



Request for complaint handling review of a complaint about

Lothian and Borders Police

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

August 2008

Case reference: PCCS/0808/00195/PF-L&B

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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 his complaint about Lothian and Borders Police. The complainer was involved in a dispute with a former employer which resulted in him attending an Employment Tribunal in 2006. After the Tribunal the complainer made a complaint to the police that witnesses had perjured themselves during the proceedings. The complainer was unhappy with the response from the force and made the following complaint:

Complaint – That the force failed to investigate the complainer’s allegation that witnesses had perjured themselves at an Employment Tribunal.

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

Following the termination of his employment, the complainer sought to have an Employment Tribunal rule that he had been unfairly dismissed. During the tribunal proceedings witnesses gave evidence relating to the events leading up to the complainer's dismissal.

After the conclusion of the Employment Tribunal, the complainer provided a statement to police force X on 1 February 2007 stating that two witnesses had lied under oath during the proceedings. As the alleged perjury had occurred within the jurisdiction of Lothian and Borders Police, police force X referred the matter to the force for investigation.

Detective Constable A was allocated the enquiry into the complainer's allegation. At the conclusion of his investigation, Detective Constable A noted that there was no evidence to support the allegation that the two witnesses had perjured themselves.

Detective Constable A informed the complainer of his conclusions on 16 April 2007. On 17 April 2007, at the request of the complainer, Detective Constables A and B visited the complainer at his home to discuss the matter further. On 22 May 2007, Detective Chief Inspector C wrote to the complainer to advise that as a result of the investigation, the force concluded that there was no evidence to support the allegations of perjury.

4. Force internal handling

The complainer notified the force of his complaint about the police on 18 June 2007. It appears that two Complaints Against the Police (CAP) forms were filled out on this date. Both forms detail the complaint to be 'neglect of duty'. One form shows that the complaint was received from the complainer by letter and that the neglect had been on the part of an unidentified officer. The other CAP form shows that the complaint was received personally and that, through Detective Constable A, the force:

'have not conducted sufficient enquiry into his perjury allegation'.

On 29 June 2007, Superintendent D wrote to the complainer advising that he would arrange for a senior officer to call and see him. On 12 July 2007 Detective Inspector E stated that he visited the complainer at his home in order to explain the steps that had been taken by Detective Constable A whilst investigating the allegation of perjury made by the complainer. Detective Inspector E stated that the complainer was unwilling to listen and that he was unable to conciliate the complaint. On 13 July 2007, Detective Inspector E provided a written update to the Deputy Chief Constable, in the format of a 'conciliated report', detailing his conclusions. His conclusion was that, although the complainer's complaint was not conciliated, Detective Constable A had carried out a full investigation into the complainer's allegations.

On 30 August 2007, the Deputy Chief Constable sent a letter to the complainer detailing the force's conclusions on his complaint. The Deputy Chief Constable stated:

'Having reviewed the file, I consider your complaint against Lothian and Borders police to be unsubstantiated.

I am satisfied that the Force has at all times attempted to address your concerns in an appropriate and professional manner. I am aware that [Detective Inspector E] has seen you personally to discuss the matter and explain the elements necessary to prove a case of perjury. In view of this I do not propose to take this matter any further and now consider the matter closed'.

5. PCCS review

An initial telephone call was received from the complainer on 7 November 2007 and his signed and completed application for review form was received on 21 November 2007 alongside other documentation. A number of telephone calls between case officers and the complainer took place during the course of the enquiries by my office.

My office asked Lothian and Borders Police on 28 November 2007 to provide the relevant complaint case papers by 12 December 2007. The case files were received from the force on 13 December 2007. My office has also been provided with a Standard Operating Procedure (SOP) which the force use when dealing with complaints about the police. On 13 December 2007, the force confirmed with my office that it had supplied all the paperwork it holds regarding the complainer's complaint about the police.

The complainer also sent my office a copy of various correspondence he had in relation to ongoing disputes he has with various other agencies. I can confirm that these have been reviewed by my office. However, this correspondence did not include any information relevant to the complainer's complaint about Lothian and Borders Police. As noted in Section 2, I do not have the remit to review such information.

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

6. Consideration

Complaint – That the force failed to investigate the complainer's allegation that witnesses had perjured themselves at an Employment Tribunal.

The papers supplied to my office by the force include a copy of the report Detective Constable A completed into the complainer's allegation that witnesses perjured themselves during the Employment Tribunal set up to consider his dismissal. This report details the evidence secured by Detective Constable A and the reasons why he concluded that there was no evidence of the crime of perjury. It is therefore clear that the force did investigate the complainer's allegation that witnesses had perjured themselves.

I note that following Detective Inspector E's enquiry, he concluded that Detective Constable A had carried out a full investigation into the complainer's allegation of perjury and that he personally explained to the complainer the steps that Detective Constable A had taken to investigate the allegation. It appears that Detective Inspector E had tried to conciliate the matter at this point. I also note that following this explanation, the complainer was still not satisfied and the complaint was marked as 'non conciliated'.

However, no statement appears to have been taken from the complainer in the course of Detective Inspector E's enquiries despite the complainer's wish that he did not want the complaint to be conciliated. From the complaint handling SOP provided to my office by the force, when a complainer does not accept the force's initial attempts to conciliate the matter, a full investigation into the complaint should be initiated. It is not clear why the force did not adhere to this requirement. Indeed, I note that Detective Inspector E submitted his report to the Deputy Chief Constable in the format of a report that had been conciliated. It is my understanding that this is also in breach of the force's complaint handling SOP.

Irrespective of the thoroughness of Detective Constable A's investigation into the complainer's claims, from the information available to me the force does not appear to have followed its own complaint handling guidelines whilst investigating the resulting complaint.

In order that I can confirm that complaints made about the police are handled effectively, it is important that the force retain all documentation surrounding a complaint for the relevant period and adhere to its own guidelines when investigating complaints made about it by the public. It causes concern that the force could not provide my office a copy of the letter which the CAP form details as having been received from the complainer on 18 June 2007.

7. Conclusion

Complaint – That the force failed to investigate the complainer's allegation that witnesses had perjured themselves at an Employment Tribunal.

Although the manner in which Lothian and Borders Police has handled this complaint causes some concern, it is clear that Detective Constable A did conduct an investigation into the complainer's complaint that witnesses had perjured themselves at an Employment Tribunal. As such, **I do not uphold this complaint.**

Jim Martin
Police Complaints Commissioner for Scotland
August 2008