

PCCS



Police Complaints Commissioner
for Scotland

Request for complaint handling review of a complaint about

Grampian Police

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

July 2008

Case reference: PCCS/0807/00209/PF-GP

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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 her complaint about Grampian Police. The complaints raised relate to the complainer's arrest on 4 July 2007:

Complaint 1 – That Constables A and B used excessive force when detaining the complainer;

Complaint 2 – That Constables A and B shouted at the complainer;

Complaint 3 – That the complainer asked a female police officer a question and felt humiliated by the response;

Complaint 4 – That while the complainer was being held in a cell Custody Officer C deliberately misled the complainer regarding the likelihood of a solicitor attending the police office to see her; and

Complaint 5 – That Superintendent D made inappropriate comments about the complainer's behaviour in the force's response to her complaint about the police.

2. Power to conduct a complaint handling review

Section 35 of the Act provides me with the authority to examine the manner in which an appropriate authority has handled a complaint about a police officer, member of police staff or the service provided by a relevant authority.

In order to carry out such a complaint handling review I request the complaint case papers from the force in question. I examine the facts of the complaint case, looking at information provided to me by both the complainer and the police 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 the relevant authority in accordance with section 35(3) of the Act. 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 34 of the Act provides 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, the police, about the terms and conditions of that person's service with the 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 a force. The complaint is therefore a relevant complaint.

2.2 Relevant complainer

The Act further provides that I may review the handling of a complaint where the complainer falls within one of the following categories (section 34(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 police. The complainer is therefore a relevant complainer under the terms of section 34(6)(a).

3. Background

The complaints raised relate to events of 4 July 2007 when the complainer was arrested at a relative's home.

Constables A and B went to the home of the complainer's relative to speak to the complainer in connection with a complaint they had received about her. On arrival at the relative's home, Constables A and B were denied access by the complainer because her relative was not present. At this time the complainer was advised that she would have to be interviewed at a local police office in the event that Constables A and B were not to be allowed entry to the property. The complainer agreed to accompany Constables A and B to a local police office.

Constables A and B state that while the detention procedure was being read to the complainer by Constable A, the complainer became agitated and advised them that she would not be going anywhere. The police officers assert that the complainer started to shout loudly and on two occasions tried to return inside the property. This behaviour was interpreted as an attempt to evade police involvement by Constable A. Constable B states that he held onto the complainer's arm to prevent her going back inside the house. However, because the officer was having difficulty in holding onto the complainer who was trying to pull away, he decided to apply handcuffs. Both officers state that the complainer struggled violently with them and as a result she was arrested for resisting lawful detention. The statements of Constables A and B both note that they fell to the floor with the complainer during the struggle. Constables A and B state that the complainer began striking out with her hands and feet whereupon Constable A restrained the complainer's feet and legs by taking hold of them and applying body weight. Constable B states that because the complainer continued to shout and struggle Officer Safety Training techniques had to be employed when handcuffing the complainer.¹ Assistance was requested from other officers and Constables E and F attended the call.

The complainer asserts in her statement that she agreed to go to the police office and advised the officers that she would let a person who was in the house know that she was leaving. The complainer states that Constable B then told her that she was being arrested and attempted to place handcuffs on her which she resisted as a previous experience with handcuffs had caused her pain. The complainer maintains that at this time Constable A was reading to her from a card but that she did not understand what was being said. In her letter to the force dated 2 October 2007, the complainer states that Constable A was shouting which made it difficult for her to understand what was being said. Following the arrival of Constables E and F the complainer notes in her statement that her wrists were bleeding and raw.

Statements show that the complainer was taken to a local police office by Constables E and F. CCTV footage shows that on arrival at the police office, the complainer was taken to an interview room by Constables A and B as there was another individual being processed at the charge bar. The complainer asserts in her statement that she asked for a drink of water on several occasions while awaiting the custody procedure at the police office and goes on to state that she asked a passing police officer for a drink. The complainer maintains that the police officer patted her pockets and looked in them before stating that she did not have any water. The complainer then asserts that Constable A provided her with a drink of water. The

¹ The Officer Safety Training referred to is detailed in a manual designed to serve as a central reference point for all Officer Safety Training in Scotland. The manual provides a common minimum standard for all Scottish police officers and offers guidance on a range of areas including use of force, health and safety, tactical communication and self-defence.

CCTV and audio track from the corridor outside the interview room records a further police officer responding to a question asked by the complainant.

Custody Officer C completed the custody procedure. The custody record shows that the complainant confirmed that she wanted a solicitor to be advised of her arrest and that a call was placed to the duty solicitor on her behalf. The complainant asserts in her statement that Custody Officer C allowed her to believe that a solicitor would attend the police office to meet her. In correspondence to the force dated 2 October 2007 the complainant states that Custody Officer C deceived her as the belief that a solicitor was due to attend kept her calm while she was in custody.

Complaint 5 relates to the response issued to the complainant by Superintendent D on 26 September 2007. The complainant is of the view that the comments made by Superintendent D about her behaviour were not appropriate. The complainant asserts in her letter to the force of 2 October 2007 that her attitude towards Constables A and B was polite and good mannered.

4. Force internal handling

A file note records that the complainant contacted the Grampian Police Service Centre on 6 July 2007 to advise that she wanted to make a complaint about Constables A and B following her arrest on 4 July 2007. Inspector G contacted the complainant by telephone on 6 July 2007 to discuss her complaints. The complainant brought Complaints 1 and 2 to the attention of the force at this time, along with further issues related to this incident that my office has not been asked to review.

A Complaint Against the Police (CAP) form was completed and forwarded to the Professional Standards and Conduct Department. Inspector H completed an initial report and assessment on 13 July 2007 and concluded that further clarification was required as it was unclear whether the complainant was making criminal allegations. The Deputy Chief Constable instructed Superintendent D to carry out a preliminary enquiry on 16 July 2007. Chief Inspector J wrote to the complainant on 16 July 2007 confirming that her complaints had been recorded. Inspector K interviewed the complainant on 21 July 2007 and confirmed that there were no criminal allegations about the police officers. The complainant's statement details Complaints 1, 2, 3 and 4. Inspector H's file note of 30 July 2007 states that Superintendent D had instructed that the case be forwarded to Chief Inspector L for allocation to Inspector M. Inspector M compiled an enquiry summary dated 26 September 2007, which addressed Complaints 1, 3 and 4. Superintendent D wrote a letter of response to the complainant in relation to Complaints 1, 3 and 4 on 26 September 2007.

In response to Complaint 1, Superintendent D stated that the officers were acting in accordance with Officer Safety Training procedures and that the injuries that the complainant sustained were consistent with those suffered by any person who resists arrest. In relation to Complaint 3 the complainant was advised that the police officer involved had been identified and that measures had been taken to prevent recurrence of this behaviour. An apology was made on behalf of Grampian Police to the complainant for having felt degraded by the police officer's conduct.

Superintendent D asserted with regard to Complaint 4 that there was no evidence to show that Custody Officer C misled the complainer. No reference was made to Complaint 2 in this letter.

The complainer wrote to the force on 2 October 2007 advising that she was dissatisfied with the outcome of its enquiry and raised Complaint 5 as she was unhappy with remarks that Superintendent D had made about her conduct in response to her complaints against the police. Following receipt of this letter, Inspector M contacted the complainer by telephone on 23 October 2007 and arranged to meet her later that day to discuss the complaints further. In a file note Inspector M notes that the Officer Safety Training techniques were clarified with the complainer during this meeting. The complainer advised Inspector M that she remained dissatisfied and wished to take the complaint further. Inspector M provided the complainer with a complaints against the police leaflet and highlighted the section regarding what action to take next.

Superintendent D wrote to the complainer on 6 November 2007 and advised the complainer how to make a complaint to my office regarding her concerns. In this correspondence, Superintendent D responded to Complaint 5 advising that his observations were based on police and independent witnesses and that as such he maintained his position on the complainer's actions.

5. PCCS review

On 26 November 2007 my office received a letter from the complainer advising that she was dissatisfied with the force's conclusions and enclosing copies of correspondence between her and the force together with a copy of her police statement. The complainer was asked to complete and sign an application for review form which was received on 30 November 2007.

On 30 November 2007 my office asked Grampian Police to provide the relevant complaint case papers by 14 December 2007. Grampian Police supplied the case papers on 21 December 2007.

Grampian Police was contacted by telephone on 14 May 2008 to request a copy of the Officer Safety Training manual, which was supplied to my office electronically that day.

The complainer was regularly updated on the progress of her case during the complaint handling review.

6. Consideration

There are five distinct issues raised by the complainer:

Complaint 1 – That Constables A and B used excessive force when detaining the complainer

In her letter to the force dated 2 October 2007 the complainer refers to the injuries that she states were sustained when the officers used excessive force whilst detaining and arresting her.

During the course of its investigation Grampian Police obtained statements from the relevant police officers and three civilians. There is no record in any of these statements to indicate excessive use of force on the part of Constable A or B.

The force also contacted the complainer's GP and obtained a statement regarding her injuries. The doctor's statement confirmed that the complainer had some tenderness across the chest, some bruising on her arm and some slight pink marks on her wrists with a superficial graze to her right wrist. The GP stated that the marks on her wrists could be consistent with the use of handcuffs.

Constable B stated that due to the complainer's behaviour the decision was made to place handcuffs on her wrists to restrain her. The Officer Safety Training Manual Module 9, Section 2 illustrates that correctly applied handcuffs should fit snugly. Constable B states in his statement that while the complainer's wrists were large, he did not judge the handcuffs to be too small. Constables A and B both assert that the complainer struggled with them and resisted application of the handcuffs. Constable B states that in order to restrain the complainer lateral pressure was applied on the handcuffed wrist as per officer safety training while instructing her loudly and clearly to place her hand behind her back. This is detailed in the Officer Safety Training Manual, Module 9, Section 7 – Pull Down to Prone:

“Should a suspect become violent whilst applying the rigid handcuff or during an attack whereby a handcuff can be applied, exert leverage on the handcuff in line with the arm...”

It is noted that Constable B states that once the complainer was secured, he loosened the handcuffs as much as was practical in the situation to improve comfort. Constable B's actions are confirmed by Witness N and the complainer's statements.

Inspector M met with the complainer on 23 October 2007 to allow her to view relevant police training documents and to explain the conflict resolution model used by Grampian Police. It would appear that the Constables A and B utilised the conflict resolution model and determined that restraining the complainer was the most effective means to control the situation as the complainer had displayed verbal, passive, active and aggressive resistance at various points during the incident. Superintendent D in his letter of 26 September 2007 also advised the complainer that she was still able to challenge the officers' version of events in Court when the case relating to her was called.

Complaint 2 – That Constables A and B shouted at the complainer

The complainer states in correspondence dated 2 October 2007 provided to both my office and the force that Constables A and B were shouting. The force has recorded this as a complaint in the initial report and assessment document dated 13 July 2007. In the file note dated 30 July 2007 Inspector H states that an additional complaint should be added to this allegation (listed as Complaint 3 in this report). However, this appears to have replaced the original wording and there is no reference made to Complaint 2 in the response to the complainer dated 26 September 2007. From the information available to me it would appear that the force has yet to respond to the complainer on this issue.

Complaint 3 – That the complainer asked a female police officer a question and felt humiliated by the response

On investigating this complaint Inspector M determined from CCTV footage that the complainer had asked a passing police officer for a doctor. The force identified this police officer as Constable P. The CCTV footage records Constable P stating that she has not got a doctor, looking down at herself as if checking her pockets and advising the complainer that she “does not keep one with her”. In the enquiry summary Inspector M notes that there is no record of an incident as recalled by the complainer. However, given the similarity of the comments made by Constable P to the complainer’s recollection of events Inspector M notes that Constable P has been given management advice regarding her behaviour.

The force response to this complaint dated 26 September 2007 advised the complainer that the police officer had been identified and measures taken to prevent such behaviour occurring in the future. Superintendent D states in this letter:

“I apologise on behalf of Grampian Police for you having been made to feel degraded by the conduct of this Officer.”

The file note recording the meeting between the complainer and Inspector M on 23 October 2007 notes that the complainer did not accept that the event she recalled related to a request for a doctor rather than a drink of water.

On reviewing the CCTV footage provided to my office by Grampian Police it is apparent that the complainer asked Constable P for a doctor. It is noted that prior to the arrival of Constable P the complainer can be heard requesting a drink of water. There is no evidence in the CCTV recordings of the complainer’s time within the local police office or any documentation supplied to my office by Grampian Police that supports her assertion. I am of the view that the behaviour of Constable P recorded on the CCTV footage from the local police office is the incident to which Complaint 3 refers. As such the force has identified the police officer involved and addressed the incident with Constable P to prevent this occurring in the future. The response to Complaint 3 provided to the complainer in the letter of 26 September 2007 explained this and apologised for the treatment the complainer received. It is unfortunate the complainer has been unable to accept the version of events as

shown on the CCTV footage from the police office or acknowledge the force's apology.

Complaint 4 – That while the complainer was being held in a cell Custody Officer C deliberately misled the complainer regarding the likelihood of a solicitor attending the police office to see her

The complainer maintains that Custody Officer C allowed her to believe that a solicitor would attend the local police office to speak with her. In her letter to the force dated 2 October 2007 the complainer states that her belief that a solicitor was due to attend kept her calm whilst she was in the police cell.

Papers provided to my office by the force record that the complainer was advised of her rights under the Criminal Procedures (Scotland) Act 1995 and details recorded on a certificate of procedures under sections 15 and 17 of the Act. These records show that the complainer was asked at the charge bar if she would like a solicitor to be informed of her arrest. It is noted that a solicitor was requested by the complainer and that Custody Officer C telephoned the solicitor at 6.09pm on 4 July 2007. CCTV recording of the charge bar has been supplied to my office by Grampian Police and confirms that the complainer was asked if she would like a solicitor.

On reviewing the footage it is apparent that the complainer confirmed that she wanted a solicitor to be advised of her arrest and that as she did not have one, Custody Officer C advised that the duty solicitor would be contacted on her behalf. The complainer can be heard to ask who the duty solicitor was and confirm the location of the office with Custody Officer C when the name is given. The complainer describes these events in her statement. I note that on the CCTV recording immediately after the discussion with Custody Officer C about the solicitor the complainer can be heard asking if her relative can attend the police office as well. It is apparent that at this time the complainer was of the belief that the solicitor would attend the police office to see her.

Force records show that the complainer was placed in a cell by Constables A and B. During this time Custody Officer C made regular checks on the complainer as recorded in police files and also on CCTV footage. Custody Officer C asserts in his statement that when speaking with the complainer during these visits it was apparent that she was under the impression that a solicitor would be attending the police office to speak with her. Custody Officer C states that he explained her right to have a solicitor advised of her arrest but that it would be rare for the solicitor to attend the police office to visit a person who was in custody.

Inspector M notes in the enquiry summary that it was not possible for the force to identify Custody Officer C explaining the likelihood of a solicitor attending the police office on the CCTV footage. It is also noted that there is no recording of the complainer enquiring after the whereabouts of her solicitor. Inspector M states in the enquiry summary that during a visit to the complainer's cell Custody Officer C can be heard advising the complainer that somebody would be coming to see her shortly. It is acknowledged by the force that this could have caused confusion for the complainer.

On reviewing the CCTV footage supplied by Grampian Police to my office it appears that there has been some misunderstanding in the conversations between the complainer and Custody Officer C while the complainer was in custody. Custody Officer C can be heard advising the complainer that someone will see her but that they have been delayed on another job. It would appear that the complainer interpreted this as a response to the whereabouts of the solicitor while Inspector M surmises in the enquiry summary that these comments refer to police staff. It is not possible to confirm or contradict the view of either the complainer or the force from the CCTV footage provided to my office.

Complaint 5 – That Superintendent D made inappropriate comments about the complainer’s behaviour in the force’s response to the complaint about the police.

The force provided its response to the complaints against the police to the complainer in a letter dated 26 September 2007. In this letter Superintendent D states:

“I am concerned, however, at the behaviour exhibited by you and you may well wish to reflect on how your own actions contributed to the situation you found yourself in that day.”

The complainer responded to this letter on 2 October 2007 and asserts that these comments are uncalled for. Superintendent D responded to this complaint in his letter to the complainer dated 6 November 2007 in which he states:

“I believe you feel strongly that my comments about your own behaviour are unjustified. I must advise you that these are based on the observations of both Police and independent witnesses and as such I maintain my position.”

I consider it inappropriate that a personal opinion of this nature has been included in the response to the complaint about the police. From the papers provided to my office by Grampian Police there does not appear to have been any further investigation by the force into this complaint. Given the nature of this complaint, I am of the view that it should not have been responded to by Superintendent D as the officer who the complaint related to.

I note that there does not appear to be any reference to officers responding to complaints relating to themselves in the Grampian Police guidance on Complaints Against the Police. This may be a learning point for the force.

7. Conclusion

Complaint 1 – That Constables A and B used excessive force when detaining the complainer

The complainer has stated that she resisted detention and struggled with the police officers. This is confirmed by the statements of the witnesses and Constables A and B. The force has investigated the allegation of excessive force by the officers thoroughly and should be commended for the efforts made to explain to the complainer why it did not uphold her complaint. As such **I do not uphold this complaint.**

Complaint 2 – That Constables A and B shouted at the complainer

The complainer brought this complaint to the force in correspondence dated 2 October 2007. From the information available to me, it does not appear that the force has responded to this specific complaint. As such **I recommend that Grampian Police now respond to the complainer.**

Complaint 3 – That the complainer asked a female police officer a question and felt humiliated by the response

I am satisfied that the force has investigated this complaint thoroughly and offered the complainer an apology for the behaviour of Constable P. The force has also advised the complainer that steps have been taken to prevent such incidents happening again. As such, **I do not uphold this complaint.**

Complaint 4 – That while the complainer was being held in a cell Custody Officer C deliberately misled the complainer regarding the likelihood of a solicitor attending the police office to see her

In the absence of any evidence to support or contradict the view of either party **I do not uphold this complaint.**

Complaint 5 – That Superintendent D made inappropriate comments about the complainer's behaviour in the force's response to the complaint about the police

In my view, it was not appropriate for Superintendent D to deal with this complaint regarding his correspondence personally. As such **I recommend that Grampian Police now record this complaint, investigate and respond to the complainer.**

Jim Martin
Police Complaints Commissioner for Scotland
July 2008