

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 being charged and issued with a Fixed Penalty Notice (FPN) in connection with a road traffic offence. Two complaints were reviewed, namely:

- (1) that the two officers who issued the applicant with FPN were incorrect in their statements when they said the female officer approached her car and charged her as the applicant alleges it was the male officer; and
- (2) that a note was left with the applicant’s neighbour regarding her Copy Complaint.

The review found that one of the complaints was dealt with to a reasonable standard and one was not. One recommendation has been made.

3. Background

On 22 April 2014 the applicant was travelling on a motorway when she was pulled over by a marked police vehicle. She was subsequently cautioned and charged with Section 3 of the Road Traffic Act 1988 for allegedly undertaking vehicles and travelling at excess speed, and was issued with a Fixed Penalty Notice (FPN).

The applicant failed to pay the fine. The case proceeded to a trial date but did not proceed.

The applicant made her complaints in writing in a letter dated 26 July 2016. Inspector A was appointed as the enquiry officer and the applicant received a response to her complaints from Chief Inspector B in writing in a letter dated 24 October 2016.

4. The Review

Complaint 1: Incorrect information

The applicant complains that the two police officers who issued her with a fixed penalty ticket were incorrect in their statements when they said the female officer approached her vehicle and explained the charge to her as this was done by the male officer.

Police Handling of Complaint 1

Chief Inspector B responded to the applicant's complaint by advising that neither the fixed penalty notice nor the police report makes any reference as to whom approached the applicant's vehicle. Chief Inspector B further states that the officers provided statements to the Procurator Fiscal in which both record that the female officer approached the vehicle.

The response further advises that, in response to the complaint, both officers provided further statements in which they both refute the allegation that it was the male officer who approached the vehicle.

The response thereafter advises that the other evidence, including the FPN, police report, and operational statements of these officers supports the position that the applicant was cautioned and charged by the male officer.

For these reasons, Chief Inspector B does not uphold the applicant's complaint.

Consideration of Complaint 1

There appears to be two aspects to the applicant's complaint. Firstly, she complains that the officers incorrectly state within their operational statements that the male officer approached her car; and secondly, she complains that both officers incorrectly state that the female officer explained the charge to her.

(1) Approached the vehicle

The response in this connection firstly refers to the operational statement of Constable C, who records that Constable D approached the applicant's vehicle. This account is supported by the statement of Constable D, who also confirms that she spoke with the female driver, asking her to sit in the rear of the police vehicle, to which the female driver agreed. The response then refers to further accounts provided by each officer as part of the complaint investigation, in which both officers refute the applicant's allegation and reiterate their position that it was Constable D who approached the applicant's vehicle.

According to paragraph 6.12.6 of Police Scotland's Complaint about the Police Standard Operating Procedure, the test to be utilised by the investigating/enquiry officer in reaching their determination is the "balance of probabilities". This means that the investigating/enquiry officer has to consider as to whether or not based on the evidence available one account is more probable than the other. Accordingly, and in line with the above test, there is nothing in the evidence as a whole to suggest that it was Constable C who approached the applicant's vehicle and nothing within the applicant's respective account to suggest Chief Inspector B should prefer her version of events when compared to the officers' respective accounts and the other evidence available.

It is therefore considered that the response to this aspect of the complaint is adequately reasoned and supported by the material evidence available.

(2) Explained the charge

From reviewing the evidence available, the applicant's complaint appears to relate to Constable C's operational statement in which he records that Constable D informed the applicant of the offence she had committed and issued her with a FPN.

However, although Constable C records that Constable D allegedly informed the applicant of the offence she had committed, there is no suggestion in either officer's account that she cautioned and charged the applicant with the offence. As reflected within the complaint response, the FPN, police report, and the statements of both officers all suggest that the applicant was cautioned and charged with the alleged offence by Constable C. The response in this connection is supported by the statements of the officers and the other material evidence available which was examined during the course of the review.

Accordingly, it is therefore considered that the response to this aspect of the complaint is adequately reasoned and supported by the material evidence available.

For the above reasons it is considered that this complaint, overall, has been dealt with to a reasonable standard. No further action is required in this connection.

Complaint 2: Note left with neighbour

The applicant complains that a note was left with her neighbour regarding her Copy Complaint which she feels was unprofessional.

Police Handling of Complaint 2

Chief Inspector B responded to the applicant's complaint by advising that various system checks were carried out during the complaint investigation, including the legal documents database and the police command and control system to trace any recorded incident of the police attending at the applicant's address. The response further states that checks were also made with the local district court and with local officers. However, the response advises that all enquiries were met with a negative result and that the police have been unable to trace the officer who allegedly left a note with the applicant's neighbour. The response does however acknowledge that the applicant attended at the relevant police office to collect the Copy Complaint on 17 July 2015.

Chief Inspector B then states that a statement was obtained from the applicant's neighbour who cannot recall speaking with the police receiving any documentation.

For these reasons, Chief Inspector B does not uphold the applicant's complaint.

Consideration of Complaint 2

The response in this connection explains the various enquiries made during the complaint investigation which included system checks and checks with the local Court and officers - all of which were negative. The response in this connection is partially supported by an email trail between the complaint enquiry officer and a local Community Inspector, the latter of whom confirmed he had sent emails to officers in his area to ascertain if any had knowledge of leaving the note with the applicant's neighbour but was met with negative replies. Notably, however, the various other checks allegedly carried out are not evidenced within the complaints file.

The response also explains that an account was obtained from the neighbour the officer allegedly left the note with who stated that he had no memory of being handed any paperwork by the police. Again, the response in this connection is supported by the statement noted from the applicant's neighbour, a copy of which was provided to the PIRC.

Based on the neighbour's account, and given that no officer was able to confirm they had attended at the applicant's address, Chief Inspector B does not uphold the applicant's complaint.

However, the response in this connection acknowledges that the applicant attended at the police office to collect her Copy Complaint on 17 July 2015. This would suggest that she had been alerted by some means that the station held this documentation. In addition, although the response makes clear that the system checks were negative, any legal document allocated to the police service for execution is routinely recorded on Police Scotland's Legal Documents Database and are thereafter allocated to an officer for enquiry. Any officer tasked with enquiry thereafter **must** record any effort made to execute the citation/Copy Complaint to ensure that appropriate information is made available to the Crown Office and Procurator Fiscal Service (COPFS) as evidence of the police efforts to serve the document.

Accordingly, although the response states that efforts to trace the officer who might have attended at the neighbour's proved negative, it is not in dispute that the station held this document and that the applicant collected it. As a consequence Police Scotland should have an auditable record of receiving the document from COPFS, as well as a record of which officer was allocated the Copy Complaint for enquiry and execution.

For this reason, it is considered that the justification offered within the response is inadequately reasoned. It is therefore determined that this complaint was not dealt with to a reasonable standard.

It is recommended that Police Scotland:

- (a) review their Legal Documents Database to determine which officer was allocated the applicant's Copy Complaint for enquiry and execution;
- (b) obtain an account from this officer regarding any efforts made to serve this document on the applicant, including if a note was left with her neighbour; and
- (c) issue the applicant with a fresh response.

If Police Scotland cannot find an auditable record of receiving and allocating this Copy Complaint for enquiry, the further response should explain why Police Scotland have not followed their own Standard Operating Procedures in relation to the service and execution of legal documents.

5. Conclusions

Complaint 1: Incorrect information

It is considered that this complaint, overall, has been dealt with to a reasonable standard. No further action is required in this connection.

Complaint 2: Note left with neighbour

It is therefore considered that this complaint was not dealt with to a reasonable standard.

It is recommended that Police Scotland:

- (a) review their Legal Documents Database to determine which officer was allocated the applicant's copy complaint for enquiry and execution;
- (b) obtain an account from this officer regarding any efforts made to service this document on the applicant, including if a note was left with her neighbour; and
- (c) issue the applicant with a fresh response.

If Police Scotland cannot find an auditable record of receiving this Copy Complaint and allocating it for enquiry, the further response should explain why Police Scotland have not followed their own Standard Operating Procedures in relation to the service and execution of legal documents.

Kirstin McPhee
Review Officer

Jacqui Jeffrey
Senior Review Officer