

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 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 application to renew his shot gun certificate. Four complaints were reviewed, namely:

- 1) that there was a lack of contact from Police Scotland to progress the applicant’s application for the renewal of his shotgun certificate;
- 2) that the decision not to grant the applicant with a temporary permit was unfair;
- 3) that the decision to contact the applicant’s GP was unjustified and not in line with the Home Office firearms guidelines; and
- 4) that the officer initially allocated the applicant’s complaint enquiry inappropriately discussed matters with an officer subject to the complaint.

The review found that none of the complaints were dealt with to a reasonable standard. Four recommendations were made.

3. Background

On 12 November 2015, the applicant submitted an application for renewal of his shot gun certificate (SGC) which he hand delivered to the police headquarters in his area. The applicant's certificate was due to expire on 21 January 2016.

On receipt of the application, unsuccessful efforts were then allegedly made by civilian staff and a Sergeant within the Firearms Licensing Department to contact the applicant via telephone.

On 3 December 2015, the renewal enquiry was allocated to divisional officer Constable A to progress.

On 11 January 2016, the applicant emailed the Firearms Licensing Department to advise he had no contact from Police Scotland and to inform them that he would not be available for any interview until after 21 January 2016. Within this email the applicant requested that he be granted a temporary permit under Section 7 of the Firearms Act 1968.

On receipt of this request, the Sergeant within the Licensing Unit (Sergeant B) liaised with Chief Inspector C and the decision was made to refuse the permit. On the same date, Sergeant B replied to the applicant's request and informed him that the decision had been made not to grant him a permit based on the fact that the enquiry officer had been unable to contact him and his elected referee was in hospital and could not be interviewed.

On 13 January 2016, Sergeant B was contacted by Superintendent D who had been in touch with the applicant. Superintendent D overturned the decision and informed Sergeant B that a permit was to be granted. Sergeant B thereafter communicated this decision to the applicant via email.

On 28 January 2016, Constables E and F attended at the applicant's home address in relation to the enquiry but this meeting was rearranged because the applicant wished to have another person present with him during the interview.

On 31 January 2016, Constables E and F re-attended at the applicant's home address and the relevant paperwork was completed.

On 9 February 2016, Sergeant B received the relevant renewal paperwork and the applicant's SGC was renewed.

During the renewal process the applicant corresponded regularly with Superintendent D to express his dissatisfaction regarding the process.

On 17 July 2016, on the instruction of Superintendent D, Inspector G attended at the applicant's home address to formally note a statement of complaint.

The applicant received a response to his complaints in writing from Superintendent D in a letter dated 29 August 2016.

4. The Review

Complaint 1: Lack of contact

The applicant complains there was a lack of contact or correspondence from Police Scotland to progress his application for the renewal of his Shotgun Certificate.

In his statement to Police the applicant states:

"I have never received any correspondence and that is one of my main points of complaint. I complied with the renewal process by completing the forms and submitting them in plenty of time, but then I heard nothing until I chased it up myself."

Police Handling of Complaint 1

Superintendent D responded to the applicant's complaints as follows:

"You have stated that during the process for the renewal of your SGC, in particular around 24 November 2015, you had not received any contact from Police Scotland to progress the enquiry stage of your application.

I can confirm that staff and officers from the...firearms licensing department telephoned you on several occasions, without success. On 12 November a message was left on your mobile telephone answer machine and two further calls were made on 24 November 2015.

You have indicated that Sergeant [B] informed you by electronic communication that the enquiry officer had sent e-mails to yourself without response. Sergeant [B] has confirmed in his statement that this was a misunderstanding on his behalf and that the e-mails referred to were in fact further telephone calls made by the enquiry officer Constable [A], who also received no response to the calls made. Constable [A] has provided information that these calls were redirected to a voicemail service on each occasion.

I am aware that you have subsequently been made aware of the misunderstanding surrounding the suggested e-mails, which were in fact telephone calls from Constable [A] through direct communication with myself.

... As a result of the full investigation I have conducted and specifically in relation to the allegations you have articulated in your statements and correspondence, in taking consideration of all circumstances and evidence available to me, I am unable to uphold your allegations.

I am in no doubt that the circumstances leading to this complaint could have been avoided and responsibility for this rests with both Police Scotland and yourself.

As I previously highlighted within an e-mail communication in February 2016, when I approved your temporary permit, I commented that I believed the main issue involving your renewal process resulted from a breakdown in communication and I remain of the view that this was the case. You have indicated that thereafter this spiralled further and I would agree with this assessment, however from my perspective and that of Police Scotland the emphasis has always been to support and resolve any issue and continued to be the case moving forward.

I do believe that Police Scotland could have progressed the matter with a more robust level of communication, however I also recognise the difficulties experienced in contacting yourself. This is especially the case with your mobile device, which you have previously indicated often experiences signal difficulties. Moving forward I would recommend that consideration is given to improve your means of contact, ideally through a more receptive telephone line.

In addition, the fact that the e-mail address had been incorrectly provided, further hindered the process of engagement within the required timescales.

... In considering all the circumstances and information I have available, aside from the corrective advice regarding improved communication and contact, for which I apologise on behalf of Police Scotland, I do not propose to take any action in respect of the allegations presented to me.

I am hopeful that you find this outcome a satisfactory conclusion to your complaint, the unfortunate circumstances surrounding your renewal process and contact with various Police Scotland firearms licensing officers and staff.

I appreciate this has been a challenging and sometimes difficult process and there are learning opportunities for all concerned and I am sure they will serve to improve any future contact and experience you have with firearms licensing staff."

Consideration of Complaint 1

The response to the applicant states that efforts were made to contact him via telephone on 12 November 2015 and on 24 November 2015. The response in this connection is supported by the statement of Sergeant B who records within his respective account that he made efforts to contact the applicant on 24 November 2015, and the statement of a civilian member of staff within the Firearms Department, Ms L, who records within her account that she attempted to contact the applicant via telephone on 12 November 2015 and again on 24 November 2015.

These attempts to contact the applicant were ultimately unsuccessful and on 3 December 2016 the applicant's renewal enquiry was allocated to Constable A to progress.

The response thereafter states that repeated calls were also made to the applicant by Constable A. The response in this connection is also supported by the account provided by Constable A who records that he made several efforts to contact the applicant via telephone and left a voicemail message asking the applicant to contact him. Although Constable A does not record within his respective account when these calls were made or provide a specific date as to when the voicemail message was left on the applicant's phone, the applicant himself makes reference to receiving a voicemail message dated 8 January 2016. According to the applicant, however, he did not receive notification of this voicemail message until 12 January 2016, the day after he contacted Police Scotland himself to query the status of his application.

Accordingly, Superintendent D's position within the response that efforts were made to contact the applicant via telephone is supported by the accounts provided by Ms L, Sergeant B, Constable A and the applicant himself.

However, notwithstanding the accounts provided by the officers and Ms L, the only contact confirmed by the applicant was the voicemail he received on 12 January 2016 which was dated 8 January 2016. Furthermore, from the evidence available, this phone call was made a number of weeks after the applicant submitted his application, and over a month after Constable A was allocated the renewal enquiry for progression. It is also clear from the evidence available that, apart from the unsuccessful efforts to contact the applicant via his mobile phone, no other method of communication was used to try and contact him.

In this instance, Superintendent D appears to recognise and acknowledge that, in the circumstances, Police Scotland could have explored other methods of communication as he states within the response: *"I do believe that Police Scotland could have progressed the matter with a more robust level of communication."* Superintendent D further states that: *"aside from the corrective advice regarding improved communication and contact, for which I apologise on behalf of Police Scotland, I do not propose to take any action in respect of the allegations presented to me."*

However, in reaching his determination, notwithstanding the fact that Superintendent D appears to have recognised a service failing for which he apologises, he does not uphold the applicant's complaint. In addition, despite Superintendent D making reference to corrective advice regarding communication, he does not explain what this advice was, who was provided with the corrective advice or how this advice would result in improved communication.

According to paragraph 6.12.3 of Police Scotland's Complaints about the Police Standard Operating Procedure ("the Complaints SOP"): *"a complaint should be upheld where the evidence based findings show that the service provided by or through the conduct of those serving with the police did not reach the standard a reasonable person could expect."*

As this lack of communication or police failure to explore all lines of communication goes to the core of the applicant's complaint, and as it appears to be a point of concession that Police Scotland failed to

utilise the other methods of communication available to them and have apologised for this failing, in keeping with paragraph 6.12.3 of the Complaints SOP, it is considered that Superintendent D should have upheld the applicant's complaint.

As the response is not consistent with the relevant procedure, it is concluded that this complaint was not dealt with to a reasonable standard. It is recommended that Police Scotland reassesses the complaint to take account of the points made above and thereafter issues a fresh response to the applicant.

Complaint 2: Decision not to grant permit

The applicant complains that the decision not to grant him with a temporary permit was unfair.

In his statement to Police the applicant states:

"I submitted my application in good time and I cannot see how it is my fault that no one contacted me to get it progressed. I can't see how I can be accused of being unco-operative when no-one had contacted me about my renewal application. It was even 6 weeks after I submitted it to chase up having heard nothing from them. I would've at least expected an acknowledgement and that's why I resorted to sending an email."

Police Handling of Complaint 2

Superintendent D responded to the applicant's complaints as follows:

"You have indicated that the intervention, communications and decision taken by Chief Inspector [C] and Sergeant [B] were unfair and disrespectful."

I can advise that Chief Inspector [C] in his capacity as head of Police Scotland's firearms licensing policy and strategy unit, reached the decision not to issue you with a Section 7 temporary permit as he was not satisfied that all the criteria had been met. Chief Inspector [C] concluded that your limited availability and apparent failure to respond to repeated telephone calls, combined with the inability to interview your nominated referee due to an unforeseen illness, meant that he was not satisfied that you had met your responsibilities and the temporary permit was declined.

I would like to clarify that the subsequent decision taken by myself, where I overturned the decisions taken by Sergeant [B] and Chief Inspector [C] in respect of the temporary permit, was not due to their assessment and decision making being wrong, but an attempt to resolve this matter to the benefit and satisfaction of all concerned.

... As a result of the full investigation I have conducted and specifically in relation to the allegations you have articulated in your statements and correspondence, in taking consideration of all circumstances and evidence available to me, I am unable to uphold your allegations.

... In considering all the circumstances and information I have available, aside from the corrective advice regarding improved communication and contact, for which I apologise on behalf of Police Scotland, I do not propose to take any action in respect of the allegations presented to me."

Consideration of Complaint 2

On 11 January 2016, the applicant contacted the Firearms Licensing Department to highlight the fact that he had not received any correspondence in relation to his renewal application and to advise that he would not be available for interview until after 21 January 2016. As his certification was due to expire on 21 January 2016, the applicant requested that he be granted with a temporary permit under the terms of Section 7 of the Firearms Act 1968.

Paragraph 15.4 of the Home Office Guide on Firearms Licensing Law ("Home Office Guidelines") states the following in relation to temporary permits:

"Permits should be issued by chief officers where a certificate has not been re-issued or where a variation has been delayed and the applicant has made the application in good time.

This may be appropriate where the renewal of the certificate is so delayed that the applicant may otherwise be left without permission to continue possessing and using their firearm and ammunition. This may not be the case where the applicant or his referees had been uncooperative and, is, or are, substantially responsible for the delay. In these circumstances the applicant should be advised to arrange for the firearms and ammunition to be placed in storage with a registered firearms dealer or another suitably authorised certificate holder."

Following his email on 11 January 2016, the applicant was contacted via telephone by Sergeant B who discussed with him the issue of granting a permit under Section 7 of the Firearms Act 1968. After this telephone conversation, Sergeant B consulted with Chief Inspector C and the decision was taken to decline the applicant's request.

As reflected in the response, this decision was based on the applicant's limited availability, failure to respond to telephone calls and the fact that his referee was not available for interview before the renewal date due to an unforeseen illness.

However, as stated above in relation to the first complaint, the applicant submitted his application on 15 November 2015, 8 weeks prior to his SGC's expiry on 21 January 2016. During this time period, although both Sergeant B and Constable A make reference within their respective accounts to trying to contact the applicant via telephone and leaving voicemails which were not responded to, it does not necessarily follow that the applicant was being purposefully uncooperative. Within his response to the applicant, Superintendent D acknowledges that the applicant suffers from signal problems with his mobile phone, and by the applicant's own account, he allegedly did not receive notification of any voice message until 12 January 2016. Furthermore, and as highlighted above, Superintendent D has also conceded within the response that the police could have pursued other methods of communication.

In addition, from reviewing the relevant email correspondence, Chief Inspector C states that the permit was declined because he deemed the applicant to be uncooperative as he was not available from 11 January 2016 until 21 January 2016 to be interviewed. However, from the evidence available, the applicant was not available between these dates because of a pre-arranged business trip. In addition, Chief Inspector C acknowledges that the applicant submitted his application in good time and that the police had over 8 weeks in which to progress it. In light of this, and in light of the fact that the applicant was not available because of a pre-arranged business trip, it is difficult to follow Chief Inspector C's reasoning, which is echoed by Superintendent D in his response, that the applicant was being purposefully uncooperative or was substantially responsible for the delay in progressing the application.

In addition, it appears to be a point of concession that the applicant's referee was not available because he was in hospital with an unforeseen illness and had communicated this fact to the enquiry officer in good time to make him aware of the circumstances.

In light of this and in light of points outlined above, it is difficult to understand why in the circumstances, the applicant was refused a permit under Section 7 of the Firearms Act 1968, or why his respective complaint in this respect is not upheld.

Accordingly, it is considered that the response is inadequately reasoned and not supported by the material evidence available. It is therefore concluded this complaint was not dealt with to a reasonable standard. It is recommended that Police Scotland reassess the applicant's complaint on the basis of the points outlined above and issue him with a fresh response.

Complaint 3: Contact with GP

The applicant complains that the decision to contact his GP was unjustified and not in line with Home Office firearms guidelines.

In his statement to police the applicant states:

"It's really important that I know what was said to my Doctor and that it was justified as per what's in the guidelines from the Home Office."

In his application to the PIRC, the applicant further states:

"This was a specific request by [Chief Inspector C] to [Sergeant B] to contact my GP. This request to [Sergeant B] cites "unusual behaviour"... [Superintendent D] confirms the contact GP was [Dr H]. You will see that [Dr H] confirms she did not speak to any police officer regarding the issue...I do not believe that this "special request" to access my medical records was justified. The normal GP contact was made by another police officer who did not follow correct procedures which could have resulted in a very serious situation had my circumstances been different."

Police Handling of Complaint 3

Superintendent D responded to the applicant's complaints as follows:

"You have intimated concern surrounding the specific nature and communication between Police Scotland representatives and your doctor (GP).

This contact was initiated by Chief Inspector [C] who requested satisfaction that there were no underlying or medical issues that were relevant to his perception of your challenging and brusque email communications to various Police Scotland staff.

You will appreciate that the effective and safe management of firearms licensing is of critical importance to Police Scotland who have responsibility to ensure public protection and due process is strictly managed and maintained and this course of action involving your GP was deemed necessary in light of the overall circumstances involved. Any discussion or communication between Police Scotland and a GP is confidential, however I can provide reassurance that this process, which is consistent in every such case, relates directly to medical information and suitability for possessing weapons.

... As a result of the full investigation I have conducted and specifically in relation to the allegations you have articulated in your statements and correspondence, in taking consideration of all circumstances and evidence available to me, I am unable to uphold your allegations.

... In considering all the circumstances and information I have available, aside from the corrective advice regarding improved communication and contact, for which I apologise on behalf of Police Scotland, I do not propose to take any action in respect of the allegations presented to me."

Consideration of Complaint 3

According to paragraph 10.24 of the Home Office Guidance:

"...it is open to the police to approach the applicant's GP at any time during the life of the certificate if there are concerns about the applicant's continued fitness to possess firearms."

This position is echoed by Police Scotland in its own Firearms SOP, paragraph 11.7.2 of which states:

"...The current Firearm and Shotgun applications give the police permission to approach the GP at application and during the currency of a Certificate."

The response to the applicant in this connection states that Chief Inspector C directed officers to carry out checks with the applicant's GP following his "*challenging and brusque*" emails and reasons that contact with the applicant's GP was deemed necessary in the circumstances. In light of the above provisions of the relevant guidance and SOP, the police are allowed to contact an individual's GP if they have any concerns regarding the individual's fitness to possess such a certificate.

However, within his correspondence with the PIRC, the applicant raises several concerns regarding the police response as to why the GP was contacted in the first place, and the procedure subsequently followed by the officers who made contact with his GP surgery.

In relation to Superintendent D's response, the applicant contests the police position that Chief Inspector C directed officers to make contact with his GP because of his emails.

From reviewing the evidence available, although the applicant was in email correspondence with Chief Inspector C and Sergeant B during the process, Chief Inspector C's specific request that Sergeant B contact the applicant's GP appears to be following the applicant's contact with Constables E and F on 28 January 2016.

Accordingly although it is open to the police to approach the applicant's GP at any point during the application process, the suggestion within the response that this contact was made because of the applicant's emails does not necessarily appear to be supported by the material evidence available.

It is therefore considered that this complaint was not dealt with to a reasonable standard.

In addition to this, the applicant highlights in his correspondence to the PIRC that he was informed via email by Superintendent D that Sergeant B had made direct contact with his GP, Dr H. Sergeant B also records within his respective account that he spoke with Dr H.

However, the applicant has presented evidence to the PIRC submitted by Dr H which confirms that no contact was made with her directly and that the officer who contacted the surgery, presumably Sergeant B, actually spoke with a different GP at the practice. Accordingly, the applicant has highlighted his concern that this information was incorrectly provided to him, and that the officer involved in making contact did not speak with his own GP or follow the proper procedures to obtain the required medical information.

Furthermore, the applicant also highlights that, within the firearms enquiry report completed by Constable F, reference is made within the relevant medical section to speaking with the receptionist at the surgery to obtain the relevant medical background. The applicant again contends that this practice is against the proper procedures.

It is noted that these particular concerns were not raised within the applicant's statement of complaint and were therefore not addressed or commented on within the response.

However, it is recommended that the applicant's complaint be revisited to take into account the additional concerns raised during the course of the review. A further response should thereafter be sent to the applicant which explains the decision to contact the applicant's GP in the first instance. The further response should also consider whether, taking into account all the available information, proper and correct procedures were followed by the officers who contacted the GP surgery.

Complaint 4: Inappropriate discussion

The applicant complains that the original investigating officer for his complaint inappropriately discussed matters with Sergeant B prior to contacting him.

In his statement to police the applicant states:

“...the Inspector that initially came, [Inspector J] arrived at my house and admitted he had phoned Sergeant [B] to ask what it was about. If it had been done professionally by [Inspector J] then it wouldn't have got to this stage now. He should've spoken to me first and not went [sic] and spoke to Sergeant [B] before speaking to me...I was told [Inspector J] had no knowledge of my enquiry, but he admitted to me that he had spoken to Sergeant [B] about it before he got here...[Inspector J] got sent here being impartial and he clearly wasn't.”

Police Handling of Complaint 4

Superintendent D responded to the applicant's complaints as follows:

“You have mentioned concern regarding the involvement of Inspector [J] as the initial investigating officer for your complaint, as he had confirmed to you, that he had spoken to Sergeant [B] prior to his attendance.

I am advised that this conversation was merely in respect of contact details and arrangements for attendance, which for the renewal process were problematic and had stalled, however when this was reported to myself I agreed that, while this was an oversight by the local division, such contact and communication should not have occurred. I immediately arranged for a different and unconnected officer, namely Inspector [G] to attend and expedite your complaint.

... As a result of the full investigation I have conducted and specifically in relation to the allegations you have articulated in your statements and correspondence, in taking consideration of all circumstances and evidence available to me, I am unable to uphold your allegations.

... In considering all the circumstances and information I have available, aside from the corrective advice regarding improved communication and contact, for which I apologise on behalf of Police Scotland, I do not propose to take any action in respect of the allegations presented to me.”

Consideration of Complaint 4

From reviewing the evidence available, the applicant initially highlighted his concern that another officer from the Division would be allocated to progress his complaint as he did not believe there to be a sufficient degree of independence from the officers he was complaining about. In light of the concern raised by the applicant during the complaint investigation, Inspector J was allocated the complaint enquiry.

The applicant's complaint in this connection focuses on the fact that, before he attended and spoke with him, Inspector J made contact with Sergeant B, one of the officers who was subject to a complaint.

Objectivity and impartiality must be demonstrable throughout the handling of a complaint. Paragraph 6.8.2 of the Complaints SOP provides that the enquiry officer should have had no prior involvement in the matter being investigated and should be sufficiently independent from the officer complained about.

In this case, Inspector J had no prior involvement with the relevant department or knowledge of the complaint and was sufficiently independent. However, as acknowledged in the response, Inspector J made contact with Sergeant B prior to attending to speak with the applicant. According to the response, this contact was made in respect of contact details and arrangements for attendance. However, from reviewing the evidence available, although contact details were exchanged between the parties, Inspector J was instructed to make contact with Sergeant B by one of his supervisors in order to obtain background information about the matter. This is also confirmed by the account provided by Inspector J in which he records he spoke with Sergeant B to obtain brief details about how the applicant had come into contact with the police.

This contact made between the officer investigating the complaint and the officer being complained about goes to the heart of the applicant's complaint. In addition to this, in his response to the applicant, although Superintendent D states he believed such contact to have been an oversight, he also formed the opinion that, in the circumstances, this contact should not have occurred.

According to paragraph 6.12.3 of the Complaints SOP, *"a complaint should be upheld where the evidence based findings show that the service provided by or through the conduct of those serving with the police did not reach the standard a reasonable person could expect."*

Accordingly, and in keeping with paragraph 6.12.3 of the Complaints SOP, it is considered Superintendent D should have upheld the applicant's complaint.

As the response is not consistent with the relevant procedure, it is concluded that this complaint was not dealt with to a reasonable standard. It is recommended that Police Scotland reassesses the complaint to take account of the points made above and thereafter issues a fresh response to the applicant.

5. Conclusions

Complaint 1: Lack of contact

It is concluded that this complaint was not dealt with to a reasonable standard. It is recommended that Police Scotland reassesses the complaint to take account of the points made above and thereafter issues a fresh response to the applicant.

Complaint 2: Decision not to grant permit

It is concluded this complaint was not dealt with to a reasonable standard. It is recommended that Police Scotland reassess the applicant's complaint on the basis of the points outlined above and issue him with a fresh response.

Complaint 3: Contact with GP

It is considered that this complaint was not dealt with to a reasonable standard. It is recommended that the applicant's complaint be revisited to take into account the above concern and the additional concerns raised during the course of the review. A further response should thereafter be sent to the applicant addressing whether, taking into account all the available information, proper and correct procedures were followed by the officers who contacted the applicant's GP surgery.

Complaint 4: Inappropriate discussion

It is concluded that this complaint was not dealt with to a reasonable standard. It is recommended that Police Scotland reassesses the complaint to take account of the points made above and thereafter issues a fresh response to the applicant.

Kirstin McPhee
Review Officer

Catherine Cumming
Acting Senior Review Officer