

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 arrest for threatening and abusive behaviour.

Five complaints were considered, namely:

1. that the police failed to retrieve CCTV which would have supported the applicant’s innocence;
2. that Police Scotland did not carry out a sufficient enquiry into the disturbance leading to the applicant’s arrest, resulting in the applicant being incorrectly reported to the Procurator Fiscal;
3. that the applicant was kept in custody to appear at court without a reason or sufficiency of evidence;
4. that an insufficient investigation conducted into the circumstances of the charge of vandalism libelled against the applicant’s son, as his son was not present when the damage occurred; and

5. that the applicant considers that Police Scotland are “*supporting*” the hotel’s claim for damages, in excess of the value of the damage actually caused, without sufficient evidence.

The review found that two complaints were dealt with to a reasonable standard while three complaints were not. Three recommendations were made in this connection.

3. Background

In the early hours of Sunday 15 November 2015, the applicant was arrested for a contravention of Section 38 (1) of the Criminal Justice and Licensing (Scotland) Act 2010 (threatening and abusive behaviour) after being involved in a “*stand up fight*” in a hotel room following his step-daughter’s wedding. The applicant’s son Mr A and step-son Mr B were also arrested for the same offence.

Police officers had already been in attendance at the wedding venue earlier in the same evening following a report of a fight in the hotel foyer. Mr A had been issued with a Fixed Penalty Notice for Disorderly Conduct in respect of that incident, and the police officers thereafter left the venue believing the disturbance to have been dealt with; however were called out again a few hours later when a further report was made.

The applicant, Mr A and Mr B were all subsequently reported to the Crown Office and Procurator Fiscal Service (COPFS) for threatening and abusive behaviour. All the accused were kept in custody at the local police custody suite until Monday 16 November 2015 when they appeared at court.

On 30 November 2015 Ms C, an employee of the hotel, contacted Police Scotland and reported that the applicant had failed to pay a bill of £2,500 for damage to the hotel room caused by the fight in the room. Enquiries were made by Constable D resulting in a further report submitted to the COPFS libeling additional charges of vandalism against each of the three men.

On 20 May 2016, the applicant’s plea of Not Guilty in relation to the charge of threatening and abusive behaviour was accepted by the COPFS.

The applicant thereafter submitted a letter dated 24 May 2016 to Police Scotland, complaining that their investigation into the circumstances of the alleged fight was insufficient. The applicant stated that he should not have been arrested or charged as he had not been “*fighting*” with anyone and had only interceded to prevent the incident escalating.

On 1 July 2016 Sergeant E obtained a statement from the applicant and agreed the terms of a ‘Heads of Complaint’ form in which the applicant confirmed fourteen complaints which he wished investigated. A letter dated 9 September 2016 responding to these complaints was thereafter issued by Chief Inspector F.

The applicant subsequently applied to the PIRC to review the handling of five of the fourteen complaints.

4. The Review

Complaint 1: Failure to seize CCTV

The applicant complained that despite there being “*extensive CCTV coverage*” of the hotel, no CCTV evidence had been seized by Police Scotland. The applicant argued that CCTV evidence “*would have and should have negated allegations made against me and my son [Mr A]*”.

Police Handling of Complaint 1

In his letter responding to the applicant’s complaints, Chief Inspector F wrote:

“[Sergeant E] has attended at [the hotel] and spoken to the hotel manager. He has explained the CCTV system and confirmed the cameras that were in operation at the time of the wedding. There has never been a camera in operation within hotel room 1 where the fight occurred so the altercation would not have been captured on CCTV. However, there was a camera that was facing from the wedding marquee towards room 1. A witness working at the hotel stated that he had been punched by your son in the main doorway of room 1. There is therefore a chance that this could have been caught on CCTV – but it was not requested by the investigating officer. Even without CCTV, there was sufficient evidence to charge those involved in the fight due to the statements provided by witnesses at the time.

The initial incident which occurred in the hotel reception area, involving [Mr A], would most likely have been captured on CCTV. However as a result of [Mr A] being given a ticket for that behaviour, the officer dealing with that disturbance did not request the footage as he believed the offence to have been dealt with at that time. This footage should still have been obtained to provide best evidence and assist in supporting the case.

It is a learning issue for the investigating officer that he should have looked to obtain the CCTV from the hotel as part of the full investigation to support his case, even though there was sufficient corroborative evidence for the charges. This will be discussed with the officer who reported the case.

I conclude that your allegation in relation to this is upheld and concluded by explanation and discussed with the officer, as above.”

Consideration of Complaint 1

As detailed in Chief Inspector F’s response, Sergeant E made enquiries with the manager of the hotel to ascertain the extent of the CCTV coverage, establishing that any fight within the confines of a room would not have been captured, however any incident in the doorway or the public areas of the hotel would have been captured.

Chief Inspector F has therefore concluded that since the CCTV cameras would most likely have captured some, if not all, of the alleged fighting, and would therefore have provided evidence relevant to the investigation, then the applicant's complaint that the investigating officer – in this case Constable G – did not seize the CCTV footage is upheld.

It is considered that Sergeant E's enquiry into the applicant's complaint was sufficient and thus Chief Inspector F's conclusions are well-reasoned on the basis that a failing has been identified, this failing has been acknowledged to the applicant, and his complaint in this regard has been upheld. For these reasons it is concluded that this complaint was dealt with to a reasonable standard. No further action is required of Police Scotland in this connection.

Complaint 2: Insufficient enquiry conducted

The applicant complained that the Police did not carry out sufficient enquiry into the alleged fight at the hotel, resulting in him being reported to the Procurator Fiscal when he shouldn't have been. The applicant stated: *"It appears to me that the arresting officers were just guessing as opposed to actively trying to ascertain evidence, a knee jerk reaction at best consisting of lets [sic] arrest everyone..."*

In his letter and statement, the applicant confirmed he was dissatisfied that no statements had been obtained from himself, Mr A and Mr B regarding the circumstances of the alleged fight; and that officers did not ask *"relevant questions"* of witnesses to check the reliability and consistency of the information contained in their statements.

Police Handling of Complaint 2

In his letter responding to the applicant's complaints, Chief Inspector F wrote:

"On arrival at the [hotel], the officers involved in this incident noted statements from witnesses – including family members and staff from the hotel.

There were at least two statements that describe you being physically violent at [the hotel] towards your son and stepson. Police and staff witnesses also provide statements describing the room being in disarray and blood-stained following the disorder. In addition, your wife attended at the hotel reception the morning after the wedding and spoke to reception about the damage caused to the room. There is therefore sufficient corroboration for the case to have been reported to the Procurator Fiscal.

I conclude that your allegation is not upheld due to there being insufficient evidence."

Consideration of Complaint 2

To resolve this complaint, the enquiry officer Sergeant E obtained statements from the six officers who attended at the wedding venue following the second report, two of whom – Constable D and Constable G – had already attended at the hotel earlier in the night and issued Mr A with a Fixed Penalty Notice. Sergeant E also reviewed the witness statements obtained from hotel guests and staff.

Three separate witnesses state that they observed the applicant fighting with Mr A: all three state that they observed the applicant fighting with Mr A during the first incident in the hotel foyer, whilst one – Mr H – specifically states that during the second incident he saw, through the window of hotel room 1, the applicant punching Mr A. One of these witnesses, a hotel employee, states that following the second incident he observed injuries to Mr A's face, and was thereafter informed by the applicant's step-daughter and wife that these injuries had been caused by the applicant. The applicant's step-daughter provides that Mr H told her Mr A's injuries had been caused by the applicant, whilst the applicant's wife confirms that the applicant "*restrained*" Mr B during the incident in hotel room 1.

On the basis of these witness statements, Chief Inspector F is justified in concluding that there existed sufficient corroboration for the applicant to have been arrested and reported to the Procurator Fiscal for being involved in a fight at the hotel that night.

However when taken in the context of Chief Inspector F's response to Complaint 1 (above) and the detail included in the SPR itself, it is considered that Chief Inspector F's response to the applicant is not well-reasoned.

The report submitted to the Procurator Fiscal refers to the locus of the fight as room 1 at the hotel. In his response to Complaint 1 (above), Chief Inspector F asserts that:

*"There has never been a camera in operation within hotel room 1 **where the fight occurred** so the altercation would not have been captured on CCTV. However... Even without CCTV, there was sufficient evidence to charge **those involved in the fight** due to the statements provided by witnesses at the time."* [emphasis added]

It is evident from his response that Chief Inspector F has framed and addressed the applicant's complaints on the basis solely of the alleged fight in the hotel room, without reference to the earlier incident in the hotel foyer. However while three witnesses speak to directly observing the applicant engaged in the earlier incident in the foyer, only one witness speaks to directly observing the applicant fighting in the hotel room 1. Therefore although there exists a sufficiency of corroborative evidence to conclude that the applicant was indeed involved in a fight at the hotel that night, it is debatable whether or not there existed – on the basis of the statements obtained on the night of the incidents – a sufficiency of corroborative evidence to support that the applicant was specifically engaged in a "*stand-up fight*" whilst in hotel room 1 as Chief Inspector F has asserted in his response. It is noted, however, that an additional statement obtained from a member of hotel staff a few weeks after the incident did provide corroboration of this point.

It is also considered that both Sergeant E's enquiries and Chief Inspector F's response are insufficient as neither have addressed the central points raised by the applicant in his complaint: that the investigating officers made no attempt to test or make sense of the allegedly inconsistent information provided to them by witnesses regarding the circumstances of the disturbance in the hotel room; and that statements were not obtained from any of the three accused parties to establish further detail.

It is the opinion of the PIRC that some information contained within certain witness statements is inconsistent with the information provided in others. The Standard Prosecution Report submitted to the

Procurator Fiscal records that “an exact picture of events was extremely difficult to obtain” due to the “somewhat hazy” recollections of witnesses, specifically noting that it was “difficult to discern who had witnessed which sequence of events”. It is therefore evident that this lack of consistency in the witnesses accounts was recognised by Constable G, the reporting officer.

In this context, and on the basis that the applicant’s complaint specifically relates to the failure of officers to ask pertinent questions of witnesses to establish an exact picture of events, it is considered that a comprehensive complaint enquiry would have necessitated Sergeant E asking each of the six officers involved to specifically address this issue. However there is no indication from the statements provided by the six officers involved in the incident that specific questions were asked of them by Sergeant E in this regard: as a result none of the six officers address these aspects of the applicant’s complaint in their statements and neither are these points thereafter addressed by Chief Inspector F in his response.

For these reasons, it is concluded that this complaint was not dealt with to a reasonable standard. It is recommended that the six officers involved in making enquiries into the disturbances at the hotel be asked to provide additional statements clarifying: why witnesses were not asked “relevant questions” to clear up any inconsistencies in the information provided and why the three accused were not detained and questioned regarding the circumstances of the incident. A further response should thereafter be issued to the applicant detailing the accounts of the six officers, addressing the applicant’s complaints, and clarifying whether or not, on the basis of the additional information obtained, the applicant’s complaint that the investigation was inadequate is upheld.

Complaint 3: Insufficient evidence to hold in custody

The applicant complained that he was kept in custody to appear at court on the next working day – in the applicant’s case Monday 16 November 2015 – without reason or a sufficiency of evidence.

Police Handling of Complaint 3

In his letter responding to the applicant’s complaints, Chief Inspector F wrote:

“The arresting officers have provided statements with accounts of their involvement. Both officers confirm that they were given sufficient grounds for the arrest by virtue of the statements from two of the witnesses (which provide corroboration). These statements described you fighting with your son and stepson. It is also noted that the custody photographs show that all three arrested males (including yourself) have a black eye...

In relation to the sufficiency of evidence, this is covered [above]. With regards to you being held in custody without reason, statements have been obtained from the custody staff who were on duty that weekend. The decision was made by the late shift custody Sergeant on Sunday 15th November that all three co-defendants in the case should be held in custody for court on Monday 16th November. The reason being that one defendant was already on bail ([Mr B]), and one had already had a fixed penalty notice

(FPN) in relation to the matter. The nightshift custody sergeant concurred with this decision.

I conclude that your allegation in relation to the reasons for your arrest and sufficiency of evidence is not upheld due to insufficient evidence.”

Consideration of Complaint 3

As part of the complaint enquiry, accounts were obtained by Sergeant E from all custody sergeants on duty during the applicant’s time in custody.

The applicant was first accepted into custody by Sergeant J, who states she was informed by the arresting officers that there was a sufficiency of evidence to justify the applicant’s being taken into custody.

The following shift was taken by Sergeant K, who provides that she was also satisfied with keeping the applicant in custody, however recalls that there appeared to be some discrepancies between what witnesses had originally told officers and the content of the statements obtained from them subsequently, and so she communicated this to Constable G. In this respect, the applicant’s Custody Record shows that Sergeant K added a note to the effect that Constable G was required to “*establish evidence for [the applicant’s] involvement in this incident*”. Sergeant K further comments that she cannot recall the precise details of the discrepancies but that Sergeant E will “*presumably already have this from the operational officers*”.

Sergeant L, who took over shift from Sergeant K, confirms he agreed that all three co-accused should be held in custody until Monday as one of the accused – Mr B – was in breach of bail conditions. Sergeant L further states that he was satisfied the grounds for keeping the applicant in custody were sound despite that “*other evidence may or may not have been available, or that some evidence may have been muddled due to the witnesses varying states of intoxication*”.

These statements clearly indicate that there were some concerns identified in respect of the information originally given to the arresting officers and the information subsequently confirmed in witness statements, and that this particularly related to the evidence supporting the applicant’s role in the disturbance. There is no indication from the paperwork provided by Police Scotland that Sergeant E made any effort to ascertain in more detail, for example from Constable G, what the discrepancies identified by Sergeant K were, the action taken to resolve these discrepancies, and the outcome.

Additionally, Chief Inspector F has provided an explanation for the applicant’s being held in custody over the weekend, however this explanation does not appear to have taken cognisance of the relevant Police Scotland procedures in this connection. Police Scotland’s standard operating procedure in relation to the Care and Welfare of Persons in Police Custody (the “Custody SOP”) states, at paragraph 19.2.1, that the Lord Advocate’s Guidelines must be consulted when detaining a custody for court the next lawful day. Paragraph 16 (a) of the Lord Advocate’s Guidelines specifically states that it may be appropriate to liberate an accused person on a written undertaking to appear at court where a co-accused is to be detained in custody but there is no justification for keeping all accused in custody.

Although it would appear that custody staff have used the discretion available to them, it does not appear that any reasonable justification for the decision to hold the applicant until Monday, rather than release him on an undertaking to appear at court on the Monday morning, has been provided; and thus this aspect of the applicant's complaint has not been sufficiently addressed by Chief Inspector F's response.

As the enquiries undertaken by Sergeant E were insufficient, and thus Chief Inspector F's response cannot be said to reflect the available information, nor does it provide sufficient justification on the basis of the relevant procedures, it is concluded that this complaint was not dealt with to a reasonable standard. It is recommended that further accounts be obtained from the operational officers, in particular Constable G, to establish precisely what discrepancies were identified by Sergeant K in respect of the evidence available to hold the applicant in custody, and how this matter was resolved. A further response should thereafter be sent to the applicant explaining the outcome of these enquiries and addressing whether or not, on the basis of the additional information obtained, the applicant's complaint is upheld.

Complaint 4: Insufficient enquiry into vandalism

The applicant complained that his son Mr A had also been charged with vandalism however had not been in the room at the time that the damage occurred, therefore the enquiry into the vandalism allegation was insufficient and there was a lack of evidence to support the charge against Mr A.

Police Handling of Complaint 4

In his letter responding to the applicant's complaints, Chief Inspector F wrote:

"The investigating officer for the charge of vandalism received a complaint from [the hotel] some time after the wedding. The officer noted a statement from the wedding coordinator making the complaint and submitted report to the Procurator Fiscal. For his report, the officer reviewed the statements that had been obtained during the initial investigation and his report describes all three co-defendants being involved in a stand up fight in the room where the damage was caused. A witness from the hotel states he entered the room after [Mr A] and [Mr B] and yourself were arrested and he saw the damage that was caused. Officers attending the incident also describe seeing the room in disarray, with clear signs of a disturbance and blood on the carpet and furnishings. There was no CCTV in the room where the damage occurred – this was confirmed with the hotel manager by [Sergeant E].

I conclude that your allegation in relation to this is not upheld due to insufficient evidence."

Consideration of Complaint 4

The paperwork provided by Police Scotland confirms that a report of vandalism was received from Ms C, a manager at the hotel, on 30 November 2015. Enquiries into the report were thereafter made by

Constable D. Constable D confirms that he obtained a further statement from a member of hotel staff confirming that the hotel employee had directly observed all three accused individuals fighting within hotel room 1 where the damage occurred. Constable D confirms that he reviewed the statements obtained in relation to the previous incident and the report submitted to the Procurator Fiscal. Constable D also states that he took advice from Police Scotland's Case Management Unit, who confirmed that there appeared to be a sufficiency evidence available to report all three men for vandalism. The content of Chief Inspector F's response to the applicant therefore reflects the available information.

However it is considered that Chief Inspector F's response has not addressed the core of the applicant's complaint. This is because the applicant has clearly complained that Mr A, was not present in the room when the damage referred to in the vandalism report occurred, and has further asserted that this damage was instead caused by Mr B, therefore Mr A should not have been charged. It is considered that Chief Inspector F's response does not adequately address the information supplied by the applicant and does not explain whether or not this information may have altered the content of the report submitted to the Procurator Fiscal, had it been established by enquiries at the time. As a result, Chief Inspector F has not explained why, taking this information into account, he still considers that the enquiry made into the vandalism was sufficient.

For the reasons given above it is concluded that this complaint was not dealt with to a reasonable standard. It is recommended that a further response be sent to the applicant addressing the points raised above, i.e. explaining, with direct reference to the information supplied by this applicant, whether or not it is considered that the enquiries conducted into the allegation of vandalism were sufficient.

Complaint 5: 'Supporting' hotel's damages claim

The applicant complained that Police Scotland were "supporting" the hotel in a "veiled extortion" attempt by relying on the hotel's disproportionate assessment of the value of the damage caused to his hotel room.

Police Handling of Complaint 5

In his letter responding to the applicant's complaints, Chief Inspector F wrote:

"The charge of vandalism was not libelled against you whilst in custody. It is understood that this was as a result of the fact that your wife offered to pay for the damage to the room before she booked out of the hotel and so at that time the hotel did not wish to press charges. However, as no payment materialised, the hotel contacted police and made a complaint of vandalism. The legal definition of vandalism is 'any person who, without reasonable excuse, wilfully or recklessly destroys or damages any property belonging to another shall be guilty of the offence of vandalism'. As it appeared that the damage had been caused during the fight in the room, a report was put to the Procurator Fiscal. It was not a case of 'additional evidence' but simply that the hotel had not wished to press charges at the time of your original arrest..."

It is not for Police Scotland to determine the value of the damage caused in a charge of vandalism – the complainer (in this case [the hotel]) provides an estimate of the total cost. However, in the case reported against you and your family, the reporting officer did include remarks about the high value of the estimate of damage and the fact that recompense had been offered for the damage. The Police Scotland Criminal Justice Unit (CJU) reviewed the report submitted. The CJU believed that there was sufficient to [sic] support charges of vandalism, based on the statements provided by hotel staff, and so the report was forwarded to the Procurator Fiscal. It was then a decision for the PF as to whether the case was proceeded with or not, based on the facts presented by police.

Any current disagreement over the value of damages to be compensated to the hotel is now a matter of civil dispute between the parties concerned.

There appears to be insufficient evidence to support this allegation and I conclude that it is not upheld.”

Consideration of Complaint 5

The paperwork provided by Police Scotland confirms that a report of vandalism was received from Ms C, a manager at the hotel, on 30 November 2015. Ms C confirms in her statement that the applicant had initially offered to pay for the damage, however that the maximum amount offered by the applicant fell well below the estimate the hotel had made of the cost, and on receiving the invoice for the final amount applicant had refused to honour the sum. The report submitted to the Procurator Fiscal in respect of the vandalism charge explains that the applicant had initially been willing to settle the matter with the hotel however had later “*reneged on his commitment*” as because he was “*invoiced for a far greater amount than he had anticipated*”. A copy of the invoice was also forwarded to the Procurator Fiscal.

In his response to the applicant, Chief Inspector G has explained the circumstances of the report of vandalism and has correctly asserted that the relevant background information was submitted to the Procurator Fiscal within the prosecution report. Chief Inspector F has also explained the legal definition of vandalism and correctly identified that it is not the duty of Police Scotland to determine the value of any damage caused as a result of vandalism, and explained to the applicant where his recourse now lies. This is considered to be good complaint handling practice.

As Chief Inspector F’s response is informative, well-reasoned and supported by the available information, 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

Complaint 1: Failure to seize CCTV

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

Complaint 2: Insufficient enquiry into alleged fight

It is concluded that this complaint was not dealt with to a reasonable standard. It is recommended that the six officers involved in making enquiries into the disturbances at the hotel be asked to provide additional statements clarifying: why witnesses were not asked “relevant questions” to clear up any inconsistencies in the information provided and why the three accused were not detained and questioned regarding the circumstances of the incident. A further response should thereafter be issued to the applicant detailing the accounts of the six officers, addressing the applicant’s complaints, and clarifying whether or not, on the basis of the additional information obtained, the applicant’s complaint that the investigation was inadequate is upheld.

Complaint 3: Insufficient evidence to hold in custody

It is concluded that this complaint was not dealt with to a reasonable standard. It is recommended that further accounts be obtained from the operational officers, in particular Constable G, to establish precisely what discrepancies were identified by Sergeant K in respect of the evidence available to hold the applicant in custody, and how this matter was resolved. A further response should thereafter be sent to the applicant explaining the outcome of these enquiries and addressing whether or not, on the basis of the additional information obtained, the applicant’s complaint is upheld.

Complaint 4: Insufficient enquiry into vandalism

It is concluded that this complaint was not dealt with to a reasonable standard. It is recommended that a further response be sent to the applicant addressing the points raised above, i.e. explaining, with direct reference to the information supplied by this applicant, whether or not it is considered that the enquiries conducted into the allegation of vandalism were sufficient.

Complaint 5: ‘Supporting’ hotel’s damages claim

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

Learning Point

Of the five complaints dealt with in this report, four were not upheld by Chief Inspector F due to “*insufficient evidence*”.

Paragraph 6.12.6 of Police Scotland's standard operating procedure in relation to Complaints About the Police (the "Complaints SOP") provides that the decision whether or not to uphold a complaint should be taken on the "balance of probabilities", e.g. the complaint handler must decide, based on the evidence available, whether one account is more probable than the other. Appendix M of the Complaints SOP goes on to state that:

"...to decide in favour of the complainer the evidence need only show that the complainer's allegation is the more probable version of events. There is no need to prove the allegation(s) beyond reasonable doubt. That may mean that evidence, which would not be admissible or sufficient in terms of the criminal law, may be adequate to prove the allegation in terms of the complaint".

As the balance of probabilities test requires only that something be more likely than not to have happened, a "sufficiency" of evidence is not required.

The evidence available in respect of each complaint has been discussed in detail in this report. Notwithstanding the conclusions above, Sergeant E and Chief Inspector F should bear in mind any finding reliant on a sufficiency of evidence is not a proper application of the balance of probabilities and implies a more rigorous standard of proof than is actually required.

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