

Report of a Complaint Handling Review in relation to Police Scotland

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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 an incident in which the applicant was arrested for failing to stop his bicycle when required by police officers. Two complaints were reviewed, namely:

- that the applicant was kept in custody until the next morning when he did not pose an obvious threat and was seriously injured; and
- that the applicant’s partner was not informed of his circumstances despite him having asked for this contact to be made.

The review found that one complaint was dealt with to a reasonable standard while the other was not. One recommendation was made in this connection.

3. Background

On the evening of 3 April 2013, the applicant and his partner Ms A were preparing to cycle home when Ms A noticed Mounted Unit police officers riding horses. Ms A decided to approach the officers as she wanted to see the horses. The applicant was not interested in joining her and cycled away. At this time the police officers considered the applicant's actions to be suspicious as they were concerned that the bicycle he was riding may have been one that had been reported stolen in the area earlier that day.

The applicant was pursued by the officers who also requested assistance from other officers in the area. The applicant was pursued for several minutes by a number of officers on horseback and others driving police vehicles. The applicant eventually stopped his bicycle and was physically removed from his bicycle by a police officer. This removal resulted in the applicant falling to the floor and injuring his shoulder.

The applicant was arrested and charged with the following offences:

- Sections 163 (2) and (3) Road Traffic Act 1988 - *Failure to stop when directed to do so by a Police Constable*
- Section 29 Road Traffic Act 1988 - *Careless Cycling*
- Section 38 Criminal Justice and Licensing (Scotland) Act 2010 – *Use threatening, abusive language or behaviour*
- Section 90 (2) (A) Police and Fire Reform (Scotland) Act 2012 – *Resist arrest*

The applicant was taken to a police station and arrived at the charge bar just before 9 pm. At around 9.30 pm, Ms A telephoned Police Scotland to enquire as to what had happened to the applicant. Ms A spoke with an operator who then put her through to Ms B, a Police Custody and Security Officer (PCSO) at the police station. Ms B advised Ms A that the applicant had been arrested and was being held in custody but informed Ms A that, as the applicant is an adult, she was unable to provide further information such as the reasons for the applicant being arrested.

Whilst in the police station, the applicant reported that he was in severe pain from the fall. The applicant was examined by the Force Medical Examiner who referred the applicant to a hospital. At the hospital, the applicant was assessed as having suffered a dislocated and fractured shoulder. The applicant's shoulder was returned to the correct position without the need for surgery and he was given morphine for the pain. The applicant was returned to the police station, arriving at 12.38 am.

The applicant was released from custody at 7.19 am. The applicant and his bicycle were driven back to the applicant's home by officers in a police vehicle.

The applicant wrote a letter of complaint to Police Scotland dated 15 May 2016. The applicant's complaints were allocated to Sergeant C and Chief Inspector D responded to the complaints in a letter dated 10 November 2016.

4. The Review

Complaint 1: Not released from custody

On his heads of complaint form, the applicant specified the following complaint:

“Why was I kept in custody until morning when I was no obvious threat and seriously injured?”

Police Handling of Complaint 1

Chief Inspector D provided the following response to this complaint:

“Firstly, may I explain that the decision to keep someone in custody is that of the Custody Supervisor on duty at the material time. This decision is based on a number of factors which include e.g. demeanour of person in custody, time of day, means to travel home, sobriety status, location of home in relation to Custody Centre and possible effects of medication. This list is not exhaustive.

The Custody Supervisor states that you were taken to hospital at approximately 2200 hrs on instruction of the NHS Health Care Professional (HCP), prior to him commencing duty.

You thereafter returned from hospital at approximately 0040 hrs after having being treated for a shoulder dislocation which resulted in a fracture to your shoulder. The Custody Supervisor states that you were still showing effects of the medication used whilst being treated and described you as being Groggy. He noted that you also had a pre-existing heart condition. When placed in the cell it was noted that you became very agitated and you were observed punching your pillow against the wall of the cell with your uninjured arm. The Custody Supervisor states that you indicated to him that you wished to make a complaint against the police and he duly reported this to the Inspector on duty at the time. It is noted that you had been cycling when arrested and your means of transport was by bicycle, it was also noted that you had no money in your possession.

It is common place and considered good practice amongst Custody Supervisors to keep someone in custody particularly during the hours of darkness and to release in the morning largely for reasons of personal safety. Taking into account all of the above the Custody Supervisor decided that in the interests of your wellbeing he would release you in the morning. I would like to comment that transport home was also provided, by way of Police officers, for you and your bicycle. This again is common practice within Police Scotland and is usually achieved by utilising officers from the early shift when they first come on duty as this is traditionally a quieter period for the police.

In light of this information I find the Custody Supervisors decision to keep you until 0720 hours on 4th April 2013 to be justifiable and reasonable. Whilst I completely understand that this must have been an upsetting time for you, Police Scotland’s values first and foremost are about

Keeping People Safe, therefore your complaint is not upheld. I apologise on behalf of the staff but I believe this decision was made with the best of intentions.”

Consideration of Complaint 1

In his statement, Sergeant F provided the following explanation for the decision to keep the applicant in custody:

“...the decision was mine based on the circumstances of the subject returning from hospital during the night in both a groggy and agitated state and, in addition, normal Police practices would dictate that persons arrested would not normally be released during the night, taking into account all the risk factors in ensuring the care and welfare of all prisoners.”

Chief Inspector D’s response accurately reflects Police Scotland’s standard operating procedures in that it explains the factors a Custody Sergeant should take into account when deciding whether or not to liberate someone. However, the response to this complaint does not appear to have balanced these factors against the general presumption that a person should be liberated from custody unless they are considered to pose some risk to the public or the interests of justice if they were to be liberated.

The response states that it is common practice for someone to be taken home in a police vehicle in the morning “as this is traditionally a quieter period for the police” but this does not explain whether or not this was the case on this particular occasion. It is not clear if the applicant was taken home in the morning because it was assumed that it would be quieter in the morning as opposed to officers checking the availability of a car to take the applicant home once they had decided it was no longer necessary for him to be kept in custody.

In his correspondence with the PIRC, the applicant has advised that, had she been asked, Ms A could have taken him home from the police station in their car. There is nothing in the evidence available to the PIRC to suggest that the applicant was asked for his position on how he could get home, were he to be released.

The crux of the applicant’s complaint is that he was kept in custody for longer than was necessary. In order to address this complaint, Police Scotland should have considered whether all reasonable steps were taken to decide whether or not it was necessary to keep the applicant in custody. As this did not happen, it is concluded that this complaint was not dealt with to a reasonable standard.

It is recommended that Police Scotland now conduct further enquiries to establish what steps were taken to ascertain the applicant’s ability to get home with or without police assistance. In particular, Police Scotland should establish what questions the applicant was asked regarding his ability to get home if he were to be released. The applicant’s complaint should be re-assessed taking account of the comments made in this report. The applicant should be provided with a further response outlining the findings of this assessment.

Complaint 2: Partner not informed

On his heads of complaint form, the applicant specified the following complaint:

“Why was my partner not informed of my circumstances as I asked for this contact to be made?”

Police Handling of Complaint 2

Chief Inspector D provided the following response to this complaint:

“At 2059 hours on 3rd April 2013 you were advised of your right to have a reasonably named person informed of your whereabouts. You answered yes to this question and gave the details of your partner. These details were entered into the IT system which appear on your custody record.

At approximately 2127 hours a member of custody staff received a telephone call at the [Police Station] custody suite from your reasonably named person. The telephone conversation was recorded and has since been reviewed by [Inspector E] during her enquiry. The staff member informs your partner that you are in fact in custody at [Police Station]. Your partner asks why you had been arrested and is informed that due to Data Protection Act 1998 restrictions the staff member is unable to disclose this information as per the following legislation:

Section 55 Data Protection Act 1998

It is an offence under this section for a person knowingly or recklessly, without consent to:

- ***Procure the disclosure to another person of the information contained in personal data.***

At 2132 hours this member of staff thereafter updated your custody record to reflect that the nominated reasonably named person had been contacted.

I therefore conclude that your complaint is not upheld.”

Consideration of Complaint 2

The call recording has been provided to the PIRC and was listened to as part of this review. It is considered that Chief Inspector D’s response accurately reflects the content of the recording. It is further considered that Ms A was provided with an appropriate level of detail regarding the applicant as well as a clear explanation as to why she could not be provided with further detail.

The applicant is recorded as having been presented at the charge bar at 8.54 pm and as having nominated Ms A as the “reasonably named person” he wished to be contacted at 8.59 pm. The timing of Ms A’s telephone call is recorded as 9.27 pm. It is considered that this was not an unreasonable delay.

In his correspondence with the PIRC, the applicant has expressed concern that Ms A was only informed because she had contacted the police. However, it is not possible to know when she would have been informed, had she not herself made contact with the police.

In these circumstances, it is considered that the decision not to uphold the applicant's complaint was reasonable. It is therefore concluded that this complaint was dealt with to a reasonable standard. No further action is recommended.

5. Conclusions

Complaint 1: Not released from custody

It is concluded that this complaint was not dealt with to a reasonable standard. It is recommended that Police Scotland now conduct further enquiries to establish what steps were taken to ascertain the applicant's ability to get home with or without police assistance. In particular, Police Scotland should establish what questions the applicant was asked regarding his ability to get home if he were to be released. The applicant's complaint should be re-assessed taking account of the comments made in this report. The applicant should be provided with a further response outlining the findings of this assessment.

Complaint 2: Partner not informed

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

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