

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 police investigation into the applicant’s allegation that a social worker had committed a criminal breach of the Data Protection Act. Three complaints were reviewed, namely that:

- (1) a police officer did not pass all relevant information to the Procurator Fiscal;
- (2) a police officer did not keep the applicant updated on the progress of the investigation; and
- (3) Police Scotland lost evidence provided by the applicant.

The review found that one of the complaints was dealt with to a reasonable standard while the other two were not. Two recommendations were made in this connection.

3. Background

The applicant's complaints arise from the arrangements for the care of her sister, Ms A. Ms A had mental health issues and was under the care of the local authority social work department (SWD). According to the papers provided, the applicant's other sister, Ms B, and their mother were granted power of attorney for Ms A in 2003.

In 2004, due to her mother's ill health, the applicant took over much of her mother's responsibilities in connection with Ms A. This was done on an informal basis and the applicant was not granted power of attorney. The SWD was aware of this arrangement.

In April 2010, the SWD received information that the applicant had previous convictions for theft. As a result, the SWD requested that the applicant return Ms A's bank card to their mother, which was done in June 2010. In August 2010, Ms B advised the SWD that she no longer wished to act as attorney for Ms A due to their mother's ill health. As a result, the applicant resumed responsibility for Ms A's banking.

In December 2010, the applicant's mother died. At this time, Ms C of the SWD advised the applicant to return all banking matters to Ms B. The applicant had several meetings with Ms C in which the applicant expressed the belief that Ms B was not fit to act on their sister's behalf. The applicant states that Ms C repeatedly referred to the applicant as a "known thief".

In January 2011, Ms B accused the applicant of stealing money from Ms A's bank account. This allegation was reported to the SWD but not to the police. A second and similar allegation was made in June 2012 which again was reported to the SWD but not the police. At this time, staff from the NHS mental health centre caring for Ms A advised the applicant that she could not visit Ms A unsupervised due to the allegations of theft.

In November 2012, Ms A died. Following Ms A's death, the applicant raised a number of complaints against the SWD in connection with its handling of Ms A's case. One issue raised by the applicant was her view that Ms C had provided inaccurate information to the NHS which had resulted in the NHS restricting the applicant's ability to provide care for her sister.

In September 2014, the applicant approached Police Scotland alleging that Ms C had committed a criminal breach of the Data Protection Act. The applicant's allegations were investigated by Constable D. In September 2015, Ms C was charged with an alleged breach of section 55(1)(a) of the Data Protection Act 1998. Constable D subsequently submitted a Standard Prosecution Report (SPR) to the Procurator Fiscal in this connection. The Procurator Fiscal decided not to initiate proceedings against Ms C.

In November 2015, the applicant raised complaints against Police Scotland regarding the investigation of her criminal allegations. In a telephone conversation with Sergeant G of the Professional Standards Department, the applicant indicated that she did not wish to pursue these complaints.

In August 2016, the applicant received a telephone call from a member of staff at Police Scotland who was carrying out surveys regarding the service provided by Police Scotland. Following this call, the applicant telephoned Police Scotland to complain that the person she had spoken to had hung up on her. In addition, the applicant advised that she wished to pursue the complaints regarding the investigation into her previous criminal allegations.

Sergeant E noted a statement of complaint from the applicant on 22 September 2016. On 18 November 2016, the applicant completed a complaint form on Police Scotland's website which raised further complaints. Inspector F responded to the applicant's complaints in a letter dated 21 November 2016.

During this review, the PIRC requested a copy of the statement noted from the applicant by Constable D and was advised that the file containing Constable D's notebook had been lost. Consequently, Police Scotland was unable to provide a copy of the statement noted from the applicant. The loss of the file meant that Police Scotland was unable also to confirm whether the applicant had agreed a Heads of Complaint form when raising her complaints about the police.

4. The Review

Complaint 1: Information missing from SPR

The applicant's statement of complaint included the following:

"I have made a complaint to the Police as I do not feel that all of the information was passed to the PF in [Constable D's] report. I do not think it was reported that it had been upheld by the Council that [Ms C] lied that the power of attorney (my sister [Ms B]) had 2 certificates that were necessary to have the authority to take over decisions with regards to medical decisions of our sister [Ms A]."

Police Handling of Complaint 1

Inspector F responded by advising that Sergeant E had examined the SPR provided by Police Scotland and has "ascertained that all the information [the applicant] provided was presented as evidence in" the SPR. The response concludes by stating that Inspector F is "satisfied that all relevant evidence was obtained from [the applicant] and submitted to the Procurator Fiscal" and that, for this reason, the applicant's complaint was not upheld.

Consideration of Complaint 1

The applicant specifically complained that the SPR did not contain any reference to the local authority upholding a complaint against Ms C. The SPR has been provided to the PIRC as part of this review and indeed does not contain any such reference. In order to address the applicant's complaint, it was necessary for Police Scotland to tell her why the SPR did not refer to this matter. As this did not happen, it is considered that this aspect of the response does not contain adequate reasoning.

It is therefore concluded that this complaint was not dealt with to a reasonable standard. It is recommended that Police Scotland now provide the applicant with a further response explaining why the SPR did not refer to the local authority upholding a complaint against Ms C.

Complaint 2: Lack of updates

In her statement, the applicant complained that Constable D “did not keep [her] up to date enough”.

Police Handling of Complaint 2

Inspector F’s response advises that Constable D had “a period of sickness absence” and that records show that the applicant was not updated during this time. Inspector F states that the records show that Constable D’s supervisor had noted an intention to have the applicant updated during Constable D’s absence but this did not happen. The response advises that, as this should have happened but did not, the applicant’s complaint is upheld and that “advice will be provided to the officers involved to ensure they are aware of the importance of keeping victims updated”. The response concludes with an apology “for the standard of service” the applicant received.

Consideration of Complaint 2

The response to this complaint acknowledges that a shortcoming has been identified and the applicant’s complaint has been upheld. The response also advises what action will be taken to prevent this occurring again and provides the applicant with an apology. This is an example of good complaint handling.

For those reasons, it is concluded that this complaint was dealt with to a reasonable standard. No further action is recommended.

Complaint 3: Loss of evidence

In the applicant’s online complaint form, she complained about Police Scotland “losing the six years worth of original paperwork given to [Constable D] when [her] statement was finally taken.”

Police Handling of Complaint 3

Police Scotland did not record or respond to this complaint.

Consideration of Complaint 3

In her communication with the PIRC, the applicant has clarified that much of the paperwork she provided to Police Scotland was information from public bodies which she had obtained through Freedom of Information and Data Protection legislation. The applicant advised the PIRC that this documentation was not returned to her. It is noted that Inspector F’s response to Complaint 1 confirmed that the applicant had “provided officers with a number of copied documents to support the

allegation and concerns”, and that “during the investigation the enquiry officer sought out and seized original documents to present as evidence”.

As Police Scotland did not record or respond to this complaint, it is concluded that the complaint was not dealt with to a reasonable standard. It is recommended that Police Scotland now:

- a) record this allegation as a distinct complaint about the police;
- b) obtain a further statement from the applicant to ascertain exactly which documents she believes were provided to Police Scotland but not returned to her;
- c) conduct enquiries to establish which documents were taken from the applicant and which were returned to her;
- d) confirm whether the documents taken were lodged as productions in line with standard operating procedure;
- e) consider whether any of the documents believed by the applicant to have been lost may have been contained in the file which has been confirmed as lost; and
- f) issue a further response to the applicant to address this complaint, provide a position in respect of each of the above points and explain fully whatever conclusion is reached.

5. Conclusions

Complaint 1: Information missing from SPR

It is concluded that this complaint was not dealt with to a reasonable standard. It is recommended that Police Scotland now provide the applicant with a further response explaining why the SPR did not refer to the local authority upholding a complaint against Ms C.

Complaint 2: Lack of updates

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

Complaint 3: Loss of evidence

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

- a) record this allegation as a distinct complaint about the police;
- b) obtain a further statement from the applicant to ascertain exactly which documents she believes were provided to Police Scotland but not returned to her;
- c) conduct enquiries to establish which documents were taken from the applicant and which were returned to her;
- d) confirm whether the documents taken were lodged as productions in line with standard operating procedure;

- e) consider whether any of the documents believed by the applicant to have been lost may have been contained in the file which has been confirmed as lost; and
- f) issue a further response to the applicant to address this complaint, provide a position in respect of each of the above points and explain fully whatever conclusion is reached.

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