

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 arrest during an incident on 7 June 2016. Two complaints were reviewed, namely:

- 1) that the applicant was unlawfully arrested; and,
- 2) that police officers treated him in a way that made him feel harassed, distressed and alarmed.

The review found that neither complaint was dealt with to a reasonable standard. A reconsideration direction was issued in this connection.

3. Background

On 7 June 2016, the applicant drove past two stationary police cars and observed that officers were arresting his brother (Mr A) at the side of the road. The applicant stopped his own vehicle in front of the police cars and began to record his brother's arrest on a digital camera. He was approached by a police officer who informed him that he was not allowed to record the incident and to "leave the spot". The applicant refused to stop recording and was subsequently arrested by Constables B and C.

The applicant submitted his complaints about the police on 11 June 2016. Sergeant D 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. No statement of complaint was recorded from the applicant. Chief Inspector E responded to the applicant's complaints by letter of 5 August 2016.

4. The Review

Complaint 1: Unlawfully arrested

The applicant complains that he was unlawfully arrested on 7 June 2016.

Within his application to the PIRC, the applicant stated that he informed officers that he had the right to record the incident, and that he was arrested when he refused to stop doing so.

Police Handling of Complaint 1

Chief Inspector [E] provided the following response:

"This is an unlawful/unnecessary arrest or detention complaint in that you feel that your arrest was not necessary, which I have not upheld, my reasons for doing so are as follows.

The officers involved have provided statements, CCTV which captures the incident has been reviewed and a statement has been noted from a witness who observed the incident. In my opinion your actions constituted an offence under the Police and Fire Reform (Scotland) Act 2012, Section 90 (2) (a) and therefore your arrest was justified, proportionate and lawful.

Consideration of Complaint 1

The response provided to the applicant lacks sufficient detail about the content of the CCTV footage and the witness statements to explain how Chief Inspector E reached the conclusion that the complaint should not be upheld.

Furthermore, the complaint response did not refer to the applicant's footage of the incident. It is noted in the complaint file that his camera was seized as evidence after his arrest, and the applicant confirmed to the PIRC during the review that his camera has not yet been returned to him. Accordingly, he was unable to provide the PIRC with a copy of the footage. It is however considered that Police Scotland should have viewed the applicant's recording as part of the complaint investigation and commented on its content.

The witness statements and CCTV footage referred to in the complaint response were however provided to the PIRC by Police Scotland during the review. It should be noted that there is no audio facility on the CCTV footage.

In relation to the evidence provided, Constables B and C stated that the applicant left his vehicle and ran, shouting, towards Mr A. This is inconsistent with the CCTV footage examined by the PIRC, which showed the applicant parking in front of the police vehicles at 19.55 hrs. He left his vehicle and walked towards the scene of the incident. He did not run as stated by Constables B and C.

The witness referred to in the complaint response, Mr H, stated that the applicant was shouting at Constables B and C, who informed him that he would be arrested if he *"didn't be quiet"*. Constable C stated that the applicant's shouting caused Mr A to struggle with the officers who were restraining him (Constable F and Detective Constable G). Constable F however did not refer to the applicant at all within his statement, and did not comment on Mr A's reaction to any shouting. Detective Constable G stated only that the applicant tried to *'pass by'* Constables B and C, who repeatedly requested that he move away.

Constable C also stated that the applicant was trying to *"get in the way"* of Constable F and Detective Constable G, while Constable B stated that the applicant continually tried to move forward and push past him. The CCTV footage shows that Constables B and C prevented the applicant from moving closer to Mr A by positioning themselves between the applicant and the area where Mr A was being restrained. However, the applicant did not appear to push past either officer, instead he tried to walk around them.

Both officers recorded that the applicant was arrested for *"obstructing police officers in the course of their duties"*. Although they noted that the applicant was recording the incident, they did not explain whether he was asked to stop recording, or whether his refusal to do so was a factor in the decision to arrest him.

Overall, the evidence presented could be considered as contradictory as there are conflicting accounts about the applicant's actions and the reasons for his arrest that have not been explained in the complaint response. Furthermore, the accounts provided by Constables B and C in relation to the applicant's demeanour and actions do not appear to be supported by the CCTV evidence provided.

In summary, the complaint response does not accurately reflect the information contained within the witness statements and the CCTV footage, does not explain why the applicant was arrested, or explain why Chief Inspector E considered his arrest to be justified. It is not clear why the video recording of the incident contained on the applicant's camera was not referred to in the complaint response. It is

therefore considered that the complaint response is not supported by the material information available and is not adequately reasoned. Accordingly, it is concluded that this 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: Manner of treatment

The applicant complains that he felt *"harassed, distressed and alarmed"* by the way he was treated.

The words *"harassed, distressed and alarmed"* were used by the applicant within his original online complaint form and he signed the Police Scotland Heads of Complaint form to that effect during his meeting with Sergeant D. Within his original complaint, the applicant stated that the officers dealing with him did not introduce themselves as they approached and subsequently searched him. He also noted that the situation was witnessed by members of the public who had *"gathered around"*.

Additionally, the applicant informed the PIRC within his application form that he was *"pushed back a few times"* when he refused to stop recording the incident.

Police Handling of Complaint 2

Chief Inspector [E] provided the following response:

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

The CCTV footage of the incident has been viewed by an Officer Safety Instructor and on your arrest you were placed in handcuffs and led to a waiting Police vehicle. This was done in good time with minimum attention drawn to yourself. The officers acted in a professional manner throughout their contact with you. The Officer Safety Instructor believes that the officers' actions were proportionate and justifiable."

Consideration of Complaint 2

Section 6.8.6 of the Police Scotland Complaints about the Police Standard Operating Procedure ("the Complaints SOP") provides that, where complaints are not straightforward and cannot be resolved quickly *"a written statement should be taken in which areas of dissatisfaction are very clearly identified"*.

It is considered that a statement of complaint should have been noted from the applicant to clearly establish whether his complaints related to Constables B and C, and which aspects of the officers'

behaviour caused him to feel harassed, distressed and alarmed. As this was not done, the response focused only on one aspect of the applicant's complaint i.e. whether or not attention was drawn to him during his arrest. It is therefore considered that the complaint was not handled in accordance with the provisions of the Complaints SOP.

Furthermore, the response stated that the officers concerned acted in a professional manner and that, in the view of an Officer Safety Instructor (Constable J), their actions were proportionate and justifiable. However, Constable J's comments, as recorded in his statement which was provided to the PIRC, appear to relate to the arrest of Mr A rather than the applicant. Constable J did not refer specifically to the applicant's arrest. As his statement appears to have been misrepresented, it is considered that the complaint response is not supported by the material information available.

As the complaint was not handled in accordance with relevant procedures, and as the response is not supported by the available information, 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.

5. Conclusions

It is concluded that neither complaint was 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 the two complaints 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. Police Scotland must reassess the content of the CCTV footage and the witness statements. Efforts should also be made to view and assess the footage recorded by the applicant. The applicant should thereafter be provided with a further response to his complaint with full reference to the available evidence and which clearly explains the reason for any decision reached.

In reconsidering this complaint, Police Scotland must have full regard for the comments and observations made by the PIRC. A further statement should be obtained from the applicant to establish which officers his complaint relates to and which aspects of their behaviour caused him to feel harassed, distressed and alarmed. Consideration should then be given to whether additional statements from the officers involved or witnesses are required. The content of Constable J's statement should be reassessed and its relevance to the applicant's complaint re-evaluated. The applicant should thereafter be provided with a further response to his complaint.

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