



Police Investigations &
Review Commissioner

PIRC/00009/17 | August 2017

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 applicant’s complaints relate to the police handling of an ongoing dispute between the applicant and his neighbours. Four complaints were reviewed, namely:

- (1) that officers came to the applicant’s home at midnight and spoke with his wife rather than him;
- (2) that a sergeant promised to update the applicant on the possibility of mediation but did not so, despite the applicant trying to contact him on a number of occasions;
- (3) that officers attended at the applicant’s home when neither he nor his wife were there and spoke outside to his son, who has autism; and
- (4) that an officer left a telephone message regarding the applicant being reported to the Procurator Fiscal when this should have been done face-to-face.

The review found that three complaints were handled to a reasonable standard whilst one was not. One recommendation was made.

3. Background

On 7 October 2015, the applicant attended a police station to make an allegation of threatening and abusive behaviour against his neighbour, Ms A. A statement was subsequently noted from the applicant's wife in connection with the allegation. That evening, at the police station, Constables B and C interviewed Ms A in connection with the allegation. Following the interview, the officers decided that there was insufficient evidence to corroborate the applicant's allegation and that Ms A would not be charged with an offence.

The officers then returned Ms A home in a police vehicle. After they had dropped off Ms A, the officers passed the applicant's home and noticed that several lights were on. The officers decided that, although it was around midnight, they should go to his door and provide him with an update on the status of his report. The officers were met by the applicant's wife, who advised that the applicant was in bed. The officers then advised the applicant's wife that Ms A was not being charged in connection with the allegation made by the applicant. The officers then left.

In August 2016, the applicant wrote to Police Scotland raising concerns about the way the police had handled matters relating to the ongoing dispute between him and families in neighbouring properties. In the following weeks, Sergeant D had a number of conversations with the applicant regarding his concerns. At that time, the applicant did not wish for his concerns to be formally recorded as complaints about the police, and discussed what the police could do to help resolve the ongoing issues with his neighbours. One possibility discussed was that of mediation.

On 19 September 2016, Constables E and F attended at the applicant's home with the intention of charging him with two offences under Section 38 of the Criminal Justice and Licensing (Scotland) Act 2010 in relation to allegations made by his neighbours. When the officers arrived, they spoke with the applicant's adult son, who has autism. The officers had a short conversation with the applicant's son in which they were told that the applicant was not at home. The officers then left. On 29 October 2016, the applicant was reported to the Procurator Fiscal in this connection.

The applicant raised formal complaints about Police Scotland in a letter dated 2 October 2016. The applicant's complaints were allocated to Sergeant G. On 21 October 2016, the applicant provided a statement of complaint and signed a heads of complaint form. Chief Inspector H responded to the applicant's complaints in a letter dated 8 January 2017.

4. The Review

Complaint 1: Officers attended after midnight

The applicant complained that, following the detention of Ms A on 15 October 2015, Constables B and C attended his home at around midnight. The applicant referred to this as “a very unsociable hour” and was unhappy that the officers spoke with his wife rather than him.

Police Handling of Complaint 1

Chief Inspector H provided the following response to this complaint:

“[Sergeant G] identified the officers who visited your property. The reason they visited you was to update you regarding a complaint you had made about a neighbour driving past you who it was reported was verbally abusive towards you. The officers concerned had dealt with the incident and were in the vicinity of your home address. Having observed that the lights of your property were on, the officers considered it appropriate for them to offer you a prompt update in person. Upon arriving at your property they met with your wife, who spoke to them and agreed to pass the message to you. Despite the officers attending at a late hour, given that your wife was still awake and lights were on in the property, it appeared reasonable for them to have called at your house. It should also be noted that your wife was a witness to the incident and was therefore fully versed with regard to the circumstances of what had taken place.

Following consideration I am satisfied the actions of the officers concerned were justified and appropriate. In your absence they have passed information, which was not of a confidential nature, to a family member who was already aware of the incident in question. It is my opinion it was reasonable for them to speak to her and ask she pass the message to you. Furthermore, had you any questions about the matter you would have had the opportunity to contact them to discuss the matter further which I understand you later did. For these reasons this allegation is not upheld.”

Consideration of Complaint 1

The explanation provided by the officers supports that they were acting in good faith when they attended the applicant’s home. In addition, given her knowledge of the incident, there does not appear to have been any reason as to why the update should not have been provided to the applicant’s wife. In this respect, Chief Inspector H’s response reflects the evidence available.

However, the hour at which the officers went to the applicant’s house would generally be considered unsociable, and it would not reasonably be anticipated by members of the public that officers would attend their home at such a time unless there was a matter of some urgency. As the delivery of the update was not urgent, the response to the complaint should have considered whether it would have been more appropriate for the officers to have waited until a more sociable hour to deliver the update.

The fact that the response did not consider this renders it inadequate in this connection. Accordingly, it is concluded that this complaint was not handled to a reasonable standard.

It is recommended that Police Scotland reassess this complaint with direct reference to the points made above. The applicant should thereafter be provided with a further response explaining Police Scotland's position on whether it would have been more appropriate for the officers to have waited until a more sociable hour to deliver the update.

Complaint 2: Offer of mediation

On the heads of complaint form, the applicant stated the following:

"I discussed mediation with [Sergeant D]. He promised to update me about this but he never did despite me trying to contact him on many occasions over the course of seven days."

Police Handling of Complaint 2

Chief Inspector H provided the following response:

"[Sergeant D] provided a witness statement. He advised that whilst in the process of exploring how to go about setting up such a process you were reported for two counts of threatening and abusive behaviour. For this reason he came to the conclusion mediation was no longer a viable option. [Sergeant D] states that he did as much as he could to advise, guide and reassure you and that he had regular contact with you."

On conclusion I am satisfied that you have been in regular contact with [Sergeant D], that you have phoned and spoken to him about a range of matters and you would have had the opportunity to raise the matter of mediation if required. I therefore conclude you had plenty opportunity to discuss any queries about mediation with [Sergeant D] and that [Sergeant D] did not pursue this as a solution after you were reported to the Procurator Fiscal for related incidents. This part of your complaint is therefore not upheld."

Consideration of Complaint 2

Sergeant D accepts that he discussed the possibility of mediation but decided against this option once the applicant was charged with offences. Whilst Police Scotland has a role to play in attempting to resolve neighbour disputes, the responsibility does not lie solely with the police and there is no specific requirement for officers to arrange mediation. Sergeant D's grounds for deciding not to pursue mediation have suitably been explained in Chief Inspector H's response.

Although Police Scotland's position that the applicant had opportunities to ask about mediation is accurate, it would have been helpful for Sergeant D to explicitly advise the applicant that mediation was no longer being considered. Whilst Chief Inspector H's response would have been enhanced by the identification of this point, it is nonetheless adequately reasoned.

Accordingly, it is concluded that this complaint was handled to a reasonable standard. No further action is recommended.

Complaint 3: Officers spoke outside with autistic son

On the heads of complaint form, the applicant complained that, when Constables E and F attended his home on 19 September 2016, they spoke to his adult son, who has autism. The applicant considered this to have been inappropriate. In his statement of complaint, the applicant stated that his son:

“... rarely leaves the house and for the officers to insist he speak to them outside would have been quite traumatic for him.”

Police Handling of Complaint 3

Chief Inspector H provided the following response:

“In your statement you describe the aforementioned incident when you returned home and were advised by your son that police officers had been at the house looking to speak to you. You advise the officers initially spoke to him through the window and then persuaded him to go outside. You state you were unhappy about this as your son would have been flustered by this interaction.

Both officers who attended your house have provided written statements and both mention that in their opinion your son was not flustered or upset. They describe holding an amicable conversation with him and at no point did he mention he was autistic, nor did the officers notice anything to suggest he required additional support. It should be noted the officers have commented they did not observe any discomfort on his part during their interaction.

On conclusion I am satisfied with the actions of the officers concerned and that they conducted themselves in an appropriate manner when they spoke to your son. I note there is no information to suggest they carried out any action that caused him to be upset him in any way [sic]. I therefore conclude that this part of your complaint is not upheld.”

Consideration of Complaint 3

Although the applicant's concern about the officers insisting that his son speak to them outside the house is referred to by Chief Inspector H, it is not actually addressed in the response. This is a shortcoming.

Nevertheless, the balance of the evidence available does not support that the officers insisted that the applicant's son speak to them outside. This is because both officers say in their statements that the applicant's son was asked at the window to come to the front door but thereafter appeared from around the side of the house and met the officers outside the front door. According to Constable E, the applicant's son said that he was unable to use the front door.

Police Scotland did not take a statement from the applicant's son in connection with the complaint. Whilst statements will usually be sought from all relevant witnesses in respect of a complaint about the police, Chief Inspector H decided not to have a statement taken from the applicant's son "given the concerns [that the applicant] had already identified balanced with what benefit would be gained from doing so." As the very nature of the applicant's complaint was that it was inappropriate for the police to speak to his son, and that his son was upset by an interaction with the police, the decision not to seek a statement from the applicant's son would appear to have been reasonable in the circumstances.

Notwithstanding the shortcoming mentioned above, the response is adequately reasoned and accurately reflects the statements of the officers, in that both speak to the applicant's son not informing them that he was autistic and an amicable conversation taking place. Chief Inspector H's finding that the officers acted appropriately is supported by the material information available.

Accordingly, it is concluded that this complaint was handled to a reasonable standard. No further action is required in this connection.

Complaint 4: Message not delivered in person

The applicant complained that Constable F left an answering machine message to inform him that he was being reported to the Procurator Fiscal in connection with two alleged offences. The applicant believes that this message should have been passed on "face to face."

Police Handling of Complaint 4

Chief Inspector H provided the following response:

"[Constable F] provided a written statement in which she states she and a colleague made repeated efforts to speak to you face to face regarding this issue but you were not at home when they attended your address. [Constable F] states she made several attempts to contact to arrange a meeting.

Having been unsuccessful and owing to time constraints with regard to reporting incidents to the Procurator Fiscal, [Constable F] states she discussed the matter with her supervisor and it was decided the best course of action would be to make telephone contact to inform you that a report was being submitted libelling two charges of threatening and abusive behaviour. [Constable F] states that, in the presence of a colleague, she telephoned and informed you of this information.

You may not be aware there are strict time limits in place with regard to the compilation and submission of reports to the Procurator Fiscal with regard to matters of criminality. From looking at the date of the incidents (1 September 2016) where it is alleged the crime took place to the date that [Constable F] contacted you by telephone (7 October 2016) to inform you that a report was being submitted, it is clear that the report required to be submitted without delay. Whilst it was desirable to have passed this information in person, there is no requirement in law or policy within Police Scotland which prevents an officer passing information in such a manner.

On consideration I am satisfied [Constable F] has made reasonable efforts to speak to you in person and having been unsuccessful, contacted you by telephone. Whilst a face to face meeting would have been preferable, any person who is likely to face court proceedings following a criminal allegation should be notified prior to receiving paperwork from the court. For this reason due to the already mentioned time limits in place for reporting matters to the Procurator Fiscal, it is sometimes the case an accused person will be informed by telephone or other means, rather than a face to face meeting. I am satisfied with the actions of [Constable F], that she has followed due procedure with the intention of ensuring you were aware a police report was to be submitted concerning your behaviour. I therefore conclude that this part of your complaint is not upheld.”

Consideration of Complaint 4

Chief Inspector H's response is detailed, well-reasoned and advises correctly that there is no legal or procedural requirement for the police to inform someone in person that he or she is the subject of a report to the Procurator Fiscal.

Accordingly, it is concluded that this complaint was handled to a reasonable standard. No further action is required in this connection.

5. Conclusions

Complaint 1

It is concluded that this complaint was not handled to a reasonable standard. It is recommended that Police Scotland reassess this complaint with direct reference to the points made above. The applicant should thereafter be provided with a further response explaining Police Scotland's position on whether it would have been more appropriate for the officers to have waited until a more sociable hour to deliver the update.

Complaints 2, 3 and 4

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

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