

PCCS



Police Complaints Commissioner
for Scotland

Request for complaint handling review of a complaint about

Tayside Police

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

September 2008

Case reference: PCCS/0809/00219/PF-TP

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 his complaint about Tayside Police. The complainer's complaints relate to his relative's time in police custody following her arrest on 6 April 2006.

Complaint 1 – That the complainer was not informed which police office his relative was being taken to and was not advised that she was moved;

Complaint 2 – That while the complainer's relative was in custody:

- a. she was provided with a dirty blanket;
- b. she was accompanied to the toilet by a male police officer and that she was asked to keep the toilet door open; and

Complaint 3 – That the length of time the complainer had to wait when collecting his relative from the police office was not acceptable.

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 and is a person acting on behalf of a person. The complainer is therefore a relevant complainer under the terms of section 34(6)(a) and (d).

3. Background

The complaints raised relate to events of 6 April 2006 when Relative A (the complainer's relative) was arrested, cautioned and charged by Constables B and C then taken to a local police office.

The complainer was present when Relative A was arrested by Constables B and C. Police records show that two additional officers, Constables D and E, were asked to attend the scene to speak with the complainer while Constables B and C transported Relative A to a local police office by car. The complainer states that Constables B

and C left with Relative A without advising him where she was being taken. The complainer states that as Constables D and E advised him that Relative A would be taken to police office 1 he decided to follow them. At police office 1, the complainer asserts that he was told to go away and that someone would contact him when he could collect Relative A so he left, leaving a telephone number that he could be contacted on.

Police records show that following her arrest Relative A was taken to police office 1. On arrival at the police office Constables B and C carried out enquiry into the alleged offences. Relative A was cautioned and charged before being transferred to police office 2 to be seen by a medical practitioner as part of the force investigation. Police files show that Relative A arrived at police office 2 at 1.10am on 6 April 2006. The custody record shows that Relative A was searched by a female police officer before being placed in a cell, taken to see a doctor at 1.25am and held in the police cell until her release at 2.30am.

In her statement Relative A states that prior to being searched by the female police officer she asked to use the toilet facilities. At this time she was in a small room with a toilet in it and a male police officer was present. Relative A maintains that when she entered the toilet and locked the door, the male officer instructed her to leave the door open. The complainer's relative states that she then unlocked the door, opened it and left a gap of around 8-9 inches. However, as this made her feel uncomfortable, she maintains that she did not use the facilities but flushed the toilet and washed her hands to give the appearance that she had used the toilet. Relative A states that she was then taken to a cell by a female police officer and provided with a blanket.

The complainer asserts that he received a phone call advising him that Relative A was ready to be collected from police office 2. The complainer states that on arrival at police office 2, he discovered that she was not ready and had to wait almost half an hour. A note of the telephone call the complainer made to the force on 6 July 2007 states that the complainer maintained that he had to wait for an hour for Relative A at police office 2.

4. Force internal handling

These complaints were brought to the attention of Tayside Police during contact by the complainer in relation to unconnected issues.

On 28 May 2007 Inspector F received an internal email referring to a telephone message received from the complainer in relation to a complaint about the events of 6 April 2006. On 29 May 2007, a Complaint Against the Police (CAP) form was completed detailing Complaints 1, 2a, part of 2b and 3. Inspector F noted a statement from the complainer at Relative A's place of business which details Complaints 1, 2a, and 3. On the same day, shortly after the statement had been taken, the complainer contacted Inspector F again and raised Complaint 2b.

Inspector F wrote to Relative A on 5 June 2007 to enquire whether she would be prepared to make a statement regarding her treatment while in police custody and to offer support should she decide to do so. Superintendent G's letter to the complainer of 7 June 2007 refers to a telephone conversation with the complainer on 6 June 2007. In this correspondence the complainer was informed that Inspector F was the appointed point of contact regarding these matters and would be progressing the enquiry. The complainer was in regular contact with the force regarding his complaints about the police.

On 20 June 2007 the complainer attended a meeting with Superintendent H and Chief Inspector J to discuss his complaints. Superintendent H subsequently wrote a letter of response to the complainer on 2 July 2007. In relation to Complaint 1, Superintendent H stated that at the time of her arrest it would not have been helpful to advise the complainer that Relative A was being taken to police office 1 when it was possible that she could be moved to police office 2. With regard to Complaint 2a the complainer was advised that a clean blanket is issued to each person following their admission and that they are laundered after use. Superintendent H acknowledged that Relative A's request to use a toilet came prior to the arrival of a female police officer at police office 2 and that the force was still attempting to identify the male officer involved. Addressing Complaint 2b, Superintendent H stated that it was not necessarily wrong for a male officer to have shown Relative A to the toilet and speculated that Relative A may have misinterpreted the officer's request to leave the door open. She suggested that this may have been an instruction to leave the door unlocked. In response to Complaint 3, Superintendent H informed the complainer that she did not consider the complainer's 30 minute wait for Relative A's release to be unreasonable.

On 6 July 2007, the complainer contacted Superintendent H by telephone to discuss her letter of 2 July 2007, in addition to matters not connected to this review. A file note records that the complainer referred to Complaints 1, 2a and 3 during this call. Superintendent H wrote to the complainer again on 24 July 2007 referring to the telephone call and letter of 2 July. In relation to Complaint 1, Superintendent H acknowledged that the complainer considered it unreasonable that Relative A had been moved to police office 2 and reiterated the force position on laundering blankets after each use. Superintendent H noted the complainer's position regarding Complaint 3, namely that he had had to wait for an hour for Relative A to be released.

On 26 July 2007 former Custody Care Assistant L provided a statement in which he confirmed that at the material time he was the Custody Care Assistant at police office 2. Custody Care Assistant L recalled a female prisoner being brought in and making a request to use the toilet. He stated that he recalled a discussion regarding the door and that normally in those circumstances he would have asked that it be left slightly ajar and not completely closed. He also recalled that there was a female officer in attendance. Due to the passage of time Custody Care Assistant L was unable to be more specific about the incident but stated that he would have left the area while Relative A used the facilities in accordance with rules for dealing with prisoners of the opposite sex. An internal email of 26 July 2007 and a memo dated 30 July 2007 between Inspector F and Superintendent H confirmed that the force

was still making enquiries to establish the identity of the male officer referred to in Complaint 2b.

Superintendent H wrote to Relative A on 1 August 2007 to request that she reconsider providing the force with a statement. Superintendent H also wrote to the complainer on this date referring to Complaint 2b advising the complainer that Relative A had been contacted by the force requesting that she provide more details which may assist in the identification of the male officer and that details of the final stage of the complaints had been forwarded to the force's Professional Standard Department.

On 9 August 2007 Relative A provided a statement in which she gave a description of the male officer whom she asked to use the toilet. Relative A also confirmed that although she asked to use the toilet, because she did not feel comfortable she did not use it.

Superintendent H provided a final response to Relative A and the complainer separately on 15 August 2007. In her response to Relative A, Superintendent H in relation to Complaint 2b stated that none of the officers on duty at police office 2 on the night in question remembered taking Relative A to use the toilet and that they have been unable to identify the officer involved. Superintendent H expresses the opinion that any request to leave the door open was with reference to leaving the door unlocked. This correspondence notes that Relative A's experience may have been better had a female police officer been available when she arrived at police office 2 and offered a general apology for the unpleasant nature of Relative A's time in custody. In response to the complainer, the force referred to Complaint 2b, stating again that none of the officers on duty at police office 2 on the night in question remembered taking Relative A to use the toilet and that they had been unable to identify the officer involved. Superintendent H again gave her interpretation of the circumstances surrounding Complaint 2b and apologised for the fact there was not a woman present when Relative A arrived at police office 2. Superintendent H also apologised because the force had been unable to resolve any of the complainer's other concerns to his satisfaction and advised that all correspondence regarding the complainer's various complaints had been forwarded to the Professional Standards Department.

The Deputy Chief Constable wrote to the complainer on 28 September 2007 and stated that he was of the view that the complaints had been satisfactorily addressed by Superintendent H in her letter dated 1 August 2007. In this letter the Deputy Chief Constable also advised the complainer that given the fact that he had already disputed the findings of the enquiry into these events, the relevant paperwork had already been passed to my office for consideration.

5. PCCS review

The complainer previously asked me to review a number of complaints about the police on 19 June 2007. During the course of the complainer's previous complaint handling review he contacted my office and advised that he had a further complaint

that Tayside Police was still considering. The complainer first detailed his concerns about Relative A's time in police custody by telephone on 19 June 2007. The complainer was asked to complete and sign an application for review form which was received on 22 June 2007.

My office contacted Tayside Police by telephone on 19 June 2007 to check the status of this particular complaint. At this time, Superintendent G advised that Tayside Police was still investigating the complaint.

As my office was already considering other issues relating to Tayside Police for this complainer, the Deputy Chief Constable decided to forward the complaints directly to the PCCS. These papers were supplied to my office on 16 October 2007.

On 30 October 2007 my office wrote to the complainer to confirm that although the police files had been received the issues reviewed in this report would not be addressed in the complaint handling review published in November 2007.

The complainer has been regularly updated with the progress of his complaint throughout the complaint handling review.

6. Consideration

Complaint 1 – That the complainer was not informed which police office his relative was being taken to and was not advised that she was moved.

In his statement the complainer maintains that, following her arrest, Relative A was taken away by Constables B and C without giving him any indication where she was being taken to. During a telephone call to the force on 6 July 2007, the complainer went on to state that it was not acceptable that Relative A had been moved to police station 2 without informing him.

Following Relative A's arrest at around midnight on 6 April 2006 she was initially taken to police office 1 by Constables B and C. The complainer states that he was advised by Constables D and E that they were going to police office 1 and that he followed them there. As part of the criminal investigation Relative A was then taken to police office 2 to see a doctor. Police records show that a visual observation was carried out by the doctor at 1.35am.

The force responded to this initial complaint on 2 July 2007. At this time, Superintendent H stated:

"You also complain that you were not informed where [Relative A] was being taken but it would not have been helpful to inform you that she was being taken to [police office 1] when, depending on the relevant procedures, it was possible that she would be taken to [police office 2]."

The force made a further reference to Complaint 1 in correspondence dated 24 July 2006, acknowledging that the complainer considered it unreasonable that Relative A was moved to police office 2 where he had to go to collect her.

No further reference has been made by the force in relation to the fact that the complainer was unhappy that Relative A was moved to police office 2.

Complaint 2 – That while the complainer’s relative was in custody:

- a. she was provided with a dirty blanket.

The complainer brought this to the attention of the force in his statement dated 29 May 2007. The complainer states that the blanket provided to Relative A while she was held in a police cell was not clean.

In the force response to this complaint dated 2 July 2007 Superintendent H states:

“A clean blanket is issued to each person on their admission following which it is laundered. It is accepted that this constant washing and re-use results in blankets looking worn but steps are taken to ensure that they are clean.”

As part of the investigation by Tayside Police into these complaints a statement was taken from Relative A on 9 August 2007. I note that Relative A made no reference in her statement to the cleanliness of the blanket that she was supplied with.

The complainer, who did not accept the force response, raised this matter again with Superintendent H during a telephone conversation on 6 July 2007. Superintendent H reiterated the force position in her letter to the complainer of 6 July 2007.

Complaint 2 – That while the complainer’s relative was in custody:

- b. she was accompanied to the toilet by a male police officer and that she was asked to leave the toilet door open.

The complainer brought this issue to the attention of the force after Inspector F noted his statement at Relative A’s place of business. The complainer followed Inspector F out into the street and advised him that he also wished to raise a complaint about this matter. A memo dated 13 June 2007 from Inspector F to Superintendent K states that the complainer asserted that Relative A was taken to the toilet by a male police officer and asked to keep the toilet door open.

The force has made attempts to determine if a male officer accompanied Relative A to the toilet. Statements were obtained from officers and a custody care assistant who were on duty at police office 2 during the time in question. I note that the statements taken from Constables B and C assert that they have no recollection of Relative A asking to be taken to the toilet or escorting her there. Custody Care Assistant L provided a statement to Tayside Police on 26 July 2007. I also note that Custody Care Assistant L does recall Relative A asking to use the toilet and that

there was some discussion about leaving the door open. He states that normally in these circumstances he would have asked that the door be left slightly ajar but that he would not have done this unless there had been a female member of staff present. Custody Care Assistant L states that there was a female police officer present at this time.

Statements have been provided by female police officers Constables M and N dated 17 June 2007 and 25 June 2007 respectively. Both officers were on duty at police office 2 at the time in question. Constable M stated that due to the lapse in time (over a year) she could not recall if she escorted Relative A to the toilet while she was in custody. Constable N's statement asserted that her only contact with Relative A was while she escorted her from the cell to the charge bar area to be released. I note that there does not appear to have been a statement obtained from the Custody Sergeant on duty at the time in relation to this allegation.

Relative A was initially reluctant to provide a statement to the force but did do so on 9 August 2007. Relative A states that she was taken to a small room with a toilet in it by a male police officer, whom she described. Relative A maintains that she then asked to use the toilet. On entering the toilet and locking the door Relative A asserts that she was told by the male officer to leave it open and so left the door 8-9 inches ajar before pretending to use the toilet.

Superintendent H provided the final response to this complaint in her letter dated 15 August 2007 to the complainer. In this correspondence Superintendent H asserted:

"..... none of the Officers dealing with [Relative A] that night recall her asking to go to the toilet.....I would ask that you understand that an Officer at a Police station being asked by someone if they could use a toilet during a short period in custody over a year ago is not something that they would necessarily be expected to remember. The men who were present have been asked and none recall such a request.....the request to leave the toilet door open would not seem as unusual to a Police Officer or custody assistant as it might to a member of the public.The care of people in our custody is paramount and we regularly deal with people who self-harm, dispose of property or try to escape and I am conscious that [Relative A] had not yet been searched at the time she was shown to the toilet."

I note that the Tayside Police Prisoner Care Manual states that every effort must be made to ensure that no prisoner is left alone with an officer or member of staff of the opposite gender.

Whilst it may be the case that the description provided by Relative A does not match that of Custody Care Assistant L, I note that the force did not inform the complainer that a male staff member recalled taking Relative A to use the toilet and that there was a discussion regarding the toilet door. It does not appear that Custody Care Assistant L's statement has been taken into account in Superintendent H's response to the complainer.

Complaint 3 – That the length of time the complainer had to wait when collecting his relative from the police office was not acceptable.

The complainer brought this matter to the attention of the force in his statement dated 29 May 2007. The complainer stated:

“When I arrived there it appeared that [Relative A] was not ready as I had to wait almost half an hour...”

Superintendent H stated in her letter to the complainer of 2 July 2007 that she did not consider that a wait of 30 minutes was unreasonable. It appears that the complainer raised this issue with Superintendent H during the telephone conversation on 6 July 2007. In her correspondence to the complainer of 24 July 2007 Superintendent H stated:

“Inspector [F] noted in your statement that you had complained that you were kept waiting for almost half an hour. That is why I stated in my letter that I did not think this was unreasonable. I now note your position that it was an hour before [Relative A] was released and that the delay was due to officers wishing to be awkward with you.”

I referred to this incident in my previous complaint handling review related to the complainer published on 28 November 2007¹. In this report I noted that CCTV footage shows the complainer arriving at police office 2 at 2.19am and leaving with Relative A at 2.30am.

It would have assisted the handling of this complaint had the force referred to this CCTV footage when responding to the complainer about his recollection of the time elapsed between arrival at and departure from police office 2.

Other matters emerging as a result of the review

I note that there are many references to telephone calls made to the force by the complainer in the information supplied to my office by Tayside Police. With the exception of a note providing a list of topics and questions covered during a telephone conversation between Superintendent H and the complainer on 6 July 2007, no record has been kept of the content of these conversations. It may have been of benefit to the force had such a record been kept. This is an area where the force may be able to improve future complaint handling.

I also note that in the letter of 15 August 2007, the force acknowledged the complainer's continuing unhappiness and apologised to him for being unable to resolve his concerns about Relative A's treatment while in police custody to his satisfaction.

¹ PCCS/0711/00015/PF-TPB pages 7-8

7. Conclusion

Complaint 1 – That the complainer was not informed which police office his relative was being taken to and was not advised that she was moved.

I am of the view that it may have been beneficial to the complaint handling in this case had the force provided a more comprehensive reply to this complaint. However, the force has given a reasoned response and as such, **I do not uphold this complaint.**

Complaint 2 – That while the complainer's relative was in custody:

- a. she was provided with a dirty blanket.

In my view, Tayside Police has recorded and considered this matter in full. The force has provided the complainer with an explanation of its procedures and given reassurance in this respect on more than one occasion. As such **I do not uphold this complaint.**

- b. she was accompanied to the toilet by a male police officer and that she was asked to leave the toilet door open.

The force has recorded and investigated this complaint. I am of the view that the force's consideration and response to the complainer could have reflected Custody Care Assistant L's statement more accurately. However, a considerable period of time elapsed between this incident occurring and being raised as a complaint about the police, resulting in a limited recollection of the police officers and staff on duty at the time in question. From the information available, I am neither able to support nor contradict the view of either party. As such, **I do not uphold this complaint.**

Complaint 3 – That the length of time the complainer had to wait when collecting his relative from the police office was not acceptable.

The force considered this complaint and advised the complainer that it did not believe that the length of time that he had to wait to collect Relative A at police office 2 was unreasonable. The complainer has already been made aware of the timing involved with regard to this matter in the previous complaint handling review conducted by my office. As such **I do not uphold the complaint.**

Jim Martin
Police Complaints Commissioner for Scotland
September 2008