

PCCS



Police Complaints Commissioner
for Scotland

Request for complaint handling review of a complaint about

Fife Constabulary

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

October 2008

Case reference: PCCS/0810/00144/PF-FC

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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 complaints about Fife Constabulary. His complaints originate from an altercation with his ex-partner's relative in his local town centre.

Complaint 1: That Inspector C failed to answer the complainer's letters detailing his concerns about the slanderous behaviour of his ex-partner's family;

Complaint 2: The complainer is unhappy with the way the CCTV footage of the incident was dealt with by Fife Constabulary; and

Complaint 3: That the force failed to charge Relative B with Breach of the Peace.

The complainer also raised a concern with my office that he had been victimised by the police because he had previously submitted a complaint about Fife Constabulary to the PCCS for review. This concern was raised with the force again at a later date and I have reported my conclusions in PCCS/0810/00261/PF-FC.

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 complainer sent a letter to Inspector C dated 24 May 2007 asking the force to send an officer to visit his ex-partner's family to ask that they stop “*spreading slander*” about him. The complainer wrote to the force again on 7 August 2007

asking for action regarding alleged slanderous comments, enclosing a copy of his letter of 24 May 2007.

On 23 August 2007 the complainer was shopping in his local town centre. On approaching a shop the complainer passed two of his ex-partners' relatives and an argument ensued. During this argument Relative A accused the complainer of spitting on her.

Following the altercation the complainer went to his local police office to report the incident. Whilst he was waiting to speak to an officer Relative A and Relative B arrived at the police office and another argument occurred. Inspector C stated in the Preliminary Report that Constable D and Constable E heard the argument and intervened to calm the situation. Relative A and Relative B then left the police office on the advice of the officers.

Constable F attended the police office and obtained a statement from the complainer regarding the incident. Constable F also noted statements from Relative A and Relative B. Inspector C stated in his Preliminary Report that the complainer made it known to Constable F that he wished to make an additional complaint about the conduct of Relative A at the police office and these details were included in the statement taken from the complainer. Inspector C noted in the Preliminary Report that Constable F assured the complainer that the relevant CCTV records would be examined for both the incident on the high street and subsequently in the police office reception.

Constable F stated that he believed that the altercation appeared to be a minor incident which could be resolved with advice given to both parties. He stated that both parties appeared to accept this and were allowed to go their separate ways. Despite the assurance given by Constable F, Inspector C noted in the Preliminary Report that the complainer then asked to speak to a supervisor and subsequently met with Sergeant G. Inspector C stated that the complainer raised issues he had regarding slanderous comments he believed were being made about him. He noted that Sergeant G informed the complainer that slanderous comments could only be dealt with in civil law. The complainer, in a letter to the force dated 6 September 2007 which he provided to my office, stated that he contacted the force later that day and informed them that he wished to pursue a complaint against Relative A.

In his Preliminary Report, Inspector C stated that Sergeant G informed him that the complainer had expressed dissatisfaction that he had received no reply to his letter of 7 August 2007 in which he had requested police action in relation to his complaint about slanderous comments. Inspector C stated that he contacted the complainer by telephone on 24 August 2007 and following this telephone call the complainer made repeated contact with the force's Complaints and Professional Conduct Department over the next few days.

The complainer, in his letter dated 6 September 2007, stated that following the incident Constable F visited him on 25 August 2007. The complainer stated in the letter that he informed Constable F that the CCTV footage of the high street would prove that he did not spit on Relative A. The complainer stated in this letter that he personally delivered a letter to the force on 26 August 2007.

Constable F asserted, in his operational statement provided in the course of the enquiry into the incident, that when he recommenced duty on 26 August 2007 he was informed that the complainer wished to pursue a complaint against Relative A. He stated that later that day he attended at the shop where the incident occurred and retrieved CCTV footage. He stated that it showed the complainer and Relative A in the shop but no disturbance.

The complainer stated in his letter dated 6 September 2007 that Inspector C telephoned him on 4 September 2007 to arrange a meeting at the police office. The complainer stated that Inspector C informed him that the CCTV had been checked and that it didn't show the complainer.

On 5 September 2007 the complainer and Relative A were charged separately with offences in relation to the incident in the high street on 23 August 2007.

The complainer's solicitor wrote to the force on 7 September 2007 requesting that any CCTV footage of the incident be preserved until such a time as any criminal proceedings concerning the complainer have been resolved. Superintendent H from the Criminal Justice Department responded on 17 September 2007 stating that he had been advised that the incidents were not captured on CCTV and that the recordings for that day had now been erased.

The complainer has provided confirmation that action was taken by the Procurator Fiscal against the complainer in relation to the incident on the high street.

4. Force internal handling

Whilst at the police office on 23 August 2007 the complainer informed Sergeant G of his concern that his letter of 7 August 2007 to Inspector C had not been answered. The Preliminary Report into the complaint about the police noted that Sergeant G informed Inspector C of the complainer's dissatisfaction.

Inspector C stated in the Preliminary Report that following a telephone conversation with the complainer on 24 August 2007, the complainer made repeated contact over the following few days with the Complaints and Professional Conduct Department to seek updates on the progress of the enquiry relating to the incident on 23 August 2007, and to repeat his concern that the CCTV footage was somehow being suppressed or ignored.

Inspector C also noted that he met the complainer to discuss his concerns. In the information provided to my office by the force there is no record of when this meeting occurred, what was discussed and what complaints were raised at this time. The complainer asserted in correspondence to my office that this meeting occurred on 4 September 2007.

The complainer wrote a letter dated 6 September 2007 which he states he sent to Fife Constabulary. In this letter he raised Complaint 1, Complaint 2 and concerns

surrounding Complaint 3. The force has confirmed with my office that it did not receive this letter.

A Complaint about the Police (CAP) form was filled in by Inspector C on 13 September 2007. The complainer's complaints were not specified on this form. A Preliminary Report was completed by Inspector C and attached to the CAP form. It was noted on the CAP form that the complaints originated from a letter to the force received in the local police office on 25 August 2007. In the information supplied to my office there is a letter dated 26 August 2007 from the complainer to the force. In this letter the complainer asked for an outcome of the incident on 23 August 2007, asked the force to investigate Relative B's behaviour at the police office as he believed this had been overlooked and stated that his ex-partner's family had been orchestrating a malicious slander campaign against him.

The Preliminary Report completed by Inspector C was attached to the CAP form. In the Nature of the Complaint section of the report Inspector C made reference to matters relating to Complaints 1 and 2. He noted that the complainer's complaints centred on a suspicion that the police are biased against him. He further stated that the complainer believed all available CCTV had not been reviewed. Inspector C also noted that the complainer appeared to accept that the force could do little about slanderous remarks he believed that people have made about him, but that he wished to complain about the lack of response to his letters.

With regard to Complaint 1 Inspector C stated that the complainer had raised the matter of his ex-partner's family making slanderous remarks about him during the course of a previous investigation into complaints about the police. He stated that the complainer had been advised that the issue of slanderous comments was not a criminal matter and that he should seek the advice of a solicitor. With reference to the complainer's letter to Inspector C dated 7 August 2007, Inspector C stated in the Preliminary Report that during a telephone conversation with the complainer on 24 August 2007 he explained that he was on annual leave until 22 August 2007 and as such the letter was not opened until his return. In the Preliminary Report Inspector C acknowledged that he was at fault for not responding directly to the complainer's letter of 24 May 2007, although he stated that he had already referred to this letter in a report about a previous complaint about the police. He stated that he had apologised to the complainer during their conversations about the complaint and confirmed to him that the issue of slander was essentially a civil matter.

Inspector C also referred to matters relating to Complaint 2 in the Preliminary Report. He stated that CCTV footage had been obtained as a production but showed little to support the allegations of the complainer or Relative A. He also mentioned CCTV footage of the police office reception area. Inspector C concluded that all of the evidence the complainer felt had been suppressed had been obtained and would be presented at court should the Procurator Fiscal decide to proceed.

Inspector C does not directly refer to Complaint 3 in the Preliminary Report. However he stated that CCTV footage of the police office reception area was obtained and reflected that an argument took place between the complainer and Relative A and that there were raised voices. He stated that the circumstances did not warrant any person being charged with any offence.

A final letter was sent to the complainer by T/Superintendent J on 13 September 2007 in response to the complainer's correspondence of 7 and 26 August 2007. In this letter he apologised for the delay in responding, stating that he believed that the reasons for this had been explained by Inspector C. He confirmed that the incident where the complainer alleged that he was verbally abused on the high street had been investigated and a report was sent to the Procurator Fiscal. He stated that the CCTV evidence the complainer had previously discussed with Inspector C was to be referred to in the report to the Procurator Fiscal. He advised the complainer that his allegation of slanderous behaviour was not a criminal offence and stated that the complainer should seek the assistance of a solicitor.

5. PCCS review

A letter of complaint was received on 1 October 2007. The complainer was asked to complete and sign an application for review form which was received on 23 October 2007 together with copies of correspondence he stated he had sent to Fife Constabulary.

On 26 October 2007 my office asked Fife Constabulary to provide the relevant complaint case papers including any CCTV, audio or photographic evidence by 9 November 2007. Fife Constabulary supplied documentary information on 15 November 2007 and 18 December 2007.

I have confirmed with the force that it did not receive the complainer's letter dated 6 September 2007, which he stated he had sent to Fife Constabulary Headquarters.

On 3 July 2008 my office sought confirmation from the force that the full file and all information available concerning the complainer's complaints had been provided. The force confirmed by email that my office had received everything in relation to the incident on the high street.

My office requested Standard Operating Procedures for CCTV in Public Places from the force on 19 August 2008 and these were received by email that day. On 18 September 2008, a further request was made for any CCTV footage of the incident held by the force. Despite previous assurances that my office had all information, CCTV footage relating to both the high street and the police office reception area were received on 23 September 2008.

I am disappointed that my office was required to make a number of requests to the force for information which should have been provided without additional prompting. This should be noted by the force as a learning point for the future.

During the time my office reviewed the files, the complainer was regularly updated on the progress of his complaints.

6. Consideration

I understand that Inspector C met with the complainer regarding his complaints about the police and that the complainer telephoned the Complaints and Professional Conduct Department on a number of occasions. I note that there was no statement taken from the complainer at the meeting and that there is no record of what was discussed during the telephone calls. A Complaint about the Police (CAP) form was completed by Inspector C and a Preliminary Report was attached to this.

In the information provided to my office there are references to the complainer's concerns throughout the Preliminary Report. However, it is evident that his specific complaints about the police have not been clearly identified by the force. Consequently there is no audit trail indicating exactly what complaints the complainer raised with the force and as a result it is difficult to evaluate the enquiry carried out by Inspector C.

Fife Constabulary's Standard Operating Procedures provide guidance to the effect that a statement should be noted from the complainer detailing the allegations and against whom they are made. This is good practice. In my view the force failed to respond to the complainer in line with its own Standard Operating Procedures. This should be noted as a learning point for the future.

Complaint 1: That Inspector C failed to answer the complainer's letters detailing his concerns about the slanderous behaviour of his ex-partner's family;

On 24 May 2007 and on 7 August 2007, the complainer wrote to Inspector C asking him to investigate his complaint about slanderous actions of his ex-partner's family. Following the incident on 23 August 2007 the complainer informed Sergeant G that he was dissatisfied that his letter of 7 August 2007, which included a copy of the letter dated 24 May 2007, had not yet been replied to.

In the Preliminary Report Inspector C confirmed that the complainer had been informed, both by Sergeant G and himself, that slander was not a criminal matter and that he should seek further advice from his solicitor. Inspector C stated that during a telephone conversation with the complainer on 24 August 2007 he explained why he had not replied earlier. Inspector C acknowledged that he was at fault for not responding directly to the complainer's letter of 24 May 2007, although he stated that he had already referred to this in relation to another matter. He stated that he had apologised to the complainer during their conversations about the complaint.

T/Superintendent J wrote a final letter to the complainer on 13 September 2007 referring to the complainer's letters to the force dated 7 and 26 August. He apologised for the delay in responding, stating that he understood the reason had been relayed by Inspector C. He further advised the complainer that slander was not a criminal offence and that he should seek advice from a solicitor.

From the information available it is evident that the complainer has informed the force on numerous occasions that he believed that his ex-partner's family were making slanderous remarks about him. It also appears that the complainer was given advice on how to deal with his concern. I note that Inspector C stated that he had apologised to the complainer for failing to respond directly to his letter of 24 May 2007 and provided an explanation for his delay in responding to his letter of 7 August 2007. However, the final response to the complainer from T/Superintendent J does not address the complaint that Inspector C did not answer the complainer's letter of 24 May 2007.

I also note that Inspector C conducted enquiry into a complaint about his own conduct. Fife Constabulary Standard Operating Procedures state that a complaint should be allocated to an Inspector unconnected with the case for enquiry.

Complaint 2: The complainer is unhappy with the way the CCTV footage of the incident was dealt with by Fife Constabulary;

Although there is no written record, it is evident in reading the Preliminary Report that the complainer informed Inspector C that he was concerned that all available CCTV footage of the incident had not been retained or reviewed. Inspector C referred to this concern in the Preliminary Report stating that the evidence the complainer felt had been suppressed had been obtained, however the footage showed little to support the allegations. He makes reference to more than one CCTV recording, specifically citing the footage obtained from the police reception area, confirming that it had been obtained however the circumstances did not warrant any person being charged with an offence.

T/Superintendent J stated in the final letter to the complainer dated 13 September 2007 that he could confirm that the incident had been investigated and the circumstances would be reported to the Procurator Fiscal. He stated that the CCTV evidence that the complainer discussed with Inspector C would be referred to in the report.

From the information provided to my office it appears that CCTV footage from the shop the incident occurred in and from the Police Office reception area was obtained during the investigation into the incident and commented on in the report to the Procurator Fiscal. Constable F asserted that the CCTV footage obtained from the shop only covered the till area and did not show Relative A committing a Breach of the Peace. He also stated that the police CCTV systems had been checked with negative result. In the course of this complaint handling review my office viewed the CCTV footage of the shop and of the reception area of the police office. Having viewed this footage in my view the response provided by T/Superintendent J, albeit brief, adequately addresses the concern the complainer raised with Inspector C that he felt that the CCTV footage had not been retained or reviewed.

Other matters related to this complaint

For a sense of completeness there are a number of issues arising from the information supplied to my office that I wish to address.

The complainer further expressed concern to my office that the force did not retain CCTV footage despite a request by his solicitor to do so and that he does not believe the force when they told him that he was not present on CCTV footage of the incident. As there is no clear documentation of the complainer's complaints about the police in the information supplied to my office it is not apparent if the complainer raised these additional concerns with Inspector C during the enquiry into his complaints.

From information provided to my office by the complainer I understand that the complainer's solicitor wrote to the Chief Constable on 7 September 2007 requesting that any CCTV footage of the incident on 23 August 2007 at the high street be retained until such a time that any criminal proceedings concerning the complainer were resolved. Superintendent H of the Criminal Justice Department responded to the complainer's solicitor on 17 September 2007. He stated that enquiry had been made with the CCTV Unit at Police HQ to ascertain if the incidents the solicitor referred to had been captured on CCTV. He maintained that he had been advised that the incidents had not been captured on CCTV and the recordings for that day had been erased as footage is kept for a maximum of 14 days.

Superintendent H in his letter dated 17 September 2007, does not specify what CCTV footage sources were checked following his enquiry with the CCTV unit at Police HQ. In light of the Preliminary Report by Inspector C and the response provided to the complainer by T/Superintendent J, who confirm that CCTV had been obtained and would be presented to the Procurator Fiscal, Superintendent H's response to the solicitor that the incidents involving the complainer were not captured in CCTV footage has caused confusion.

The correspondence between the complainer's solicitor and the force was not contained in the information provided to my office by the force and Inspector C did not address this concern in his Preliminary Report.

I am concerned that personnel in different departments of the Force have provided the complainer and his legal representative with conflicting advice in relation to the existence of CCTV footage.

Complaint 3: That the force failed to charge Relative B with Breach of the Peace.

The complainer is unhappy that Relative B was not charged with Breach of the Peace following the argument in the police office. From the information provided to my office it is evident that the complainer asked the force to investigate the conduct of Relative B in his letter of 26 August 2007. However, there is no information to suggest that this concern was raised with the force as a complaint about the police. Nevertheless I do note that Inspector C stated in the Preliminary Report that CCTV footage of the police office in which the incident occurred was obtained and that the circumstances did not warrant any person being charged with any offence.

7. Conclusion

Complaint 1: That Inspector C failed to answer the complainer's letters detailing his concerns about the slanderous behaviour of his ex-partner's family;

From the information available it is evident that the complainer raised the matter of his ex-partner's family on a number of occasions and the complainer was given advice on how to progress the matter. Inspector C acknowledged that he had not responded to the complainer's letter of 24 May 2007 and apologised to the complainer for this during a phone conversation. He also explained the delay in responding to the complainer's letter of 7 August 2007. In light of the apology offered to the complainer by Inspector C **I do not uphold this complaint.**

I note that Inspector C conducted enquiry into a complaint which concerned his own conduct. I urge the force to ensure that the relevant Standard Operating Procedures are applied in full in practice.

Complaint 2: The complainer is unhappy with the way the CCTV footage of the incident was dealt with by Fife Constabulary

It is not clear whether the complainer raised with the force his concerns that he did not believe the force when they stated that he was not present on CCTV footage, and that the force failed to retain CCTV footage despite the request from his solicitor. However T/Superintendent J provided an adequate response to the complainer regarding his concern that the relevant CCTV had not been retained and reviewed.

In light of the contradictory information provided to the complainer's solicitor regarding the CCTV footage from Superintendent H, combined with the failure to clearly record the complainer's complaint, **I recommend, for a sense of completeness, that Fife Constabulary now provide a full and detailed response to the complainer.**

Complaint 3: That the force failed to charge Relative B with Breach of the Peace.

Despite Inspector C making reference to the incident in the police office in the Preliminary Report, there is no evidence in the information sent to my office to suggest that the complainer raised this matter with the force as a complaint about the police. Should the complainer wish to have this complaint addressed by the force, **I recommend that he should in the first instance make this complaint to Fife Constabulary.**

Jim Martin
Police Complaints Commissioner for Scotland
October 2008