

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 the applicant’s interview under caution for drugs offences.

Three complaints were considered:

1. that the applicant was not provided with sufficient time to arrange legal representation;
2. that the applicant was not cautioned in respect of a number of criminal allegations which he was subsequently questioned on; and
3. that the applicant was told he would be detained if he did not attend voluntarily for an interview, however does not believe there were sufficient grounds to detain him.

The review found that two complaints were dealt with to a reasonable standard while the remaining complaint was not. A reconsideration direction was issued in this connection.

3. Background

The applicant is a serving police officer. In December 2012 the applicant and a Police colleague, Mr A, instigated a drugs enquiry within their policing area. As part of this enquiry, in January 2013 the applicant and Mr A obtained a voluntary witness statement from a suspected “*low level*” drug dealer, Mr B.

Some months later, Mr B was arrested for being concerned in the supply of controlled drugs in contravention of the Misuse of Drugs Act 1971. At this time, Mr B reported to Police that he believed he had been “*working for the police*” by providing them with information. As a result of this report, a statement was obtained from Mr B. He stated he had been coerced and intimidated by the applicant and Mr A to accompany them to the police station and alleged that the applicant and Mr A had threatened to have his parents arrested should he not provide a statement regarding the drugs enquiry. Mr B further reported that at the conclusion of the statement he had given to the applicant and Mr A – wherein he had admitted being involved in the supply of controlled drugs – Mr A had told him to “*just keep doing what [you are] doing and we’ll be in touch*”, which Mr B interpreted as an instruction to keep supplying drugs.

The applicant states that he became aware through “*rumour*” that Mr A was under investigation as a result of the information provided to Police Scotland by Mr B. The applicant was then advised that he too was the subject of a criminal investigation relating to the allegations reported by Mr B.

Inspector C thereafter contacted the applicant to request he attend voluntarily at a police station for an interview to address these allegations on 27 December 2013. The applicant attended as requested and was interviewed by Inspectors C and E.

In June 2014 the applicant and Mr A raised a number of concerns about the manner in which the allegations against themselves had been identified and the way the enquiry had been progressed.

On 3 February 2015 the applicant was advised that the Crown Office and Procurator Fiscal’s Service (COPFS) had determined there was insufficient evidence to support the criminal allegations against him.

On 10 February 2015, the applicant was asked to submit an operational statement to the Professional Standards Department addressing two allegations: that he had coerced Mr B into providing a statement by making threats towards Mr B’s family; and that he had failed to investigate or report Mr B for being concerned in the supply of controlled drugs despite having an admission of the same from Mr B.

In February 2015 the applicant contacted the Deputy Chief Constable’s office advising of his intention to make a formal complaint about the procedures followed in his case. At the same time, Mr A made

complaints about his own treatment. The applicant's complaints and those of Mr A were allocated to Chief Superintendent F and Detective Chief Inspector H to be investigated in parallel.

In November 2015, the applicant and Mr A attended a meeting with Detective Chief Inspector H to discuss the conclusions of the complaint investigation.

A letter dated 18 April 2016 was thereafter sent to Mr A by Detective Chief Inspector H. The applicant requested a separate response for himself: this was sent to him on 3 May 2016.

A further letter dated 13 April 2017 was issued to the applicant by Inspector J addressing an additional complaint identified from the applicant's original submissions.

4. The Review

Complaint 1: Insufficient time

The applicant complained that he was given “*less than adequate time to seek proper legal representation and proper legal consultation*” before being questioned in respect of the allegations inferred from Mr B's statement.

The applicant further stated that the request for him to attend voluntarily for interview was not timed in a way that was “*conducive to staff welfare*”.

Police Handling of Complaint 1

In his letter to the applicant dated 3 May 2016, Detective Chief Inspector H wrote:

“This allegation has been investigated as ‘Irregularity in Procedure’ that I have not upheld. My reasons for doing this are as follows...

It is generally accepted that when an officer is requested to attend for a prearranged interview that they would be given a sufficient period to organise their legal representation. I accept that the timing of this request, during the Christmas period, would make contacting individuals and organisations more problematic however, the Scottish Police Federation operate a 24/7 legal contact system. I acknowledge that this would leave you little time to consult with your solicitor however I do not believe it was detrimental to the advice you received. Given the time taken to reach this stage a further delay of a few days may not have had critical effect on the enquiry, but conversely further delay may have been viewed as disproportionate by you and/or your legal representative. I base this on your responses to the ACPOS Pre-Interview Review of Rights questions where you were asked if you wished to have a private consultation with your solicitor prior to being interviewed to which you said ‘No’ and your subsequent responses during the interview.”

Consideration of Complaint 1

Detective Chief Inspector H has acknowledged that the timing of the request to attend for interview was not ideal, however has ultimately based his conclusion to the applicant's complaint on the fact that the applicant had been aware for several months prior that he was subject of a criminal investigation, with sufficient time during this period to arrange legal representation.

The applicant has acknowledged that he "*didn't expect to be treated any differently being a Police Officer*", therefore it would not have been competent for Detective Chief Inspector H to take "*staff welfare*" into account when coming to his conclusion. The applicant has also pointed out that had he not been a member of the Scottish Police Federation then he would have found his situation more difficult. However, it would likewise not have been competent for Detective Chief Inspector H to take this into account as it is not relevant to the facts at hand, i.e. the applicant was indeed a member of the Scottish Police Federation, and his complaint was assessed on that basis.

For these reasons, it is concluded that Detective Chief Inspector H's response to the applicant is well-reasoned and based on the facts of the situation. It is therefore concluded that this complaint was dealt with to a reasonable standard. No further action is required of Police Scotland in this connection.

Complaint 2: Caution not administered

The applicant states that during the during the Solicitor Access process prior to his interview, he was cautioned and advised he was going to be asked questions regarding alleged contraventions of the Misuse of Drugs Act 1971 (i.e. Mr B's statement that the applicant and Mr A had effectively instructed him to continue dealing drugs).

The applicant states that he was not advised, prior to his interview, that he was also under investigation for allegations of Criminal Neglect of Duty – i.e. that he had failed to report Mr B's admission of drug dealing to COPFS – and for the threats he had allegedly made against Mr B's family should he not provide a statement. The applicant states that despite this omission, he was asked questions about these matters during the interview.

In his application to the PIRC the applicant wrote that "*It is a fundamental principle of Scots Law... that a person being interviewed as a suspect must be cautioned and advised of the nature of the crimes/offences they are going to be interviewed about*".

Police Handling of Complaint 2

In his letter to the applicant dated 3 May 2016, Detective Chief Inspector H wrote:

"This allegation has been investigated as 'Irregularity in Procedure' that I have not upheld. My reasons for doing this are as follows..."

I acknowledge that the section [on the SARF] detailing why you had attended is too small and does not allow for sufficient detail to be recorded. This will be highlighted to the relevant department.

I can understand your confusion surrounding why you were cautioned for offences under the Misuse of Drugs Act 1971 against your belief that you were being investigated for criminal neglect of duty and threats as these are standardised 'allegation categories' used by PSD. I am content that the caution you received was appropriate as the overriding element was that by condoning [Mr B]'s continued involvement in drug related activities by implication you too, were concerned in the supply of controlled drugs. The 'criminal neglect of duty' refers to your alleged failure to report [Mr B] for consideration of prosecution of drugs offences."

Consideration of Complaint 2

The Association of Chief Police Officers of Scotland Guidelines in relation to the Interviewing of Suspects state that the main function of the caution to be administered to suspects prior to interview is to offer protection against self-incrimination. It is generally accepted that in the interests of fairness, the suspect should be aware of the nature of the suspicion which he is under in order to understand the terms of the caution.

Taking this into account, it is considered that Detective Chief Inspector H's conclusion that the caution given to the applicant prior to interview was appropriate as "*the overriding element was that by condoning [Mr B]'s continued involvement in drug related activities by implication you too, were concerned in the supply of controlled drugs*" is not supported by the available information and therefore not well-reasoned. This is because Detective Chief Inspector H has referred to the applicant's "*confusion*" in believing that he was being investigated for criminal neglect of duty and threats and has asserted that the caution administered to him referring only to offences under the Misuse of Drugs Act 1971 was "*appropriate*", however the material information available supports that the applicant was interviewed under caution with a view to addressing several criminal allegations prior to a report being submitted to the Criminal Allegations Against the Police Division of COPFS – specifically, Inspector E's briefing note dated 9 July 2013 querying the CCU assessment of the allegations, and Superintendent K's subsequent instruction that the "*criminal investigation*" continue, confirm that the applicant was under suspicion of "*crimes of threats/abduction, contraventions of the Misuse of Drugs Act... and also possibly a criminal Neglect of Duty*".

Additionally the transcript of the applicant's interview supports that the applicant was indeed asked questions regarding the additional allegations, for example whether or not he threatened or coerced Mr B into providing a statement. It therefore cannot be said that the caution administered to the applicant, in respect of drugs offences only, offered him sufficient protection from self-incrimination in respect of the other allegations under investigation.

For these reasons, it is concluded that this complaint was not dealt with to a reasonable standard. A reconsideration direction is given to Police Scotland under section 35(7) of the Act.

In terms of section 37(1) of the Act, Police Scotland must now appoint a person to reconsider this complaint. The person appointed must not have had any previous involvement in the consideration of the complaint. Police Scotland must also adhere to the obligations set out in sections 38 and 40 of the Act, as appropriate. The reconsideration is not subject to the PIRC's supervision.

In reconsidering the complaint, Police Scotland must reassess the transcript of the applicant's interview under caution as well as Inspector E's briefing paper dated 9 June 2013 and have full regard for the comments and observation made by PIRC in this report. The applicant should thereafter be provided with a further response to his complaint.

Complaint 3: Insufficient grounds to detain

The applicant complained that although he was advised he would be detained under Section 14 of the Criminal Procedure (Scotland) Act 1995 should he not agree to attend voluntarily for interview in relation to the allegations under investigation, he did not believe that sufficient grounds existed to justify a detention under this legislation. Specifically, the applicant stated that he did not believe Mr B had made any outright criminal allegations against him.

Police Handling of Complaint 3

In his letter to the applicant dated 13 April 2017, Inspector J wrote:

"As detailed in [Detective Chief Inspector H]'s letter to you... the Counter Corruption Unit (CCU) report dated 21 June 2013, found that there was no corroborative evidence to support the allegations that [Mr B] was threatened.

The following paragraph was not articulated to you in [Detective Chief Inspector H]'s letter:

*Whilst no criminal complaint was made by [Mr B], he did report that he was given, [sic] a choice between attending at the police office and providing a voluntary statement or being arrested along with his mother and father. He felt intimidated and threatened. He did not feel his attendance was voluntary and did not feel that he could leave at any time. Furthermore, after providing his statement to you and former Sergeant [Mr A], he claimed that he was told to **"just keep doing what I was doing for him (a named individual) and we'll be in touch... I took it that I had to carry on dealing drugs. He never said directly to carry on dealing drugs but he knew [sic] my involvement was."** [emphasis in original]*

Therefore, whilst the CCU investigation found no corroborative evidence to support the allegations that [Mr B] was threatened, it was not the case that there was no potential criminality. It was the case that he reported he did feel threatened and indeed was under the belief that he was to continue to deal drugs.

The report with the findings of the CCU was submitted to the Professional Standards Department (PSD) and as detailed in [Detective Chief Inspector H]'s letter, on 9 July

2013, [Inspector E] was instructed to consider any misconduct issues, at the direction of (then) [Superintendent K], PSD (North).

In considering this, [Inspector E] found that there was a reasonable inference of criminality on the part of you and [Mr A]. This inference of criminality was in relation to a potential criminal Neglect of Duty, in addition to the common law Threats and offences contrary to Section 4(3)(b) of the Misuse of Drugs Act already identified by the CCU.

[Inspector E] recommended, as per Crown Office and Procurator Fiscal Service (COPFS) guidance, that such inferences of criminality should be reported to the Criminal Allegations Against the Police Division (CAAPD).

This was a position supported by [Superintendent K], who instructed that PSD continue the criminal investigation, noting that neither you nor [Mr A] had been interviewed in connection with the allegations.

You will be aware that common law Threats, contraventions of Section 4(3)(b) of the Misuse of Drugs Act 1971 and criminal Neglect of Duty, are matters which, upon conviction, are punishable by imprisonment. Thereby, to allow investigation into such matters and provide those suspected with an opportunity to provide a response to these allegations, the power of detention under Section 14 of the Criminal Procedure (Scotland) Act 1995, is an investigative option. Voluntary attendance for interview under caution is also an option and a preferred procedure for matters involving allegations against on duty police officers.

In light of the circumstances I have narrated above, I consider, on the balance of probabilities, that there were grounds to detain you under the aforementioned Act, had the investigating officers chosen that course of action. I therefore do not uphold your complaint.”

Consideration of Complaint 3

Section 9 of the Police Service of Scotland (Conduct) Regulations 2014 provides that if the deputy chief constable (or delegated officer) “considers that it can reasonably be inferred that a constable may have committed a criminal offence”, then the matter must be referred to the appropriate prosecutor.

Taking this into account, the statements obtained from Mr B support Inspector J’s conclusion that, although the complaints made by Mr B are not explicitly couched by him as criminal allegations against a police officer, “it was not the case that there was no potential criminality”.

Furthermore, Section 14 of the Criminal Procedure (Scotland) Act 1995 provides that detention may be considered where there are “reasonable grounds for suspecting that a person has committed an offence punishable by imprisonment”. Inspector J has explained to the applicant that the allegations inferred from Mr B’s statement were indeed punishable by imprisonment and therefore detention under this legislation would most certainly have been justified on the basis that “reasonable grounds” alone are sufficient and corroborative evidence is not required to justify a detention under Section 14, albeit powers of detention were not ultimately utilised in the applicant’s case.

It may have bolstered Inspector J's conclusions to have established whether or not the applicant was told that he would be detained should he not attend voluntarily for interview; indeed there is no indication from the paperwork provided that any enquiry to establish this fact was conducted.

Furthermore, it should be noted that it is not the opinion of the PIRC that the nature of the "threats" alleged to have been made by the applicant, as described by Mr B in his statement, constitute a common law offence.

However on the basis that a detailed explanation of the circumstances has been provided to the applicant by Inspector J, and taking into account that Inspector J's position is supported by both the material information and the relevant legislation, it is concluded that this complaint was dealt with to a reasonable standard. No further action is required of Police Scotland in this connection.

5. Conclusions

Complaints 1 & 3:

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

Complaint 2: Applicant not cautioned

It is concluded that this complaint was not dealt with to a reasonable standard. A reconsideration direction is given to Police Scotland under section 35 (7) of the Act.

In terms of section 37(1) of the Act, Police Scotland must now appoint a person to reconsider this complaint. The person appointed must not have had any previous involvement in the consideration of the complaint. Police Scotland must also adhere to the obligations set out in sections 38 and 40 of the Act, as appropriate. The reconsideration is not subject to the PIRC's supervision.

In reconsidering the complaint, Police Scotland must reassess the transcript of the applicant's interview under caution as well as Inspector E's briefing paper dated 9 June 2013 and have full regard for the comments and observation made by PIRC in this report. The applicant should thereafter be provided with a further response to his complaint.

Jennifer Millar
Review Officer

Ilya Zharov
Head of Reviews & Policy