

Report of a Complaint Handling Review in relation to Police Scotland

Index

- 1. Role of the PIRC**
- 2. Key findings**
- 3. Background**
- 4. The Review**
- 5. Conclusions**

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 denied a Taxi Driver’s Licence.

Four complaints were considered:

1. that Police Scotland offered advice to a potential employer of the applicant’s on the basis of intelligence which had not been investigated;
2. that the applicant had no opportunity to challenge the accuracy of the intelligence held;
3. that no procedure or guidance was available to officers of Police Scotland to enable them to make consistent and fair decisions; and

4. that Police Scotland's expression of this opinion, without the applicant being allowed to know the substance of the intelligence, was a violation of the applicant's human rights.

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

3. Background

In March 2014 the applicant made an application to his local council for a Taxi Driver's Licence. The applicant's licence application was subsequently rejected on the basis of an objection made by Police Scotland.

In February 2015 the applicant's Member of Parliament, Mr A, wrote to the then Chief Constable of Police Scotland on the applicant's behalf, expressing the applicant's frustration at having been unable to find out the source of the information which resulted in Police Scotland's objection to his licence application. The Chief Constable responded to this correspondence in April 2015.

Between April 2015 and July 2016, Mr A exchanged numerous further pieces of correspondence with either the Chief Constable or Deputy Chief Constable of Police Scotland. These letters concerned both the procedures Police Scotland followed when conducting background checks in relation to licensing applications and the options available to the applicant to contest the Licensing Authority's decision.

In August 2016 Mr A submitted a formal complaint to Police Scotland with four concerns which he asserted had not been addressed by the previous correspondence.

Temporary Superintendent B thereafter responded to the applicant's complaints in a letter dated 1 December 2016.

4. The Review

Complaint 1: Intelligence not investigated

In Mr A's letter dated 18 August 2016, he complained that Police Scotland issued advice to "*potential employers*", regarding a person's potential risk, on the basis of intelligence information which had not been investigated. Mr A asserted that such advice could have "*a serious and detrimental impact on the person's employment prospects*".

Police Handling of Complaint 1

In his letter to the applicant's representative dated 1 December 2016, Temporary Superintendent B wrote:

“[The applicant] made an application for a Taxi Drivers Licence to [the local council]. The Police Service of Scotland (hereafter referred to as Police Scotland) made an objection to the application which was upheld by the members of the Licensing Committee.

The information in this case was on the Scottish Intelligence Database which is not routinely investigated as sources of intelligence are firewalled to protect their identity. The intelligence in this instance was general and not victim specific. Intelligence is assessed, researched and graded with further action taken as appropriate.

If a licence application is refused by a Licensing Committee and the applicant believes the decision to be wrong, and that it will have a serious and detrimental impact on the person’s employment prospects, then the applicant has a right of appeal as laid out at Schedule 1 of the Civic Government (Scotland) Act 1982 (“the 1982 Act”).

In this case there was therefore no advice issued to an employer as you state, but merely information provided to [the local council] to assist them in coming to a determination over [the applicant’s] application for a licence. I can therefore not uphold this particular allegation.”

Consideration of Complaint 1

The crux of the applicant’s complaint is that intelligence received by Police Scotland is not – and thus was not, in the applicant’s case – investigated to establish its accuracy.

Mr A put forward the applicant’s position that the intelligence held by Police Scotland was false and was provided maliciously, yet was used by Police Scotland to form the basis of an objection which damaged the applicant’s employment prospects.

Temporary Superintendent B states that, in the applicant’s case, the information used to object to the application for a Taxi Driver’s License was held on the Scottish Intelligence Database (SID), a Scottish Police intelligence database.

Procedures for the recording, use and sharing of intelligence held on SID are found in the Police Scotland guidance document on the SID Rules, Conventions and Data Input Standards (the “SID Rules”), which references the Association of Chief Police Officers in Scotland (ACPOS)’s Manual of Standards for the Recording and Dissemination of Intelligence Material (the “ACPOS Manual”) and the ACPOS Management of Police Information Guide (MOPI).

These documents provide that the origin of any intelligence must be appropriately explained prior to recording. The intelligence must also be graded in accordance with the ‘5x5x5’ system, which ensures adherence to the Data Protection Act 1998 and the European Convention on Human Rights in relation to intelligence records on persons.

The ‘5x5x5’ system is used by UK police forces to evaluate: the reliability of the source or person providing the intelligence, the accuracy of intelligence itself; and its potential to be disclosed or shared with other agencies or in court.

Prior to being recorded into SID, intelligence submitted by police officers and staff must be assessed by an intelligence officer, who should examine it to determine whether it meets the standard grounds for recording into the system. If it does not meet the standard grounds it should be deleted. If it passes this test, the intelligence officer should examine the '5x5x5' grading given by the submitting officer and make any necessary changes to the grading, dependent on their assessment of the appropriateness of the assigned grades.

The "raw" intelligence report is then "sanitised" by the intelligence officer. This process removes the identity or any other identifying information about either the person providing the intelligence or the source of the information. The information can then be exposed more widely across the police service or shared with others.

Summarised, the grades describing the reliability of the intelligence provider are:

- A - Always Reliable
- B – Mostly Reliable
- C – Sometimes Reliable
- D – Unreliable
- E – Untested Source – reliability cannot be judged

In the applicant's case, Police Scotland's letter to the local authority dated 9 April 2014 from Acting Inspector C explains that the "*the source of the single piece of intelligence... is graded at E level on the Scottish Intelligence Database grading system, which means that the source of the intelligence is untested*".

The ACPOS Manual provides at paragraph 3.31 that sources graded at E level are not necessarily unreliable but should be treated with caution, **and corroboration of the information should be sought**.

As part of its review, the PIRC sought and were provided with an Incident History Report by Police Scotland. This report outlines an allegation made against the applicant. This report further details enquiry undertaken by Police Scotland to establish if the allegation could be proved or otherwise. The report concluded that the allegation could not be proved and no corroboration of the allegation was obtained. In this respect, the report contains the statement "*there was no evidence of...*". The report concludes that a SID entry, recording the matter, be created on the basis that corroborating information may come to light in the future.

It is acknowledged that Police Scotland creating and storing such information on SID, with an appropriate weed date, is in accordance with general policing principles. This is because there exists the potential that a further allegation or information may be received which provides some substance or support to the initial allegation. Many items of untested intelligence are received by the police; however it does not follow that all untested intelligence is false or erroneous: merely that they cannot, at that time, be substantiated. SID allows the police to store that intelligence, in the eventuality that information providing a firmer basis for action comes to light at a later date. However there is an

inherent danger in acting upon a single uncorroborated and unsubstantiated item of intelligence, especially where corroboration has been actively sought unsuccessfully.

It appears, from the PIRC's examination of the material information available in this case, that Police Scotland gave the Local Authority a single item of untested intelligence, with no corroboration or support of that information ever found by Police Scotland, from a source whose reliability could not be judged. The consequence of this action was that the Local Authority refused the applicant a Taxi Driver's License, thereby having a significant impact on his employment opportunities.

Temporary Superintendent B has explained to the applicant that "*intelligence is assessed, researched and graded with further action taken as appropriate*". Temporary Superintendent B has also stated that information on SID "*is not routinely investigated as sources of intelligence are firewalled to protect their identity*". It is considered that this response to the applicant is deficient because Temporary Superintendent B has failed to provide a sufficiently detailed explanation of Police Scotland's system for assessing the reliability and quality of the intelligence. Temporary Superintendent B has also not confirmed to the applicant whether or not this system was adhered to his case. It is clear from examination, that the information contained in the Incident History Report was investigated and, therefore the statement by Temporary Superintendent B is not accurate.

Taking this into account, it is considered that in order to resolve the applicant's complaint an assessment should have been made as to whether it was then suitable for this uncorroborated and untested intelligence to be shared with any outside agency, in this case the Local Authority.

In addition, Temporary Superintendent B has not explained, to the satisfaction of the applicant, the need for Police Scotland to take the action that it did, i.e. sharing an single item of uncorroborated information from a person whose reliability could not be judged, which had a significant impact on the applicant's employment opportunities. Temporary Superintendent B has also not outlined what, exactly, are Police Scotland procedures in this area.

For these reasons, it is concluded that this complaint was not handled to a reasonable standard. A reconsideration direction is given to Police Scotland under section 35(7) of the Act.

In terms of section 37(1) of the Act, Police Scotland must now appoint a person to reconsider this complaint. The person appointed must not have had any previous involvement in the consideration of the complaint. Police Scotland must also adhere to the obligations set out in sections 38 and 40 of the Act, as appropriate. The reconsideration is not subject to the PIRC's supervision.

In reconsidering the complaint, Police Scotland should assess whether or not they are satisfied that the intelligence later used to provide an opinion to the Licensing Authority in respect of the applicant's licensing application was appropriately: a) evaluated; b) recorded; and c) shared in light of the information contained in the Incident History Report on which the SID log was based.

A further response should thereafter be sent to the applicant, via Mr A as his representative, explaining the matters outlined above and the outcome of this assessment.

Complaint 2: No opportunity to challenge intelligence

In his letter dated 18 August 2016, Mr A complained that the person about whom an opinion was rendered – in this case, the applicant – had no real ability to respond to or challenge the intelligence held by Police Scotland. This is because that person would not be aware that intelligence was held about them until the intelligence was shared with another authority.

Police Handling of Complaint 2

In his letter dated 1 December 2016, Temporary Superintendent B wrote:

“The process of a hearing to a Licensing Committee allows any applicant to respond in person, or via their representative, to any objections raised, whereby the applicant will have the opportunity to ask the persons who submitted the objection relevant questions.

If Police Scotland are basing an objection on intelligence, they may ONLY base that objection on the intelligence which is presented to the Licensing Committee, a copy of which is presented to the applicant prior to the Committee meeting. Should Police Scotland be in possession of intelligence which is not relevant, or the content of which may not, for operational or any other reason, be presented to the Committee, then that intelligence will not be presented to the Licensing Committee and will therefore not form part of an objection. In this particular case Police Scotland submitted a written objection based on intelligence contained within the Scottish Intelligence Database. The intelligence was detailed on the letter, therefore I consider that the applicant had ample opportunity to challenge the objection made in front of the committee. It is for this reason I have not upheld this allegation.

Furthermore “may not know they are on the police intelligence base until a view or an opinion is expressed to a potential employer or licensing authority”, at no point has a potential employer been contacted. Regarding the fact that someone does not know their details are held on an intelligence database, it would be utterly remiss of Police Scotland to approach the subject of intelligence and inform them of the fact that intelligence is held in relation to them. This is for a myriad of reasons, such as, but not limited to, putting a source of intelligence at risk, putting police operations at risk or divulging tactics. Police Scotland have duties in relation to the prevention and detection of crime along with the apprehension and prosecution of offenders that would simply make it inconceivable for Police Scotland to approach an individual who they hold intelligence on and pro-actively inform them of such.”

Consideration of Complaint 2

The crux of the applicant’s complaint is that, without knowing the source of any intelligence or the circumstances from which it arose, those individuals about whom intelligence is held have no way of challenging the authenticity of the information held about them, until that intelligence is used to their detriment, such as in the applicant’s case.

The SID Rules document describes that intelligence should be recorded when it is believed that the recording and dissemination of the material would be of value in, amongst other areas, the prevention and detection of crime and for the maintenance of community safety. In his response to the applicant, Temporary Superintendent B correctly identified that it would be a violation of Police Scotland's duties and obligations in these areas – as well as contrary to the relevant Police Scotland guidance documents and standard operating procedures – to pro-actively disclose the nature of any intelligence reported to its subject.

Additionally – as explained in the SID Rules document – the police have a duty of care: to protect the identifies of persons supplying information and intelligence; and to take steps to ensure that careless processing, disclosure or misuse of information does not compromise the source's safety.

Temporary Superintendent B has also explained to the applicant that only intelligence which could be shared with the relevant individual would be shared with the Licensing Authority; any information which could not be divulged to the individual would not be shared. The applicant was told of the nature of the information which led to his licence application being rejected. The applicant was thus made aware of the information held about him and was provided with the opportunity to challenge Police Scotland's objection, as far as the relevant procedures and legislation allow.

It is considered that Temporary Superintendent B provided a sufficient explanation as to why it is not appropriate for those subject to intelligence to be pro-actively informed of the nature of that intelligence in order that they may challenge it. Temporary Superintendent B has therefore demonstrated that his decision not to uphold the applicant's complaint is well-reasoned on the basis of Police Scotland's procedures and legal obligations.

For these reasons, it is concluded that this complaint was handled to a reasonable standard. No further action is required of Police Scotland in this connection.

Complaint 3: No guidance available

In his letter dated 18 August 2016, Mr A complained that "*there would appear to be no procedure or guidance for officers who exercise this power which would enable them to make consistent and fair decisions*", which Mr A asserted was "*unfair on everyone involved, including police officers*" because it resulted in officers having to "*make difficult decisions about the probability of risk to the public as well as what may seriously damage the future of a person*" based on intelligence which may not be accurate.

Police Handling of Complaint 3

In his letter dated 1 December 2016, Temporary Superintendent B wrote:

"The process in relation to all applications for the grant or renewal of a civic licence is laid out at Schedule 1 of the Civic Government (Scotland) Act 1982. Civic Licensing is managed by local authorities, however it is an important part of Police Scotland's business and we have a crucial role to play as statutory consultees.

Any person can make an objection or representation to the licensing authority relating to an application for the grant or renewal of a licence, including the Chief Constable.

As part of Police Scotland's Standard Operating Procedure, on receipt of a licence application officers dealing with such an enquiry should interrogate local Command and Control systems and crime recording systems in order to establish the suitability or otherwise of the applicant to hold a licence. Checks will be carried out on Police Systems, including, but not limited to, Police National Computer, Criminal History Scotland and the Scottish Intelligence Database as these background checks will dictate whether the applicant is "Fit and proper".

All information held on the Scottish Intelligence Database, which operational officers have access to, has been sanitised by accredited staff. The intelligence held must be accurate, relevant, proportionate and necessary.

As can be seen there is undoubtedly a process and guidance for Police officers as to how to proceed with Civic Licensing enquiries. From the process I have previously described, and as laid down in statute, it is the Licensing Committee who make the decision.

To summarise, an application for a civic licence is made to the Local Authority as detailed in Schedule 1 of the Civic Government (Scotland) Act 1982. As statutory consultees the application is submitted to Police Scotland who carry out enquiry, checking many databases one of which is the Scottish Intelligence Database. Should information come to light that causes Police Scotland to believe the applicant is not a "Fit and proper person" then police Scotland have a statutory right to submit an objection, as does any other person.

If an objection is submitted, a meeting of the Licensing Committee will take place prior to which the applicant will be issued with a copy of the Police objection in full, members of the Licensing Committee will also be provided an identical copy of the objection. At the Licensing Committee hearing the applicant will be given the opportunity to put their case forward, the person who submitted the objection will then put their case forward and the applicant will be given the opportunity to ask questions of the objector, Committee members will be given the opportunity to question either party, thereafter both the applicant and the objector will be given the opportunity to sum up. The Committee may then debate and come to their decision.

If an applicant is dissatisfied with the decision of the Licensing Committee then they have a right of appeal under the 1982 act.

As can be seen Police Scotland have acted lawfully, proportionately and in accordance with operating procedures, for these reasons I cannot uphold this allegation.

From the outcome of the Licensing Committee hearing it is the committee members who came to the decision not to grant the licence following the process where [the applicant] had every opportunity to respond to the objection made.

The process by which Police Scotland deals with licensing applications has been developed and enhanced over the last few years. In particular [Sergeant D]... provides

advice and guidance to all officers in [the policing division] on licensing matters. If you wish to discuss these matters further I would be willing to assist in arranging a face to face meeting between [Sergeant D] and either yourself or [the applicant].”

Consideration of Complaint 3

As discussed above, there are a number of relevant Police Scotland and ACPOS guidance documents in relation to the recording and management of intelligence. Additionally, Police Scotland’s role in granting licences, governed by the Civic Licensing (Scotland) Act 1982, is described in their standard operating procedure in relation to Civic Licensing Law (the “Civic Licensing SOP”).

Paragraph 5.6 of the Civic Licensing SOP provides when receiving a licensing application from the Local Authority, officers “*should interrogate local... systems, in order to establish the suitability or otherwise of the applicant and premises to hold a licence*”. Paragraph 5.10 provides that:

“If any areas of concern are uncovered, a letter of objection or representation will be drafted... including full details of those grounds and all evidence supporting the police case. This will be passed to the Area Commander for discussion and a decision as to whether to proceed with the objection or representation.”

Paragraph 1.18 of the ACPOS Manual further provides that “*a duty of care may lie on law enforcement officers in relation to the management of intelligence... [this] requires an assessment to be conducted and recorded, in respect of the risks associated with the use of, or failure to use, intelligence.*”

As Temporary Superintendent B has asserted “*there is undoubtedly a process and guidance for Police officers as to how to proceed with Civic Licensing enquiries*”. Temporary Superintendent B has also provided the applicant with the opportunity to discuss the matter further with an experienced officer in the field. This is considered to be good complaint handling.

However in his application to the PIRC Mr A expressed, on the applicant’s behalf, that his dissatisfaction with the response received from Police Scotland rested on the fact that the response purely addressed the procedures followed by Police Scotland, and did not address the complaint from the perspective of “*an individual officer*”.

It is unclear if the applicant expected either the precise circumstances of his own case to be considered when addressing this complaint – i.e. by questioning the officers who decided to raise an objection with the licensing authority; or whether he is dissatisfied that the individual officers’ positions have not been taken into account when the ramifications of the process itself were considered – i.e. by examining the guidance available, designed to assist officers to proportionately assess “*the risks associated with the use of, or failure to use*” intelligence when processing licensing applications.

It is notable that, in this case, the officers who checked the intelligence system and decided to register an objection with the Licensing Authority were not asked to explain their rationale for such an assessment. This is despite one officer – Temporary Chief Inspector E – notifying the Professional

Standards Department that he had made the disclosure to the Licensing Authority and as such was the subject of the applicant's complaint.

Furthermore, as discussed above, the intelligence shared with the Licensing Authority on the applicant's case was graded as "E", meaning "*untested*". Although the Licensing Authority was informed of this definition, it does not appear from the correspondence sent to the Licensing Authority by Acting Inspector C that any further explanation of the implications of this grading were provided to the authority, e.g. that such intelligence should be "*treated with caution*". This is especially relevant as the Incident History Report makes it clear that the allegation could not be proved, no corroboration was obtained and further contains the statement "*there was no evidence of...*" However this information was not provided to the Local Authority.

It is considered that to fully address the applicant's concerns, the officers who decided to raise an objection, in accordance with the provisions of the Civic Licensing SOP, should have been asked to account for their decision-making, with particular reference to any guidance they used to inform their decision. As this was not done, it is considered that the enquiry conducted into this complaint was insufficient. As a result Temporary Superintendent B has not addressed the full extent of the applicant's concerns.

For these reasons it is concluded that this complaint was not handled to a reasonable standard. A reconsideration direction is given to Police Scotland under section 35(7) of the Act.

In terms of section 37(1) of the Act, Police Scotland must now appoint a person to reconsider this complaint. The person appointed must not have had any previous involvement in the consideration of the complaint. Police Scotland must also adhere to the obligations set out in sections 38 and 40 of the Act, as appropriate. The reconsideration is not subject to the PIRC's supervision.

In reconsidering the complaint, Police Scotland should obtain accounts from Temporary Chief Inspector E and Acting Inspector C. When providing these accounts, Temporary Chief Inspector E and Acting Inspector C should be asked to explain: what factors they took into account when deciding to register an objection with the Licensing Authority on the basis of the intelligence held; and what specific guidance or legislation they referred to when making this assessment.

A further response should thereafter be sent to the applicant, via Mr A as his representative. The response should explain the outcome of these enquiries and further explain if, on the basis of this information, the applicant's complaint that there is "*no procedure or guidance for officers*" to assist them to make "*difficult decisions about the probability of risk to the public*" is upheld.

Complaint 4: Human rights violated

In his letter dated 18 August 2016, Mr A complained that "*expressing formal opinions of this type... without the person who is the subject of the opinion being allowed to even know what they are being accused of is... a clear violation of basic human rights*".

Police Handling of Complaint 4

In his letter dated 1 December 2016, Temporary Superintendent B wrote:

“Human rights is a vast area of legislation and it would help if you had provided further details of which part of [the applicant’s] human rights he suggests are being violated. However, if I could suggest that you are referring to Human Rights Act 1998, Article 6 – Right to a fair trial, then I would again bring your attention to the fact that the information presented to the Licensing Committee was, as you previously stated in your letter of 20 February 2015, “Police Scotland operates the Scottish Intelligence Database (SID) which contains information and intelligence which indicates that the applicant... has an unhealthy interest in young females and may be attempting to groom them”.

No details were given to the Licensing Committee which had been hidden, redacted or withheld from the applicant... as such both parties were privy to exactly the same information. This was the basis for the Police objection that [the applicant] was not a “Fit and proper person” to hold a taxi drivers licence. I am sure you would agree that police Scotland would be failing in its duty to keep people safe were it to hold information to the effect that someone applying for a Taxi Drivers Licence had an unhealthy interest in young females and may be attempting to groom them, and not object to the application.”

Consideration of Complaint 4

As explained in the consideration of Complaint 2 (above), regulations for Police Scotland’s recording of intelligence are provided in a variety of procedural guides and policy documents. These documents do take the provisions of the Scotland Act 1998 (incorporating most of the European Convention on Human Rights into Scottish legislation) into account. Specifically, the right of an individual to privacy and a fair trial is to be proportionately balanced with the policing purpose for which intelligence is gathered and recorded.

Temporary Superintendent B has explained to the applicant that he considers Police Scotland would have been “*failing in its duty to keep people safe*” had it not objected to the applicant’s licence application on the basis of the intelligence held. The implication here is that an assessment of “*the risks associated with the use of, or failure to use*” this intelligence was carried out, with the outcome that the risks of not sharing the information with the Licensing Authority was considered to be greater than the infringement on the applicant’s rights.

However as discussed in the consideration of Complaint 3 (above), Police Scotland conducted no enquiry with the relevant officers who made the decision to raise an objection, either to account for their decision-making and to explain the guidance they used to inform their decision. This is particularly relevant when talking into account – as discussed above – the grading of the intelligence. As a result, Temporary Superintendent B’s response – which is seemingly based on the assumption that a full proportionality assessment was carried out – cannot be considered to be based on the material information available.

For the reasons given above, it is concluded that this complaint was not dealt with to a reasonable standard.

As it is considered that the applicant's concerns regarding this particular complaint will be adequately addressed by the enquiry conducted in respect of Complaint 3 (above), it is not considered necessary to make a further specific recommendation in relation this complaint.

More generally, it appears that Police Scotland shared intelligence – the reliability of which is questionable at best and which the applicant alleges was false and given to the police maliciously to harm his interests – with a Local Authority. Police Scotland found no supporting information to prove, disprove or corroborate that information.

Police Scotland should therefore take action to improve and tighten its procedures in instances like these. It is not sufficient to place the onus of deciding what cognisance should be taken of police intelligence on the agency – in this case the Local Authority – receiving that information. This is because it is likely that any Local Authority will treat information provided by the police as accurate, despite attempts by the police to qualify that information.

Sharing a single item of information or intelligence – especially where its accuracy cannot be established and, indeed, enquiry concluded that the allegation could not be proved, corroboration or supporting evidence obtained– may, as described, have a significant impact on a person's livelihood and Human Rights.

In instances where Police Scotland have recorded intelligence, however the source's reliability cannot be judged, then they must ensure that they obtain corroboration or support of this information *before* taking further action, e.g. sharing this intelligence with an outside agency. Where such support cannot be found, yet Police Scotland assess the risk of *not* sharing the information to be greater than the risk of sharing potentially false information, then the specific rationale for this decision must also be accurately recorded and clearly explained to the outside agency receiving the information.

This is an organizational learning point for Police Scotland.

5. Conclusions

Complaint 1: Intelligence not investigated

It is concluded that this complaint was not dealt with to a reasonable standard. A reconsideration direction is given to Police Scotland under section 35(7) of the Act.

In terms of section 37(1) of the Act, Police Scotland must now appoint a person to reconsider this complaint. The person appointed must not have had any previous involvement in the consideration of the complaint. Police Scotland must also adhere to the obligations set out in sections 38 and 40 of the Act, as appropriate. The reconsideration is not subject to the PIRC's supervision.

In reconsidering the complaint, Police Scotland should assess whether or not they are satisfied that the intelligence later used to provide an opinion to the Licensing Authority in respect of the applicant's licensing application was appropriately: a) evaluated; b) recorded; and c) shared in light of the information contained in the Incident History Report on which the SID log was based.

A further response should thereafter be sent to the applicant, via Mr A as his representative, explaining the matters outlined above and the outcome of this assessment.

Complaint 2: No opportunity to challenge intelligence

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: No guidance available

It is concluded that this complaint was not dealt with to a reasonable standard. A reconsideration direction is given to Police Scotland under section 35(7) of the Act.

In terms of section 37(1) of the Act, Police Scotland must now appoint a person to reconsider this complaint. The person appointed must not have had any previous involvement in the consideration of the complaint. Police Scotland must also adhere to the obligations set out in sections 38 and 40 of the Act, as appropriate. The reconsideration is not subject to the PIRC's supervision.

In reconsidering the complaint, Police Scotland should obtain accounts from Temporary Chief Inspector E and Acting Inspector C. When providing these accounts, Temporary Chief Inspector E and Acting Inspector C should be asked to explain: what factors they took into account when deciding to register an objection with the Licensing Authority on the basis of the intelligence held; and what specific guidance or legislation they referred to when making this assessment.

A further response should thereafter be sent to the applicant, via Mr A as his representative. The response should explain the outcome of these enquiries and further explain if, on the basis of this information, the applicant's complaint that there is "no procedure or guidance for officers" to assist them to make "difficult decisions about the probability of risk to the public" is upheld.

Complaint 4: Human rights violated

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

As it is considered that the applicant's concerns regarding this particular complaint will be adequately addressed by the enquiry conducted in respect of Complaint 3 (above), it is not considered necessary to make a further specific recommendation in relation this complaint.

Learning Point

As described above, it appears that Police Scotland shared intelligence – the reliability of which is questionable at best and which the applicant alleges was false and given to the police maliciously to harm his interests – with a Local Authority. Police Scotland found no supporting information to prove, disprove or corroborate that information.

Police Scotland should therefore take action to improve and tighten its procedures in instances like these. It is not sufficient to place the onus of deciding what cognisance should be taken of police intelligence on the agency – in this case the Local Authority – receiving that information. This is because it is likely that any Local Authority will treat information provided by the police as accurate, despite attempts by the police to qualify that information.

Sharing a single item of information or intelligence – especially where its accuracy cannot be established and, indeed, enquiry concluded that the allegation could not be proved, corroboration or supporting evidence obtained– may, as described, have a significant impact on a person's livelihood and Human Rights.

In instances where Police Scotland have recorded intelligence, however the source's reliability cannot be judged, then they must ensure that they obtain corroboration or support of this information *before* taking further action, e.g. sharing this intelligence with an outside agency. Where such support cannot be found, yet Police Scotland assess the risk of *not* sharing the information to be greater than the risk of sharing potentially false information, then the specific rationale for this decision must also be accurately recorded and clearly explained to the outside agency receiving the information.

This is an organizational learning point for Police Scotland.

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