

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 in connection with an alleged offence. Two complaints were reviewed, namely:

- 1) that an officer was aggressive and cheeky to the applicant and lied to him on a few occasions; and,
- 2) that an unauthorised search of the applicant’s flat took place while he was being detained.

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

3. Background

On 16 March 2017, two police officers attended at the applicant's home address to detain him in connection with an ongoing investigation. The applicant was transported to a local police office where he was subsequently charged with an offence of assault.

The applicant submitted his complaints on 18 March 2017 using the Police Scotland online complaints system. Detective Inspector C was appointed to investigate the applicant's complaints and met with him on 23 March 2017 when a statement of complaint was noted. The Police Scotland Heads of Complaint form was also completed on that date.

The applicant has a hearing impairment and part of his complaint related to the way in which an officer spoke to him when he asked for information to be repeated. He provided CCTV footage from his home address which showed the officers attending the property. CCTV footage of the applicant and the officers within a holding area at the police office and at the charge bar area was also available.

Detective Chief Inspector D responded to the applicant's complaints by letter on 27 March 2017.

4. The Review

Complaint 1: Attitude of officer

According to the Heads of Complaint form, the applicant complained that Detective Sergeant A was aggressive and cheeky towards him whilst he was in police custody, and also lied to him on a few occasions.

Within his statement of complaint, the applicant stated that the "crux" of his complaint was the way that Detective Sergeant A spoke to him "*and his body language throughout*" when he didn't have his hearing aids in.

Police Handling of Complaint 1

Detective Chief Inspector D provided the following response:

"Firstly, you alleged that Detective Sergeant [A] was aggressive and cheeky to you and had lied to you on a few occasions at [the police office] on 16/03/2016.

- *Detective Sergeant [A] refutes this allegation*
- *CCTV, including audio facility, has been reviewed from within [the police office]. The CCTV shows your time within the detention area and thereafter being processed at the charge bar, where you were cautioned and charged. Having observed the footage, Detective Inspector [C]*

can find no evidence to support your allegation of Detective Sergeant [A] being either aggressive, cheeky or having lied to you. Detective Sergeant [A]'s colleague at the material time has also been spoken to and can provide no additional information regarding your allegation. In making a determination based on the evidence available to me, I am faced with a recorded version of events which does not support your account of activities that took place. The officer subject to your complaint has refuted the allegation and the CCTV footage supports the officer's actions. There is no further evidence available.

In considering all the circumstances and on the balance of probabilities, I find this allegation to be not upheld.

Consideration of Complaint 1

There appear to be two aspects to the complaint:

- (1) that Detective Sergeant A was aggressive and cheeky; and
- (2) that Detective Sergeant A lied to the applicant.

(1) The applicant stated in his correspondence to the PIRC that Detective Sergeant A was aggressive and cheeky towards him at his house, within the police car, and also within the custody area of the police office.

However, within his statement of complaint, the applicant recorded that he was *"quite happy with the way [he] was treated whilst in [his] house and everything was explained to [him]."* He did not identify any specific complaint about Detective Sergeant A's manner towards him at that point. The applicant's own CCTV footage captured Detective Sergeant A's conversation with him while he was being detained at his house. Detective Sergeant A was not continuously in view and accordingly no comment can be made about his body language, however the audio recording did not reveal any comments being made that could be construed as cheeky. Furthermore, the applicant did not refer within his statement to any concerns about Detective Sergeant A's manner whilst within the police car. Accordingly, it is considered that Police Scotland was justified in focusing the complaint investigation on whether or not Detective Sergeant A was *"aggressive and cheeky"* to the applicant whilst at the police office.

In that respect, the applicant noted in his statement that Detective Sergeant A *"sat with his elbows on his knees and was talking towards the ground"* and that he *"huffed"* and appeared *"pissed off"* when the applicant asked him to repeat what had been said. The applicant also stated that whilst at the charge bar, Detective Sergeant A said to the applicant *"well look at me", "pay attention" and "concentrate"* which the applicant thought to be cheeky. In addition the applicant stated that Detective Sergeant A's *"body gestures"* were cheeky and aggressive.

Police Scotland provided the PIRC with CCTV footage of both the holding area at the police office and the charge bar area. Within the holding area, Detective Sergeant A at times sat in the manner described by the applicant. However, the applicant responded to the majority of questions without

asking for them to be repeated. At one point, the applicant informed Detective Sergeant A that he “*didn’t hear a word*” the officer said and Detective Sergeant A repeated his comments. On a second occasion, the applicant did not appear to hear Detective Sergeant A’s response to a question about how long he would be held in custody, and his concerns about missing a driving lesson.

Whilst at the charge bar area, the CCTV footage shows that Detective Sergeant A did make the comments attributed to him by the applicant while he was being formally charged. He asked the applicant to “*concentrate*” and, in response to the applicant’s request for him to “*speak up*”, Detective Sergeant A stated “*I am speaking up but it helps if you look at me*”. When the applicant explained that he couldn’t hear in his left ear, Detective Sergeant A moved to the applicant’s right side.

The complaint response referred to the CCTV footage and it was assessed that it did not contain evidence to support the applicant’s allegation. However, as the CCTV footage shows the sections of their interaction which caused the applicant to complain that Detective Sergeant A had been aggressive and cheeky, it is considered the complaint response should have more clearly reflected on its content. The response should also have reflected on the content of the applicant’s statement which contains contradictory information about whether or not he was wearing his hearing aids. If Detective Sergeant A’s actions and comments were considered to be appropriate, the response should have explained how that assessment was reached. Accordingly, it is considered that the response to this aspect of the applicant’s complaint is not supported by the material information available and is not adequately reasoned.

(2) In relation to the aspect of the complaint that Detective Sergeant A ‘lied’ to the applicant, it is not clear what the applicant meant by this comment. The scope of the complaint was not clarified within his statement. Although the applicant stated that Detective Sergeant A admitted “*one of his lies*” while they were in the police car, he made no other reference within his statement to Detective Sergeant A lying to him.

The Complaints SOP states at Section 6.5.10 that:

“It is important that there is a clear understanding between the person noting the complaint and the complainer as to what is being investigated”

In accordance with the provisions of the Complaints SOP, it is considered that the applicant should have been asked to explain why he thought that an officer had “*lied to him on a few occasions*”. This would have allowed the complaint to be more clearly addressed during the investigation and within the letter of response. As the scope of the applicant’s complaint was not clearly understood, it is considered that this aspect of the complaint was not dealt with in accordance with relevant procedures.

In relation to the handling of this complaint, it is considered that each aspect of the applicant’s concerns would be capable of being upheld or not upheld independently. Police Scotland should therefore have recorded two separate allegations. Furthermore, as the complaint response was not supported by the

material information available, not adequately reasoned, and did not meet the requirements of the relevant procedures, it is concluded that the complaint was not dealt with to a reasonable standard.

It is recommended that Police Scotland now records this complaint as two separate allegations. A further statement should be obtained from the applicant that more clearly establishes the scope of his complaint that Detective Sergeant A lied to him on a few occasions. A further response should then be issued to the applicant that addresses each complaint. Within the further response, the content of the CCTV footage should be adequately assessed and any decisions reached should be clearly explained.

Complaint 2: Unauthorised search

The applicant complains that an unauthorised search of his flat took place while he was being detained, which was captured on his home CCTV.

Police Handling of Complaint 2

Detective Chief Inspector D provided the following response:

“Secondly, you alleged that Detective Sergeant [A] conducted an unauthorised search of your flat whilst you were being detained and that the activities were captured on a CCTV system within your hallway.

- Detective Sergeant [A] refutes this allegation.*
- CCTV, including audio facility, which you provided to Detective Inspector [C] has been reviewed and shows a view of your front door along with the internal doors of two further rooms within your flat. The footage provided does not support your allegation of an unauthorised search taking place; however does show police ensuring your property is secured and safe prior to your removal to the police office. Detective Sergeant [A]’s colleague at the material time has also been spoken to and can provide no additional information regarding your allegation.*

In making a determination based on the evidence available to me, I am faced with opposing versions of events. You have provided an account which is refuted by Detective Sergeant [A] and your CCTV coverage does not support your allegation of an unauthorised search taking place. There is no further evidence available.

In considering all the circumstances and on the balance of probabilities, I find this allegation to be not upheld.

Consideration of Complaint 2

The Police Scotland Search Standard Operating Procedure (“the Search SOP”) explains that search “*is a core policing activity which exists in two basic forms*” i.e.

Defensive Search – which is generally linked to counter-terrorism and the search of potential targets for explosive devices or other relevant threats; and

Offensive Search – which is defined as “*any search conducted to gain evidence, gain intelligence or deprive criminals of resources*”.

The applicant noted in his statement that one of the officers informed him that “*his colleague was checking the rest of the house to make sure no one else was in*”. This comment is supported by the applicant’s CCTV footage in which an officer is heard to ask if anyone else is in the house. One officer, who appears to be Detective Constable B, can be seen briefly entering each room within the view of the CCTV camera. However there is nothing contained in the footage to suggest that anything other than a cursory check of the premises was carried out. This would support the position that the house was being checked for other occupants, as explained to the applicant at the time, rather than a search (as defined in the Search SOP) being conducted. The complaint response would have been strengthened had it explained how a search is defined and more clearly explained the content of the CCTV footage. However, as the decision not to uphold the complaint is supported by the material information available, it is concluded that the complaint was dealt with to a reasonable standard. No further action is required in this connection.

5. Conclusions

Complaint 1: Attitude of officer

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

It is recommended that Police Scotland now records this complaint as two separate allegations. A further statement should be obtained from the applicant that more clearly establishes the scope of his complaint that Detective Sergeant A lied to him on a few occasions. A further response should then be issued to the applicant that addresses each complaint. Within the further response, the content of the CCTV footage should be adequately assessed and any decisions reached should be clearly explained.

Complaint 2: Unauthorised search

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

Learning Point

The response to both complaints in this case stated that Detective Sergeant A refuted the allegations and that Detective Constable B had been spoken to and could provide no additional information regarding the matter. Police Scotland confirmed to the PIRC that neither officer provided a statement during the complaint investigation. It was therefore unclear exactly what information the officers provided in response to the applicant's complaints, and how that information was obtained. Whilst there is no requirement for officers subject to complaint to provide a statement, it is considered that an auditable record of any information provided to a complaint investigation should be maintained.

In that respect, the Complaints SOP states at paragraphs 6.10.5 and 6.10.6:

“Auditable records will be kept in respect of all complaints detailing all enquiries undertaken and all significant steps taken during the complaints process. All evidence obtained or created as part of the investigation must be retained.

Record keeping is an integral part of the complaint handling process, whether it is through local complaint handling or specialist investigation. A comprehensive record benefits the complainer, the police and the public. It allows the complainer to be fully informed as to the handling of the complaint; it protects the police against claims of poor complaint handling and makes for a transparent complaint handling system that is open to scrutiny.”

Following the PIRC's enquiry to establish how the information provided by Detective Sergeant A and Detective Constable B had been obtained, statements were provided by both officers. However, it is considered that the information gathered at the time of the complaint investigation was not sufficiently recorded. While it may not always be necessary to obtain statements during a complaint investigation, (indeed in this case the CCTV evidence would be likely to carry more weight than the officers' recollection of events), in accordance with the provisions of the Complaints SOP, Police Scotland should ensure that an auditable record of each witness account is maintained that is separate from the response provided to the applicant.

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