

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 after police officers stopped the applicant's vehicle in order to speak to him about his manner of driving. Nine complaints were reviewed, namely:

- 1) that during an incident on 7 June 2016, the officers involved did not identify themselves as police officers;
- 2) that a police officer pulled the applicant from his vehicle without any explanation;
- 3) that the officer was swearing;
- 4) that the officer jumped on the applicant's back while he was lying on the ground;
- 5) that the applicant was not advised of the reason for his arrest or why he had been stopped;
- 6) that a police officer laughed at the applicant;
- 7) that the applicant was not allowed to contact his girlfriend;
- 8) that the applicant did not understand the officer who cautioned and charged him;
- 9) that ash was left on the front seat of his car after it had been searched.

The review found that three of the complaints were dealt with to a reasonable standard and six were not. A reconsideration direction has been made in respect of five complaints.

3. Background

On 7 June 2016, the applicant was stopped in his vehicle by Detective Constables A and B.

Another driver (Mr C) who was travelling directly in front of the applicant's vehicle, observed the police vehicle in his rearview mirror, also travelling behind him in the other lane. Although the police vehicle was unmarked, the sirens and blue lights were activated. Mr C assessed it to be a police vehicle and he thought the officers may be trying to stop the applicant's car. Mr C therefore stopped his own vehicle, causing the applicant to stop behind him. The police vehicle was then able to pull in alongside the applicant's vehicle.

Detective Constables A and B approached the applicant and his passenger (Mr D) as they wished to speak to him about his manner of driving, which they described as erratic. Both officers state that there was a smell of cannabis coming from the vehicle, and, that the applicant and Mr D were informed that they were being detained under Section 23 of the Misuse of Drugs Act 1971 for the purposes of a search.

Once the applicant had exited the vehicle, he ran off across the road with Detective Constable A in pursuit. Detective Constable A summoned assistance via his radio. Constables E and F attended and were present when the applicant was apprehended. The applicant was conveyed to the local police office and was later charged with offences under the Misuse of Drugs Act 1971 and the Police and Fire Reform (Scotland) Act 2012.

The applicant submitted a complaint about the police by letter of 13 June 2016. Sergeant G was appointed to investigate the applicant's complaints and met with him on 22 June 2016 when the Police Scotland Heads of Complaint form was completed. Chief Inspector H responded to the applicants complaints by letter of 5 August 2016.

4. The Review

Complaint 1: Officers did not identify themselves

The applicant complains that Detective Constables A and B failed to identify themselves as police officers.

Police Handling of Complaint 1

Chief Inspector H provided the following response:

"This is an irregularity in procedure – Search Procedures – Person and Property complaint by providing them failing to identify themselves as Police Officers, which I have not upheld, my reasons for doing so are as follows.

The officers that you had contact with work with the Criminal Investigation Department and as such work in plain clothes. On this occasion they were dressed in shirts, ties and suits. Both officers had their personal protection equipment in covert harnesses and were wearing radio's (sic) with ear pieces. One had this underneath their jacket and the other was not wearing a jacket therefore it could clearly be seen.

The officers were driving a Silver Vauxhall Astra unmarked Police vehicle which has blue flashing lights fitted to all four sides and a two tone siren. This had been activated for a considerable time prior to the vehicle you were driving being stopped. The officers then approached your vehicle and you were shown their Police identification warrant cards which were hanging on lanyards around their necks.

A member of the public who observed the incident in full immediately formed the opinion that the 2 persons who approached the vehicle you were found in were police officers.

Consideration of Complaint 1

The applicant confirmed that the unmarked car driven by Detective Constables A and B had blue lights activated and this factor may support Police Scotland's position that the applicant should have identified the unmarked car as a police vehicle.

However, the response stated that the applicant was shown the officers' warrant cards and this is not fully supported by the information contained within their statements. Detective Constable A recorded that he was wearing a Police Scotland lanyard holding his warrant card. He did not state that he showed the warrant card to the applicant. Detective Constable B stated that both occupants of the applicant's car "were shown our police warrant cards which were hanging around our necks". However, as Detective Constable B was dealing with Mr D at the passenger side of the car, it is unclear whether he actively showed his warrant card to the applicant.

Section 6.12.6 of the Police Scotland Complaints about the Police Standard Operating Procedure ("the Complaints SOP") provides that the decision whether to uphold a complaint must be taken based on the 'balance of probabilities'. That is whether, based on all available evidence, one version of events is considered to be more probable than another. Where conflicting accounts cannot be reconciled, the complaint will not be upheld, however an explanation as to why must be provided.

As the information provided within the officers' statements was not accurately represented. It is considered that the complaint response does not reflect the provisions of the Complaints SOP and the decision not to uphold the applicant's complaint is not adequately reasoned. It is therefore concluded that the complaint was not dealt with to a reasonable standard.

A reconsideration direction is issued to Police Scotland under section 35(7) of the Police Public Order and Criminal Justice (Scotland) Act 2006 in relation to this complaint. The reconsideration is not subject to the Commissioner's supervision.

Complaint 2: Pulled from vehicle

The applicant complains that he was pulled from the vehicle without any explanation. Within his statement, the applicant recorded that Detective Constable A pulled him out of his seat while he was "still wrapped around [his] seat belt".

Police Handling of Complaint 2

Chief Inspector H provided the following response:

"This is an excessive force complaint, which I have not upheld, my reasons for doing this are.

The officer who detained you and the witness both stated that the officer opened the car door and you stood up out of the vehicle. As you were a detained person at this time the officer took a hold of you in order to maintain control. This is the action I would have expected by the officer.

Consideration of Complaint 2

The available CCTV footage did not show the applicant exit the vehicle as the camera was directed towards the incident after this had occurred. However, according to the applicant, his vehicle was stopped outside an army barracks which is equipped with CCTV cameras that he thought may have captured the initial stages of the incident. He highlighted this to Sergeant G during their meeting on 22 June 2016. It is unclear from the available information whether Police Scotland thereafter made enquiries to establish if any additional CCTV footage of the incident was available. It is considered that this point should have been clarified within the complaint response.

In relation to the witness statements, Detective Constable A did not record how the applicant exited the vehicle and did not address the specific allegation that he pulled the applicant from his seat. Detective Constable B, who was at the passenger side of the vehicle dealing with Mr D, stated he was aware that Detective Constable A had *“removed [the applicant] from the vehicle, and was struggling with him at the side of the driver’s door”*. He did not record whether he observed the applicant exit the vehicle. From the information available, the witness referred to in the complaint response appears to be Mr C. Mr C stated that he could see the applicant *“get out”* of the vehicle after Detective Constable A opened the door for him, and that he *“did see the officer try and pull the male out of the vehicle”*. It is therefore considered that the witness statements do not support Police Scotland’s position that the applicant *“stood up out of the vehicle”*.

As the complaint response is not supported by the material information available, it is concluded that the complaint was not dealt with to a reasonable standard.

A reconsideration direction is issued to Police Scotland under section 35(7) of the Police Public Order and Criminal Justice (Scotland) Act 2006 in relation to this complaint. The reconsideration is not subject to the Commissioner’s supervision.

Complaint 3: Abusive language

The applicant complains that Detective Constable A was swearing during the incident. Within his statement of complaint, the applicant described Detective Constable A as shouting and swearing.

According to the Heads of complaint form, the applicant stated *“I’m not sure if he was swearing at me but he said something like ‘get the fuck out of the car’ ”*.

Police Handling of Complaint 3

Chief Inspector H provided the following response:

“This is an oppressive conduct/harassment complaint, which I have not upheld, my reasons for doing so are as follows.

Both officers have provided statements and deny using abusive language towards you. A member of the public who was near to the incident, and observed and heard the majority of the officer's actions, has been traced and at no time did they hear the officer using abusive language.

Consideration of Complaint 3

Contrary to the complaint response, Detective Constable A did not record in his statement whether he was swearing or made the comment attributed to him by the applicant.

Detective Constable B however specifically noted that, at no time, did he or Detective Constable A use abusive language towards the applicant or Mr D. Mr C also recorded that he did not hear Detective Constables A or B swear at the applicant or Mr D.

Mr D did not record whether he heard Detective Constable A use abusive language towards the applicant. This may be expected however as his statement focused on his own interaction with Detective Constable B, who he said *"kept swearing"*.

As already explained, the decision whether to uphold a complaint must be taken based on the 'balance of probabilities'. In relation to this complaint, Chief Inspector H did not accurately represent the information contained within the witness statements and did not explain how that information was used to conclude that the applicant's complaint should not be upheld. It would also have been beneficial to the complaint response had the provisions of the Complaints SOP been more clearly explained to the applicant. For these reasons it is concluded that the complaint was not dealt with to a reasonable standard.

However, based on the content of the witness statements provided to the PIRC, no information was presented that would have justified Chief Inspector H preferring the applicant's account, and that of Mr D, over the accounts provided by Detective Constable B and Mr C. As the content of the witness statements has now been explained in this report, no further action is required of Police Scotland in this connection.

Complaint 4: Excessive force

The applicant submitted a letter of complaint detailing his allegations to Police Scotland on 13 June 2016. Within that letter he stated that Detective Constable A jumped on his back and pushed his head against the ground, causing injuries to his forehead, knees and shoulders.

Police Handling of Complaint 4

Chief Inspector H provided the following response:

"This is an excessive force complaint, which I have not upheld, my reasons for doing this are as follows.

A CCTV camera located nearby captured the incident and captures your arrest. This footage has been reviewed by an Officer Safety instructor and his opinion is that the force used during your arrest is reasonable and justified and not excessive.

Consideration of Complaint 4

Constable J, the Officer Safety Instructor who viewed the CCTV footage, recorded that he was provided with the statements of the officers involved in the incident of 7 June 2016. However, he was not provided with a statement from the applicant, and noted that he would like to have access to it *“if it becomes available”* as it may change his opinion. In giving that opinion, he stated that *“unless there is any specific allegation that needs to be addressed”*, the level of force used during the applicant’s arrest was reasonable, justified and not excessive.

No statement was recorded from the applicant, however his allegation about Detective Constable A was recorded in his letter of complaint dated 13 June 2016. On 1 July 2016, he also provided Sergeant G with photographs of injuries which he stated he sustained during his arrest. It is unclear why details of the applicant’s allegation, and the photographs he provided to Sergeant G, were not made available to Constable J when he was asked to comment on the content of the CCTV on 1 August 2016. The absence of that information led him to qualify his opinion about the level of force used during the applicant’s arrest.

Furthermore, it is considered that the witness statements provided by Detective Constable A, Constables E and F, and Constable K (who was also present during the applicant’s arrest) are not sufficiently detailed as they do not address the applicant’s allegation that an officer *‘jumped’* on his back.

For the reasons provided it is considered that insufficient enquiry was carried out into this complaint. It is therefore concluded that the complaint was not dealt with to a reasonable standard.

A reconsideration direction is issued to Police Scotland under section 35(7) of the Police Public Order and Criminal Justice (Scotland) Act 2006 in relation to this complaint. The reconsideration is not subject to the Commissioner’s supervision.

Complaint 5: Not informed of reason for arrest

The applicant complains that he was not advised of the reason for his arrest or why he had been stopped.

Within his letter of complaint, the applicant noted the following:

- that after his car was stopped he repeatedly asked Detective Constable A what was happening;

- that after he was handcuffed by Detective Constable A and Constables E and F, he asked the officers why he was being arrested and was not provided with an answer;
- that after he was transported to Police Office Y, he was informed that the reason for his arrest was not known, as only the arresting officer would have that information.

Accordingly, his complaint appears to relate to the level of information provided at several points during the incident.

Police Handling of Complaint 5

Chief Inspector H provided the following response:

“This is an Irregularity of Procedure Complaint – Provide Insufficient Explanation Regarding Police Procedures, which I have not upheld, my reasons for doing this are as follows.

In the statements provided by the officers they state that at the time of the caution and charge they fully explained the circumstances surrounding your arrest and were satisfied that you understood.

Consideration of Complaint 5

The applicant’s complaint appears to relate to the information provided to him at the time his vehicle was stopped, at the point of his arrest, and on arrival at Police Office Y. These aspects of his complaint were not addressed in the Police Scotland response, which instead focused on the level of information provided at the time he was cautioned and charged. As the response did not address the crux of the applicant’s complaint, it is concluded that the complaint was not dealt with to a reasonable standard.

A reconsideration direction is issued to Police Scotland under section 35(7) of the Police Public Order and Criminal Justice (Scotland) Act 2006 in relation to this complaint. The reconsideration is not subject to the Commissioner’s supervision.

Complaint 6: Officer laughed

The applicant complains that an officer, who he identified by his shoulder number (2347D), laughed at him. The shoulder number 2347D belongs to Constable K, who assisted in restraining the applicant while Constables E and F were dealing with another matter.

Within his statement, the applicant noted that he asked Constable K why he was laughing, to which he responded *“I just remembered the joke”*.

Police Handling of Complaint 6

Chief Inspector H provided the following response:

“This is an incivility complaint, which I have not upheld, my reasons for doing this are as follows.

The CCTV footage of the incident has been reviewed and captures officers 2347D involvement with you in full. At no time, is officer 2347D seen laughing. The witness who observed your behaviour also did not see the officer laughing at you.

Consideration of Complaint 6

In the view of the PIRC, the CCTV footage is not clear enough to distinguish facial features or expressions and therefore should not have been so heavily relied upon when considering the applicant's complaint. Furthermore, and contrary to the complaint response, Mr C, who witnessed the incident, did not state whether or not he saw any officer laugh at the applicant. It is therefore considered that the complaint response is not supported by the material information available.

However, Constable K provided a statement during the complaint investigation in which he addressed the allegation against him. He noted that he could not think of anything that would have caused him to laugh, and that he did not recall laughing. This information was not reflected in the complaint response.

As already explained, the decision whether to uphold a complaint must be taken based on the 'balance of probabilities'. That is whether, based on all available evidence, one version of events is considered to be more probable than another. In relation to this complaint, the response provided to the applicant did not accurately reflect the information gathered during the complaint investigation. Accordingly, the explanation provided for not upholding the applicant's complaint is not adequately reasoned.

As the complaint response is not supported by the material information available and is not adequately reasoned, it is concluded that the complaint was not dealt with to a reasonable standard.

A reconsideration direction is issued to Police Scotland under section 35(7) of the Police Public Order and Criminal Justice (Scotland) Act 2006 in relation to this complaint. The reconsideration is not subject to the Commissioner's supervision.

Complaint 7: Not allowed to contact girlfriend

The applicant complains that he was not allowed to contact his girlfriend whilst in custody. Within his statement, the applicant explained that he informed custody staff that his girlfriend was heavily pregnant and he wanted to contact her to allow her to organise alternative transport to hospital should she go into labour.

Police Handling of Complaint 7

Chief Inspector H provided the following response:

“This is an irregularity of procedure – Custody Procedures/Care of Prisoners complaint , which I have not upheld, my reasons for doing this are as follows.

As an arrested person, you have the right to have a solicitor advised of your arrest and to have a reasonably named person informed. Arrested persons do not make phone calls themselves. On this occasion, you nominated a specific person and I can confirm that they were contacted at 2119 hours on the 7th June 2016. At this time your nominated person would have been advised that you had been arrested and the location you were being kept in custody.

Consideration of Complaint 7

Section 7.8.1 of the Care and Welfare of Persons in Police Custody Standard Operating Procedure (“the Custody SOP”) provides that a person in custody is entitled to have a relative or other named person informed that they are in custody and where they are being held.

The applicant’s custody record was provided to the PIRC during the review. This confirms that the person nominated by the applicant was contacted by Police Scotland at 21.19 hours on 7 June 2016. As the complaint investigation revealed that the applicant was afforded the right to contact a family member in accordance with the provisions of the Custody SOP, it is considered that the decision not to uphold the complaint is supported by the material information available. It is therefore concluded that the complaint was dealt with to a reasonable standard. No further action is required in this connection.

Complaint 8: Failure to clarify

The applicant complains that he could not understand what the officer who cautioned and charged him said as he spoke too fast. Within his statement, the applicant identified the officer as Detective Constable A. The applicant stated that he asked Detective Constable A to repeat the information, and that he refused to do so.

Police Handling of Complaint 8

Chief Inspector H provided the following response:

“This is an Irregularity of Procedure – Provide Insufficient Explanation Regarding Police Procedures, which I have not upheld, my reasons for doing this are as follows.

The officers that cautioned and charged you have provided statements. They are satisfied that you understood the procedure and state you acknowledged this.

Consideration of Complaint 8

Detective Constables A and B were present when the applicant was cautioned and charged. Within his statement, Detective Constable A recorded that he was satisfied that the applicant understood each charge against him. Detective Constable B made a similar comment and also stated that the applicant did not ask for the charge to be repeated.

It is considered that the content of the statements could have been better explained to the applicant, and it would have been helpful to the review had Detectives Constables A and B been asked to clarify how the applicant indicated that he understood the charge if he made no reply. Despite these shortcomings, the accounts provided by the officers were very broadly explained in the complaint response.

As already explained, where there are conflicting accounts, the decision whether to uphold a complaint must be based on the balance of probabilities. In relation to this complaint, it is considered that Police Scotland was justified 'on balance' in not upholding the applicant's complaint. This is because there is nothing in the available evidence as a whole that would have warranted Police Scotland preferring the applicant's account over those provided by Detective Constables A and B. Accordingly, it is concluded that this complaint was dealt with to a reasonable standard. No further action is required in this connection.

Complaint 9: Ash in vehicle

The applicant complains that ash was left on the front seat of his car after it had been searched.

Police Handling of Complaint 9

Chief Inspector H provided the following response:

"This is an incivility complaint, that I have not upheld, my reasons for doing so are as follows.

Your vehicle had been detained under the terms of section 23 of the Misuse of drugs Act 1971, and as such it was subjected to a search. The nature of these searches can at times be intrusive and I would expect officers to be very thorough. It is expected that the ashtray would, if possible, be removed from its holder to allow the space behind it to be searched. If during the search ash has fallen onto the seats then I apologise however at no time do I believe this was an intentional act by the officers.

Consideration of Complaint 9

As Chief Inspector H acknowledged that ash could have been spilled during the search and apologised to the applicant, it is concluded that the complaint was dealt with to a reasonable standard. No further action is required in this connection.

5. Conclusions

Complaints 1, 2, 4, 5 and 6

It is considered that these complaints were not dealt with to a reasonable standard.

A reconsideration direction is issued to Police Scotland under section 35(7) of the Police Public Order and Criminal Justice (Scotland) Act 2006 in relation to complaints 1, 2, 4, 5 and 6 as detailed in this report. The reconsideration is not subject to the Commissioner's supervision.

In terms of section 37(1) of the Act, Police Scotland must now appoint a person to reconsider these complaints. The person appointed must not have had any previous involvement in the consideration of the complaints. Police Scotland must also adhere to the obligations set out in section 38 and 40 of the Act, as appropriate.

Complaint 1

In reconsidering this complaint, Police Scotland must have full regard for the comments and observations made by the PIRC. Detective Constable A should be asked to clarify whether he showed his warrant card to the applicant. A further response should be issued to the applicant that more clearly analyses the available evidence and which adequately explains any decision reached.

Complaint 2:

In reconsidering this complaint, Police Scotland must have full regard for the comments and observations made by the PIRC. Detective Constable A should be asked to provide a further statement explaining how the applicant exited the vehicle, and whether he pulled or attempted to pull the applicant from the vehicle. A further response should then be issued to the applicant. The further response should (a) explain whether any enquiry was carried out to establish if any additional CCTV footage was available, (b) accurately reflect the information provided within the witness statements, (c) adequately explain any decision reached.

Complaint 4

In reconsidering this complaint, Police Scotland must have full regard for the comments and observations made by the PIRC. Further statements should be recorded from Detective Constable A and Constables E, F and K that more clearly explain how the applicant was arrested and restrained, specifically addressing whether or not any officer "jumped" on his back. Full information about the

applicant's allegation should be provided to the Officer Safety Training Department and a further statement of opinion sought. A further response should then be issued to the applicant that clearly explains any decision reached.

Complaint 5

In reconsidering this complaint, Police Scotland must have full regard for the comments and observations made by the PIRC. A further response should be issued to the applicant that addresses his complaint about the lack of information provided to him at the time his car was stopped, at the point of his arrest, and on arrival at the police office.

Complaint 6

In reconsidering this complaint, Police Scotland must have full regard for the comments and observations made by the PIRC. A further response should be issued to the applicant that reflects the provisions of the Complaints SOP by explaining the content of the witness statements in relation to whether or not an officer laughed, and, by assessing 'on balance' which version of events is considered to be more probable. If the applicant's account is not preferred, the response must clearly explain why this is the case.

Complaint 3

It is concluded that this complaint was not dealt with to a reasonable standard. For the reasons provided, no further action is required in this connection.

Complaints 7, 8 and 9

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

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