

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 detention and arrest for an alleged breach of the Communications Act 2003.

Three complaints were considered:

1. that officers were hostile to the applicant and defensive of the individual reporting the allegations;
2. that officers did not carry out a proper enquiry and in particular did not seize a computer belonging to the reporter; and
3. that the officers had a conflict of interest as the applicant believes they knew the reporter personally.

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

3. Background

On 6 May 2015 the applicant's cousin, Mr A, reported to Police Scotland that he had received abusive messages from a social media account posted onto his personal channel on a video streaming website. Constables B and C attended at Mr A's home where he showed them the messages and indicated that he believed his cousin, the applicant, may be responsible.

Constables B and C conducted checks on social media sites and Police Scotland information systems to confirm that the messages appeared to originate from the applicant's social media account. Constables B and C thereafter attended at the applicant's home on 19 July 2015 when she was detained for questioning.

The applicant gave a 'no comment' interview and was subsequently arrested for an alleged breach of section 127(1)(a) of the Communications Act 2003 (improper use of a public electronic communications network). The case was reported to the Procurator Fiscal at the end of July 2015, and in August 2016 the applicant was found not guilty of the charge against her.

In October 2016 the applicant sent a letter to Police Scotland complaining that she had been wrongfully arrested and requesting compensation for "malicious" prosecution and false imprisonment, stating that she had been "set up" for a crime that she did not commit.

The applicant's complaints were allocated to Sergeant D, who obtained a statement from the applicant in November 2016 and agreed with her three complaints to be investigated.

A letter dated 6 January 2017 responding to the applicant's complaints was thereafter issued by Chief Inspector E.

4. The Review

Complaint 1: Officers "hostile and defensive"

In her statement dated 5 November 2016 provided to Sergeant D, the applicant complained Constables B and C were "hostile" and "intimidating", made her feel "uneasy", and were "very defensive regarding [Mr A]".

Police Handling of Complaint 1

In her letter to the applicant dated 6 January 2017, Chief Inspector E wrote:

"You explained that when the officers attended at your flat that you found them to be standoffish and their demeanour and the way they held themselves to be hostile. You

further stated that whilst phoning your Lawyer within [the Police Office] [Constable C] was pacing outside the room that you were using and slammed shut a hatch in the room. Whilst being taken from the room after you had been interviewed you stated that both officers laughed at the fact that you had provided a no comment interview. You have confirmed that at no time did either officer shout or swear at you.

Your daughter... was present when the officers spoke to you in your flat and she has stated that she found the presence of the officers to be intimidating but did not find them hostile.

The first Police Officer engaged in your arrest, [Constable B], has provided his account of the incident. He has stated that at no time whilst dealing with you did he act in a hostile or intimidating fashion and dealt with you with respect and dignity. He further states that at no time did he act in a way that was defensive or [Mr A].

The second officer, [Constable C], states that he also acted in a professional manner and treated you with respect and remained neutral throughout the enquiry and in no way favoured [Mr A].

Unfortunately, due to the passage of time between your detention and the making of this complaint, no CCTV footage is available from the Police Office. In this respect your complaint must be considered on the balance of probabilities and other factors, such as credibility, independent evidence and overall circumstances.

In the absence of any evidence in support of your account, on the balance of probabilities I am unable to uphold this aspect of your complaint.”

Consideration of Complaint 1

In order to address this complaint, statements were obtained from Constables B and C, and from the applicant's daughter who was present in the applicant's home at the time of her detention.

The applicant's daughter stated that she did not find the officers to be hostile, however she was intimidated by them and perceived them to be “standoffish”. Constable B denied being “hostile or intimidating” at any time whilst dealing with the applicant and emphasised the requirement for police officers to remain “neutral”. Constable C described his behaviour as “professional” and “neutral” and also denied being defensive of Mr A.

Paragraph 6.8.10 of Police Scotland's standard operating procedure in relation to Complaints About the Police (the “Complaints SOP”) provides that where an officer complained about has not addressed the specific allegations made by the complainer in their statement, it would be prudent of the investigating officer to ask precise questions in order to establish the officer's exact position.

As Chief Inspector E has identified in her letter, the applicant provided examples of the officer's behaviour which she found to be hostile and intimidating, which includes incidents she states occurred whilst she was at the Police Office; yet it does not appear that either officer was asked to give a position on these specific incidents. As a result of this oversight, Chief Inspector E provides no assessment of

whether or not these incidents constituted “*hostile*” and “*intimidating*” behaviour or how these incidents affected the outcome of the applicant’s complaint.

In her original letter of complaint to Police Scotland, the applicant explained that her description of the officers as “*hostile*” and “*defensive*” related to her perception that they had arrived at her home “*with a predetermined outcome to their visit... to take me to their station and charge me*”. In this respect, the applicant’s daughter stated that she perceived the officers had “*already made up their mind that she was guilty and wouldn’t listen to anything she had to say*”.

This aspect of the applicant’s complaint has not been addressed by Chief Inspector E beyond repeating the officer’s rebuttal of the allegation. It is considered that in order to fully address this complaint an explanation of the reason for the attendance of Constables B and C at her home, and thus a rationale for the application’s detention, should have been provided to her.

For the reasons given above, it is concluded that this complaint was not dealt with to a reasonable standard. It is recommended that further accounts be obtained from Constables B and C specifically addressing the behaviour which the applicant stated she found hostile and intimidating. A further response should thereafter be sent to the applicant explaining:

- a) the positions of Constables B and C in respect of the specific behaviour which the applicant referred to in her complaint;
- b) the officers’ intentions in attending at the applicant’s home;
- c) on what basis the applicant was detained and taken to a Police Office; and
- d) whether or not, on the balance of the information gathered, the applicant’s complaint is upheld.

Complaint 2: Insufficient enquiry

In her statement provided to Sergeant D, the applicant complained that “*neither officer carried out a proper investigation*”; specifically, that she believed the officers should have seized Mr A’s computer as evidence. The applicant asserted that had Mr A’s computer been seized “*it would have proven [her innocence]*”, however this did not happen as the applicant believed the officers were friends of Mr A and thus allowed him to “*refuse*” to hand over his computer when they asked to seize it.

The applicant further stated that she did not believe the correct procedure had been followed by Constable C when obtaining evidence from Mr A, specifically his method of retrieving the abusive messages.

Police Handling of Complaint 2

In her letter to the applicant dated 6 January 2017, Chief Inspector E wrote:

“You have stated that you believe that the officers should have seized [Mr A]’s computer and that the passing of emails from [Mr A] to [Constable C]’s Police Scotland email account was not proper police procedure.”

Both Police Officers involved have provided accounts of their enquiry and explanations of their decision-making during their investigation. Both officers have stated that taking into account all the circumstances of the incident, the evidence obtained from other sources and the impact on the complainer of seizing his computer they took the decision that they would not in these circumstances seize it.

Both officers have further outlined the details of the enquiry that they carried out and, in particular, the use of Police Scotland IT systems to obtain evidence, and the result of all these enquiries formed the basis of the circumstances that the officers reported to the Procurator Fiscal.

[Sergeant D] has examined all the evidence, namely statements obtained from yourself and the officers involved. He has also reviewed the Force Standard Operating Procedures in relation to the seizing of productions and the use of Police Scotland email accounts.

The decision to seize productions in this incident rests with the reporting officer and a number of factors must be considered before a production is seized. Inappropriate or unnecessary seizure of productions should, in all cases, be avoided by any reporting officer who should ensure that only essential items are seized.

Police officers are allocated a Police Scotland email address that can be used by officers for business purposes to assist in communication with members of the public and, in particular, complainers.

The officers involved carried out a number of enquiries in relation to this incident, including utilising a number of IT resources at their disposal to obtain evidence. At the conclusion of their enquiry and after you had been detained and interviewed, the circumstances were the subject of a report to the Procurator Fiscal.

[Sergeant D] has found no evidence to suggest that the officers failed to carry out a proper enquiry into this incident and, as such, on the balance of probabilities I am therefore unable to uphold this aspect of your complaint.”

Consideration of Complaint 2

There are two aspects to this complaint: that Mr A's computer was not seized, and that Constable C's method of obtaining copies of the abusive messages allegedly sent by the applicant did not comply with "proper procedure".

Computer not seized

In his statement addressing the allegations, Constable B states that he made a decision not to seize Mr A's computer as he assessed that, due to Mr A's personal circumstances, removing his computer "would not in fact benefit [MrA]'s mental state". Constable C confirms that Constable B made this decision "with my backing".

Paragraph 1.4.1 of Police Scotland's standard operating procedure relating to Productions (the "Productions SOP") warns that inappropriate seizure of productions should be avoided as it unnecessarily increases the workload of all staff involved in the production chain; it also unnecessarily inconveniences the individual whose property has been seized. Paragraph 2.1 of the Productions SOP provides that productions should only be seized when they are evidentially necessary to prove the commission of a crime. As, in the applicant's case, the abusive messages had been posted on an internet site accessible globally, it does not follow that it was evidentially necessary to seize Mr A's computer to prove the commission of a crime.

Chief Inspector E has taken these provisions into account and has also explained to the applicant the rationale of the officer's in making the decision not to seize Mr A's computer. Consequently, it is considered that this aspect of the applicant's allegation has been adequately addressed.

Procedure not followed

Page 15 of the Police Scotland Internet Investigations Manual of Guidance states that:

"Internet data is volatile by its nature and evidence should be captured at the earliest opportunity. The first capture may be done by many ways which may not necessarily be considered best practice. To delay capturing evidence until a recognised 'best practice' method can be used could result in the evidence being lost..."

"Where a member of the public reports an internet related offence they should be instructed to print off or otherwise save the content concerned."

In his statement addressing the allegation, Constable C confirms that because Mr A did not have a printer, he made the decision to forward the messages from Mr A's computer to his Police Scotland email account so he could print these later from the Police Office. It is therefore considered that Chief Inspector E's conclusion is well-reasoned on the basis of the relevant procedures.

Furthermore the paperwork provided by Police Scotland supports that Constable B submitted enquiry forms requesting Communications Data under the Regulation of Investigatory Powers Act 2000 to the relevant department of Police Scotland. Specifically, Constable B submitted a request using the subscriber information relevant to the abusive comments to establish clarity on the times and origin of the messages in order to establish a definitive link between the applicant and the messages. In his statement, Constable B asserts that he was subsequently advised this information could not be provided due to the nature of the websites concerned and thus the circumstances were reported to the Procurator Fiscal on the basis of the information which had been obtained.

The material information available therefore supports Chief Inspector E's assertion that "*a number of enquiries [were carried out] in relation to this incident, including utilising a number of IT resources at their disposal to obtain evidence*".

Consequently, 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 3: Officers knew reporter personally

In her statement provided to Sergeant D, the applicant stated her belief that both Constables B and C knew Mr A personally and were also aware of a complaint she had made about a different police officer in 2010, which caused them to treat her with hostility.

Police Handling of Complaint 3

In her letter to the applicant dated 6 January 2017, Chief Inspector E wrote:

“You have stated that both officers have a personal relationship with [Mr A] and this was evidenced by both officers referring to the complainer by his first name and that [Mr A] emailed documents to [Constable C]’s email account. You further stated that the officers purposely took you out the front door of [the Police Office] so that you would be ‘paraded’ in front of family members of [Mr A].

It is also your belief that the officers had knowledge of a previous complaint against the Police that you made in 2010 after an incident in 2009... and that the officers’ knowledge of your complaint had an impact on how they treated you and handled the investigation. You have stated that a comment made by [Constable B] when he dropped you of [sic] at your home address in relation to the Police having long memories was evidence of both officers’ knowledge of your previous complaint.

[Constable B] has provided an account in relation to this allegation. He has stated that the only occasion he had any dealings with [Mr A] was when he was obtaining information in relation to his complaint. He further states that he has no personal relationship with [Mr A] or any of his family members. In relation to your previous complaint, [Constable B] has stated that he has no knowledge of the incident, the complaint you made or of the police officers involved.

[Constable C] has also confirmed that other than dealing with [Mr A]’s complaint he has never had any dealings with him in any way and does not know him in a personal capacity. He further states that he has no knowledge of the incident that you refer to from 2009 and the complaint you made in 2010 or of any of the officers involved in the incident. At the time of these incidents, [Constable C] had not yet joined the Police.

It is your belief that both Police Officers know [Mr A] in a personal capacity and also had prior knowledge of a complaint against the Police you made in 2010.

[Sergeant D] has examined the statements provided by both officers and has spoken to both officers involved. The first occasion that both officers met [Mr A] was when they attended at his address in relation to his complaint; neither officer has had any dealing with him since and neither knows him in any capacity other than being the complainer in relation to a crime that you were charged with. The email address that [Constable C] provided to [Mr A] was his official Police Scotland email address that can be passed out to members of the public so they can contact officers.

Similarly, neither officer has any knowledge of the complaint against the Police you made in 2010 or of any of the Police Officers involved in the complaint. Neither has ever been stationed in the [division where the incident took place]. Any information or correspondence kept in relation to your complaint will only be accessible to a small number of specialist officers.

As there is no evidence to substantiate your belief that both officers knew [Mr A] in a personal capacity, on the balance of probabilities I cannot uphold this aspect of your complaint.”

Consideration of Complaint 3

In order to address this complaint, statements were obtained from Constables B and C. The positions of both officers have been accurately reflected in Chief Inspector E’s response.

In her application to the PIRC, the applicant referred to the statements submitted to the Procurator Fiscal by Constables B and C in respect of the charge against her as evidence of their “*hostility*” and thus as proof of their personal relationship with Mr A. The content of these statements was not referred to by the applicant when framing this complaint in her original statement to Sergeant D, however these statements have now been examined by the PIRC and do not feature any detail that can be considered as hostile. Specifically in these statements, both officers refer to Mr A and the applicant by their surnames alone, in accordance with Police Scotland’s established statement writing convention.

Paragraph 6.12.6 of the Complaints SOP provides that the determination on whether or not to uphold a complaint should be taken on the balance of probabilities i.e. when taking into all information into account, which is the more probable version of events. In this case, both officers have denied having personal knowledge of Mr A or his family members. Furthermore, the applicant has supplied no persuasive evidence to support her contention that both officers had a personal relationship with Mr A other than that Constables B and C referred to Mr A by his first name and took her to a Police Office near to where the applicant believes Mr A’s family live.

Additionally, Chief Inspector E’s assertion that “*information or correspondence kept in relation to your complaint will only be accessible to a small number of specialist officers*” correctly reflects Police Scotland’s complaint recording systems. It is therefore unlikely that either officer would have been aware of the applicant’s complaint history. Although a comprehensive enquiry into this complaint would have established whether or not Constable B did make the comment referred to by the applicant, it is not considered that this omission affects the balance of probabilities as it does not necessarily follow that, even had the alleged comment been made, it directly referred to the applicant’s previous complaint about the Police.

On the basis of the forgoing, it is considered that Chief Inspector E’s conclusion not to uphold the applicant’s complaint is justified on the basis of the material information available and Chief Inspector E has provided a sufficient explanation of this rationale in her response. Consequently, 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: Officers “hostile and defensive”

It is concluded that this complaint was not dealt with to a reasonable standard. It is recommended that further accounts be obtained from Constables B and C specifically addressing the behaviour which the applicant stated she found hostile and intimidating. A further response should thereafter be sent to the applicant explaining:

- a) the positions of Constables B and C in respect of the specific behaviour which the applicant referred to in her complaint;
- b) the officers’ intentions in attending at the applicant’s home;
- c) on what basis the applicant was detained and taken to a Police Office; and
- d) whether or not, on the balance of the information gathered, the applicant’s complaint is upheld.

Complaints 2 & 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.

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