

Report of a Complaint Handling Review in relation to Police Scotland

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1. Role of the PIRC

Sections 34 and 35 of the Police, Public Order and Criminal Justice (Scotland) Act 2006 (“the Act”) provide that the Police Investigations and Review Commissioner (“the PIRC”) may examine the manner in which particular kinds of complaints are dealt with by Police Scotland and the Scottish Police Authority. Through agreements with UK police bodies operating in Scotland, the PIRC may also examine the manner in which these bodies deal with complaints. The PIRC cannot review complaints of criminal behaviour against police officers or police staff, or complaints made by persons serving, or who have served with the police, about the terms and conditions of their service.

In performing this review function, the PIRC obtains information from the police body which dealt with the complaint. This information is considered together with information provided by the person who made the complaint (“the applicant”). An assessment is then made as to whether in all the circumstances the complaint was dealt with to a reasonable standard. Among the factors taken into account when making this assessment are the following:

- whether sufficient enquiries into the complaint have been carried out by the policing body;
- whether the policing body’s response to the complaint is supported by all material information available;
- whether in dealing with the complaint the policing body has adhered to all relevant policies, procedures and legal provisions;
- whether the policing body’s response to the complaint is adequately reasoned; and
- where the complaint has resulted in the policing body identifying measures necessary to improve its service, whether these measures are adequate and have been implemented.

2. Key findings

The complaints in this case arose from the applicant’s contact with police following an alleged disturbance at his home address . Two complaints were reviewed, namely:

1. that officers failed to obtain a statement from a witness to a disturbance at the applicant’s home address; and
2. that an officer informed the applicant he would be charged if he pursued a criminal complaint.

The review found that both complaints were dealt with to a reasonable standard. No recommendations are made.

3. Background

On 12 September 2015, officers attended the report of an alleged disturbance at the applicant's home address. The disturbance was not on-going on police arrival and no formal police action was taken.

On 17 September 2015, Constables A and B spoke with the applicant's son in connection with a separate incident. The applicant was made aware his son was within the rear of a police vehicle and made his way to where the officers were. According to the applicant, at this time the officers were approached by Ms C and Ms D. Ms C allegedly spoke with Constables A and B and offered to provide a statement regarding the alleged disturbance at the applicant's home address on 12 September 2015.

On 18 September 2015, the applicant and his son attended a meeting at a Police Office with Sergeant E. Constables A and B were also present during the meeting. During the meeting the applicant mentioned the alleged disturbance at his home address on 12 September 2015. According to the applicant, Sergeant E thereafter informed him that if he pursued a criminal complaint in this matter, he would be charged with intimidation.

The applicant made his complaints in person on 2 November 2016. Sergeant F was appointed as enquiry officer and the applicant received a response to his complaints in writing from Chief Inspector G in a letter dated 6 December 2016.

4. The Review

Complaint 1: Statement not taken

The applicant complains that a witness to a disturbance at his home address on 12 September 2015 identified themselves to an officer and offered to provide a statement about the disturbance but no statement was taken. In his statement to police the applicant says:

"As far as I am aware, no Police Officer has been to see [Ms C], which I see as a neglect of duty. I feel [Sergeant E, Constable A] and the other officer did not do their duty by not taking a statement from [Ms C]."

Police Handling of Complaint 1

Chief Inspector G responded to the applicant's complaint as follows:

"In your statement, noted by Police Inspector [H] on Wednesday, 2 November 2016, you state that on Wednesday, 16 September 2015, you received a phone call from your nephew, [Mr J], informing you that your son, [Mr K], was in [Location Y] within the rear of a Police vehicle. You state that you thereafter made the short journey from your home address to his location whereby you indeed observed your son within the rear passenger seat of [a] Police vehicle speaking with two Police Officers, one of whom you recognised as Constable [A], the other you describe as

male, aged in his mid-twenties, average size with black hair. You also state that your nephew, [Mr J], and his girlfriend, [Ms L] were present.

You state that you had a discussion with the two police officers as to their reasons for speaking with your son [Mr K] and that, during this time, two person you named as [Ms C] and [Ms D] also approached the officers to speak with them. You state that [Ms C] approached Constable [A] and informed him that she had witnessed an incident at your home address on the evening of Saturday, 12 September 2015 and wished to provide a statement to Police with regard to what she had observed. You state that Constable [A] did not follow up on this and that, to date, no statement has been taken from her.

Sergeant [F] has conducted a full enquiry to establish all available evidence for this incident, including identifying and speaking with all available witnesses to the incident.

It has been established that shortly after 1330 hours on Thursday, 17 September 2015 (as opposed to Wednesday, 16 September), at [Location Y] Police did indeed speak to your son, [Mr K]. This was not in relation to the disturbance at your home address on Saturday, 12 September 2015 but a separate incident reported to Police.

On 8 November 2016, Sergeant [F] spoke with your son, [Mr K] within your home address. At this time, your son stated he wished no involvement in this enquiry and refused to provide any witness statement in relation to your allegation.

Sergeant [F] has also made attempts to speak with your nephew, [Mr J], and [Ms L]. Having established their home address, Sergeant [F] has made unsuccessful efforts to trace them. Despite calling cards being left at their address, to date, neither [Mr J] nor [Ms L] have replied to these requests or made themselves available for the purpose of providing witness statements.

Sergeant [F] has spoken at length with both [Ms D] and [Ms C], whom you identified as being present at the material time. Statements were noted from both.

[Ms D] can confirm she was at [Location Y] at the material time and observed two Police Officers speaking with your son. She also states that she and her friend, [Ms C], approached the Police Officers dealing with your son and asked what was going on. However, [Ms D] states that she could not remember either she or [Ms C] informing officers that either wanted to provide a statement to Police about an incident at your home address several days earlier or indeed about any other matter. As such, [Ms D's] account does not support your allegation.

[Ms C] also states that she was at [Location Y] at the material time and observed two Police Officers speaking with your son. She confirms that she approached the two Police Officers dealing with your son and thereafter speaking with an officer she knows as [Constable A]. She states she informed Constable [A] that she had witnessed a disturbance at your home address the previous Saturday (12 September 2015). She states that she provided her full name and address and offered to provide a statement regarding this. She also states that, to date, she has

had no further contact with Police and no statement has ever been taken from her with regard to the disturbance at your home. To this end, [Ms C's] account supports your allegation.

The two Police Officers who spoke with you and your son [Mr K] at the material time have been identified by Sergeant [F] and both have provided statements with their respective accounts regarding the incident in question.

Constable [A] confirms being one of the officers who spoke with you and your son at the material time on [Location Y]. He denies being approached at any time during this incident by [Ms C, Ms D] or any other person offering to provide a statement about a disturbance witnessed on 12 September 2015. Constable [A] denies this allegation.

The second officer identified also confirms being present on [Location Y] shortly after 1330 hours, on Thursday, 17 November 2015 and speaking to your son within the rear of a Police vehicle in relation to a separate reported incident. Whilst he confirms that you subsequently attended at this location, he also denies being approached by any other person during the course [sic] dealings with you and your son. The second officer's account also does not support your allegation.

Sergeant [F] has enquired as to the availability of both public space CCTV as well as any private CCTV from the shops on [Location Y] beside which the incident took place. Whilst there is CCTV covering the footpath directly outside the Post Office on [Location Y], it has been established that recorded footage is only retained for a relatively short period of time (in the order of days) and, as such, any potential footage that may have existed has since been lost. The incident in question has not been captured on any other known camera. There is no public space CCTV covering this location. Furthermore no other witnesses to this incident have been identified or come forward.

Having considered the evidence available to me, I am presented with two conflicting versions of events and am unable to determine whether one account is more credible than the other. On the balance of probabilities, I am therefore unable to uphold your first allegation."

Consideration of Complaint 1

The applicant's position is accurately reflected in the response. The applicant's position is supported by the account provided by Ms C who states that she approached two officers who were dealing with the applicant's son and offered to provide them with a statement regarding a disturbance she had allegedly observed at the applicant's home address. The applicant's account is also partially supported by the account provided by Ms D who records that she and Ms C approached the two officers, although she could not confirm if Ms C offered to provide a statement. The position of both witnesses in this respect is also accurately reflected in the response.

Constables A and B have also provided their respective accounts. These accounts broadly support each another in that both officers record that they were not approached by any person at any time

during their dealings with the applicant and that no person offered to provide them with a statement. The position of both officers is also accurately reflected in the response.

Accordingly, the response in this connection has accurately reflected the evidence for and against the applicant's position and has identified there are conflicting accounts.

In circumstances where conflicting accounts cannot be reconciled, according to paragraph 6.12.7 of the Police Scotland Complaints about the Police Standard Operating Procedure ("Complaints SOP"), the complaint will not be upheld.

Therefore, based on the evidence available, and in line with the provisions of the Complaints SOP, it is considered Chief Inspector G is justified in not upholding the applicant's complaint. It is considered this complaint was dealt with to a reasonable standard. No further action is required in this connection.

Complaint 2: Informed might be charged

The applicant complains that he was informed that if he pursued a criminal complaint against the persons involved in the incident at his house on 12 September 2015, that he would be charged with intimidation. In his statement to police the applicant says:

"I wish to complain that Sergeant [E]...later told me that if I were to pursue a criminal complaint against the persons that came to my house, I too would be charged with "intimidation", along with everyone in the house."

Police Handling of Complaint 2

Chief Inspector G responded to the applicant's complaint as follows:

"In your statement, noted by Police Inspector [H] on Wednesday, 2 November 2016, you said that on the morning of Thursday, 17 September 2015 you and your son [Mr K] attended at [named police office], by arrangement, to meet with Police Sergeant [E]. You state this meeting was in relation to Police involvement with your son the previous day at [Location Y]. You also state that both [Constable A] and the second officer who spoke with you and your son on that day were also present during the meeting.

You state that during this conversation you asked for the five individuals who were involved in a previous disturbance at your home address (on Saturday, 12 September 2015) to be charged. You state that Sergeant [E] subsequently informed you if those individuals were to be charged, you in turn would be charged with intimidation, along with everyone else in your household.

As already referred to in review of your first allegation, on 8 November 2016, Sergeant [F] spoke with your son, [Mr K], at your home address. At this time, your son stated he wished no involvement in this enquiry and refused to provide any statement regarding your allegation.

Police Sergeant [E] (the subject officer if your second allegation), as well as Constable [A] and the second Constable you describe as being involved, have all provided their respective accounts of this meeting at [named police office]. All officers confirm that this meeting took place on Friday, 18 September 2015 (as opposed to Thursday, 17 September 2015).

Sergeant [E] states that on Friday, 18 September 2015, he met with you and your son [Mr K]. Sergeant [E] states that during this meeting you were angry and shouting at him regarding the incident at your home address on 12 September 2015.

Sergeant [E] states that during this meeting he informed you that he would be willing to note statements from those who wished to do so, but that his would likely result in all persons involved in a disturbance being charged. Sergeant [E] states that at no time did he tell you that everyone in your house would be charged with intimidation. Sergeant [E] states that you then stood up and left the room. He states that when he asked you to remain you refused and continued to shout and swear as you and your son left [named police office]. Sergeant [E] denies your allegation.

Constable [A's] statement also confirms that at 1000 hours, on Friday, 18 September 2015 he was present at [named police office] during your meeting with Sergeant [E]. Constable [A] also states that you were angry during this meeting during which Sergeant [E] explained the circumstances of Police involvement with your son. He confirms that you asked Sergeant [E] why nothing had been done about the disturbance at your home on Saturday, 12 September 2015. Constable [A] went on to state that Sergeant [E] advised you that a full investigation would be carried out and that all persons would be charged accordingly.

Constable [A] also states that you told Sergeant [E] "charge us all then", before leaving the room with your son. In his account Constable [A] states that despite Sergeant [E] asking you to remain and discuss the matter further you left [named police office], shouting in the stairwell and reception area of the building as you did so. Constable [A] states that at no time did Sergeant [E] tell you that all persons within your house hold would be charged with intimidation if they wished to pursue a complaint against the persons involved in a disturbance. As such, Constable [A's] account does not support this allegation.

The second male Constable involved in this incident also confirms that he was present during your meeting with Sergeant [E] at [named police office] on Friday, 12 September 2015 in relation to both the disturbance at your home address on Saturday, 12 September 2015, and your son's subsequent involvement with the police on Thursday, 17 September 2015. He states that Sergeant [E] informed you that in relation to the disturbance at your home that statements would be taken from everyone involved; however, advised that this meant that it was probable that everyone involved would be charged with the offence. The officer states that at no point did Sergeant [E] tell you that everyone in your household would be charged with intimidation or that it would only be members in your household charged. The officer also states that you subsequently left the meeting despite Sergeant [E] asking you to stay and discuss the matter.

The officer states that you continued to shout and swear as you left [named police office]. The officer's account does not support this allegation.

Sergeant [E's] supervisor, who was on duty and present within [named police office] at the material time, has also provided a statement with his account of events. Within it, he states that he recalled you and your son, [Mr K], attending at [named police office] for a meeting with Sergeant [E]. He states that he subsequently heard shouting from the public bar area of the office. He states that upon walking through, he observed you in an animated state clearly angry and shouting. He states that, at this time, Sergeant [E] was trying to reason with you and provide professional advice. He describes you shouting over Sergeant [E] as he tried to speak to you. In his account he states that he subsequently observed you from his office window and described you storming out to your car and driving away. He states that he did not hear anything said by Sergeant [E] which he would question and states that Sergeant [E] had showed empathy and understanding to try and explain how Police deal with matter. His account does not support the allegation.

No other witnesses to this meeting have been identified and there is no known audio or video recording of this meeting.

Having considered all the evidence available to me, I am once more presented with two conflicting versions of events and am unable to determine whether one account is more credible than the other. On the balance of probabilities, I am therefore unable to uphold your second allegation."

Consideration of Complaint 2

The position of the applicant is accurately reflected in the response in that he alleges that Sergeant E said to him that he would be charged with intimidation if he pursued a complaint against those involved in the alleged disturbance at his home address on 12 September 2015.

Sergeant E has also provided an account and his position in relation to this allegation is accurately reflected in the response. Within his account, Sergeant E denies that he told the applicant he would be charged with intimidation. However, Sergeant E does state that he said to the applicant that an investigation into the alleged disturbance might result in all persons involved being charged.

Sergeant E's account is supported by the statements provided by Constables A and B, both of whom record that at no point was the applicant informed by Sergeant E that he would be charged with intimidation but confirmed he was advised that an investigation into the alleged disturbance might result in all persons involved potentially being charged.

From reviewing the evidence available therefore, it is considered that Chief Inspector G is justified in not upholding the applicant's complaint. This is because she has made an accurate analysis of the evidence available and there is nothing in the evidence as a whole to suggest that the applicant was

informed he *would* be charged, rather he was informed that an investigation into the alleged disturbance *might* result in all the parties involved being charged.

Accordingly, it is considered that the response is supported by the material evidence available and is adequately reasoned. It is therefore concluded that this complaint was dealt with to a reasonable standard. No further action is required in this connection.

5. Conclusions

Complaints 1 and 2

It is considered both complaints were dealt with to a reasonable standard. No further action is required.

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Review Officer

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