

Report of a Complaint Handling Review in relation to the Scottish Police Authority

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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

Complaints about “senior officers” of Police Scotland, namely those who are ranked assistant chief constable, deputy chief constable or chief constable, are dealt with by the Scottish Police Authority (SPA) rather than Police Scotland. The complaints in this case arose from correspondence sent by the applicant to senior officers of Police Scotland.

The SPA’s handling of the following complaints was reviewed by the PIRC:

1. that the Deputy Chief Constable (“the DCC”) was negligent in passing a letter in which the applicant raised concerns about a particular department to the same department to deal with;

2. that the DCC was negligent in dismissing the applicant's claims and not dealing with the points raised in his letter about the department; and
3. that the Chief Constable was negligent in passing the applicant's letter of complaint about the DCC to the DCC to deal with.

The review found that one complaint was handled by the SPA to a reasonable standard while the remaining two complaints were not. The SPA was directed to reconsider those two complaints.

3. Background

On 10 November 2015, the applicant sent a letter to the DCC in which he raised various concerns about officers of Police Scotland's Professional Standards Department (PSD) in a particular locality. The DCC passed the applicant's letter to Superintendent A, the officer in charge of the PSD in that locality, and on 1 December 2015 he responded to the applicant's letter to the DCC.

On 29 February 2016, the applicant sent a letter to the Chief Constable complaining about the DCC's decision to pass his letter to the very department that he had raised concerns about. On 4 March 2016, Inspector B of the Chief Constable's secretariat wrote to the applicant advising that his letter of complaint to the Chief Constable had been passed to the DCC. On 14 March 2016, the applicant was sent a letter by Chief Superintendent C, the head of the PSD nationally, in response to the applicant's letter to the Chief Constable.

On 16 March 2016, the applicant wrote to the SPA outlining his complaints about the DCC and the Chief Constable. On 17 August 2016, the applicant's complaints were decided upon by the SPA's Complaints & Conduct Committee ("the Committee"). On 31 August 2016, the SPA sent the applicant a written response to his complaints.

4. The Review

Complaint 1: DCC passed letter to same department

The applicant complained that the DCC had neglected his duty by deciding "to simply forward on a copy" of the letter to "the exact same people" whom the applicant had raised concerns about.

SPA Handling of Complaint 1

In its letter of 31 August 2016, the SPA responded to this complaint as follows (emphasis in original):

*"I would advise that, after careful consideration of the complaint, the Committee decided in terms of Regulation 8(2) that the conduct which is the subject matter of the misconduct allegation would amount to **neither** misconduct nor gross misconduct. Furthermore, the Committee determined in terms of Regulation 8(3) to **take no action**. Therefore complaint 1 about [the DCC] was not upheld.*

However, members identified a point of Organisational Learning for Police Scotland in that if a complaint is made about a particular team then that complaint should not be referred to the same team to deal”.

Consideration of Complaint 1

Under regulation 8 of the Police Service of Scotland (Conduct) (Senior Officers) Regulations 2013 (“the Regulations”), when a misconduct allegation against a senior officer comes to the attention of the SPA, the SPA must assess whether the allegation would, if proved, amount to misconduct (i.e. a breach of the standards of professional behaviour), gross misconduct (i.e. a breach of the standards of professional behaviour serious enough to justify dismissal) or neither.

Under sections 34 and 41 of the 2006 Act, and section 60 of the Police and Fire Reform (Scotland) Act 2012, the SPA also has a statutory obligation to deal with complaints about the acts or omissions of senior police officers.

In keeping with the provisions of the legislation and the Regulations, page 5 of the SPA’s complaint handling procedures, dated January 2016 (“the Procedures”), confirms that the SPA is responsible for recording, processing and investigating complaints about senior police officers. In addition, page 7 of the Procedures points out that “complaints may or may not include allegations of misconduct”, reflecting accurately the fact that not all complaints about the police are necessarily misconduct allegations.

The Procedures also confirm throughout that the SPA will follow the six-stage complaint handling process, which is detailed in the PIRC’s Statutory Guidance and is followed also by Police Scotland. Specifically, the Procedures state the following:

“When assessing evidence and reaching conclusions that will inform recommendations/decisions, all conclusions must be clearly explained within the case file” (page 14);

“The final letter of response should... Be based on the facts established by the complaint officer... Explain how the facts were used to inform the conclusions reached... Contain a summary of the enquiries carried out in respect of each complaint” (pages 19 to 20);

and

“If a complaint has been dealt with and a decision is taken to either proceed or not proceed with misconduct proceedings, the complainer should be notified of the outcome and of the reasons for the outcome being reached” (page 20).

It is considered that the above requirements have not been met in the SPA’s handling of this complaint. Neither the file provided to the PIRC nor the response issued to the applicant contains any reasoning as to why the Committee decided that the allegation would not, if proved, amount to misconduct. Furthermore, the response contains no explanation of what enquiries were carried out, what facts were established, or how these facts led to the complaint not being upheld. Accordingly, it is considered that the enquiry into the complaint was insufficient and the response inadequately reasoned.

Furthermore, the Procedures state the following at page 17 in respect of determining complaints:

“Whilst SPA staff must have regard to the standard of professional behaviour demonstrated by officers and staff, misconduct is not relevant if the complaint is about a person who is no longer a serving senior police officer, member of staff or Board Member. Notwithstanding that a person may no longer be part of Police Scotland or SPA and subject to the misconduct, each complaint will be considered and a determination made to whether the complaint is upheld or not”.

As the DCC had retired from Police Scotland a number of weeks prior to the Committee determining the applicant’s complaints, it is wholly unclear as to why the SPA deemed it appropriate to carry out a misconduct assessment under the Regulations.

In relation to the Committee’s identification of “a point of Organisational Learning for Police Scotland in that if a complaint is made about a particular team then that complaint should not be referred to the same team to deal”, the PIRC sought clarification from the SPA regarding its exact position in this connection. In an e-mail dated 29 March 2017, Mr D of the SPA advised the PIRC that:

“The learning point identified by the Committee arose from the particular circumstances of this case and was not intended to be of general application; it was based on the belief that the complaint had been made against a particular team (i.e. [the PSD office in question]). The Committee considered in these circumstances that the complaint should have been passed to one of the other PSD offices rather than [the PSD office in question]”.

The basis of the applicant’s complaint is that a letter in which he raised concerns about the local PSD was passed to that office to deal with. Given the SPA’s view that the letter should in fact have been passed to another office, it is very difficult to understand why the applicant’s complaint was not upheld.

For the various reasons given above, it is concluded that this complaint was not handled to a reasonable standard. Under section 35(7) of the 2006 Act, a reconsideration direction is issued to the SPA. The reconsideration is not subject to the PIRC’s supervision.

In terms of section 37(1) of the Act, the SPA 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. The SPA must also adhere to the obligations set out in sections 38 and 40 of the Act, as appropriate. This includes the submission of a report to the PIRC upon completion of the reconsideration.

The SPA should reconsider the complaint with direct reference to the observations made above and in cognisance of the Learning Point detailed at the end of this report. The SPA should then send a fresh response to the applicant which addresses those observations and fully explains the outcome of the reconsideration. An apology should be given to the applicant for any shortcomings identified.

Complaint 2: DCC did not deal with concerns

The applicant complained that the DCC had neglected his duty by dismissing the applicant's claims and not dealing with the points raised in his letter about the PSD.

SPA Handling of Complaint 2

In its letter, the SPA responded to this complaint as follows (emphasis in original):

*"I would advise that, after careful consideration of the complaint, the Committee decided in terms of Regulation 8(2) of The Police Service of Scotland (Senior Officers) (Conduct) Regulations 2013 that the conduct which is the subject matter of the misconduct allegation would amount to **neither** misconduct nor gross misconduct. Furthermore, the Committee determined in terms of Regulation 8(3) to **take no action**. Therefore complaint 2 about [the DCC] was not upheld.*

In reaching this decision, Members were aware that [the DCC] had no role in the day to day investigations that occur within PSD and any complaints addressed to [the DCC] were delegated to the relevant PSD Units. In your case [the DCC] delegated the letter to [Superintendent A], complying with Section 7.1.2 of The Police Service of Scotland (Conduct) Regulations 2014 Standard Operating Procedure (SOP) which states;

The Deputy Chief Constable has directed that his authority will be delegated only to a PSD Chief Inspector or above in relation to alleged offences and preliminary assessments".

Consideration of Complaint 2

As stated in the consideration of Complaint 1, given that the DCC retired in the weeks before the Committee determined the applicant's complaints, it is not at all clear why the SPA carried out a misconduct assessment under the Regulations.

Nonetheless, and notwithstanding the SPA's view that the applicant's letter should have been passed to an office other than that of Superintendent A, the response to this complaint correctly indicates that the DCC would not ordinarily have had a role to play in respect of the concerns raised in the letter. In line with Regulation 5(2) of The Police Service of Scotland (Conduct) Regulations 2014, the deputy chief constable can delegate his or her functions in respect of misconduct allegations against officers up to and including the rank of chief superintendent. Similarly, complaints about the acts or omissions of officers belonging to those ranks are dealt with under the six-stage process by PSD, and rarely would the deputy chief constable have any direct involvement in this.

It is therefore considered that the response is adequately reasoned and in line with the relevant legislative and procedural provisions. Accordingly, it is concluded that this complaint was handled to a reasonable standard. No further action is required of the SPA in this connection.

Complaint 3: Chief Constable passed letter to DCC

The applicant complained that the Chief Constable had neglected his duty by passing the applicant's letter of complaint about the DCC to the DCC to deal with.

SPA Handling of Complaint 3

In its letter, the SPA responded to this complaint as follows (emphasis in original):

*"I would advise that, after careful consideration of the complaint, the Committee decided in terms of Regulation 8(2) that the conduct which is the subject matter of the misconduct allegation would amount to **neither** misconduct nor gross misconduct. Furthermore, the Committee determined in terms of Regulation 8(3) to **take no action**. Therefore complaint 1 about [the Chief Constable] was not upheld.*

In reaching this decision, Members were aware that [the Chief Constable] would not be sighted on a complaint unless it is of such a nature that he should be briefed on it. Each complaint addressed to the Chief Constable is reviewed by a member of the Secretariat Team and passed to the DCC's office who in turn would pass the matter on to the relevant Professional Standards Department to deal".

Consideration of Complaint 3

In his letter to the Chief Constable, the applicant alleged that the DCC had "swept up everything and buried it" and shown "tribal loyalty to the organisation and his own reputation ahead of such lesser considerations as performance and public interest". Accordingly, the applicant's letter to the Chief Constable was a clear expression of dissatisfaction about the DCC. Despite that fact, Inspector B of the Chief Constable's secretariat wrote to the applicant on behalf of the Chief Constable advising that his letter had been passed to the DCC for consideration.

To pass a letter of complaint about a police officer to that same individual for consideration is not acceptable practice in complaint handling, and the PIRC will be contacting the Chief Constable and his secretariat to make this clear. Furthermore, as the complaint was about a senior officer, it should have been notified to the SPA in keeping with the provisions of the 2006 and 2012 Acts, the PIRC's Statutory Guidance and Police Scotland's Standard Operating Procedure on Complaints About the Police.

During the enquiry into this complaint, Mr E of the SPA contacted the Chief Constable's office on a number of occasions seeking clarification as to whether it was the secretariat or the Chief Constable himself who instructed the letter to be passed to the DCC. The eventual reply from Inspector F of the Chief Constable's secretariat was in general terms rather than specific to the applicant's complaint, as reflected in the nature of SPA's response. As the response conveys without criticism the notion that a complaint about a senior officer should be passed to the DCC's office and the PSD rather than notified to the SPA, it is considered that the response is neither adequately reasoned nor in line with the relevant legislative and procedural requirements.

Furthermore, irrespective of whether it was the secretariat or the Chief Constable himself who decided to pass the letter to the DCC, the crux of the applicant's complaint is that he sent the Chief Constable a letter of complaint about the DCC which was then passed to the DCC. Given that there is no dispute that this is precisely what happened, it is again very difficult to understand why the applicant's complaint was not upheld.

For the reasons given above, it is concluded that this complaint was not handled to a reasonable standard. Under section 35(7) of the 2006 Act, a reconsideration direction is issued to the SPA. The reconsideration is not subject to the PIRC's supervision.

In terms of section 37(1) of the Act, the SPA 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. The SPA must also adhere to the obligations set out in sections 38 and 40 of the Act, as appropriate. This includes the submission of a report to the PIRC upon completion of the reconsideration.

The SPA should reconsider the complaint with direct reference to the observations made above and in cognisance of the Learning Point detailed at the end of this report. The SPA should then send a fresh response to the applicant which addresses those observations and fully explains the outcome of the reconsideration. An apology should be given to the applicant for any shortcomings identified.

5. Conclusions

Complaints 1 and 3

It is concluded that these complaints were not handled to a reasonable standard. Under section 35(7) of the 2006 Act, reconsideration directions are issued to the SPA. The reconsiderations are not subject to the PIRC's supervision.

In terms of section 37(1) of the Act, the SPA must now appoint a person to reconsider these complaints. The person appointed must not have had any previous involvement in the consideration of the complaints. The SPA must also adhere to the obligations set out in sections 38 and 40 of the Act, as appropriate. This includes the submission of a report to the PIRC upon completion of the reconsiderations.

The SPA should reconsider the complaints with direct reference to the observations made above and in cognisance of the Learning Point detailed at the end of this report. The SPA should then send a fresh response to the applicant which addresses those observations and fully explains the outcome of the reconsiderations. An apology should be given to the applicant for any shortcomings identified.

Complaint 2

It is concluded that this complaint was handled to a reasonable standard. No further action is required of the SPA in this connection.

Learning Point

When dealing with complaints about senior officers, the SPA's responsibility to assess whether there might be misconduct appears often to be undertaken at the expense of suitable complaint handling. While the SPA has a legal duty under the Regulations to do the former, it also has a statutory obligation and a procedural requirement for the latter.

In relation to complaints about senior officers, paragraph 100 of the PIRC's Statutory Guidance states the following:

"...even where no inference of misconduct is found, there is nothing in the current regulations to prevent [the SPA] from going on to address the substance of the complaint. Although no misconduct has been identified, there may be organisational learning that can be gleaned from the complaint. The Commissioner therefore encourages [the SPA] to proactively work beyond the minimum standards defined in legislation and to issue a substantive response to complaints even when no misconduct issues are found. This will enhance police governance and hold police forces to account."

In addition, paragraph 3.1 of Police Scotland's Standard Operating Procedure on the Police Service of Scotland (Conduct) Regulations 2014 provides useful guidance:

"An investigation into a complaint is not automatically an investigation into whether a police officer has breached the standards of professional behaviour but rather an investigation into the circumstances that led to the dissatisfaction being expressed by the complainer of the actions of one or more persons serving with the police..."

In order to ensure that it has efficient and effective complaint handling arrangements in place, the SPA may wish to consider revising the Procedures to reflect the guidance cited above. The PIRC is able to assist the SPA in developing suitable processes and training in this connection.

Peter Innes
Senior Review Officer

Ilya Zharov
Head of Reviews & Policy