

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 various social media posts that the applicant reported to the police. Three complaints were reviewed, namely:

- (1) that the police took the decision to class the allegation the applicant made about social media postings as non-criminal;
- (2) that the applicant was provided with conflicting information as to how the allegation was being dealt with; and
- (3) that the applicant received a poor service from officers at the police station who did not answer telephone calls and dealt with her at the back of the station.

Of the three complaints reviewed, it was found that one was dealt with to a reasonable standard while two were not. Two recommendations were made in this connection.

3. Background

The applicant and her husband, Mr A, have been involved in an on-going dispute with Mr B, a former employee of Mr A. Mr A's son is married to Mr B's daughter.

On 18 September 2016, the applicant contacted the police to report posts she had viewed on a social networking site posted by Mr B, which she believes were directed towards her and Mr A.

Constable C attended and spoke with the applicant and noted a statement from her. Constable C thereafter liaised with his supervisor, Sergeant D, about a prospective course of action and then raised a crime file for an alleged contravention of Section 127 of the Communications Act 2003 ("the 2003 Act").

During the enquiry, Constable C liaised with the relevant crime management department and Crime Registrar and the decision was made to 'no crime' the incident. No further police action was taken.

On 9 October 2016, the complaints were notified to Police Scotland by way of email. The applicant signed a Heads of Complaint form on 24 October 2016. Sergeant E was appointed as the enquiry officer and noted statements from both the applicant and Mr A. The applicant received a response to her complaints in a letter from Superintendent F dated 7 February 2017.

4. The Review

Complaint 1: Treated as non-criminal

The applicant complained that the police took the decision to class her allegation about postings on a social media site as non-criminal.

Police Handling of Complaint 1

Superintendent F responded to the applicant's complaint as follows:

"Following the initial report the [named social media site] postings were assessed as being a crime. This being specifically a contravention of Section 127 of the Communications Act 2003 ('the Act') which states,

(1) A person is guilty of an offence if he-

(a) sends by means of public electronic communications network a message or other matter that is grossly offensive or of an indecent, obscene or menacing character.; or

(b) causes such a message or matter to be sent.

However, following a later discussion between subject officer 1 and his supervisors it was debated whether a crime had in fact been committed.

It was then that the Police Service of Scotland Crime Registrar was consulted and following their review of the content of the [named social media site] postings they determined that the comments did not constitute a crime.

It is the role of the each Crime Registrar to support divisions in ensuring that crime is recorded consistently, accurately and in accordance with the Scottish Crime Recording Standards (SCRS). Crime Registrars are a point of specialist reference for divisions and are the final decision makers in determining whether or not a crime is recorded.

Having considered the information available to me, I do not uphold the allegation made against the officer concerned."

Consideration of Complaint 1

The response in this connection explains to the applicant that, following her initial report, a crime report was created for a contravention of Section 127(1) of the 2003 Act. This course of action is in line with the Scottish Crime Recording Standard (SCRS), which states that an auditable record of a reported crime should be created if an alleged offence is reported. Under the SCRS, a balance of probabilities test is applied to a reported crime which means that the belief of a victim that a crime has taken place

will result in the creation of a record. In this case, it is clear that the applicant was of the opinion that a crime had occurred so, in line with the relevant guidance, a crime report was created for the offence stated above.

As stated in the response, although a crime report was created, Constable C and his supervisor, Sergeant D, debated about whether or not a crime had taken place, and Constable C contacted the crime management department to ask for advice. Although not reflected in the response, the email from the enquiry officer, Constable C, fully relays the circumstances and attaches a screenshot of the social media post of 18 September 2016. Constable C advises in his email that there are other posts which he has in screenshot form, but they are not attached to the email. Constable C also includes the information that the posts in question did not mention the applicant or Mr A by name and makes clear that, although the applicant and Mr A are blocked from viewing Mr B's profile, the applicant maintains a third party account to monitor Mr B's social media page.

Based on this email and the screenshot of 18 September 2016, the crime management department in turn contacted the Crime Registrar. As explained correctly in the response, it is the role of the Crime Registrar to support divisions and ensure that crime is recorded consistently, accurately and in accordance with the SCRS. While it is not mentioned in the response, the Crime Registrar who was contacted in this instance is a member of police staff and is ultimately accountable to the National Crime Registrar, Chief Inspector H, who is based within the Risk and Business Assurance area of Corporate Services at Police Scotland's headquarters.

Based on the information provided, the Crime Registrar deemed that the content of the post of 18 September 2016, for the purposes of the relevant legislation, did not amount to an offence and the relevant report was thereafter 'no crimed'. This decision appears to have been based on the content of the post uploaded on 18 September 2016. However, the evidence available indicates that the applicant reported that Mr B had uploaded two other posts onto the social media platform before the post of 18 September 2016. The content of these particular posts is not included in the crime file, nor is it featured in the subsequent email correspondence between the enquiry officer, the crime management department and the Crime Registrar.

Accordingly, although the response to the applicant mentions the postings and comments, the evidence available suggests that only one post was considered in the registrar's decision to 'no crime'. Moreover, the response does not explain to the applicant why the Police Scotland Crime Registrar determined that the comments did not constitute a crime. For these reasons it is considered that the response in this respect is inadequately reasoned and not supported by the material evidence available.

It is therefore concluded that this complaint was not dealt with to a reasonable standard. It is recommended that Police Scotland revisit the complaint by reviewing the evidence as a whole and providing the applicant with a fully reasoned response which addresses whether, based on all the social media posts and any other relevant information available, an offence was committed under Section 127(1) and/or (2) of the 2003 Act or any other legislation.

Complaint 2: Conflicting information

The applicant complained that she was provided with conflicting information as to how the above incident was being dealt with.

Police Handling of Complaint 2

Superintendent E responded to the applicant's complaint as follows:

"...the determination as to whether a crime had been committed was as point of debate between subject officer 1 and his first and second line supervisors.

The information you were initially provided with by subject officer 1 in relation to the proposed detention of Mr [B] in relation to this matter was the original intended course of action had the [social media] postings been perceived to be a crime.

Following this, the events you reported were discussed further between subject officer 1, and his first and second line supervisors, which resulted in the Crime Registrar being consulted and their ultimate finding.

I apologise for any confusion caused, however it is the responsibility of the subject officers supervisors to ensure that the actions taken by Police officers are lawful and justified.

Having considered the information available to me, I do not uphold the allegation made against the officer concerned."

Consideration of Complaint 2

It appears to be conceded that the applicant was provided with an update from Constable C to the effect that he was going to make efforts to detain Mr B as part of the on-going enquiry. This is reflected in the response and is stated within the accounts of Constable C and the applicant. As explained in the response, this prospective course of action was relayed to the applicant because this was the intended course of action had the postings been perceived as criminal.

However, although the response explains what information the applicant was initially provided with, it does not explain what information was provided to her following the decision to 'no crime' the incident. Notably, the applicant highlights in her application to the PIRC her particular concern that she was not updated by Constable C or his supervisors that Mr B was not and was not going to be detained in connection with the incident.

During the course of the review, the PIRC examined the officers' statements. It is unclear from the accounts provided by Constable C and Sergeant D as to who communicated the outcome of the enquiry to the applicant and what information this update included.

Constable C records within his account that he informed Sergeant D that the report was to be 'no crimed'. Sergeant D then advised him that the applicant would be updated to this effect by a supervisor. Sergeant D also records within her account that, as she understood it, a different supervisor (Sergeant G) updated the applicant and Mr A with the outcome of the enquiry, as she and Constable C were on night shift. However, from reviewing the account of Sergeant G, there is no mention of this allegation or of whether or not he provided the applicant with the information that the incident was being treated as 'no crime' and no further police action would be taken.

Accordingly, although the response acknowledges and explains the initial information the applicant received, it does not address or reflect on the information she was or was not provided with thereafter, nor is this clear from the respective accounts of the officers involved. For this reason, it is considered that the response is inadequately reasoned.

It is therefore concluded that this complaint was not dealt with to a reasonable standard. It is recommended that Police Scotland:

- (a) seek further accounts from the officers involved, particularly Sergeant G, to ascertain what information was relayed to the applicant and Mr A regarding the outcome of the investigation; and thereafter
- (b) issue the applicant with a further response which details the information provided to the applicant and clarifies whether this information included an update to the effect that Mr B would not be detained. If this information was not relayed to the applicant, the further response should address whether it should have been.

Complaint 3: Poor service

The applicant complained that she was provided with a poor service from officers at the police station who did not answer telephone calls and dealt with her at the back of the station.

Police Handling of Complaint 3

Superintendent F responded to the applicant's complaint as follows:

"Subject 1 and his supervisor, subject officer 2 with whom you met out with [named] Police Station have stated that during the time period you were attempting to phone [named police office] they were in a team debrief and did not hear any phones ringing within the station. Further that on their termination off [sic] when they were leaving their place of work dressed in civilian clothes they spoke with you and your husband in relation to you seeking an update into the events that you had reported. They made you aware that an update had been passed by E mail and then a verbal update was provided to you."

The officers did not see a requirement to take you physically into [named] Police Station as they were aware that you were not reporting a new or ongoing incident and they had provided you with an update.

A check was made in relation to the calls made on this date and there is a record of 2 calls made by your husband;

1/ About 1543 hours a call is made during which a request is made to speak with subject officer 1, following a discussion attempts are made to call the extension for this officer but this was not answered. An attempt was then made to contact subject officer 2 and the extension called was not answered.

This second attempt lasted approximately 40 seconds.

The Service Centre used to call officers currently has the incorrect telephone number for subject officer 1, the number recorded being his last posting at a different station. The number recorded for subject officer 2 is correct and relates to [named] Police Station.

2/ About 1551 hours a call is made again trying to speak with subject officer 1, prior to this call being transferred to this officer you have met his as he emerged from [named] Police Station.

Having considered the information available to me, I uphold the allegation made against the officers concerned.

I will ensure that the subject officers are provided with corrective advice in relation to not answering the phones within the station and for subject officer 1 only for failing to update his correct contact number on Police systems.”

Consideration of Complaint 3

There appear to be two aspects to the applicant's complaint. Firstly, she complains that officers did not answer the telephone, and secondly, she complains that officers dealt with her Mr A at the back of the station.

(i) Not answering telephone

The response in this connection explains that officers did not hear the phones ringing because they were in a debrief. The response is supported by the account provided by Sergeant D who records that she was in a debrief with all her officers, including Constable C, from 3.30 pm to 4:00 pm. However, from reviewing the statement of Constable C, although he also records that he did not hear the phone ring, he states that he was in the writing room completing clerical duties. Although there is therefore a slight anomaly between the accounts of the officers involved, both record they did not hear the phone ring, and there is nothing in either account to suggest that they purposefully did not answer the phone.

In addition to this, the response explains to the applicant that both officers would be provided with corrective advice in connection with the matter. The response in this connection is supported by memos contained within the complaints file which confirm this course of action.

Accordingly, it is considered that the response to this aspect of the complaint is adequately reasoned and has recognised a service failing for which Police Scotland has taken action to address by providing the officers involved with corrective advice.

(ii) Back of station

In relation to the issue of dealing with the applicant and Mr A outside the police station, it is clear from the accounts of all involved that Constable C and Sergeant D had finished duty and were leaving via the back car park when they were approached by the applicant and Mr A.

The response acknowledges this and explains that the officers did not see any requirement to take the applicant and Mr A into the police office because they were not reporting anything new and were provided with an update at that time. The response in his connection is supported by the accounts provided by Sergeant D and Constable C, both of whom record that the applicant and Mr A were informed that the enquiry was on-going and they would be updated in due course.

Although not reflected in the response, Sergeant B also records within her account that at no time did the applicant or Mr A ask to be taken into the station. Sergeant B's position appears to be supported by the statements of the applicant and Mr A as, although both record that the officers did not ask to take them inside, there is nothing to suggest that the applicant or Mr A asked or expected to be spoken to within the station.

For the reasons stated above, it is considered that this aspect of the complaint is adequately reasoned and supported by the material evidence available.

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

5. Conclusions

Complaint 1: Treated as non-criminal

It is concluded that this complaint was not dealt with to a reasonable standard. It is recommended that Police Scotland revisit the complaint by reviewing the evidence as a whole and providing the applicant with a fully reasoned response which addresses whether, based on all the social media posts and any other relevant information available, an offence was committed under Section 127(1) and/or (2) of the 2003 Act or any other legislation.

Complaint 2: Conflicting information

It is concluded that this complaint was not dealt with to a reasonable standard. It is recommended that Police Scotland:

- (a) seek further accounts from the officers involved, particularly Sergeant G, to ascertain what information was relayed to the applicant and Mr A regarding the outcome of the investigation; and thereafter
- (b) issue the applicant with a further response which details the information provided to the applicant and clarifies whether this information included an update to the effect that Mr B would not be detained. If this information was not relayed to the applicant, the further response should address whether it should have been.

Complaint 3: Poor service

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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