

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 Police Scotland's investigation into a serious crime reported by the applicant's wife (Mrs A). Five complaints were reviewed, namely:

- 1) that police officers met with Mrs A regarding a rape investigation but then proceeded to interrogate her in relation to her still born baby;
- 2) that police officers failed to take Mrs A's medical conditions into consideration during their meeting, despite having access to her medical records;
- 3) that police officers failed to provide support for Mrs A during their meeting, despite her being a vulnerable person;
- 4) that police officers threatened Mrs A that she would most likely go to prison in relation to her still born baby; and
- 5) that Mrs A was not given the choice of having a male or female officer interview her.

The review found that none of the complaints were dealt with to a reasonable standard. A reconsideration direction was issued in this connection.

3. Background

On 2 December 2015, the applicant's wife, Mrs A, reported to Police Scotland that she had been physically attacked and raped earlier that evening while walking her dogs close to her home. During the incident she sustained a stab wound to her abdomen.

On the same date, Mrs A provided a witness statement to CID officers describing the attack. She also disclosed to the officers that she was prescribed anti-depressant medication and had previously been admitted to hospital due to deterioration of her mental health following an unreported stillbirth in 2003. On 17th December 2015 Detective Constables B and C confirmed from Mrs A's medical records that she was and had been for several years, suffering from depression.

Detective Inspector D arranged for Mrs A to attend a meeting on 12th January 2016 to provide her with an update on the progress of the rape investigation. He also instructed officers to attend at the applicant's place of work to advise him about the purpose of the meeting and to ensure that support was available for Mrs A after the meeting.

Following the meeting on 12th January 2016, the applicant states that his wife was *"hysterical...tearful and sat with her head in her hands"*. A few days later, Mrs A was admitted to hospital where she remained for 7 weeks. According to the applicant, she was diagnosed with Post Traumatic Stress Disorder (PTSD) which the applicant attributed to the manner in which Mrs A was questioned during her meeting with Detective Inspector D and Detective Constables B and C.

On 15 January 2016, the applicant complained that Mrs A had been questioned about the stillbirth and the manner of the questioning. Detective Inspector G was appointed to investigate these matters.

Detective Inspector G states that he met with the applicant on 1 February 2016 to discuss his complaints, although no record of that meeting is available. Detective Inspector G states that the applicant appeared to accept the explanation which he provided during the meeting.

On 2 February 2016, the applicant contacted Detective Inspector G by email raising a further complaint. On 3 March 2016, as he had not received any update from him, the applicant again emailed Detective Inspector G to reiterate his complaints.

In June 2016, Superintendent H asked Detective Inspector G for an update on his progress in dealing with the applicant's complaints. At that time Detective Inspector G informed Superintendent H that he had been unable to conclude enquiries as he was waiting for the applicant to contact him once Mrs A was home from hospital and fit to attend a meeting.

Detective Inspector G met with the applicant on 12 September 2016 when he noted his statement of complaint and completed a Heads of Complaint form. Detective Chief Inspector J responded to the applicant's complaints by letter of 26 October 2016.

4. The Review

Complaint 1: Content of meeting

The applicant complains that when police officers met with his wife in January 2016 in connection with a rape investigation they questioned her about another matter in a manner that "*amounted to an interrogation*".

There appear to be two aspects to the applicant's complaint:

- (i) that the focus of the meeting shifted from providing Mrs A with an update on the progress of the rape investigation to questioning her about the stillbirth she experienced in 2003; and,
- (ii) that the manner of questioning was inappropriate.

The applicant states that Mrs A informed him that she had been asked "*questions about the birth and what she did with the remains*" at one point being asked "*whether it could have been a blood clot rather than a baby*". She stated that Detective Inspector D "*raised his voice shouting that she needed to remember things*".

Police Handling of Complaint 1

Detective Chief Inspector J provided the following response:

"In response to this complaint, the officers who dealt with your wife on this date are experienced investigators who are fully aware of their responsibilities in relation to dealing with victims of sexual crime. The questions asked were relative to the ongoing investigation and the interview

was conducted appropriately. It is my opinion that the matter was dealt with in an appropriate manner and I do not uphold your complaint.”

Consideration of Complaint 1

(i) Focus of the meeting

According to the applicant, Mrs A was informed that the purpose of the meeting was to provide her with an update on the progress of the rape investigation and to meet Detective Inspector D in his capacity as Senior Investigating Officer. Detective Inspector D confirmed this information in his own statement. However he also recorded that, in addition to providing an update on the investigation, he also sought to “*obtain specific information about [Mrs A’s] pregnancy and stillborn baby in 2003*” to allow him to make enquiries about the matter with the relevant police force. It therefore appears that Detective Inspector D intended from the outset that the meeting would include questioning about the stillbirth in 2003.

No information is contained in the statements of Detective Constables B and C, nor in the Contact Log, about whether or not Mrs A was advised in advance of the meeting, that she would be questioned about the stillbirth. It is considered that Detective Constables B and C’s statements should have addressed whether or not they fully explained the purpose of the meeting to Mrs A. It is also unclear if any consideration was given to Mrs A’s status in relation to the enquiry into the stillbirth incident in 2003 and subsequently whether she was advised, prior to the meeting, of her legal rights and/or obligations to cooperate with that particular enquiry.

More significantly, the complaint response does not explain why the applicant’s stillbirth was subject to enquiry some 12 years after it occurred; why it was relevant to the rape investigation; and why it was considered appropriate to question Mrs A about the matter during a meeting to update her on the investigation into her recent allegation of rape.

As this information was not gathered during the complaint investigation, it is considered that insufficient enquiry was carried out into this aspect of the applicant’s complaint to allow a full assessment of the circumstances to be undertaken and reflected in the complaint response.

(ii) Manner of questioning

The statements of Detective Constables B and C and Detective Inspector D do not address the applicant’s complaint that Detective Inspector D shouted at Mrs A and made an inappropriate comment. It is therefore considered that insufficient enquiry was carried out into this aspect of the applicant’s complaint to allow Chief Inspector J to assess ‘on balance’ whether or not the applicant’s complaint should be upheld.

As insufficient enquiry was carried out into both aspects of this complaint, it is concluded that the complaint overall was not dealt with to a reasonable standard. Further action in this connection required by Police Scotland is detailed at the end of this report.

Complaints 2 and 3 are considered together below as they are interlinked.

Complaint 2: Medical conditions

The applicant complains that Mrs A's depression was not taken into consideration during her meeting with Detective Inspector D and Detective Constables B and C despite Police Scotland having access to her medical records.

Police Handling of Complaint 2

Detective Chief Inspector J provided the following response:

"In response to this complaint, from an early stage of this enquiry, those involved in contact with your wife were aware that she suffered from depression. It is my opinion that in dealing with your wife, those involved acted with fairness, integrity and respect. Additionally, at all times focusing on her personal needs. As such, I do not uphold this complaint."

Complaint 3: No support provided

The applicant complains that Police Scotland failed to provide support for Mrs A during the meeting, despite her being a vulnerable person.

Police Handling of Complaint 3

Detective Chief Inspector J provided the following response:

"In response to this complaint, again it is my opinion that the way in which your wife was dealt with was fair and displayed integrity and respect and at all times focused on her personal needs. At no time did the officers concerned consider that your wife required the services of an appropriate adult. That said, they did feel that she may benefit from additional emotional support which was offered to her on numerous occasions but was always declined. For these reasons I do not uphold this complaint".

Consideration of Complaints 2 and 3

The Police Scotland Appropriate Adult Standard Operating Procedure ("the Appropriate Adult SOP") states that its purpose is to ensure that arrangements are made to have a suitably trained person available to facilitate communication during police procedures involving adults with a mental disorder who are involved with any police processes as victim, witness, suspect or accused.

Section 4 of the Appropriate Adult SOP states:

“An Appropriate Adult is a person with prior experience (either in a professional or voluntary capacity) of working with adults who have a mental health issue” and “the appropriate adult will have been specifically recruited for their experience in the field of mental health and their communication skills”.

Their role is *“to facilitate communication between an individual with a mental disorder and the police”* including helping the person understand why they are being interviewed, the questions put to them and to ensure that their responses are fully understood by the police.

Section 5.14 of the Appropriate Adult SOP states:

“There is no formal process for identifying the need for an Appropriate Adult so the decision to contact one is based largely on information available about, or behaviours displayed by a person”

As noted in the response to complaint 2, it is clear that the officers involved in the enquiry were aware of Mrs A’s history of depression through information disclosed by the applicant and Mrs A and by viewing her medical records.

The response to complaint 3 states that officers felt that Mrs A *“may benefit from additional emotional support”*, which was declined. It is documented within Detective Inspector D and Detective Constables B and C’s statements and the SOLO Contact Log that Mrs A declined offers of referral to Rape Crisis and that she was provided with *“advice about outside agencies that could assist with counselling”*. There is however no further information in the paperwork provided to the PIRC that explains what steps were taken to provide Mrs A with emotional support during the meeting.

It is notable that Detective Inspector D was sufficiently concerned about Mrs A’s welfare that he instructed two officers to inform the applicant that his wife may be *“emotional”* and require support after the meeting.

In light of the foregoing, the responses to complaints 2 and 3 do not explain what actions were taken by Detective Inspector D and Detective Constables B and C in recognition of Mrs A’s mental health issues, and do not explain why the services of an Appropriate Adult were not thought to be required. It is therefore considered that the responses to complaints 2 and 3 are inadequate and the explanation provided for not upholding each complaint is not adequately reasoned. For the reasons provided, it is concluded that the complaint was not dealt with to a reasonable standard. Further action in this connection required by Police Scotland is detailed at the end of this report.

Complaint 4: Threat

The applicant complains that police officers threatened Mrs A by stating that she would most probably go to prison in relation to her still born baby.

Police Handling of Complaint 4

Detective Chief Inspector J provided the following response:

“In response to this complaint, having examined the evidence I can find nothing to substantiate that any of the officers concerned in this enquiry would have reason to state that your wife would probably go to prison and for this reason I do not uphold the complaint”.

Consideration of Complaint 4

The applicant did not refer to this allegation within the statement of complaint noted by Detective Inspector G on 12 September 2016. It is however recorded on the Heads of Complaint form which appears to have been completed on the same date, indicating that the matter was discussed during their meeting. As the allegation was not documented in the applicant’s statement, it is unclear which officer or officers the applicant alleges made the threat to Mrs A.

It would have been helpful had Mrs A been able to provide a statement, however the applicant recorded that his wife was *“not fit”* to speak to either Detective Inspector G or the Rape Investigation Team at the time his statement was recorded. It is therefore considered that the specific allegation should have been clearly documented within the applicant’s statement to explain which officer(s) made the threat, and the wording used. This would have allowed the officer(s) concerned to address the applicant’s allegation within their own statements.

As the details of the allegation were not clearly recorded and as the officers who were present at the meeting did not address the applicant’s complaint within their statements, it is considered that insufficient enquiry was carried out into the applicant’s complaint to allow a reasoned response to be issued based on the balance of probabilities. Accordingly, it is concluded that the complaint was not dealt with to a reasonable standard. Further action in this connection required by Police Scotland is detailed at the end of this report.

Complaint 5: Male officer present

The applicant complains that Mrs A was not given the choice of having a male or female officer interview her. This complaint was not recorded on the Police Scotland Heads of Complaint form dated 12 September 2016, however it is recorded within the applicant’s statement of complaint that Mrs A *“was not given the option for the male not to be present”*.

The applicant initially raised this point within his email to Detective Inspector G dated 2 February 2016 in which he stated:

“I spoke to my wife last night and she again confirmed that she was not given the option of having a male or female officer interview her.....

I would be grateful if you can investigate this and report back to me with your findings”.

Detective Inspector G replied, also on 2 February, stating he would carry out enquiries into the matter and respond.

Police Handling of Complaint 5

Police Scotland did not provide a response to this complaint.

Consideration of Complaint 5

Although the complaint was not recorded on the Heads of Complaint form, it is clear that the applicant raised the complaint on 2 February 2016 and that he was given an assurance at that time that the matter would be investigated. He also raised the issue again within his statement of complaint. Furthermore, the officers who attended the meeting addressed the allegation within their statements.

The Appropriate Adult SOP provides at section 5.6 that *“officers must take cognisance of section 8 of the Victims and Witnesses (Scotland) Act 2014, which states that a person who is, or appears to be, the victim of”* a range of specified offences (including rape), *“must be afforded the opportunity to specify the gender of the interviewing officer (deemed to be the officer noting a full statement)”*.

It is considered that Police Scotland should have responded to this complaint, taking account of the information provided in the witness statements and the provisions of the Appropriate Adult SOP. As no response was issued, it is concluded that the complaint was not dealt with to a reasonable standard. Further action in this connection required by Police Scotland is detailed at the end of this report.

5. Conclusions

It is concluded that none of the applicant's complaints were 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 respect of each of the five complaints 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.

In reconsidering the complaints, Police Scotland must have full regard for the comments and observations made by the PIRC in this report. Specifically, Police Scotland should do the following as part of the reconsideration into each complaint:

Complaint 1: Content of meeting

In reconsidering this complaint, further statements should be obtained from Detective Inspector D and Detective Constables B and C that specifically address the following points:

- the level of information provided to Mrs A about the purpose of the meeting with Detective Inspector D;
- why the applicant's stillbirth was subject to enquiry some 12 years after it occurred;
- why it was relevant to the rape investigation;
- why it was considered appropriate to question Mrs A about the matter during the update meeting;
- the status of Mrs A (victim, witness or suspect) in relation to questioning about the 2003 incident;
- whether Detective Inspector D raised his voice towards Mrs A or made the specific comment attributed to him by the applicant.

A further response should then be issued to the applicant that fully addresses each aspect of his complaint, which takes account of the provisions of the Complaints SOP and adequately explains any decision reached.

Complaints 2 and 3: Medical conditions and lack of support

In reconsidering these complaints, a further response should be issued to the applicant that (a) considers whether appropriate steps were taken to assess Mrs A's vulnerability and to ensure her mental health issues were taken into account; (b) considers whether the provisions of the Appropriate Adult SOP were taken into account; and (c) adequately explains any decision reached.

Complaint 4: Threat

In reconsidering this complaint, a further statement should be obtained from the applicant that clearly explains which officer(s) made the threat to Mrs A and the language used. If it is possible to identify a specific officer subject to the complaint, he/she should be given an opportunity to comment on the allegation. Any other officers in attendance at the meeting should also be asked to provide statements specifically addressing the applicant's complaint. A further response should then be issued to the applicant that takes account of the information provided in the witness statements, assesses 'on balance' which version of events is considered to be more probable and adequately explains any decision reached.

Complaint 5: Male officer present

In reconsidering this complaint, Police Scotland should formally record and respond to the applicant's complaint. The response should refer to the provisions of the Appropriate Adult SOP, reflect the content of the witness statements and adequately explain any conclusions reached.

Kate Frame
Police Investigations & Review Commissioner