

Report of a Complaint Handling Review in relation to Police Scotland

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1. Role of 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 a road traffic collision. One complaint was reviewed, namely , that the attending officer wrote down his own statement and did not ask what had happened, and did not note statements from people at the scene of the crash.

The review found that the complaint was not dealt with to a reasonable standard. One recommendation was made.

3. Background

On 7 January 2016, the applicant was involved in a road traffic collision. Constable A and Sergeant B attended the scene and the applicant was subsequently cautioned and charged with dangerous driving.

The applicant made his complaints in writing in a letter to the Professional Standard Department which was received on 18 August 2016. The applicant also contacted Police Scotland by telephone on 18 September 2016 to reiterate his complaints.

Sergeant C was appointed as enquiry officer and the applicant received a response to his complaint in writing from Chief Inspector D in a letter dated 13 December 2016.

4. The Review

The Complaint

The applicant complains that Constable A attended at the scene of the road traffic collision and wrote down his own statement and did not ask what had happened, and did not note statements from people at the scene.

Police Handling of Complaint 1

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

"...You have since returned our Heads of Complaint form, which you feel is a complaint against the Police which I have repeated below.

Constable [A] wrote down his own statement [sic] he never took statement [sic] from people at the crash scene... 7 Jan 2016, (10.00am), he was scared of getting wet, he never left the police car, there was no breathalysing or yellow tape to close road or road measurements.

The situation was that the Hyundai ix35 had a slow puncture and its skidded to the right had[sic] side of the road I was taken [sic] it back to [named company in named location] to get it changed.

Constable [A] should of [sic] asked what happened instead of writing down what he wanted to write down.

It was a cock up of all proportions I have been speaking to my solicitor and it is illegal for people to write their own statements, I want this investigated...

Sergeant [C] advises that you have provided her with an affidavit of [the applicant]. I have returned this to yourself and it does not change the fact that at the time of the road traffic collision you provided a different name and our records show you have a different name of that listed on the Affidavit. If you are disputing that our records held are incorrect, I would suggest that you provide photographic evidence i.e Passport and/or Driver's Licence along with your birth certificate to one of our officers who can confirm your name and date of birth and have our relevant computer systems updated.

I can advise you that statements were noted from witnesses and these have been provided to the Procurator Fiscal. Your solicitor can gain access to copies of these statements, and they will be aware of the correct process in order to obtain these. I would suggest that you contact your Solicitor to establish if they do indeed have the statements.

The Sergeant who accompanied and corroborated Constable [A] is an ex Traffic Department officer and also trained in Collision Investigation. There is nothing in our guidance and no

legislation which stipulates that a road must be closed and road measurements taken. Each collision is taken on a case by case basis and if the Sergeant felt it was not required, then they will have been justified in not doing so. We are also not obliged on every occasion to carry out a breath test at the road side, if we felt that had been a contributory factor to the collision then this would have been carried out at the time.

As the driver of a motor car, it is your responsibility to ensure that it is road worthy. If you were aware of the fact that it had a slow puncture, you should not have driven that vehicle, without changing the tyre. I have provided this information to the Procurator Fiscal for his information as this is possibly evidence which can be added to the case against you.

Constable [A] has asked what has happened, he has asked the witnesses and noted statements where possible from the majority of them. It is unclear which Solicitor you have spoken to that has advised you it is illegal for people to write their own statements, however, Sergeant [C] has spoken with [Mr E] who signed the Affidavit and he has confirmed that at no point has he advised you it is illegal for an officer to note their own statement. It is in fact quite the opposite, officers are expected and required to provide their own statement regarding their evidence in each case reported to the Procurator Fiscal, when requested to do so.

Therefore your above complaint not upheld for the reasons listed above. The matter has been again investigated and we are now concluding your complaint against the police in relation to this matter.”

Consideration of Complaint 1

There are two aspects to the applicant’s complaint, namely that Constable A failed to note statements at the scene from the witnesses to the collision, and that Constable A wrote down his own statement or version of events and did not ask what had happened.

(i) Statements from witnesses

In relation to identifying and noting statements from witnesses to a road traffic collision, paragraph 7.4.1 of the Police Scotland Road Traffic Collision Standard Operating Procedure, (“the SOP”) states;

“It is vital that all witnesses are identified, even those who may have left the locus prior to police attendance. Full and detailed statements should be obtained from all witnesses as soon as possible after the collision. Where the obtaining of statements is not practicable or suitable at the locus arrangements should be made to have these obtained as soon as possible.”

The response in this connection states that statements were obtained from the witnesses and have been provided to the Procurator Fiscal. The response further states that Constable A asked the witnesses what had happened and noted statements from the majority of them.

However, from reviewing the evidence available, although contact details for the witnesses were obtained at the scene, full witness statements were not obtained until the weeks following the collision, and were noted by different officers.

Accordingly, although the response does not explicitly state when the statements were allegedly obtained, any suggestion that they were obtained at the scene, and by Constable A, is not supported by the material evidence available.

Furthermore, as the evidence available supports the applicant's position, the response in this connection also fails to explain why, in light of this, and in line with the aforementioned section of the SOP, the witness statements were not noted at the scene of the collision.

It is therefore considered that the response is not supported by the material evidence available and is inadequately reasoned.

(ii) The officer wrote down his own statement

The response in this connection reasons that officers would be expected to provide their own statement regarding their involvement in each case reported to the Procurator Fiscal. This assertion is correct and officers are routinely requested to provide statements outlining their involvement in any case that has been reported to the Procurator Fiscal.

However the applicant's complaint in this regard relates to Constable A's initial involvement at the scene of the collision and his belief that Constable A noted his own "statement" (or version of events), without asking the applicant what had happened.

From reviewing the evidence available, the witness statements and the police report would tend to support the position that details regarding the collision were obtained at the scene from both the applicant and the other witnesses. However, this information is not reflected in the response

Accordingly, it is considered that the response in this connection has failed to adequately address the crux of applicant's complaint or reflect the material evidence available.

It is therefore considered that the applicant's overall complaint was not dealt with to a reasonable standard. It is recommended that Police Scotland reassess the complaint in light of the points outlined above and issue the applicant with a fresh response. The response should clearly explain to the applicant how the evidence available has been used to inform the conclusions reached.

5. Conclusions

The Complaint

It is considered that the applicant's overall complaint was not dealt with to a reasonable standard.

It is recommended that Police Scotland reassess the complaint in light of the points outlined above and issue the applicant with a fresh response. The response should clearly explain to the applicant how the evidence available has been used to inform the conclusions reached.

Kirstin McPhee
Review Officer

Ilya Zharov
Head of Reviews and Policy
