

Report of a Complaint Handling Review in relation to Police Scotland

Index

- 1. Role of the PIRC**
- 2. Key findings**
- 3. Background**
- 4. The Review**
- 5. Conclusions**

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 involvement in an altercation with a workman. Three complaints were considered:

1. that Constable C allowed a workman to illegally alter a communally-owned part of the building without the appropriate agreements or a Building Warrant;
2. that Constable C ignored warnings from the applicant that the work was dangerous and could cause damage to the building; and
3. that Constable C both supported and continued the harassment of the applicant initiated by the workman involved in the incident.

The review found that one complaint was dealt with to a reasonable standard while the remaining two complaints were not. Two recommendations were made in this connection.

3. Background

On 23 October 2015 the applicant became involved in an altercation with a workman, Mr A, employed on behalf of Property Agency B to perform alterations in the communal roof space of the block of flats where the applicant lives.

The applicant informed Mr A that he could not perform any alterations without the written permission of all residents in the block. Mr A called the police and reported that the applicant was being obstructive, preventing him from performing his job and had pushed him.

The call was attended by Constables C and D. The applicant states that he attempted to explain to Constable C that any work conducted by Mr A in the communal area would be illegal and potentially dangerous; however Mr A was ultimately allowed access to the loft area.

The applicant was subsequently made aware of significant damage to the roof of the neighbouring property which had caused injury to a resident.

On 20 April 2016 the applicant submitted a letter of complaint to Police Scotland stating that Constable C had no authority to become involved in his dispute with Mr A, and that Constable C had allowed Mr A to conduct the work which was illegal and dangerous. The applicant argued that this would not have happened had he *“been allowed to stand my ground”*.

On 2 May 2016, the applicant was contacted by telephone by Sergeant E, who had come to the conclusion that the applicant’s complaint was not a complaint about the police and instead lay with the landlord who requested the alterations be carried out. Sergeant E states that he advised the applicant to seek independent legal advice as the matter was not an issue for the police.

On 20 May 2016 the applicant submitted a further letter to Police Scotland asserting that he did not believe his complaint about the police had been understood by Sergeant E and thus had not been addressed. On 27 July 2016, the applicant submitted a further letter to Police Scotland making three distinct complaints about the actions of Constable C.

The applicant’s complaint was allocated to Sergeant F for enquiry. On 2 September 2016 Sergeant F obtained a statement of complaint from the applicant, and agreed with him the three complaints to be investigated. A final letter dated 22 September 2016 responding to the applicant’s complaints was issued by Chief Inspector G.

4. The Review

Complaint 1: Allowed alterations

The applicant complained that Constable C “*allowed a trespassing workman to alter a mutually owned space without other owners’ agreement or a Building Warrant*”.

Police Handling of Complaint 1

In his letter dated 22 September 2016 responding to the applicant’s complaints, Chief Inspector G wrote:

“[Constable C] denies the allegation and his account is supported by the evidence of [Constable D] who was present at the material time, who states that at no time did they allow a workman to carry out the alterations.

The Officers were in attendance at the address to quell a disturbance there. Their attendance was not to provide authority as to whether the work should be undertaken or not, or make enquiries in relation to the existence of a Building Warrant. These matters are civil and not for Officers to make decisions upon.

The account of [Constable C] is also supported by the evidence of a Joiner [Mr A] who was present at the material time. [Mr A], who had been sub-contracted on behalf of the Landlord, had access to the communal area.

Having considered the circumstances and in the absence of any supporting evidence, I believe the Officers present acted appropriately to ensure no disturbance took place and made no decisions as to the work being undertaken. I therefore find this element of your complaint not upheld.”

Consideration of Complaint 1

Both the officers’ statements and Police Scotland’s record of the incident generated by Mr A’s call confirm that police attendance was a result of Mr A alleging that he had been assaulted by the applicant, who was preventing him from carrying out repair work at the landlord’s instruction.

Constable C states he advised the applicant that he could not refuse anyone access to the communal parts of the building if they had been invited by another property owner and were not engaged in criminality. This account is supported by Constable D, who confirms that Constable C’s advice to the applicant was that he could not deny Mr A access to the communal loft area. The incident record further confirms that the applicant ultimately agreed to stop blocking Mr A’s access to the loft area.

The applicant states that he ceased his obstruction of Mr A as a result of Constable C’s advice, as he believed that he would be arrested should he continue to protest. The applicant has argued that by

preventing him from obstructing Mr A, Constable C essentially allowed Mr A to complete the alterations, and this action was outwith his authority as a police officer since any building matters were civil.

However there is no indication from the information provided to the PIRC by Police Scotland that either officer specifically informed Mr A that he was permitted to carry out the work instructed by the landlord. Rather, the information suggests that the officers' intervention was confined to preventing the applicant from committing an offence for which he may be liable to be arrested.

It is therefore considered that Chief Inspector G's letter of response to the applicant reflects the information available and his conclusion is justified. For these reasons it is concluded that this complaint was dealt with to a reasonable standard. No further action is required of Police Scotland in this connection.

Complaint 2: Ignored warnings

The applicant complained that Constable C ignored his warning that the proposed work could cause a significant amount of damage to the communal space.

Police Handling of Complaint 2

In his letter dated 22 September 2016 responding to the applicant's complaints, Chief Inspector G wrote:

"[Constable C] denies the allegation and his account is supported by the evidence of another Officer and [Mr A]. [Mr A] states he was acting on behalf of the Landlord and did not believe, at any time, further damage would be caused following the work being carried out.

On the balance of all the available evidence, I must conclude that your allegation I not upheld."

Consideration of Complaint 2

Paragraph 6.8.10 of Police Scotland's standard operating procedure in relation to Complaints About the Police ("the Complaints SOP") states that where an officer has not addressed the specific allegations made by a complainer, it would be prudent of the enquiry officer to ask precise questions in order to establish the officer's position.

Although Constable C states that the applicant told him that previous work conducted had caused damage in the loft area, he does not address the allegation that he ignored the applicant's warnings that any additional work would cause further damage.

Constable D states that the applicant told them that previous work had caused damage to the loft hatch however does not directly address the applicant's allegation that he warned Constable C that further damage could be caused but Constable C ignored this.

On the basis of the foregoing, it is considered that Sergeant F has not conducted a sufficient enquiry into this allegation. As a result Chief Inspector G's response to the applicant does not reflect the material information and is therefore not well-reasoned.

For these reasons, it is concluded that this complaint has not been dealt with to a reasonable standard. It is recommended that further accounts be sought from Constables C and D directly addressing the applicant's allegation. A further letter of response should thereafter be issued to the applicant detailing the respective positions of the officers in relation to this allegation and, taking these accounts into considerations, explaining whether or not his complaint is upheld.

Complaint 3: Continued harassment

The applicant complained that Constable C "*supported and continued*" the harassment of him which had been initiated by Mr A.

Police Handling of Complaint 3

In his letter dated 22 September 2016 responding to the applicant's complaints, Chief Inspector G wrote:

"[Constable C] denies the allegation and his account is supported by the evidence of the other officer present, who both state they acted in a professional manner at all times. The account of the Officer is also supported by the evidence of [Mr A].

Having considered the circumstances and in the absence of any supporting evidence to suggest the Officer behaved inappropriately, I am unable to uphold this element of your complaint."

Consideration of Complaint 3

It is not entirely clear from the applicant's submissions precisely how he believes that Constable C "*supported and continued*" harassment of him which had been instigated by Mr A. The applicant did, however, state that he felt intimidated by Constable C and that he perceived that Constable C "*wanted to dominate*" him and "*seemed to get angry*" with him.

Similarly to Complaint 2, this particular aspect of the applicant's allegation has not been addressed by either Constable C or Constable D in their accounts of the incident. Furthermore, neither officer actually states that they consider themselves to have acted in a professional manner at all times. On this basis, it is considered that Sergeant F has not conducted a sufficient enquiry into this allegation, and as a result Chief Inspector G's response to the applicant does not reflect the material information and is not well-reasoned.

It is therefore concluded that this complaint has not been dealt with to a reasonable standard. It is recommended that further accounts be sought from Constables C and D directly addressing the applicant's allegation. A further letter of response should thereafter be issued to the applicant detailing

the respective positions of the officers in relation to this allegation and, taking these accounts into considerations, explaining whether or not his complaint is upheld.

5. Conclusions

Complaint 1: Allowed alterations

It is concluded that this complaint was dealt with to a reasonable standard. No further action is required of Police Scotland in this connection.

Complaints 2 and 3

It is concluded that these complaints were not dealt with to a reasonable standard. It is recommended that further accounts be obtained from Constables C and D directly addressing the applicant's allegations. A further letter of response should thereafter be issued to the applicant detailing the respective positions of the officers in relation to the allegations and, taking these accounts into considerations, explaining whether or not his complaints are upheld.

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