

Report of a Complaint Handling Review in relation to Police Scotland

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1. Role of 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 a dispute between the applicant and her neighbour regarding a property boundary. The applicant complained about the police response to an incident in which she made assault allegations against her neighbour’s family after the applicant had attempted to erect a fence between the properties. Three complaint were considered, namely:

- (1) that officers acted in a prejudiced way and referred to the applicant’s neighbour acting as if she had done nothing wrong and the applicant was the one in the wrong;
- (2) that an officer could not be bothered with the applicant and was not interested in why she was at the police station; and

(3) that, during a telephone conversation, the applicant felt an officer was not investigating her complaint properly and was dismissive of her words.

The review found that none of the three complaints had been handled to a reasonable standard. Three recommendations were made in this connection.

3. Background

The applicant's complaints relate to an ongoing dispute regarding the boundary between the applicant's home and the home of her neighbour, Ms A.

On 1 November 2016, an incident occurred when the applicant, along with her son, her son's partner and their friend, began erecting a fence between the properties. The applicant alleges that a disagreement arose with Ms A and her family and that Ms A's son Mr B reversed his car at her at speed and stopped it very close to the applicant. The applicant further alleged that Mr B's father in law pulled a wooden fence panel from her hands and, as she was not wearing gloves, this caused her pain.

Following this incident, the applicant and Mr B both separately contacted Police Scotland to report each other's conduct. Constables C and D attended at Ms A's home in response to these calls. At this time the officers were advised of the ongoing dispute and were shown paperwork from Ms A which she believed supported her position in relation to the disputed boundary. The officers advised Ms A and Mr B that they believed that this was a civil matter and that they did not intend on taking further action.

The officers then met with the applicant and her son. The officers advised that they believed that no crimes had occurred and that the dispute was civil and therefore not a police matter. The applicant states that she asked for the officers to read paperwork she held which she believes supported her position but that the officers advised her that it was not necessary from them to view this. The officers then left the applicant's home.

On 2 November 2016, the applicant and her son attended at a local police station and met with Sergeant E. At this time the applicant handed over a typed statement she had prepared in relation to the events the previous day. Sergeant E advised the applicant that he was about to go on leave but would look into the incident on his return on 5 November. Following the meeting, Sergeant E met with Constables C and D to discuss his meeting with the applicant. Sergeant E advised the officers that the applicant's allegation against Mr B should have been progressed and that he would now be taking steps to do so. Sergeant E then telephoned the applicant and arranged to attend at her home on 5 November to note statements from her and other witnesses.

On 3 November 2016, the applicant and her son attended the police station again as the applicant wished to add to the statement provided the previous day. At this time police officers noted statements from the applicant and her son.

On 5 November 2016, Sergeant E attended at the applicant's home along with Constables F and G. The officers were met by the applicant's son who explained that his mother was not in. Sergeant E left

the other officers at the applicant's home to discuss the incident with the applicant's son. Once Sergeant E had left, it was established that the applicant had not been at home as she was under the impression that the meeting was no longer taking place given that statements had already been noted on 3 November. Later that day, Sergeant E telephoned the applicant to clarify the situation.

On 11 January 2017, Police Scotland sent a report to the Procurator Fiscal regarding the applicant's allegation against Mr B.

The applicant wrote a letter of complaint to Police Scotland dated 14 November 2016. Sergeant H noted a statement of complaint from the applicant on 6 December 2016. Chief Inspector J responded to the applicant's complaints in a letter dated 6 February 2017.

4. The Review

Complaint 1: Prejudice against applicant

The applicant raised the following complaint:

"[Constables C and D] acted in a prejudiced way and referred to my neighbour acting as if she had done nothing wrong and I was the one in the wrong."

Police Handling of Complaint 1

Chief Inspector J provided the following response:

"[Sergeant H] has examined the incident log related to the incident on 1st November 2016, and obtained accounts from the officers who attended at this incident.

From there [sic] accounts they both state that both parties were given the same advice regarding this being a civil matter and no favouritism was shown to either party.

The incident log is recorded as a civil matter regarding ownership of land and has both parties details listed. The log further states that both parties have been given the same advice.

I can find no evidence of either party being treated differently and from the information available to me I consider the actions of the officers that attended that day to be appropriate, and for that reason I have not upheld this allegation."

Consideration of Complaint 1

The complaints considered in this report are not the only ones raised by the applicant in connection with this incident. One complaint the applicant did not ask the PIRC to review related to the officers failing to note her criminal allegations at the time of the incident. Police Scotland upheld this complaint

and advised that the officers should have taken further steps to deal with the applicant's allegation against Mr B.

In her communications with Police Scotland, the applicant has referred to the officers as having accused her of causing "grief" to an elderly neighbour which she found to be unfair. The applicant has also referred to asking the officers to speak to Mr B's father in law about pulling the fence panel from her hands. The applicant has further highlighted that the officers were unwilling to look at her documentation after having looked at documents produced by Ms A. The response from Police Scotland does not make specific reference to these points.

In her application to the PIRC, the applicant questioned how Chief Inspector J could accept that the officers failed to investigate her report yet when responding to this complaint, he has stated that he considers "the actions of the officers that attended that day to be appropriate".

It is considered that Chief Inspector J's position in relation to this complaint is not necessarily incompatible with his previous finding. This is on the basis that this complaint specifically refers to Ms A receiving favourable treatment whereas the previous upheld complaint related to the lack of investigation of a criminal allegation against Mr B.

It is considered that Police Scotland did not clarify the applicant's exact reasons for believing the officers have been biased in favour of her neighbour. When receiving a complaint such as this one, the police should clarify with the complainer what the police did or failed to do that made them believe that they had not been treated fairly. As this did not happen in this case, it is unclear if all of the applicant's concerns have been captured and responded to by Police Scotland.

For this reason, it is concluded that this complaint was not handled to a reasonable standard. It is recommended that Police Scotland obtains a further statement from the applicant to clarify what the attending officers said or did that made her believe that they were biased in favour of her neighbour. If the applicant makes allegations which are capable of being upheld independently of each other, these should be recorded and responded to as separate complaints about the police if this has not already been done.

Complaint 2: Sergeant E dismissive at meeting

The applicant complained that, during her meeting at the Police Station, Sergeant E "could not be bothered with [the applicant] and was not interested in why I was there".

Police Handling of Complaint 2

Chief Inspector J provided the following response:

"This was an allegation of Irregularity in Procedure/Insufficient Enquiry Carried Out which I have not upheld for the following reasons:-

[Sergeant H] has obtained an accounts from [Sergeant E] and other officers which I have reviewed. [Sergeant E] states that he did speak with you on Wednesday 2nd November 2016 at which time you were not happy that your complaint regarding your neighbours driving had not been taken. He went on to say that he had informed you that he would review the officer's work and if it was required he would allocate another two officers to carry out further enquiries on his teams return to duty on Saturday.

I can confirm from other officer's statements that following speaking to you he did speak to the attending officers regarding the incident. Also as can be seen by the contents of your statement and your sons, [Sergeant E] attended personally at your house on Saturday 5th November 2016, with a different pair of officers with a view to progressing your complaint. At that time he was unaware that you had paid a further visit to the police station and another team was now dealing with your complaint.

Although you feel [Sergeant E] gave the impression that he was not interested I am satisfied that he took the appropriate actions in reviewing the incident and put in measures for other officers to progress the matter. For that reason I am not upholding the allegation."

Consideration of Complaint 2

Chief Inspector J's response advises that this complaint was recorded as "Irregularity in Procedure/Insufficient Enquiry Carried Out". However, it is considered that this complaint should have been recorded as incivility. Police Scotland's Standard Operating Procedures on Complaints About the Police gives a list of examples of complaints which can be considered incivility. This list includes the following:

"Circumstances where the complainer states that a member of staff did not seem to care, or gave the impression that they were not interested or didn't listen to them."

In her letter and complaint statement, the applicant has claimed that Sergeant E said "Is this just about a fence?" In his statement, the applicant's son has also referred to Sergeant E stating this and that he felt Sergeant E was "being dismissive". In his statement, Sergeant E does not address the allegation that he was dismissive or that he stated "Is this just about a fence?"

The available evidence consists of the applicant's version of events which is supported by her son. As Sergeant E did not directly address this complaint, there is no evidence to the contrary. In these circumstances, it is difficult to understand why, on the balance of probabilities, the applicant's complaint was not upheld. For this reason, it is concluded that this complaint was not handled to a reasonable standard.

It is recommended that Police Scotland ask Sergeant E to provide a further statement directly addressing the applicant's allegation. Police Scotland should then re-assess this complaint taking into account the comments made in this report. The applicant should be provided with a further response to her complaint which states whether or not her complaint is now considered to be upheld.

Complaint 3: Sergeant E dismissive on phone

The applicant complained that, when she spoke with Sergeant E by telephone on 5 November 2016, she “felt he was not investigating my complaint properly and was dismissive of my words.”

Police Handling of Complaint 3

Chief Inspector J provided the following response:

“This was an allegation of Irregularity in Procedure/Insufficient Enquiry Carried Out which I have not upheld for the following reasons:-

[Sergeant H] has obtained an account from [Sergeant E] which I have reviewed. [Sergeant E] confirms he spoke to you on Saturday 5th November 2016 by telephone to confirm that you were aware that another team was dealing with your complaint regarding your neighbours driving. This differs to your statement as you state he discussed the civil matter regarding land.

Due to the different accounts from you both I cannot comment as to if he was dismissive.

With regard to him not investigating your complaint properly, I note that [incident number] was raised on Wednesday 3rd November 2016 which relates to the investigation of your complaint by [an officer] who is not supervised by [Sergeant E]. Therefore [Sergeant E] was not investigating your complaint at all. [Sergeant E] has been made aware of your feelings regarding the call.

For these reasons I have not upheld your allegation.”

Consideration of Complaint 3

In her statement, the applicant gave a specific example of Sergeant E stating “Why would [Mr B] want to damage his car by hitting you”. The response to this complaint does not offer a position on whether or not this comment was made.

Chief Inspector J has commented that he “cannot comment as to if [Sergeant E] was dismissive” on the basis that there are “different accounts” of the conversation. When presented with conflicting versions of events, the police should decide which version to accept on the balance of probabilities. This means that, when the evidence supports one version more than the other, that version should be accepted. When the evidence is equally weighted between conflicting accounts, the response to the complaint should state that this is the case and that this is why the complaint has not been upheld.

However, as in complaint 2, Sergeant E has not actually stated anything that could be considered as a direct denial of the allegation. Consequently, the only available evidence would appear to be the applicant’s version of events. It is therefore unclear why, on the balance of probabilities, the complaint was not upheld. For this reason, it is concluded that this complaint was not handled to a reasonable standard.

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5. Conclusions

Complaint 1: Prejudice against applicant

It is concluded that this complaint was not handled to a reasonable standard. It is recommended that Police Scotland obtains a further statement from the applicant to clarify what the attending officers said or did that made her believe that they were biased in favour of her neighbour. If the applicant makes allegations which are capable of being upheld independently of each other, these should be recorded and responded to as separate complaints about the police if this has not already been done.

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