The doctrine derives from the development of the office of constable in England during Saxon and Norman times. The office was originally a part-time one, with the constable annually elected to maintain the King’s peace in the area. It carried with it certain heavily prescribed coercive powers, that were original to the office rather than delegated from some other source and were required to be exercised by the individual constable independently of political control. That became known as “constabulary independence.”³⁹²

3.264 Dr Young said that in his view the original doctrine (which, in its extreme form, held that a constable was answerable to the law and the law alone) is no longer applicable to a

386 Assistant Police Commissioner Peter Marshall, Transcript of hearing, 7 November 2005, p. 57.

387 Superintendent Grant Nicholls, District Commander, Eastern, Transcript of hearing, 15 November 2005, p. 48.

388 Police Commissioner Robert Robinson, Transcript of hearing, 28 November 2005, p. 10.

389 Mr Michael Wintringham, Mr David Wright, and Ms Pauline Winter.

390 New Zealand Police, Closing submissions, 16 December 2005, p. 45.

391 Police Commissioner Robert Robinson, Transcript of hearing, 28 November 2005, p. 11.

392 Dr Warren Young, Law Commission, Brief of evidence, 22 November 2005, p. 6.

modern police force subject to statutes and accountabilities in a manner similar to other state agencies.³⁹³

- 3.265 Dr Young also explored the question of whether the concept of constabulary independence requires that police districts are autonomous, particularly in the implementation of policy:

I would find it difficult to see district autonomy of that sort as being something that derives from constabulary independence. It might well be that as a matter of operational practice, you want districts to have the ability to respond to local conditions, and ... have flexibility how they implement policy.

But I think it is taking constabular independence too far to suggest that that requires local District Commanders, for example, to have autonomy in the way they police. I just don't think in modern day that's what it means.

I should add, ... it's contrary to the Police Act as well.³⁹⁴

- 3.266 I understand that the concept of constabulary independence, although important in order to ensure independence from executive control in relation to matters of operational law enforcement, is properly not advanced as a reason for the Commissioner of Police, and through him the district commanders, to resist scrutiny of the way that the police are managed, administered, and controlled.³⁹⁵

Oversight of smaller and rural police stations

- 3.267 Based on my reading of the files, I had some concern about the oversight given to ensuring compliance with standards and procedures in smaller and rural stations, where, as a result of a lack of adequate supervision, problems could potentially go undetected over a long period. The police were aware that this was a topic in which I was interested and called witnesses to reassure me that mechanisms were now in place to effectively supervise small stations, which were defined by the police as stations with one, two, or three sworn officers. My consideration of small stations extended to rural stations with small numbers of staff, but several had more than three officers (referred to in the report as "smaller and rural" stations).

- 3.268 I found that there had been several incidents at small stations during the period covered by my inquiry. The case of Submitter A, discussed at paragraphs 3.123 to 3.129, involved a complaint made at a small station. The associate against whom the complaint was made had a good relationship with the police officers in the local station, and as a result there were several issues involved with the quality of the investigation into her complaint. A 1996 police report said,

It is clear from the extensive interviews conducted with residents and police officers stationed at [place name] in the early 1980's, that the Police Service provided to that town, at that time, was inadequate and superficial.³⁹⁶

393 Dr Warren Young, Law Commission, Brief of evidence, 22 November 2005, p. 6.

394 Dr Warren Young, Law Commission, Transcript of hearing, 22 November 2005, p. 15.

395 The accountability of the Commissioner of Police is discussed in *Laws of New Zealand*, Police, paragraph 11.

396 Operation Loft file LT 69.

3.269 As noted elsewhere, Submitter A subsequently received an apology from Police Commissioner Robinson in person in 2000.³⁹⁷

3.270 I also found incidents that appeared to arise as a result of senior management not being aware that policing standards had deteriorated (even though this had been so for some time), or from a general lack of supervision and oversight from outside the station³⁹⁸:

- In December 2002 two constables in a small town station alleged that the officer in charge used his position to obtain sexual favours from women in the community, especially solo parents, and that the community had lost confidence and respect in the officer. The allegation of sexual impropriety was not proved. The case file noted,

The thrust of the results is that there is some possible ill-advised conduct on behalf of [name of officer] in connection with local women. There is a lot of rumour that cannot be sustained to any formal degree.³⁹⁹

During the investigation it was found that there had been concerns about the officer's attitude and practices in the community for several years. The investigating officer recorded the views of those in the community and other police members:

the overwhelming view of community leaders and members I spoke with, confirmed that he was considered lazy, was intensely disliked and was seen as a barrier between an effective police-community partnership.⁴⁰⁰

It was decided that it would be in the best interests of the officer concerned and those of the police and the community for him to transfer to another station in order to complete his 35 years service in the police. The area controller in this case noted, "That this situation was able to fester and grow over a long period of time is disappointing".⁴⁰¹ There was also no suggestion of any performance issues in any of this officer's appraisals; indeed, he had been nominated for an outstanding appraisal in the year ended June 2002 with supporting documentation from other members of the police. The area controller's report stated, "The fact that these issues were not reported much earlier does not reflect well on the members involved or the supervision process."⁴⁰²

- In September 1996 three police members came forward with complaints of sexual harassment (dating from January 1995 to August 1996) against the officer in charge of a small town station. A complaint of a similar nature against the officer had been dealt with informally through mediation in December 1995. At that time the officer declined the offer of sexual harassment training and gave his "assurance that he would modify his behaviour and that this would not happen again".⁴⁰³ The officer's offending was known by police hierarchy in December 1995 yet he was able to continue in his role unsupervised until September 1996. He was permitted to disengage before the complaints went to a tribunal hearing.⁴⁰⁴

397 Operation Loft file LT 69.

398 For example, Operation Loft files LT 61 and LT 91.

399 Operation Loft file LT 61.

400 Operation Loft file LT 61.

401 Operation Loft file LT 61.

402 Operation Loft file LT 61.

403 Operation Loft file LT 91.

404 Operation Loft file LT 91.

3.271 In response to the issues I identified, the police provided evidence regarding the management of one-, two-, and three-person stations. Senior police officers set out the line responsibility for supervising small stations and illustrated the different methods of supervision undertaken in different districts, given the discretion individual managers have to select methods designed to suit their own particular requirements. Information was also provided on a national policy issued in September 2005 to guide district evaluations and decision-making associated with the assessment of “1-2-3 person” station staffing.

Supervision and training of staff

3.272 Assistant Police Commissioner Marshall told me that supervision of small stations is the responsibility of the area commanders. In each district there are about four areas, each of which is overseen by an area commander (at inspector level). In many areas there are also sub-area controllers (at senior sergeant level) with direct oversight of small stations. It is the responsibility of sub-area controllers and area commanders to make sure that stations under their jurisdiction are functioning correctly. District commanders keep pressure on area controllers to ensure that all stations are performing at a high level.⁴⁰⁵ How this is carried out is largely up to each district and area, depending on the number of small stations it has and their geographical spread.⁴⁰⁶ “Cluster groups” of areas of a similar size and demographic type have been formed to provide area commanders with an opportunity to share best practice.⁴⁰⁷

3.273 As an area commander, Inspector Philip Jones gave evidence on how he manages small stations within his area of Otago Rural, a large area geographically but relatively sparsely populated and thus having a lot of small stations. He outlined how he supervises the small stations through

- training
- direct supervision and monitoring
- feedback received
- internal control measures.⁴⁰⁸

3.274 Inspector Jones identified training as a “major factor in ensuring that my staff are operating effectively, safely, professionally and in compliance with relevant policy and law.”⁴⁰⁹ The inspector monitors attendance at training and makes use of the database on training kept by the regional Training Service Centre to identify what training has been completed, and what is to be completed by individual members. He told me that at their monthly district executive meeting each area commander is also briefed by the person in charge of the training centre about training issues, and any gaps in key training of individual members.⁴¹⁰ It is the responsibility of the sub-area supervisor to ensure that a staff member is trained in critical areas.

405 Assistant Police Commissioner Peter Marshall, Brief of evidence, 7 November 2005, pp. 14 and 15.

406 Inspector Dawn Bell, New Zealand Police Human Resources Manager: Recruitment and Appointments, Brief of evidence, 9 November 2005, p. 19.

407 Inspector Philip Jones, Area Commander, Otago Rural, Transcript of hearing, 11 November 2005, p. 5.

408 Inspector Philip Jones, Area Commander, Otago Rural, Transcript of hearing, 11 November 2005, pp. 5 and 6.

409 Inspector Philip Jones, Area Commander, Otago Rural, Brief of evidence, 11 November 2005, p. 2.

410 Inspector Philip Jones, Area Commander, Otago Rural, Transcript of hearing, 11 November 2005, p. 6.

3.275 Other senior officers discussed the role of training in the supervision of small-station staff. Superintendent Lammas, District Commander, Central Police District, said that in his district staff of small stations are part of the training programme that involves staff in larger stations. Also, about every two years, Central Police District has a rural seminar.⁴¹¹ However, he went on to tell me that meeting the training needs of a small number of staff spread over the larger rural areas can become more problematic, and staff in more isolated rural areas can miss out on training opportunities. This can occur despite such things as the rural seminars.⁴¹²

Internal control and audit

3.276 Superintendent Lammas said that in his district there is an internal control process and internal audit that is completed on a monthly basis.⁴¹³ This is to a large extent an administrative process but it ensures that someone from outside the station visits on a regular basis. Superintendent Lammas endeavours to visit each small station once a year; he expects that the area commander will visit more frequently, and the person in charge of that station should visit the station at least four times a year.⁴¹⁴ An individual officer's performance is measured using crime statistics, traffic statistics, each member's productive output, and the member's relationship with the community.⁴¹⁵

3.277 Inspector Jones told me that in terms of internal control measures, Otago Rural has two systems: a monthly internal control audit, and a three-monthly internal control audit, both checking different areas. The monthly audit focuses on the more critical areas (such as the completion of charge sheets) and high-risk areas (such as the care and use of weapons), as well as the administrative areas. The inspector outlined how they have a first, second, and third line check in their audit systems. The first line is the people in the station; the second is the sub-area supervisor; and the third line is the inspector himself.⁴¹⁶ As area commander, Inspector Jones identified this line supervision as the most significant method of managing and monitoring performance in the rural environment.⁴¹⁷

3.278 The inspector has implemented an audit process in the past four years whereby a retired senior sergeant comes around every six months and reviews or audits the area's internal audits and highlights any deficiencies.⁴¹⁸ This is a local initiative, undertaken in addition to the police internal audit function, which audits district performance against a Statement of Service Performance.

Community relationships and feedback

3.279 Other senior police officers also discussed the importance of community feedback in the monitoring of small stations. Superintendent Lammas said that in his district the member's relationship with the community is monitored through community comment, an assessment of any complaints generated, and an assessment of the member's relationship with other

411 Superintendent Mark Lammas, District Commander, Central, Brief of evidence, 15 November 2005, p. 8.

412 Superintendent Mark Lammas, District Commander, Central, Transcript of hearing, 15 November 2005, p. 74.

413 Superintendent Mark Lammas, District Commander Central, Brief of evidence, 15 November 2005, p. 8.

414 Superintendent Mark Lammas, District Commander, Central, Transcript of hearing, 15 November 2005, p. 75.

415 Superintendent Mark Lammas, District Commander, Central, Brief of evidence, 15 November 2005, p. 9.

416 Inspector Philip Jones, Area Commander, Otago Rural, Transcript of hearing, 11 November 2005, p. 8.

417 Inspector Philip Jones, Area Commander, Otago Rural, Brief of evidence, 11 November 2005, p. 3.

418 Inspector Philip Jones, Area Commander, Otago Rural, Transcript of hearing, 11 November 2005, p. 34.

agencies such as iwi, the local council, and the media.⁴¹⁹ Similarly Superintendent Nicholls told me that his district has a number of formal consultative groups including meetings and liaison with representatives of the Government entities of Education, Housing, Corrections, Conservation, Inland Revenue, Accident Compensation Corporation, Work and Income, and Child, Youth and Family, as well as with local authorities and the district health board, sports groups, local iwi, probation services, and the Chamber of Commerce. These relationships are maintained and provide a mechanism through which issues of community concern can be raised.⁴²⁰

- 3.280 Assistant Police Commissioner Marshall told me that senior officers are expected to stay in close touch with their sole-charge constables, and to visit the communities themselves on a regular basis. Part of a senior officer's job is to liaise closely with the leaders of local communities (for example mayors, local rotary clubs, neighbourhood watch coordinators, school principals); if the relationship between the community and its local constable were to sour for any reason, then, at least under the structure in place now, the local officer's supervisor would hear about this quickly. He believes that the present structure constantly demands accountability at all levels, and the performance of every station is closely monitored.⁴²¹
- 3.281 Superintendent Lammas explained that officers in charge of small stations are very carefully selected.⁴²² Police officers in small stations in his district also have a more direct relationship with senior police staff, including with himself as district commander, than staff of the same rank in larger stations. He said that because these staff are essentially the face of the police in smaller communities, they are more visible than their colleagues in larger stations, and thus he takes a far more active interest in them than he takes in other staff at constable or sergeant level.⁴²³
- 3.282 Inspector Jones also regularly visits the small stations in his area. When he makes these visits he already has information on any issues that may be coming up in relation to that station, based on the internal control reports and the monthly meetings with the sub-area supervisors, or from general feedback received.⁴²⁴ He told me that feedback from the community is also a very useful source of information about the performance of small stations.⁴²⁵
- 3.283 I asked Superintendent Lammas whether problems in small stations could go undetected today and he replied, "it could, particularly if it was an officer by him or herself". However he went on to say "We have an environment where people are much more willing to complain than 10 or 20 years ago."⁴²⁶ Similarly, Assistant Police Commissioner Marshall said that in small communities it is easier to determine what is happening because the people expect service and are very quick to complain.⁴²⁷ Superintendent Nicholls also said

419 Superintendent Mark Lammas, District Commander, Central, Brief of evidence, 15 November 2005, p. 9.

420 Superintendent Grant Nicholls, District Commander, Eastern, Brief of evidence, 15 November 2005, p. 8.

421 Assistant Police Commissioner Peter Marshall, Brief of evidence, 7 November 2005, pp. 14 and 15.

422 Superintendent Mark Lammas, District Commander, Central, Brief of evidence, 15 November 2005, p. 8.

423 Superintendent Mark Lammas, District Commander, Central, Brief of evidence, 15 November 2005, p. 8.

424 Inspector Philip Jones, Area Commander, Otago Rural, Transcript of hearing, 11 November 2005, p. 8.

425 Inspector Philip Jones, Area Commander, Otago Rural, Transcript of hearing, 11 November 2005, pp. 9–12.

426 Superintendent Mark Lammas, District Commander, Central, Transcript of hearing, 15 November 2005, p. 91.

427 Assistant Police Commissioner Peter Marshall, Transcript of hearing, 7 November 2005, pp. 60 and 61.

that in rural communities issues of performance would readily be brought to the notice of the district management. There is a significant level of community interaction with police, particularly with the command levels of police within these communities. He said he would be extremely surprised if a significant policing issue in the district remained undisclosed in the environment in which they currently operate.⁴²⁸

3.284 Inspector Dawn Bell, New Zealand Police Human Resources Manager: Recruitment and Appointments, also drew my attention to some recent national initiatives regarding small stations. She informed me that a survey has been undertaken of one-, two-, and three-person stations. The survey focused on identifying the risks associated with small station policing and has generated the establishment of a small station focus group to discuss issues of interest. She advised that the survey report is currently being prepared.⁴²⁹

National initiatives

3.285 Inspector Bell also explained that the Human Resources section recently issued a national policy designed to guide district evaluations and decision-making associated with the assessment of one-, two-, and three-person police station staffing. The policy states that regular evaluation and re-assessment of one-, two- and three-person stations will be undertaken to achieve an appropriate balance between providing for the safety and wellbeing of rural station members, meeting the needs and expectations of the community, and operational policing requirements. The policy establishes a method of regular data collection and sets out, among other things, that district Human Resources managers are responsible for consulting with members, managers, and supervisors to determine if the data for the station indicates that current policing practices are not working effectively and to consider interventions and policing practices that may achieve the desired outcomes.⁴³⁰

3.286 The objective of the policy is to

- provide a framework to guide district evaluations and reviews of one-, two-, and three-person station staffing on a regular basis
- provide districts with relevant information on one-, two-, and three-person stations so informed decisions can be made
- ensure a consistent approach to the evaluation and review of one-, two-, and three-person station staffing yet also allow unique station, district, and community features and needs to be recognised
- ensure adequate staffing levels in rural stations.⁴³¹

3.287 I note in the third bullet point above that this is a national policy that also allows for unique district features to be recognised. As such, I think it is a very positive and useful example of an application of nationally consistent standards while still allowing for some regional discretion. I believe this approach could usefully be extended beyond the management of

428 Superintendent Grant Nicholls, District Commander, Eastern, Brief of evidence, 15 November 2005, pp. 7 and 8.

429 Inspector Dawn Bell, New Zealand Police Human Resources Manager: Recruitment and Appointments, Brief of evidence, 9 November 2005, p. 21.

430 Inspector Dawn Bell, New Zealand Police Human Resources Manager: Recruitment and Appointments, Brief of evidence, 9 November 2005, Appendix DB20, "Assessment of 1-2-3-Person Station Staffing", p. 2.

431 Inspector Dawn Bell, New Zealand Police Human Resources Manager: Recruitment and Appointments, Brief of evidence, 9 November 2005, pp. 21 and 22.

one-, two- and three-person station staffing to the monitoring, evaluation, and reporting methods employed in respect of smaller and rural stations more generally.

Adequacy of the management structures and systems

- 3.288 I heard of some good initiatives being undertaken, such as the establishment of an Assurance Committee, the establishment of ethics committees at district level (discussed in Chapter 6), and the steps taken by districts to monitor behaviour at smaller and rural stations. However, I am concerned about the lack of consistency with key management processes and systems across the country and the implications of this for consistently and adequately identifying and managing inappropriate behaviour. For instance, I had concerns over the level of discretion for districts in meeting the training requirements for staff. Further, I am not confident that there are always mechanisms in place to ensure that concerns of all sections of the community are passed onto police management when things go wrong.
- 3.289 My concern is about achieving the proper balance between national, centralised direction and district autonomy. I recognise that there is not a “right” approach to achieving this balance. However, in my view, although delegation for day-to-day decision-making and operations must go to those people in the field carrying out the work, that delegation must occur within a clear national management and policy framework, especially when dealing with matters as important as complaints of sexual assault and misconduct by police officers.
- 3.290 I believe that more clarity is required about when districts can make their own decisions and when they must follow a nationally directed approach. The Sexual Harassment Policy is an example of a nationally mandated approach being implemented consistently across the country, with very good results.
- 3.291 For the devolved model of management to operate effectively in terms of the way sexual misconduct within the police is addressed, New Zealand Police must have in place
- good data and information
 - clear policies and standards, which are easily accessible to staff
 - regular monitoring to ensure compliance with those policies and standards.
- 3.292 In my view currently these requirements are not adequately in place in the police. Extensive data is collected, but it is not integrated, well analysed, and used to best effect. For instance, one district commander told me,
- ... I spent 18 months doing internal investigations, we’ve always collated data and we’ve always sent it to the Office of the Commissioner. It’s only recently that I’ve come to realise that they don’t actually do anything with it. I just assumed that someone in the Office of the Commissioner was tasked with analysing, because we analyse everything else, ...⁴³²
- 3.293 As discussed in Chapter 2, there are three national policy documents governing sexual assault investigations into members of police, plus the commissioner’s directives and district orders. This duplication is a real concern. The proliferation of policies within New Zealand

432 Superintendent Gavin Jones, Acting District Commander, Auckland City, Transcript of hearing, 17 November 2005, p. 13.

Police has resulted in a lack of clarity for staff about the policies and procedures that they must follow. Superintendent David Trappitt, New Zealand Police National Manager: Planning and Policy, told me that there is no way of knowing whether or not every front-line person has actually read all the instructions.⁴³³ He told me that in some critical areas there is an internal review process where some areas are checked but that is at a general level rather than at the specific level of each individual member. There is no specific follow-up in relation to individual members to ensure that they are familiar with a specific policy that they may have to obey.⁴³⁴

3.294 To conclude, this section has examined the processes in place to ensure that police practice with respect to the handling of complaints does in fact comply with relevant standards and procedures. Police address this need primarily through the management chain of command and the Professional Standards review mechanisms.

3.295 My overall findings are as follows:

- There are many examples of good practice across the country. However, the mechanisms used by the police to ensure that practice in investigating allegations of sexual assault by police officers complies with the relevant standards and procedures vary across districts.
- District and area commanders appear to have significant discretion as to how they operate and whether they implement national policies or develop and use their own preferred procedures.
- There is an unhelpful lack of consistency across the country in key areas, such as the monitoring of complaints against police officers and internal practices for investigating those complaints. There is no review system for dealing with complaints against police associates, other than that which is applied to any investigation of a complaint of sexual offending.
- Policies and directives are issued to districts without any obvious mechanisms for ensuring that they are understood and consistently followed by front-line staff.
- Extensive data is collected in relation to the behaviour of individual officers, but it is not well integrated and analysed on a consistent basis.

433 Superintendent David Trappitt, New Zealand Police National Manager: Planning and Policy, Transcript of hearing, 24 May 2004, p. 6.

434 Superintendent David Trappitt, New Zealand Police National Manager: Planning and Policy, Transcript of hearing, 24 May 2004, pp. 21 and 22.

Recommendations

Consistency and transparency in complaint processes

R14 New Zealand Police should ensure that the practice of providing investigating officers with a reminder of the standards for complaint investigation is applied consistently throughout the country.

R15 New Zealand Police should improve the process of communicating with complainants about the investigation of their complaint, particularly if there is a decision not to prosecute. Complainants and their support people should be given

- realistic expectations at the start of an investigation about when key milestones are likely to be met
- the opportunity to comment on the choice of investigator
- regular updates on progress, and advance notice if the investigation is likely to be delayed for any reason
- assistance in understanding the reasons for any decision not to prosecute.

Independence of investigations

R16 New Zealand Police should develop a consistent practice of identifying any independence issues at the outset of an investigation of a complaint involving a police officer or a police associate, to ensure there is a high degree of transparency and consistency. The practice should be supported by an explicit policy on the need for independence in such an investigation. In respect of the handling of conflicts of interest, the policy should, among other things,

- identify types and degrees of association
- define a conflict of interest
- provide guidelines and procedures to assist police officers identify and adequately manage conflicts of interest (including in cases where cost or the need for prompt investigation counts against the appointment of an investigator from another section or district)
- ensure that the risk of a conflict of interest involving investigation staff is considered at the outset of any investigation involving a police officer or police associate.

R17 New Zealand Police should expand the content of its ethics training programme to include identifying and managing conflicts of interest, particularly in respect of complaints involving police officers or police associates.

Support for sexual assault investigations

R18 New Zealand Police should ensure that training for the Adult Sexual Assault Investigation Policy is fully implemented across the country, so that the skills of officers involved in sexual assault investigations continue to increase and complainants receive a consistent level of service.

R19 New Zealand Police should initiate cooperative action with the relevant Government agencies to seek more consistent Government funding for the support groups involved in assisting the investigation of sexual assault complaints by assisting and supporting complainants.

Management assurance

R20 In relation to investigations of sexual assault complaints against police officers or police associates, New Zealand Police should have in place systems that

- verify that actual police practices in investigating complaints comply with the relevant standards and procedures
- ensure the consistency of such practice across the country, for instance in the supervision of smaller and rural stations
- identify the required remedial action where practice fails to comply with relevant standards
- monitor police officers' knowledge and understanding of the relevant standards and procedures.

