

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 being asked to voluntarily attend a police station in connection with an allegation that he has assaulted a husband and wife. Four complaints were considered, namely:

- 1) That an officer telephoned the applicant and demanded he attend at a police office for interview. Despite not wishing to attend, the applicant felt pressure to do so as the officer stated he would attend at the applicant’s home and remove him to a police office in a police car if he failed to meet with him;

- 2) That officers carried out insufficient enquiry prior to demanding that the applicant attend a police office for interview. Had the officers carried out a thorough investigation, they would have realised the applicant was not responsible for the crime for which they interviewed him;
- 3) That police officers failed to adequately explain procedures to the applicant meaning he was unaware of his status, believing he had been arrested; and
- 4) Officers were provided a copy of a DVD on, which the applicant believes clearly shows he was not responsible for the assault under investigation. The officers advised him they would take appropriate action when considering the evidence they had obtained, however, the applicant has not been provided with an adequate update as to the outcome of this.

The review found that all four of the applicant's complaints were dealt with to a reasonable standard. No recommendations were made.

3. Background

Mr A and Mrs B own property which is bordered by property owned by Mr C. An ongoing dispute regarding the location of a wall between the properties led to civil court proceedings in which Mr C obtained permission to remove the wall. The applicant is a surveyor and acted as an expert witness in the court case.

On the morning of 31 May 2016, five people including the applicant and Mr C attended at the wall to begin the process of removing it. One of these people made a video recording of the process of removing the wall. At this time, Mr A and Mrs B attended at the wall and spoke with some of those in attendance. Mr A and Mrs B also made their own video recording of the incident at the time.

Mr A and Mrs B subsequently contacted Police Scotland to allege that they had both been assaulted by the applicant. Mr A and Mrs B both alleged that, at different times during the same incident, they had been deliberately "shoulder barged" by the applicant. Each party provided their video recording to Police Scotland.

On 5 July 2016, Constable D telephoned the applicant and asked him to attend a local police station in connection with 31 May incident. The applicant attended and was interviewed. During the interview the applicant denied having committed the alleged offences. The applicant was released without charge.

The applicant subsequently raised complaints with Police Scotland which were investigated by Sergeant E. The applicant completed a "Heads of Complaint" form on 12 August 2016. Chief Inspector F responded to the applicant's complaints in a letter dated 28 September 2016

4. The Review

Complaint 1: Pressurised to attend

On his Heads of Complaint form, the applicant wrote the following:

“On or around 5 July 2016, an Officer telephoned me at teatime and demanded I attend [a police station] for interview in connection with an alleged crime which had occurred on 31 May 2016. Despite not wishing to attend, I was pressurised to do so as the Officer stated he would he would attend my home and removed me to [the police station] in a Police car, if I failed to meet with him that evening.”

Police Handling of Complaint 1

Chief Inspector F provided the following response to this complaint:

“The Officer dealing with this investigation has provided his account of what took place.

It is apparent he does not share your position in this regard. He states he telephoned and explained to you that two allegations had been made against you and could attend your home address to detain you for the purposes of an interview. However, given the particular circumstances he offered you the alternative of attending voluntarily at a Police Office.

For clarity, current protocols dictate that in the majority of cases, an interview of an individual must take place at a Police Office. The impact on an individual subject to a voluntary attendance procedure, is significantly less than the formal detention process, in respect of the duration an individual is required to remain within a Police Office.

While acknowledging you did [sic] wish to meet with the Officer regardless of the arrangements made, I am satisfied that the Officer required to interview you. I consider the comments he made to you were merely an explanation of the circumstances and to ensure you were fully aware of the consequences, should you not have accepted his offer of attending there voluntarily.

Consequently, I do not consider these comments were demanding and when taking all the circumstances into consideration, I find this element of your complaint not upheld”

Consideration of Complaint 1

The applicant has been advised that his complaint was not upheld on the basis that Constable D had correctly advised the applicant that if he did not attend voluntarily, he would instead be formally detained. It is considered that this is a reasonable explanation.

Whilst it was the applicant’s perception that Constable D had “demanded” the applicant attend and that this made the applicant feel “pressurised” to do something he did not want to do, Constable D has

accurately described the consequences for the applicant if he did not agree to attend. It is considered that Constable D would have been expected to explain to the applicant what would happen if the applicant did not attend the police station in order to ensure that the applicant was fully informed of the circumstances before deciding whether or not to attend the police station.

Consequently, it is concluded that this complaint was dealt with to a reasonable standard. No further action is recommended.

Complaint 2: Insufficient enquiry

On his Head of Complaint form, the applicant wrote the following:

"I do not believe that Officers carried out a sufficient in-depth enquiry prior to demanding I attend [the police station] for interview on 5 July 2016. Had those officers done so, they would have realised I was not responsible for the crime they "charged" me over. The complainers have a history of false allegations against [Mr C] that only involved me as an expert witness."

Police Handling of Complaint 2

Chief Inspector F provided the following response to this complaint:

"The Officer does not share your position in this regard. He acknowledges he was provided CCTV footage of the incident, however, he did not consider the quality of the footage in isolation allowed him to make a final assessment as to what had taken place.

Therefore, given that a criminal allegation had been made against you, he considered it appropriate to interview you and allow you the opportunity to provide your explanation surrounding the alleged incident.

It appears to me that this decision was sound and I am considered the Officer has carried out an appropriate and proportionate investigation [sic].

I am therefore unable to uphold this element of your complaint."

Consideration of Complaint 2

The video recordings made by both parties were supplied to the PIRC and these have been viewed as part of the review process. It is considered that Chief Inspector F has accurately described the content of the recordings and correctly advised the applicant that the footage does not give a clear view of all the events that took place. Similarly, the fact that a person may have made false allegations in the past is not conclusive proof that future allegations are untrue. In these circumstances, the officer investigating the allegation would be obliged to continue investigating the matter and therefore would have been expected to interview the applicant. In these circumstances, the decision not to uphold this complaint was justified.

It is therefore concluded that this complaint was dealt with to a reasonable standard. No further action is recommended.

Complaint 3: Procedures not explained

On his Head of Complaint form, the applicant wrote the following:

“On 5 July 2016, at [the police station] Officers failed to adequately explain procedures to me. I was unaware of my status, believing that I had been arrested. The whole episode put me in a state of fear, and not something as a professional in this case I should have experienced.”

Police Handling of Complaint 3

Chief Inspector F provided the following response to this complaint:

“A ‘Voluntary Attendance’ at a Police Office is a formal process and Officers are required to complete paperwork and follow set procedures when carrying this out.

In particular, on arrival at a Police Office, a form has to be completed in the presence of the individual, explaining their status. I am advised the Officers you met with completed the required form in your presence and you thereafter signed this document. The purpose of requesting you sign the form is to establish you understand the procedure and your status while in the Police Office.

The position of both Officers is that they clearly explained to you the procedure and your status and they believed you fully understood this.

It is unfortunate if you did not understand this process and had you asked, I am confident the Officers would have explained matters further to you.

When taking into consideration the accounts provided by both Officers, along with the form completed by the Officers and signed by you, I am satisfied the Officers explained the procedures to you and I find this element of the complaint not upheld.”

Consideration of Complaint 3

The PIRC has been provided with a copy of the “Voluntary Attendance Form” signed by the applicant at the police station. On this form, in the section immediately above the applicant’s signature, the following is printed:

“I declare that I have voluntarily attended at this Police Station for interview. I confirm that I have been advised that, under these circumstances, I am free to leave at any time.”

Both officers have stated that they explained the applicant’s status to him and that they believed him to have understood this explanation. Their position is supported by the form signed by the applicant.

There is nothing in the evidence as a whole to justify Police Scotland favouring the applicant's version of events over that provided by the officers. In these circumstances, on the balance of probabilities, Chief Inspector F was entitled to not uphold the applicant's complaint.

Consequently, it is concluded that this complaint was dealt with to a reasonable standard. No further action is recommended.

Complaint 4: Enquiries into recording

On his Heads of Complaints form, the applicant wrote the following:

"Police officers were given a copy of a DVD on the 31 May 2016 date recording clearly that I was not responsible for the assault for which I had been "arrested and charged". I was told these officers would take appropriate action given the evidence they now had. I received one telephone call on my answerphone 11-08-2016; no other contact has been made."

Police Handling of Complaint 4

Chief Inspector F provided the following response to this complaint:

"I am aware you have raised concerns regarding the credibility of the allegation made against you. However, I consider it of note to highlight to you that this is not uncommon when dealing with disputes between individuals, which often involve conflicting versions of events. This can be as a result of differing perceptions as to what has taken place."

While acknowledging the CCTV footage obtained does not show any obvious criminality, that in itself does not necessarily prove that an individual has deliberately or maliciously misled the Police."

I can reassure you that if sufficient evidence became available that any individual knowingly and maliciously provided false evidence to the Police, this would be investigated. However, in your particular case, the Officers believed there was insufficient evidence to justify charging any individual with Wasting Police Time."

My understanding is that the Officer subsequently telephoned you to provide you with an update, however, you were not at home and he left you a message on your answer machine."

For clarity, Officers do not routinely update individuals suspected of committing crimes or offences with the outcome of a criminal investigation. However, I acknowledge in your particular set of circumstances, the Officer chose to provide you an update and appears to have left you a message on your answer machine to this effect."

Therefore, when considering all the facts, I am satisfied the decisions made by the Officer were appropriate and find this element of your complaint not upheld."

Consideration of Complaint 4

The response has explained to the applicant that there was not sufficient evidence to justify charging Mr A or Mrs B with an offence of wasting police time. As noted above, whilst the recordings do not contain any clear evidence of a crime being committed, they also do not cover the entire time the applicant was present at the locus and as such, do not conclusively show that no offences occurred.

The response has also correctly explained that, as a person accused of a crime, the applicant would not normally have received an update on the outcome of the criminal investigation. However, on this occasion, he was given an update.

It is considered that the response is well-reasoned and accurately reflects the available evidence. It is concluded that this complaint was dealt with to a reasonable standard. No further action is required.

5. Conclusions

Complaints 1 - 4

It is concluded that these complaints were dealt with to a reasonable standard. No further action is required.

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