

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 the applicant's contact with Police Scotland during a family dispute. Five complaints were reviewed, namely:

- 1) that an officer failed to pass information to the Procurator Fiscal;
- 2) that an officer carried out insufficient enquiry before reporting the applicant to the Procurator Fiscal;
- 3) that an officer incorrectly advised the applicant that only Police Scotland knew that the applicant had been arrested;
- 4) that an officer provided guidance during the enquiry to a third party who was known to the officer personally;
- 5) that a Police Scotland form signed by his wife was subsequently amended and the word 'stalking' added.

The review found that three of the complaints were dealt with to a reasonable standard and two were not. Two recommendations were made.

3. Background

The applicant and his wife (Mrs A) have experienced issues with their son's former partner (Ms B), primarily over access to their grandchildren. Several incidents were reported to Police Scotland by both parties during 2015. Ms B alleged that the applicant and Mrs A drove past her house on numerous occasions, and regularly parked at a nearby playpark in an effort to see their grand-daughter. Officers advised the applicant a number of times that his actions could be "*construed by others as stalking behaviour*" and he should seek more formal access arrangements.

The applicant and Mrs A were interviewed under caution on 8 June 2015 in connection with Ms B's allegations. This resulted in the submission of a report to the Crown Office and Procurator Fiscal Service (COPFS) on 29 June 2015 for consideration of prosecution. Ms B also alleged that the applicant and Mrs A followed her on one occasion in June 2015. This allegation was reported to the COPFS in October 2015.

On 15 November 2015, the applicant was arrested and charged with stalking Ms B under section 39(1) of the Criminal Justice and Licensing (Scotland) Act 2010 ("the 2010 Act"). Proceedings were taken against the applicant and the trial concluded on 9 June 2016 with the charge found not to be proven.

The applicant submitted complaints via the Police Scotland online complaints system on 3 May 2016. Inspector G was appointed to investigate the applicant's concerns, and met with him on 28 June 2016 when the applicant provided a statement of complaint. The Police Scotland Heads of Complaint form was also completed on that date. Chief Inspector H responded to the applicant's complaints by letter on 22 November 2016.

4. The Review

Complaint 1: Information not provided to COPFS

The applicant stated that he informed Constable D about an incident that occurred on 25 June 2015, when he and his wife were confronted by Ms B and her partner, Mr C. He complained that Constable D failed to pass this information to the COPFS.

Police Handling of Complaint 1

Chief Inspector H provided the following response:

“You complained that you reported to Constable [D] by phone that you and your wife had been confronted by [Ms B] and [Mr C] and that it was never passed to the Procurator Fiscal. This was recorded as an allegation of ‘neglect of duty’ which I have not upheld for the following reasons:-

Inspector [G] advised that he noted a statement from you in which you confirmed the allegation. In your personal statement you describe the incident in question and thereafter calling Police Scotland via telephone number ‘101’. You stated you discussed the incident with Constable [D] because he was the officer who previously interviewed you and your wife. You state that he said he would speak to [Ms B] as her doing this was not helping matters. Inspector [G] also noted a statement from your wife in which she described the incident in question. She confirmed you spoke to Constable [D] and states that he said he would attend to the matter but that you did not hear anything from him after that.

Inspector [G] has carried out research and found you reported an incident to police on 25 June 2015 [incident number provided]. The enquiry officer, Constable [D] has recorded on this incident that you reported to him by telephone that you had been with your wife in your car at [Street W, Location X] that evening when you were approached by [Ms B] and [Mr C] who advised you to stop stalking [Ms B].

Constable [D] recorded that you advised them you had no interest in [Ms B] and that you did not wish to report the matter as a crime but sought to make police aware owing to previous incidents between the various parties. The incident was thereafter closed as ‘police advice’ and recorded for information purposes.

I note the information contained within police incident [number provided] in which it is recorded you passed information about the aforementioned incident to police. I note this incident was not recorded as a crime and there is no information to suggest you asked for police to take further action or speak to [Ms B]. In the statement provided, Constable [D] confirmed you spoke to him about the previous encounter with [Ms B].

Having reviewed all available information I am of the opinion that there was not a requirement to inform the Procurator Fiscal about this incident. From the information provided by both you and

your wife, an allegation of criminality was not made to police and the incident was reported to police for information, which was recorded on police systems by Constable [D]. I am satisfied with the police action taken in respect of the information and have not upheld this allegation”.

Consideration of Complaint 1

The Police Scotland file provided to the PIRC contains the incident report of 25 June 2015, which records that the applicant and Mrs A reported being approached by Ms B and Mr C while sitting in their vehicle earlier that evening. Constable D recorded on the incident report that the applicant did not wish to report a crime having taken place, however wished to notify Police Scotland of the incident due to the ongoing investigation involving all parties.

The complaint response states that there was no requirement to inform the COPFS about this incident as no crime was alleged and it was reported to Police Scotland for information only. However, it is noted that details of a previous similar incident involving Ms B, which the applicant reported to Constable D during his interview on 8 June 2015, were included in Police Scotland’s report to the COPFS on 29 June 2015.

As the applicant was accused of engaging in a course of conduct that caused Ms B to suffer fear and alarm, it is considered that Chief Inspector H ought to have assessed whether the information about Ms B having approached the applicant – in what the applicant describes as an aggressive manner – should have been notified to the COPFS irrespective of whether or not a crime had been alleged or recorded. As this was not explored in Chief Inspector H’s response, it is considered that the response is not adequately reasoned. Accordingly, it is concluded that this complaint was not dealt with to a reasonable standard.

It is recommended that Police Scotland issues a further response to the applicant that assesses, in light of the points made above, whether details of the incident of 25 June 2015 should have been included in the report provided to the COPFS on 29 June 2015.

Complaint 2: Lack of enquiry

The applicant complained that, on 5 October 2015, Constable E informed him that information would be submitted to the COPFS in connection with a further allegation Ms B had made against him. Ms B alleged that the applicant and Mrs A had followed her around the local area on one occasion in June 2015. Within his statement of complaint, the applicant stated that he found it “*strange*” that he was contacted more than three months after the allegation was made, and that he was not questioned about this matter.

Police Handling of Complaint 2

Chief Inspector H provided the following response:

“You complained that on 5 October 2015, Constable [E] called you and informed you that you were being reported to the Procurator Fiscal. You feel that there was not enough enquiry done and he

did not speak to you or ask for your side of the story. This was an allegation of ‘irregularity in procedure – insufficient enquiry carried out’ which I have not upheld for the following reasons:-

In the personal statement you passed to Inspector [G] you describe how Constable [E] contacted your wife and advised her that an allegation had been made which was to be added to the original report. You confirm that you telephoned Constable [E] to discuss the matter. You state you find it strange that you were never questioned or even asked about the allegation and question what ever happened to innocent until proven guilty.

Inspector [G] has confirmed that on 22 June 2015, a complaint was made to police by a member of the public who made allegations with regard to your behaviour ([incident number] refers). Following illness by the original investigating officer, enquiry was passed to Constable [E] to progress. Constable [E] continued the enquiry, gathered statements from witness [sic] and subsequently submitted a report to the Procurator Fiscal in respect of the allegations.

Having reviewed the evidence in respect of the related police report sent to the Procurator Fiscal, I am satisfied that following the allegation having been made to police, Constable [E] gathered sufficient evidence to substantiate a crime had been committed and reported the matter to the Procurator Fiscal.

In respect of your comment that you were not questioned, I can confirm that where a crime is reported to police and sufficient evidence is available, police can submit a report to the Procurator Fiscal without interviewing the accused person.

With regard to the delay in the matter being reported to police in June 2015 and you thereafter being contacted in October 2015 I can advise that this was owing to the initial enquiry officer having taken a period of absence resulting in the enquiry being passed to another officer. Whilst this delay was clearly not ideal, I am satisfied that the enquiry was still actioned timeously, statements noted from witnesses and the matter reported to the Procurator Fiscal within appropriate timescales.

In summary, I am satisfied sufficient enquiry was carried out into the allegation, enquiry was carried out timeously and the matter was reported in accordance [sic] owing to there being sufficient evidence a crime had been committed. As confirmed in your statement, Constable [E] has notified you a report was to be sent to the Procurator Fiscal. Had the Procurator Fiscal decided to progress criminal proceedings in respect of this incident you would have been provided with an opportunity to respond to the complaint. I therefore do not uphold your allegation”.

Consideration of Complaint 2

In relation to the applicant's concern that he was not questioned about Ms B's allegation, the complaint response accurately explains that there is no requirement for the police to question an individual where there is deemed to be sufficient evidence to send a report to the COPFS for consideration of prosecution.

In addition, Chief Inspector H's position that sufficient evidence had been gathered to allow the matter to be reported is supported by the information contained with the case file provided to the PIRC, which shows that relevant witness statements had been obtained. The report submitted to the COPFS clearly indicates that the applicant had not been interviewed about the allegation at that point. It is also noted in the relevant Police Scotland incident log that Constable E sought advice from the COPFS prior to submitting his report.

The explanation provided to the applicant for the delay in enquiries being undertaken into Ms B's allegation is also supported by updates recorded on the relevant Police Scotland incident log. This shows that the enquiry was allocated to Constable E on 13 September 2015 as the original enquiry officer had a period of absence.

It is therefore considered that the response is supported by the material information available and is adequately reasoned. Consequently, it is concluded that this complaint was dealt with to a reasonable standard. No further action is required in this connection.

Complaint 3: Information about arrest and charge

The applicant stated that Ms B informed the court during a child access hearing on 19 November 2015 that he had been arrested and charged with stalking and abduction. The applicant complained that he received an unsatisfactory reply when he asked Constable D about who would have been aware of his arrest and charge.

Police Handling of Complaint 3

Chief Inspector H provided the following response:

"You complained that during a children's access hearing, [Ms B] told the court you had been arrested for abduction and stalking. You contacted Constable [D] to ask who knew you had been arrested and he said no one. You asked him how [Ms B] blurted it out to the Sheriff and he said maybe the complainer had been told. This was an allegation of 'irregularity in procedure – provide insufficient explanation regarding police procedures' which I have not upheld for the following reasons.

In the statement you provided to Inspector [G] you described how your son attended a child access hearing on Thursday 19 November 2015 with regard to access for your son [Mr J] to see his children. You state that whilst in court [Ms B] commented you had been arrested for abduction and stalking. Your wife [Mrs A] did not make comment with regard to this matter in her statement to police.

In his statement, Constable [D] confirmed you contacted him and he states he advised you that he had not passed this information to anyone. After you enquired about [Ms B], he clarified that she had been updated that the circumstances of the allegation she made to police would be reported to the Procurator Fiscal. He states that he did not tell her the nature of the crime you had been

charged with, in particular he states he did not inform her that you had been charged with an allegation of abduction.

In 2014 legislation was introduced by the Scottish Government to support victims and witnesses to crime namely the Victims and Witnesses (Scotland) Act 2014. Section 1 of the act (sic) states the following in respect of victims of crime "(a) that a victim or witness should be able to obtain information about what is happening in the investigation or proceedings".

Upon reviewing available information I am of the opinion Constable [D] could have informed you that as the victim who reported an incident to police, [Ms B] had been updated with regard to the police enquiry carried out. I am satisfied Constable [D] has carried out the correct course of action in updating her on the enquiry carried out and note that he denies having informed her you charged [sic] with abduction as you have alleged. For this reason I have not upheld this allegation".

Consideration of Complaint 3

Ms B reported two incidents to the police involving her children's contact with the applicant and Mrs A. Firstly, an allegation that the children had not been returned home after visiting their father (the applicant's son) and, secondly, that the applicant and Mrs A had briefly removed their grand-daughter from the playpark without Ms B's consent.

From the papers provided, it is evident that both of those incidents were investigated when they were reported in February and April 2015 respectively, and that the circumstances were again discussed with the applicant during an interview on 15 November 2015 prior to him being charged with stalking. It is noted that the term 'abduction' was not used at any point during the applicant's interview, mentioned in any of the incident reports, or reflected in any charge against the applicant.

Chief Inspector H's response explains that Ms B was provided with an update on the progress of the case as the alleged victim, and that she was entitled to that information under section 1 of the Victims and Witnesses (Scotland) Act 2014. It is noted in this connection that section 6 of the same Act permits the police to disclose when requested the nature of charges to a victim or someone who has given a statement in connection with an alleged offence. The response is therefore broadly supported by the relevant legislation.

Notwithstanding, it is considered that there are shortcomings in the handling of the complaint. While Constable D is clear in his statement that he did not inform Ms B that the applicant had been charged with abduction, the complaint recorded refers to abduction *and* stalking. Accordingly, Constable D should have been asked to clarify whether Ms B was informed about the stalking charge. Moreover, no account appears to have been sought from Ms B as to what information was provided to her by Constable D in respect of the applicant. For those reasons, it is considered that insufficient enquiry was carried out, and that the complaint about Constable D's unsatisfactory reply was not fully addressed.

It is therefore concluded that this complaint was not dealt with to a reasonable standard. It is recommended that a further account be sought from Constable D in order to establish exactly what

information was provided to Ms B, particularly in relation to the stalking charge. Police Scotland should also attempt to obtain an account from Ms B to establish what she recalls being told by Constable D. A further response should thereafter be issued to the applicant that fully addresses his complaint about Constable D's unsatisfactory reply.

Complaint 4: Enquiry influenced

The applicant complained that Sergeant F may have been "guiding" Ms B and possibly influencing her during the course of the ongoing enquiries involving him. He considered Sergeant F's presence in the custody area of Police Office Y during his period of detention on 15 November 2015 to support this view.

Police Handling of Complaint 4

Chief Inspector H provided the following response:

"You complained that [Ms B] being best friends with the wife of a serving police officer, you believe that Sergeant [F] has been guiding [Ms B] and possibly influencing her due to the ongoing enquiries. You specifically mentioned Sergeant [F] being within [Police Office Y] when you were arrested and Sergeant [K] was the duty Sergeant that night. This was an allegation of 'corrupt practice' which I have not upheld for the following reasons:-

In the statement you provided to Inspector [G] you describe having attended [Police Office Y] to discuss allegations made to police. You state that whilst within the custody suite you noted Sergeant [K] was accompanied by Sergeant [F] which you believed was strange. You were interviewed by Constable [D] and following consultation with a supervisor you were arrested and charged. Your wife [Mrs A] did not make comment with regard to this allegation.

As part of the enquiry, Sergeant [F] was given the opportunity to respond to your allegation. He categorically denied having being [sic] approached for advice by [Ms B] or being directly involved in the enquiry you refer to. He also provided a satisfactory explanation for his presence in the cell block on the date in question, namely that he was the dayshift duty Sergeant and Sergeant [K] was the late shift Sergeant.

All police enquiries are recorded on an incident recording system (IMPACT) which is fully auditable. All decisions regarding the progression of enquiries are recorded therein and it is of note, that the enquiry officer Constable [D] has never been line managed by Sergeant [F]. I have reviewed the incident for which you were arrested and can confirm that there are no updates from Sergeant [F] or information to suggest he was involved at any stage in the decision making in respect of this enquiry.

I note that you informed Inspector [G] that you did not have any direct evidence to substantiate your allegation. I am therefore satisfied there is no evidence that Sergeant [F] in any way influenced the enquiry and that he was in [Police Office Y] on 15 November 2015 as part of his normal duty. For this reason I have not upheld this allegation".

Consideration of Complaint 4

The incident log for the enquiry that led to the applicant's detention and arrest confirms that Sergeant F had no involvement in the matter. The rationale for the applicant's detention is clearly recorded, and the entry of 15 November 2015 relating specifically to his detention and arrest was added by Sergeant K, not Sergeant F.

In relation to the applicant's concern that Sergeant F knew Ms B and may have been "guiding" her actions, Sergeant F clearly explained the extent of his knowledge of Ms B, which appears from the evidence available to be minimal. Sergeant F stated that he has never been approached by, or provided advice to, Ms B or anyone connected with her.

It is considered that, based on the material information available, Police Scotland was justified in not upholding the applicant's complaint. This is because it is clear from the recorded information that Sergeant F had no involvement in the relevant incident prior to or during the applicant's detention. Furthermore, there is nothing in the evidence available that would warrant Police Scotland preferring the applicant's belief over Sergeant F's account in respect of whether any advice was provided to Ms D.

It is therefore concluded that the complaint was dealt with to a reasonable standard. No further action is required in this connection.

Complaint 5: Form amended

The applicant complained that, as identified by his solicitor, a Police Scotland form had been amended as the word 'stalking' had been added in a different ink.

Police Handling of Complaint 5

Chief Inspector H provided the following response:

"You complained your wife's solicitor picked up a form which was submitted which had been amended in pen to add the word stalking in black ink. This was an allegation of 'other – non criminal' which I have found to be not upheld for the following reasons:-

In your statement you advised of the allegation and did not provide any further information to substantiate the allegation. In the statement provided by your wife, she described having met with her solicitor who passed her a form (no further details) which had the word 'stalking' written in pen.

Inspector [G] arranged with the Procurator Fiscal in [Location Z] to seize the original case related documents which had been submitted as the case [reference number provided] was concluded. They have all been examined and there are no amendments on them. On the voluntary declaration form and solicitor access form in respect of your wife having voluntarily attended [Police Office Y] on 8 June 2015 it is recorded she was to be interviewed in connection with an offence of stalking. I

am satisfied that these are the original documents which have not been amended. From the documentation we have examined, there is no other reference to stalking and I have not upheld this allegation.

Consideration of Complaint 5

The applicant informed the PIRC that he was unhappy with the handling of this complaint as he believes that the forms he and his wife signed whilst attending at Police Office X on 8 June 2015 did not make any reference to stalking at the time of signing. The forms in question would appear to be the Voluntary Declaration Forms and Solicitor Access Recording Forms (SARFs) signed by the applicant and Mrs A on 8 June 2016. Those papers were provided to the PIRC along with the statement of Constable D, who countersigned the forms and interviewed the applicant and Mrs A.

Constable D refers in his statement to informing both parties that he was investigating an offence of stalking, to which they each provided a response. The Voluntary Declaration Forms contain a section explaining the reason for interview, which both the applicant and Mrs A signed. The forms clearly state that they were each *“to be interviewed in connection with an offence of stalking”*. The word ‘stalking’ is handwritten, however this is to be expected as the document is a *pro forma* which requires to be populated with details such as name, date and nature of offence. Similarly, the SARFs require some details to be handwritten.

There does not appear to be any evidence to support that the word ‘stalking’ was added to any of the forms at a later stage, and it is clear from the record of each interview that the applicant and Mrs A were informed that their attendance at Police Office Y was in connection with a stalking allegation. It is therefore considered that the complaint response is supported by the material information available.

Accordingly, it is concluded that the complaint was dealt with to a reasonable standard. No further action is required in this connection.

5. Conclusions

Complaint 1

It is concluded that this complaint was not dealt with to a reasonable standard. It is recommended that Police Scotland issues a further response to the applicant that assesses, in light of the points made above, whether details of the incident of 25 June 2015 should have been included in the report provided to the COPFS on 29 June 2015.

Complaints 2, 4 and 5

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

Complaint 3

It is concluded that this complaint was not dealt with to a reasonable standard. It is recommended that a further account be sought from Constable D in order to establish exactly what information was provided to Ms B, particularly in relation to the stalking charge. Police Scotland should also attempt to obtain an account from Ms B to establish what she recalls being told by Constable D. A further response should thereafter be issued to the applicant that fully addresses his complaint about Constable D's lack of clarity over what information was provided to Ms B.

Lynn McCord
Review Officer

Peter Innes
Senior Review Officer