

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 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 a police investigation into an allegation of fraud reported by the applicant. Three complaints were reviewed, namely:

- 1) that an officer did not contact the applicant in response an email of 2 August 2016;
- 2) that the officer did not seek the applicant’s permission to contact the solicitor dealing with his aunt’s estate; and
- 3) that the officer did not conduct a full investigation.

The review found that two of the complaints were dealt with to a reasonable standard while one was not. One recommendation was made.

3. Background

On 10 November 2015, the applicant reported to Police Scotland that he believed a family member (Mrs A), was fraudulently trying to obtain a larger share of his aunt's (Mrs B's) estate than she was entitled to. Mrs A was an executor of Mrs B's estate.

It is the applicant's position that Mrs A added her name to a copy of Mrs B's will to make it appear that she was both a beneficiary and next of kin. The applicant thought that, by doing so, Mrs A was trying to obtain a share of the estate in her own right in addition to the share she would receive as the widow of a named beneficiary. The applicant was also concerned about the manner in which the proceeds of a family trust fund, set up by Mrs B, had been distributed by Mrs A, who was named as a beneficiary of the fund and was also the sole trustee.

As the applicant does not reside in Scotland, his statement was recorded by his local police force. This was forwarded to Police Scotland along with relevant documentation, including a copy of Mrs B's Will which contained the additional wording. On 8 February 2016, Detective Constable C was appointed to investigate the applicant's concerns.

Detective Constable C made enquiries with the legal firm dealing with Mrs B's estate. He understood from those enquiries that the legal firm was in negotiation with the applicant's solicitor, and that no criminal activity on the part of Mrs A had been identified. Detective Constable C provided the applicant with an update to that effect during a meeting on 27 February 2016.

The applicant submitted his complaints via the Police Scotland online complaints system on 25 August 2016. Detective Inspector D was appointed to investigate the applicant's complaints. The points of complaint to be investigated were agreed by email. The Police Scotland Heads of Complaint form was completed on that basis and forwarded to the applicant by post for his signature. Detective Chief Inspector E responded to the applicant's complaints by letter of 14 December 2016.

4. The Review

Complaint 1: Lack of contact

The applicant complains that he sent an email to Detective Constable C on 2 August 2016, asking the officer to contact him about the investigation into the fraud allegation, as he had obtained further relevant information. At the time of submitting his complaint on 25 August 2016, the applicant had not received a response from Detective Constable C.

Police Handling of Complaint 1

Detective Chief Inspector E provided the following response:

"I can confirm that [Detective Constable C] was on annual leave on the date you sent said email and did not return to duty until 18th August 2016 when he commenced late-shift duties. Due to the anti-social hours of late-shift duties and other work commitments, [Detective Constable C] decided to defer contacting you until he returned to dayshift duties on 26 August 2016, considering this to be a more suitable time to discuss matters with yourself and your partner. However, unknown to [Detective Constable C], by this time you had contacted Police Scotland to raise a complaint.

[Detective Constable C] was not aware of the complaint made and did attempt to contact your partner, [Ms F], by telephone but did not get a reply. On being notified of the complaint by his supervisor, [Detective Constable C] was subsequently advised to cease contact with you as this was now being carried out by his 2nd line manager.

Whilst I understand that you were frustrated at receiving no contact between 2nd August and 25th August, for the majority of that time, as outlined, [Detective Constable C] was on Annual Leave and unsighted on the email you had sent. Whilst [Detective Constable C] could have contacted you on return to duty on his late-shift week he did not do so as he assessed that contact during daytime hours would be the most appropriate; particularly as most enquiries he could have carried out required contact with people working business hours. On returning to dayshift [Detective Constable C] states that he made attempts to contact your partner via phone which were unsuccessful, with this information I find this point of complaint is not upheld."

Consideration of Complaint 1

The complaint response acknowledges that Detective Constable C could have contacted the applicant on his return to work on 18 August 2016 and explains why he did not do so. However, the applicant informed the PIRC that he was dissatisfied with the explanation provided as Detective Constable C had previously contacted his partner (Ms F) by email whilst on late shift duties. In support of his position, the applicant provided the PIRC with an email sent to Ms F at 20:04 hours on 28 June 2016.

It is recognised that Detective Constable C had only a short window of opportunity to respond to the applicant's email on his return from annual leave before the applicant submitted his complaint on 25 August, as his four late shifts (18 to 21 August) were followed by a period of rest days. Although it is clear that Detective Constable C previously contacted the applicant while working late shifts, it does not follow that he would be in a position to do so on every occasion. His email of 28 June 2016 was sent simply to confirm the date of a meeting he was aware the applicant had planned with his solicitor, whereas in his statement he explained that he considered it would be more appropriate to respond to the 2 August email during dayshift hours.

As the complaint response acknowledged that Detective Constable C could have contacted the applicant on his return from annual leave, and explained why he did not do so, it is considered that the decision not to uphold the applicant's complaint is adequately reasoned. It is therefore concluded that the complaint was dealt with to a reasonable standard. No further action is required in this connection.

Complaint 2: Permission not sought

The applicant complains that Detective Constable C did not seek his permission to contact the legal firm dealing with Mrs B's will (Company X).

Within his original online complaint form, the applicant stated that he was "not happy" with the way in which Detective Constable C handled the fraud enquiry "especially contacting the solicitors for the estate before even seeing me".

He explained within his PIRC application that he would have expected Detective Constable C to speak to him about the matter first, particularly as he had not seen the referral prepared by his local police force (Constabulary W) that was forwarded to Police Scotland.

Police Handling of Complaint 2

Detective Chief Inspector E provided the following response:

"From the circumstances presented to [Detective Constable C], it is a natural line of enquiry for an investigator to make enquiries with the solicitors who were carrying out these duties and who were in possession of information surrounding the estate of your late Aunt, in particular the details held on the original copy of her will, with this information I find this point of complaint is not upheld".

Consideration of Complaint 2

The complaint response does not address the applicant's expectation that he would be contacted prior to any investigation being undertaken, or explain whether there would be a requirement to seek his permission to contact Company X.

However, the applicant's allegation of fraud was clearly outlined in the statement he provided to Constabulary W on 2 December 2015, a copy of which was provided to the PIRC during the review process. According to Detective Constable C, the supporting documentation he received from Constabulary W contained only photocopies of Mrs B's Will. He therefore sought to compare these against the original documentation and accordingly he contacted Company X. It is considered that Detective Constable C, having received an allegation of fraud, would not require the applicant's permission to commence his initial enquiries with Company X.

While, it may have been a matter of good practice for Detective Constable C to make contact with the applicant on receipt of the referral from Constabulary W and prior to enquiries being commenced, it has now been explained in this report that there would be no requirement to seek the applicant's permission to commence his enquiries. It would have been beneficial to the response had these factors been acknowledged. However, as Police Scotland has broadly explained why it was appropriate for Detective Constable C to commence his enquiries with Company X, it is considered that, overall, the complaint was dealt with to a reasonable standard.

Complaint 3: Lack of investigation

The applicant complains that Detective Constable C's investigation into the fraud allegation did not go beyond contacting Company X, and that he thereafter informed the applicant that his concerns were a civil matter.

Police Handling of Complaint 3

Detective Chief Inspector E provided the following response:

"From the circumstances presented to [Detective Constable C], it was established that the original Last Will and Testament of your late aunt (the legally held copy), had not had any additional narrative inserted thereon and as this was the document that was being referred to in the probate/confirmation process there is no crime committed by anyone who altered the photocopy of said Last Will and Testament in the circumstances you suspect. [Detective Constable C] was advised by [Company X] that they had not identified any criminality on the part of Mrs [A] and that the matter was being dealt with as a civil matter with your solicitors, an update which I have been advised he disclosed to you.

Whilst the additional material you referred to in your first point of complaint provided a further line of enquiry into the Family Trust Fund set up by your late aunt, enquiries carried out by the investigating officer into your complaint have failed to identify any criminal conduct on the part of Mrs [A]. Attempts were made to obtain records and correspondence from [Company Z] but they would not provide them to Police Scotland without a warrant and an application for a search warrant was rejected by Crown Office and Procurator Fiscals Service as they were not satisfied that it had been established as a criminal matter.

The investigating officer has liaised with your solicitor Ms [G] at [Company Y] to update her accordingly and she understands why said warrant application was rejected. Whilst corresponding with Ms [G] she provided the investigating officer with exculpatory information that suggests that Mrs [A] was not responsible for the decision made about the distribution of the funds from the Family Trust Fund; as such no criminality on the part of Mrs [A] can be established. Ms [G] has confirmed that at present the matter is a civil matter and she has been advised that if additional material is established which suggests criminality on the part of any individual or organisation she should contact the investigating officer to advise him of this. With this information I must conclude that this point of complaint is not upheld."

Consideration of Complaint 3

The applicant's fraud allegation contained two elements:

1. concerns about the administration of Mrs B's Will; and,
2. that trust fund monies were not distributed in accordance with the terms of the trust.

1. Will

In relation to the administration of Mrs B's Will, it is the applicant's position that he and his three brothers were the beneficiaries. Their names were listed as such on both the original and the amended copy. The wording on the original Will is however ambiguous and could be interpreted in two ways, either:

- that the applicant, his brothers and Mrs A are all beneficiaries; or
- that Mrs A is not a beneficiary and is named as next of kin only.

The complaint response explains that Detective Constable C's enquiries with Company X established that Mrs B's original Will had not been altered, and therefore the addition of Mrs A's name on the copy had no bearing on how the estate would be distributed once agreement was reached on how the original will should be interpreted. The interpretation of the original will is being treated as a civil matter.

According to Detective Constable C, he informed the applicant during a meeting on 27 February 2016 that, *"on being made aware of the outcome of the civil investigation"* he would then *"carry out any criminal element to the enquiry"*. He also states that he maintained contact with Ms F, after 27 February 2016, informing her that he required the original documents the applicant submitted to Constabulary W, as he was *"still working with photocopies"*, and that he *"would carry on with this part of the enquiry"*. He referred to receiving a further package on 29 June 2016 which still contained *"only a copy of the original will"*. In light of these comments, it appears that the applicant and Ms F may have been given some expectation, after their meeting with Detective Constable C, and through further contact with him, that enquiries were continuing into the applicant's allegations. It is unclear from Detective Constable C's statement, and the other available information, what the scope of those enquiries may have been.

2. Trust Fund

The applicant stated that the value of the trust fund was distributed by Mrs A in a manner which he believed to be fraudulent. He referred to this aspect of the fraud allegation in his statement of 2 December 2015.

It appears from the available information that details of the Trust Fund were forwarded to Police Scotland within the referral pack compiled by Constabulary W, however Detective Constable C does not specifically refer to carrying out enquiries in connection with the Trust Fund within his statement.

The complaint response explains that *"additional material"* provided by the applicant led to further enquiry being carried out into this aspect of his fraud allegation by Detective Inspector D, alongside the complaint investigation. However, it is unclear from the Police Scotland file what that additional material was. Although it was explained to the applicant why Police Scotland was unable to establish any criminality by Mrs A in respect of the distribution of the funds, the complaint response does not assess

whether Detective Constable C should have conducted any enquiry into this aspect of the applicant's fraud allegation.

In summary, the complaint investigation did not establish:

- (1) whether the applicant was given an expectation that enquiries were continuing into the administration of the Will beyond Detective Constable C's contact with Company X; and,
- (2) whether Detective Constable C had sufficient information about the Trust Fund at the outset, and whether he made (or should have made) enquiries in relation to its administration.

As these points were not explored during the complaint investigation, it is considered that insufficient enquiry was carried out into each aspect of the applicant's complaint. Consequently, the complaint enquiry did not fully assess the appropriateness of the investigation carried out by Detective Constable C. On that basis, it is considered that the decision not to uphold the applicant's complaint is not adequately reasoned. Accordingly it is concluded that the complaint overall was not dealt with to a reasonable standard.

It is recommended that a further statement be sought from Detective Constable C that more clearly explains the scope of his enquiries and whether he carried out any investigation in connection with the administration of the Trust Fund. A further response should then be issued to the applicant that adequately explains any conclusion reached

5. Conclusions

Complaints 1 and 2

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

Complaint 3: Lack of investigation

It is concluded that this complaint was not dealt with to a reasonable standard. It is recommended that a further statement be sought from Detective Constable C that more clearly explains the scope of his enquiries and whether he carried out any investigation in connection with the administration of the Trust Fund. A further response should then be issued to the applicant that adequately explains any conclusion reached

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