

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 theft of property from the applicant’s home address.

Two complaints were considered, namely:

1. that, despite several requests, an officer failed to return goods belonging to the applicant; and
2. that an officer would not speak with the applicant at the front desk during her detention at the police office.

The review found that both complaints were handled to a reasonable standard. No recommendations were made in this connection.

3. Background

On 7 November 2016, officers from Police Scotland attended at the applicant's home to speak with Miss A. Miss A was staying at the applicant's home on a temporary basis; as of 7 November 2016 she had been there for approximately 6 days. When they arrived at the applicant's home, officers found the applicant in the process of evicting Miss A. Miss A was in possession of two carrier bags: one had been packed by the applicant, the other packed by Miss A herself.

In the presence of the officers, the applicant's son alleged that Miss A had taken his mobile phone. In response, Sergeant B instructed Constable C to search the bags that Miss A was carrying. The mobile phone was retrieved from one of the bags. Sergeant B made enquiries and, satisfied that the mobile phone belonged to the applicant's son, returned it to him.

The applicant thereafter questioned the contents of the carrier bag packed by Miss A and requested that officers allowed her access to the bags, to check if they contained any more property belonging to either herself or her family. However officers did not inspect the bags in front of the applicant as she requested.

On 18 November 2016, the applicant telephoned Police Scotland to complain about the incident. Sergeant D met with the applicant on 2 December 2016 and agreed with her the complaints that she wished to have investigated.

Chief Inspector E thereafter responded to the applicant's complaints in a letter dated 17 January 2017.

4. The Review

Complaint 1: Officer failed to return applicant's property

The applicant complained that Sergeant B failed to search Miss A's bags despite catching Miss A in possession of a phone which did not belong to her. The applicant claims that she has since identified several items missing from her home and believes that Miss A took them.

The applicant considers that Sergeant B inaction means that the items will now never be returned to them; a situation that could have been avoided had he inspected Miss A's bags.

Police Handling of Complaint 1

In her letter to the applicant dated 17 January 2017, Chief Inspector E wrote:

"As part of the investigation, [Sergeant D] has been provided with statements from the three officers who were in attendance. She advises that she has also spoken with yourself, your son [Mr F] and also your daughter [Miss G], both of whom were also present. I

believe that a family friend was also present, however, due to unforeseen circumstances we have not been in a position to trace him, however, I believe that he would have witnessed the same as [Mr F].

There are variations in what the officers can recall, however, your children and yourself have all advised [Sergeant D], that during conversation with [Sergeant B], you have advised him that it would appear certain items within the carrier bags did not belong to the female. The officers who were in attendance confirm that the female was found in possession of a mobile telephone which did not belong to her, and this was returned to the rightful owner, [Mr F]. Therefore your complaint is upheld, both the carrier bags should have been taken back to your home, for you to ascertain what belonged to you and your family and what belonged to the female.

I have discussed the matter with [Sergeant B], to ensure that such an incident does not happen again”.

Consideration of Complaint 1

The police officers in attendance at the applicant’s home were there in relation to a separate, unrelated matter involving Miss A and the applicant’s son. Once the officers had separated the parties in order to make enquiries into the original allegation which was the reason for their attendance, the issue of missing mobile phone was raised with Sergeant B.

Given the fact that Sergeant B recovered a mobile phone belonging to the applicant’s son from one of Miss A’s bags, it would have been logical for him to consider that Miss A may be in possession of other items belonging to the applicant or her family. Chief Inspector E’s assessment, that Sergeant B ought to have returned to the applicant’s home with the bags and examined the contents in front of the applicant, her family and Miss A, is a reasonable one. This would have allowed the applicant and her family to recover any items belonging to them, and may have removed any need for Sergeant B or the other officers to take any further action.

It is also noted that there was no crime report raised by Sergeant B at the time of the incident being brought to his attention. This would appear to contradict the Scottish Crime Recording Standard, which clearly stipulates that:

“An incident will be recorded as a crime if,

- *The circumstances amount to a crime defined by Scots Law or an offence under statute, and*
- *There is no credible evidence to the contrary”.*

Within his statement, Sergeant B explains that he attended at the applicant’s home address to speak with Miss A about an allegation that Mr H – the applicant’s other son – had assaulted her. Sergeant B describes that whilst he was trying to speak to Miss A about the assault allegation and indeed during the subsequent detention of Mr H, the applicant was *“very excitable and clearly defensive of her son.... and almost obstructive”*. It can therefore be inferred from Sergeant B’s statement that the

circumstances at the time did not allow for a crime report to be raised or a statement taken from the applicant.

Notwithstanding the above, the Scottish Crime Recording Standard clearly states that:

“All crimes must be recorded as soon as reasonably practicable and within a period of 72 hours from the time the incident is first notified.”

The crime report for this incident was not raised – and thus the incident not recorded in line with the SCRS – until 29 December 2016, 46 days after the matter was brought to the attention of officers. It is not clear why this delay occurred. This is especially relevant as the applicant had been in touch with Police Scotland on a number of occasions since the incident occurred in relation to her missing property. Consequently, Police Scotland has rightly upheld the applicant’s complaint.

Within her application to the PIRC, the applicant states that she is dissatisfied that Sergeant B has not been held accountable for effectively losing her possessions. This is particularly frustrating for the applicant as she had told Sergeant B of her suspicions at the time. The applicant believes that had Sergeant B taken the action she requested and thus established that the applicant’s property was in Miss A’s bags, he could have potentially prevented the goods from being stolen.

Although Police Scotland has upheld the applicant’s complaint, the response does not outline what action was taken in respect of Sergeant B.

Paragraph 6.14.6 of Police Scotland’s standard operating procedure in relation to Complaints About the Police (the “Complaints SOP”) states that when notifying a complainer of the outcome of their complaints, the final response should fully address their concerns and fully explain the reasoning behind any decision. It states also that any action taken as a result of the complaint should be communicated to the complainer. Although Chief Inspector E has informed the applicant that she has “discussed the matter with Sergeant B”, she has failed to adequately explain to the applicant the content of this discussion.

As part of the review, the PIRC contacted Police Scotland to confirm the content of the discussion between Chief Inspector E and Sergeant B. In an email dated 21 July 2017, Chief Inspector E explained:

“The discussion [with Sergeant B] centered around how as a supervisor, if he [Sergeant B] is aware of such allegations that officers are removing property and not all of it belongs to the person in question, he [Sergeant B] should ensure his staff take the time to establish ownership at the time, obviously time/duties/circumstances permitting, which would then have prevented this complaint. [Sergeant B] has assured me that he would take more time with such matters in the future.”

It is therefore evident that Chief Inspector E took appropriate action to address this matter with Sergeant B.

For the reasons given above, it is concluded that this complaint was dealt with to a reasonable standard. It is considered that Chief Inspector E's response to this complaint would have been enhanced by the inclusion of further detail; however as it is considered that sufficient detail has now been provided in this report, no further action is required of Police Scotland in this connection.

Complaint 2: That an officer would not speak to the applicant

The applicant states that whilst she was in police custody for an unrelated incident, she asked to speak to Sergeant B to obtain an update regarding her missing property. The applicant complained that although she made this request on 11 November 2016, Sergeant B did not attend to speak with her until the next day and furthermore did not speak to her at the front desk as she had requested.

Police Handling of Complaint 2

In her letter to the applicant, Chief Inspector E wrote:

“With regards to [Sergeant B] attending the custody suite, which although is not listed on the heads of complaint, [Sergeant D] advises is another element you were not happy with, as a result of the items of clothing within the carrier bags. The CCTV at our custody suite is for Policing purposes, and therefore he would not have been required to discuss matters with you at the charge counter. The officers were initially sent in order to note a statement of complaint regarding the items which had been stolen by the female who was at your home during 7 November 2016, it was not [Sergeant B] refusing to see you. As the duty Sergeant, that weekend he was required to oversee my command area, which unfortunately for him, takes up a considerable amount of time due to the volume of calls we receive.”

Consideration of Complaint 2

It is considered that there are two separate aspects to the applicant's complaint: (i) that Sergeant B refused to meet with the applicant regarding her missing property; and (ii) that Sergeant B refused to speak with the applicant at the charge counter as requested.

(i) Sergeant B refusing to meet with the applicant

In his statement, Sergeant B states that when the applicant made her request 11 November 2016, he was stationed at a different Police Office some 18 miles away from the custody suit where applicant was detained. He states that owing to other operational commitments he was unable to visit the custody suite to speak with her as requested and so asked a local custody Sergeant to pass on a message to the applicant. He also arranged for two police officers – one being Constable K – to attend and note a statement from her on his behalf.

Constable K also provided a statement. He advises that the applicant told him she was unhappy that Sergeant B had not come to speak to her in person and that she wished to raise a complaint against

Sergeant B as a result. As Sergeant B was Constable K's supervisor at the time, Sergeant L – the on duty custody sergeant – intervened and noted some details from the applicant, as well providing her with advice about how to make a complaint.

Sergeant B thereafter complied with the applicant's request and met with her at the Police Office on the evening of 12 November 2016. Sergeant B states that he spoke with the applicant in the presence of Sergeant L, however the applicant was behaving in an unreasonable manner and the meeting was unproductive.

It is noted however that Sergeant B made no record in his notebook of his decision to send officers to speak with the applicant on 11 November 2016. There is likewise no record of his conversation with the applicant on 12 November 2016. Chief Inspector E acknowledged this shortcoming on the part of Sergeant B in an email to the PIRC dated 21 July 2017, although this was not articulated in the response provided to the applicant. Chief Inspector E stated:

"I also advised [Sergeant B] that if he is allocated a [Complaint About the Police] and requests, for whatever reason, a colleague carries out some or all of the enquiry on his behalf that this is documented, with the reason for doing so".

It is acknowledged that Sergeant B was stationed at a different police office, 18 miles away from the applicant. On hearing of the applicant's request, he asked the local Custody Sergeant to tell the applicant that he was unable to attend that night in person and he made arrangements for two of his colleagues to attend at her cell to note the details of her complaint. Taking these circumstances into account, it is considered that Sergeant B did not refuse to meet with the applicant. On the contrary, Sergeant B appears to have made a concerted effort to respond to the applicant's request. However, it is acknowledged that Sergeant B – an experienced officer with 19 years' police service – should have made the appropriate entries within his notebook, documenting his interactions with the applicant and the rationale for the decisions he made.

It is considered that Chief Inspector E's response could have provided the applicant with more detail. However it is not considered that this detracts from the overall handling of this complaint. For the reasons given above, it is concluded that this aspect of the applicant's complaint has been handled to a reasonable standard. No further action is required in this connection.

(ii) Sergeant B refusing to speak to the applicant at the charge counter

Chief Inspector E has made clear to the applicant, in her letter, that the charge bar is used for policing purposes only. It may have been beneficial for Chief Inspector E to further explain that the charge bar is used primarily for the processing of prisoners, although the applicant may herself have been aware of this given that she had previously been accepted into police custody.

It appears that the applicant was keen to speak with Sergeant B at the front desk so as to ensure that their conversation would be captured by the CCTV covering that area of the custody suite. However, as articulated by Chief Inspector E, there was no requirement for Sergeant B to comply with the applicant's request to speak with her at the charge bar and indeed to do so could be considered as

misuse of police systems. It is therefore acknowledged that Sergeant B was justified in refusing to honour the applicant's request.

Accordingly, it is considered that Police Scotland has handled this aspect of the applicant's complaint to a reasonable standard. No further action is required in this connection.

5. Conclusions

Complaints 1 & 2:

It is concluded that both of these complaints were handled to a reasonable standard. No further action is required of Police Scotland in this connection.

Jacqui Jeffrey
Senior Review Officer

Ilya Zharov
Head of Reviews & Policy