

PCCS



Police Complaints Commissioner
for Scotland

Request for complaint handling review of a complaint about

British Transport Police

**under the provisions of
the Police, Public Order and Criminal Justice (Scotland) Act 2006**

July 2008

Case reference: PCCS/0807/00129/PF-BTP

CONTENTS

Introduction

- 1. Request for review**
- 2. Power to conduct a complaint handling review**
- 3. Background**
- 4. Force internal handling**
- 5. PCCS review**
- 6. Consideration**
- 7. Conclusion**

Introduction

The role of the Police Complaints Commissioner for Scotland was established by the Police, Public Order and Criminal Justice (Scotland) Act 2006 (“the Act”) to consider and review the way police authorities, police forces and policing agencies handle complaints from the public. I was appointed by the Scottish Ministers as the first Police Complaints Commissioner for Scotland, taking up my powers from 1 April 2007. My office provides a free and independent service, reviewing the handling of complaints fairly, looking at both sides of what has happened and looking at the facts.

I aim to review complaints in an independent, open and fair manner. In line with this aim I will publish the reports of my complaint handling reviews, whilst bearing in mind individuals’ rights to confidentiality. The following report therefore details my consideration, but does not include individual names of complainers, police officers or others affected by the events detailed therein.

1. Request for review

The complainer has requested that I review the handling of a complaint about British Transport Police relating to an event on 3 August 2007, specifically:

Complaint – That British Transport Police did not investigate properly an allegation made about the complainer by a third party.

2. Power to conduct a complaint handling review

In exercising powers conferred by Sections 104, 112(1) and 113(2), (3) and (4) of the Scotland Act 1998 and Section 4 of The Police, Public Order and Criminal Justice (Scotland) Act 2006 (Consequential Provisions and Modifications) Order 2007, on 20 May 2008, my office signed an agreement (“the Agreement”) with the British Transport Police Authority confirming my role in the review of complaints made about the force in Scotland.

The extent to which my office establishes and maintains procedures in relation to complaints made about British Transport Police under the Agreement corresponds to the provisions contained in Chapter 2 of Part 1 of the Police, Public Order and Criminal Justice (Scotland) Act 2006.

Section 5 of the Agreement confirms my authority to examine the manner in which the British Transport Police has handled a complaint about a police officer, member of police staff or the service provided by the British Transport Police Authority.

In order to carry out such a complaint handling review I request the complaint case papers from the British Transport Police. I examine the facts of the complaint case, looking at information provided to me by both the complainer and the force. I consider whether the information available does, or does not, support the complaint, and whether or not the force has responded to the complaint in a reasonable manner. I also consider whether the force communicated with the complainer in a reasonable manner, including whether the police force handled the complaint within a reasonable timescale. I then come to a view whether the conclusions drawn by the force in handling the complaint were reasonable in all the circumstances.

Once I have reached my conclusions I prepare a report which details the findings of my case handling review. This is then forwarded to the British Transport Police in accordance with section 5(3) of the Agreement. The complainer will be advised of the conclusions of this review and of what action, if any, I propose to take in consequence of those conclusions. Where the complaint is in respect of an act or omission by an individual police officer that person will also be informed of the conclusions of this review.

2.1 Relevant complaint

Section 4 of the Agreement confirms that I may review the handling of a complaint where the complaint is “a relevant complaint”, defined as

(1) ... a complaint which is given or sent ... to the appropriate authority in relation to the complaint.

(2) “complaint” means a written statement expressing dissatisfaction about an act or omission...

(3) But “complaint” does not include

(a) any statement made by a person serving with, or who has served with, British Transport Police, about the terms and conditions of that person's service with British Transport Police; or

(b) a statement which consists of or includes an allegation of an act or omission which constitutes a crime.

The complainer has supplied a written statement expressing dissatisfaction about an act or omission by the force. The complaint is therefore a relevant complaint.

2.2 Relevant complainer

The Agreement further confirms that I may review the handling of a complaint where the complainer falls within one of the following categories (section 4(6)):

(a) a member of the public who claims to be the person in relation to whom the act or omission took place;

(b) a member of the public not falling within paragraph (a) who claims to have been adversely affected by the act or omission;

(c) a member of the public who claims to have witnessed the act or omission;

(d) a person acting on behalf of a person falling within any of paragraphs (a) to (c)

The complainer is a member of the public who claims to have been adversely affected by an act or omission by the force. The complainer is therefore a relevant complainer under the terms of section 4(6)(a).

3. Background

The complainer has provided the following information to my office regarding his complaint about British Transport Police. This complaint arises from the way in which the force investigated a criminal allegation that was made about the complainer to the police by a third party.

On 3 August 2007, the complainer was approached by British Transport Police Constables A and B at train station X. The two officers advised him that a third party had reported that the complainer was following him. He was also informed that the third party had indicated to the officers that he *'had something out against [the complainer] that stops [the complainer] from going near him'*. The complainer provided his details to the officers after being advised that he would be arrested if he did not. No further action was taken by the police.

The complainer said that he felt stressed and humiliated after the speaking with the officers, and later returned to the police office in train station X to ask for the officers' identifying numbers. He states that Sergeant C advised him that he was not prepared to provide these numbers but gave his own details to the complainer should he decide to contact him in the future. At this point Sergeant C advised the complainer that the third party had now advised the two officers that **'he thought he had something out against [the complainer]'** (my emphasis).

The complainer attended his local police station in order to complain that the third party had made statements to the police knowing them to be false. He was advised that he would have to lodge this complaint with the British Transport Police. On 10 August 2007, the complainer contacted Sergeant C to complain about the third party. Sergeant C informed the complainer that due to lack of evidence the third party would not be charged. The complainer advised Sergeant C that if the third party's claims were true, CCTV footage of the incident and documentation confirming his prohibition from approaching the third party would confirm this. The complainer then made a formal complaint about British Transport Police.

On 16 August 2007, the complainer met with Inspector D to discuss his complaint about British Transport Police. The complainer requested a copy of the CCTV footage of the incident but was told that this could not be provided as it included images of other people. During this interview, the complainer explained why he was unhappy and states that he was advised by Inspector D that he would speak to the officers involved and that the third party would be interviewed. The complainer maintains that he was also advised that if Inspector D discovered that the third party was unable to confirm that an order against the complainer existed, then the third party would be charged with making a false report or wasting police time.

The complainer felt reassured that action was being taken and signed a Complaint Against a Member of the Police Service (CAMPS) form in the belief that the enquiry would take two or three weeks to conclude. Inspector D telephoned the complainer 26 days later to advise that although the CCTV footage confirmed that the complainer had not been following the third party, there was not enough evidence to charge the third party. When the complainer asked Inspector D whether or not the third party had any documentation preventing him going near him, he states that he was told that the third party now stated that **another police force had told** the third party that the complainer could not go near him (my emphasis).

4. Force internal handling

The complainer raised his complaint to the force by telephone on 10 August 2007. A Complaint Against a Member of the Police Service (CAMPS) form was filled in on this date. The CAMPS form noted the complaint as being:

'Complainant alleges neglect of duty on the part of the two constables and also on the part of Sergeant C for failing to confirm [the third party's] allegations. He claims that [the third party] has made a false allegation to the police and should have been dealt with accordingly'.

The CAMPS form also noted that there 'is a long running history between these two parties'. On 20 September 2007, Inspector D wrote to the complainer with the outcome of his complaint. This response stated:

'I have now looked into this matter as we agreed at our meeting on 16 August 2007 and can advise as follows. In respect of the incident which was reported on 10 August 2007 I can find no evidence of an offence being committed by the other party involved'.

On 22 September 2007, the complainer wrote to the force expressing his dissatisfaction with Inspector D's response and indicated his intention to refer the matter to the PCCS.

On 26 September 2007, Detective Chief Inspector E sent a memo to Detective Superintendent F advising that, with the agreement of the complainer, the complaint had been dealt by means of informal resolution. The memo also referred to the complainer's letter of 22 September 2007 in which he advised that he was not satisfied with the outcome of his complaint.

On 23 October 2007, Detective Superintendent F wrote to the complainer advising that:

'I am now in receipt of a report from Detective Chief Inspector E in which he informs me that you agreed to have the matter informally resolved. As a result the officers concerned have been seen and made fully aware of the substance of your complaint and the reasons for it. They have been provided with suitable words of advice and guidance.

In accordance with your wishes, no further action will be taken but I would like to express my regret that you felt dissatisfied on this occasion, as I regard good relations between officers of this Force and all members of the public as a matter of paramount importance'.

On 8 November 2007 the complainer replied to Detective Superintendent F stating that he was of the opinion that his complaint was not handled fairly and that he had already referred the matter to the PCCS.

5. PCCS review

An initial e-mail was received from the complainer on 20 September 2007. On 28 September 2007, the complainer confirmed that he wished to pursue his complaint about the police. At this time, the complainer was sent an application for review form which was received by my office on 2 October 2007.

Throughout my review, the force provided my office with the information relating to the complainer's complaint. The complainer also provided correspondence that he had had with the force.

The complainer remained updated on this correspondence and on the progress of his complaint every 28 days in accordance with the PCCS published standards of service.

6. Consideration

Complaint – That British Transport Police did not investigate properly an allegation made about the complainer by a third party.

On the CAMPS form, the complainer has expressed his dissatisfaction with British Transport Police in two areas. His complaints are that Constables A and B should have confirmed the truth of the allegations made by the third party before approaching him at train station X and that Sergeant C did not charge the third party with making false allegations about him. The force has classified the complaint as being that Sergeant C and Constables A and B neglected their duty.

On receipt of a complaint made about British Transport Police in Scotland, the force may seek to resolve the complaint using a method called informal resolution. The advantages of informal resolution are that, handled well, it is a quick and flexible way of dealing with complaints. However, before the force can attempt to informally resolve a complaint, two conditions must be satisfied:

- The complainer consents to such action
- The alleged conduct is of a minor nature and even if substantiated would not justify a criminal charge or disciplinary hearing

Once these conditions are satisfied, the complainer signs a form declaring that he/she agrees for the complaint to be handled this way. The enquiry officer will agree a plan of action to resolve the complaint with the complainer. Once agreeing to the informal resolution procedure, the complainer does not have the right to challenge the response that the force provides following the conclusion of the process.

I note that during Inspector D's meeting with the complainer on 16 August 2007, the complainer signed the CAMPS form agreeing that the informal resolution process

could be used to resolve his complaints. The CAMPS form recorded that the complainer agreed that the complaint could be resolved on the basis of the following anticipated action by Inspector D:

- *“Speak to officers concerned re possible false allegation made; and*
- *Inspector D will commit to conducting further enquiries re original allegation and on conclusion will update [the complainer]”.*

However, from the information that the complainer has supplied my office, the complainer advised that he was told by Inspector D that:

- Inspector D would speak to all officers involved and get a detailed account of what the third party reported;
- The third party would be interviewed; and
- If officers confirmed the complainer’s story, the third party would be charged with making a false report and wasting police time.

It is clear that the complainer had different expectations from the force on what the process of informal resolution could provide. It is unfortunate that the future action listed by the force was not sufficiently specific and was open to misinterpretation. However, while the CAMPS form appears to detail the process which the complainer agreed that Inspector D would follow, it does not show that Inspector D agreed that he would interview the third party or charge him if it was shown he had made a false allegation.

I note that Inspector D’s response to the complainer did not address the complaint about Sergeant C and Constable A and B’s alleged neglect of duty. His response advised that he could find no evidence that a crime had been committed by the third party. It did not give any explanation regarding the officers’ actions. Detective Superintendent F’s later response states that the officers involved had been seen, made fully aware of the substance of the complaint and provided with suitable words of advice and guidance. From the files supplied to my office, there is no note of what advice and guidance was given to the officers or the reason why it was given. It is also unclear where Detective Superintendent F received the information that this action had been taken.

In order that I can assess the manner in which complaints have been handled and confirm to a complainer that the force has carried out its agreed actions, it is vital that I am provided with sufficient information from the force. I am concerned that there is no auditable record of Inspector D carrying out the actions detailed in the CAMPS form.

Although Detective Superintendent F’s response to the complainer acknowledges this complaint about the police, it is my view that the complainer has not had an adequate response to the complaint that Sergeant C and Constables A and B neglected their duty.

7 Conclusion

It is my view that the complainer has not had an adequate response to his complaint regarding the actions of Sergeant C and Constables A and B. From the information provided to me, it would appear that the force does not have a clear audit trail confirming that Inspector D carried out the actions contained in the CAMPS form. As such, **I now recommend that the force look again at the complaint, ensure that it is fully addressed, and communicate the outcome of its investigation to both the complainer and my office.**

Jim Martin
Police Complaints Commissioner for Scotland
July 2008