

PCCS



Police Complaints Commissioner
for Scotland

Request for complaint handling review of a complaint about

Northern Constabulary

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

October 2008

Case reference: PCCS/0810/00228/PF-NC

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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 Northern Constabulary in relation to events following a visit to his home by two officers on 14 November 2006. The officers had attended the complainer's home in response to a complaint that the force had received about him from a member of the public.

Complaint 1 - That the manner in which Northern Constabulary handled his complaints about the police was a "*paper exercise*" and failed to provide answers to all his complaints. Specifically:

Complaint 1(a) – That officers of Northern Constabulary failed to consider the complainer's account of events when they visited his home on 14 November 2006;

Complaint 1(b) – That the force is under the influence of an external organisation;

Complaint 1(c) – That the force did not ask the complainer to provide the dates and times he was stopped by the police before an investigation was carried out; and

Complaint 1(d) – That the force lied about the complainer's relative refusing to provide a statement.

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

On 13 November 2006 a member of the public, Mr A, contacted Northern Constabulary about the conduct of the complainer. Mr A accused the complainer of threatening behaviour, requested that no formal police action be carried out, but that the police speak to the complainer about the incident.

Sergeant B and Constable C visited the home of the complainer on the evening of 14 November 2006 to make him aware of Mr A's concerns. Sergeant B and Constable C's statements both show that when they arrived at his address, they spoke to the complainer and his relative outside the house. Both officers stated that they found it difficult to discuss the issue with the complainer and that he and his relative began to talk at the same time, refusing to let the officers speak. Constable C stated that the complainer walked back into his house and that as it was the complainer they wished to speak to, not his relative, they decided to return to the police car.

The complainer stated that the officers were not interested in his view regarding the complaint made against him by Mr A. He also stated that he believed that the officers were working to Mr A's agenda due to the influence of an external organisation.

The complainer subsequently wrote a letter of complaint to Northern Constabulary about the two officers who attended his home on 14 November 2006 and his belief that the officers were working on behalf of the member of the public who made the complaint.

4. Force internal handling

Complaint 1(a) – That officers of Northern Constabulary failed to consider the complainer's account of events when they visited his home on 14 November 2006; and

Complaint 1(b) – That the force is under the influence of an external organisation.

The complainer initially raised Complaints 1(a) and 1(b) in a letter dated 20 November 2006, received by Northern Constabulary's Professional Standards and Conduct Unit on 22 November 2006. The complainer stated that he wished to lodge a formal complaint against Sergeant B and Constable C because the officers: (i) were not interested in his response to the complaint made against him; (ii) were working on behalf of Mr A whom he considered was a "fellow" member of an external organisation; (iii) and that he saw their actions as harassment. The complainer also asked that an officer from station X be appointed as he was unhappy with previous dealings with station Y. On the same date, a letter containing similar complaints was received by the Professional Standards and Conduct Unit from the complainer's relative.

A Complaint Against the Police (CAP) form dated 20 November 2006 summarises the complainer's letter stating that Sergeant B and Constable C refused to listen to the complainer's "*side of the story*" regarding the complaint by Mr A and that Sergeant B had been influenced by individuals who were members of an external organisation which was why he was harassing the complainer.

In the preliminary report, dated 9 February 2007, Inspector D stated that she had been appointed investigating officer on 29 November 2006. She also noted that after several cancelled appointments, a visit to the complainer's house was arranged for 23 January 2007. Inspector D and Sergeant E confirmed that during this visit, an unsuccessful attempt at reconciliation was made before a statement was noted from the complainer. The complainer's statement showed that he thought the officers who visited his house on 14 November 2006 were not interested in what he had to say; that he felt harassed by Sergeant B; and that an external organisation had influence over Sergeant B.

This report also noted that the complainer's relative did not wish to provide a statement as he considered it to be the complainer's complaint. Inspector D summarised the complaint, stating that the complainer felt that as a result of influence over Sergeant B by members of an external organisation, he had been harassed by Sergeant B and Constable C. Inspector D asserted that the complainer considered there was corruption within the force, particularly in relation to officers within Area Y, due to their allegiance with an external organisation. Inspector D requested that a copy of the report be forwarded to the Area Procurator Fiscal (APF) due to the possible criminal element of the complainer's complaint about Sergeant B. Chief Inspector F, of the Professional Standards and Conduct Unit, received this report in a memorandum dated 10 February 2007 on which he appended a note, requesting that Sergeant G of the same department review it and provide recommendations by 1 March 2007. An operational statement regarding the events of 14 November 2006 was then taken from Sergeant B on 14 February 2007.

On 16 February 2007, Chief Inspector F wrote to the complainer stating that:

"...I have received a Preliminary Report on your complaint from Inspector [D]. I have now decided to review the circumstances of your complaint. An independent senior Police Officer has been appointed to carry out the review..."

On 21 February 2007, Sergeant G wrote a memo to Chief Inspector F and stated "*I refer to the above complaint and in particular to your instruction to review the file and report submitted by Inspector D*". Sergeant G noted that the complaint about Sergeant B inferred oppressive conduct/harassment and stated that, in his opinion, the files did not suggest any wrongdoing on part of the officers.

Chief Inspector F responded to the complainer in a letter dated 6 March 2007, in which he summarised the events leading up to the complaint about the police, before addressing Complaints 1(a) and 1(b). In relation to Complaint 1(a), he explained that:

“The attending Police Officers were of the opinion that both you and your [relative] displayed a hostile attitude from the outset which became worse...”

Chief Inspector F also noted that the complainer had walked into his house away from the officers and therefore the officers were unable to obtain the complainer’s version of events. In relation to Complaint 1(b), Chief Inspector F stated that:

“I do not consider that [an external organisational] influence is at work in [Area Z]. I do not know whether the officer referred to is in fact a [member of that external organisation] but I am confident that he discharges his duties as a Police Officer without fear, favour, malice or ill-will towards any person regardless of creed, colour or religion....Overall I can find no corroborative evidence to support your allegations in this instance.”

In a letter dated 19 March 2007, the complainer responded to the force and reiterated Complaints 1(a) and 1(b). The complainer also stated that he intended to refer his complaint about the police to Her Majesty’s Inspectorate of Constabulary (HMIC). Chief Inspector F in his reply to the complainer, on 29 March 2007, noted that the force would cooperate with HMIC.

On 3 April 2007, HMIC contacted the Deputy Chief Constable of Northern Constabulary regarding the complainer’s complaint about the police and requested a copy of the force investigation report.

A statement was noted from Sergeant E on 5 April 2007 and at some point during the course of the force’s investigations, undated statements were taken from Inspector D and Constable C.

The Deputy Chief Constable responded to HMIC on 12 April 2007 and enclosed the relevant documentation.

HMIC completed a report in June 2007 regarding the manner in which Northern Constabulary handled the complainer’s complaint about the police. On 8 June 2007 HMIC wrote to the Chief Constable enclosing a copy of the HMIC report and confirming that in relation to what is now Complaint 1(b) in this review: *“The Inspectoratedirects that the force re-engage with the complainer in an effort to clarify his specific complaints....”* An update was requested by the end of June 2007.

On the same day, HMIC also wrote to the complainer to advise that the force had been directed to reconsider the complaint and specifically to clarify the justification behind the complaint. HMIC also urged the complainer to co-operate with the force.

In a memo to the Chief Constable dated 12 June 2007, the Deputy Chief Constable stated that he had appointed Chief Inspector F to report on this case before any further work was to be undertaken. He also stated that his initial view was that it had been appropriate not to refer the complainer’s complaint to the APF, as that should only happen in cases with *“reasonable inferences of criminality”*. The Deputy Chief Constable also noted that Chief Inspector F was working in a *“Best Value*

environment” and that he understood both the need to thoroughly investigate complaints but also the need for proportionality.

On 13 July 2007 the Deputy Chief Constable wrote to HMIC acknowledging the letter of 8 June 2007 and confirming that the matter was still receiving attention. This was followed on 19 July 2007, when the Deputy Chief Constable wrote to both the complainer and HMIC and explained that a further review of the complaint was near completion.

On 26 July 2007 the Chief Constable provided a detailed response to the HMIC report, rebutting a number of points and concluded that:

“I believe that HMIC’s review of this case has been below the standard that could be reasonably expected and fails to take account of the nature of the allegations made, the attitude of the complainer, his lack of co-operation, the requirements of the primary legislation, the practicalities of handling complaints, the role of the APF and most worryingly proportionality..... I trust, in view of my observations you will reconsider your position on this matter.”

On 27 July 2007, HMIC wrote to the Deputy Chief Constable, confirming receipt of his letter of 19 July 2007 regarding the imminent completion of a further review of the complainer’s complaint. HMIC also forwarded a further letter of complaint from the complainer, dated 17 June 2007, in which he sought to clarify several points regarding his complaint about the police. HMIC asked that the force consider this as “*further information*” to be incorporated into its investigation.

On 21 August 2007 HMIC responded in detail to the Chief Constable’s letter of 26 July 2007 in which it explained that “*We do not take the decision to issue a direction lightly and all such decisions are only finalised after consultation with HM Chief Inspector of Constabulary*”. The response also provided a background for the decision in this case and concluded that:

“I hope that this background information helps to put the direction into context and trust that this case can now be concluded once you have had the opportunity to consider this letter and the further information offered by [the complainer]”.

Sergeant G was instructed to examine the complainer’s letter to HMIC of 17 June 2007. In a memo dated 27 August 2007 to Chief Inspector F, Sergeant G stated that in relation to Complaint 1(b), there was no evidence to support the complainer’s allegation that Mr A received preferential treatment, whether a member of this organisation or not, and that the complainer had previously expressed an unfounded opinion regarding the influence of an external organisation.

On 5 September 2007, the Chief Constable replied to HMIC’s letter of 21 August 2007. In this response, the Chief Constable again rebutted some of HMIC’s findings in relation to the force’s original handling of the complaint. The Chief Constable also referred to the complainer’s unwillingness to support his complaint about an external organisation having influence over the police. This letter also asserted that HMIC had come to the same conclusion as the force and the Chief Constable stated:

“As you have now ascertained that there is no substance to [the complainer’s] allegations of [external] influence can you please advise me of the status of your direction so I may consider my position.”

On the same day, the Deputy Chief Constable wrote to the complainer and explained that the force was in receipt of the complainer’s letter dated 17 June 2007 and that it was receiving consideration. Concluding the response, the Deputy Chief Constable stated:

“Before I commit any resources to consider your further complaint can I please have a reassurance of your full co-operation.”

On 11 September 2007, HMIC responded to the force’s letter of 5 September 2007 and stated that:

“It might also be asserted that the further information provided [in the letter dated 17 June 2007] could obviate the necessity to take a comprehensive statement from [the complainer] as directed.....You will see that the HMIC direction stated that ‘Subsequent action by the force will require to be based on the content and recorded assessment of such a statement.’ I would suggest that this means that the Force has to assess and record, using the test of reasonableness...the following two things:

- *Whether it has enough information to negate taking a statement*
- *Whether any of that information, or any further information which might be expected to be available (if not readily offered) from [the complainer] in a planned interview, requires the Force to take any further action other than explain its reasoning to him.”*

Chief Inspector F wrote to the complainer on 12 November 2007, noting that the force had received no response to the Deputy Chief Constable’s letter of 5 September 2007 and that:

“I have again reviewed your complaint and I am satisfied that at the time your complaint received appropriate attention and in the absence of your cooperation or any new information I have now decided to close the file.”

The Deputy Chief Constable wrote to HMIC on 14 November 2007 in which he made several observations about the content of the complainer’s letter of 17 June 2007. These comments reiterated Sergeant G’s observations in the memo to Chief Inspector F of 27 August 2007. This letter concluded by enclosing a copy of the letter sent to the complainer by the force on 12 November 2007.

The complainer responded to Northern Constabulary on 17 November 2007. In this correspondence the complainer referred to the letter of 12 November 2007 and stated:

“I have never declined to talk to, or co-operate with Northern Constabulary, and do not see why this assurance is required...”

In a letter of response dated 21 November 2007, the force acknowledged the complainer's correspondence by stating that:

"I refer to your letter to me dated 17 November 2007 and note all you have to say."

On 4 December 2007 HMIC wrote to the complainer referring to the conclusion in its report, noting that as a result of correspondence from the complainer the issue relating to the external organisation had no specific grounds and stated:

"...I have been advised by the Force that it has subsequently reviewed your complaint again and decided not to seek further information from you, given that it was unsuccessful in seeking the same information from you on previous occasions....I remain disappointed that the Force has appeared to maintain a rather inflexible stance over this complaint and that the most serious aspect of the allegation had to be resolved by HMIC acting as an intermediary rather than by proactivity on the Force's part, but I have decided that there is no more that HMIC can do in these circumstances...." [my emphasis]

Complaint 1(c) – That the force did not ask the complainer to provide the dates and times he was stopped by the police before an investigation was carried out.

The complainer brought Complaint 1(c) to the attention of HMIC in the letter dated 17 June 2007 which was forwarded to the force on 27 July 2007.

However, the circumstances surrounding Complaint 1(c) were originally brought up in the complainer's statement to the force of 23 January 2007 about Complaints 1(a) and 1(b). At that time, the complainer mentioned that since 14 November 2006 he had been stopped or spoken to by the police several times, which he considered may have been linked to Mr A's complaint. Although this comment was not treated as a complaint about the police at this point, Sergeant G, in his memo dated 21 February 2007, suggested that it may be worth the force identifying those officers who had allegedly stopped or spoken to the complainer and that this would best be progressed by senior officers in Area Z.

When Chief Inspector F responded to Complaints 1(a) and 1(b) on 6 March 2007, he also explained that attempts had been made to identify the officers who had allegedly stopped and/or spoken to the complainer between 14 January 2006 and 23 January 2007 but without success. He also noted that if the complainer had more information about the circumstances, then the matter of officers stopping him could be further investigated.

However, in a letter dated 19 March 2007, the complainer responded to the force and stated that although he was in possession of the dates and times that the officers stopped him, he saw no point in supplying this to the force. In response, on 29 March 2007, Chief Inspector F stated that the force could not progress the complaint further without the complainer's cooperation and now that Complaints 1(a) and 1(b) had been referred to HMIC, the force would cooperate with HMIC.

When Complaint 1(c) was brought to the attention of the force on 27 July 2007, when HMIC forwarded the complainer's letter of 17 June 2007, Sergeant G was instructed to review this letter. In a memo dated 27 August 2007 to Chief Inspector F, Sergeant G stated that with regard to Complaint 1(c), the complainer's assertion (that the force did not ask the complainer to provide the dates and times he was stopped by the police before an investigation was carried out), was correct, because prior to the investigation, this information was unknown. He also added that he had previously requested enquiries be made into who had stopped the complainer as he had described in his statement.

Complaint 1(c) was not recorded on a CAP form and no response to Complaint 1(c) was provided to the complainer.

Complaint 1(d) – That the force lied about the complainer's relative refusing to provide a statement.

The complainer brought Complaint 1(d) to the attention of HMIC in a letter dated 17 June 2007, which was forwarded to the force on 27 July 2007. In a memo dated 27 August 2007 to Chief Inspector F, Sergeant G stated that with regard to Complaint 1(d) (that the force lied about the complainer's relative refusing to provide a statement), either the complainer was wrong, or he was alleging that Inspector D was not telling the truth.

In the complainer's letter to Northern Constabulary of 17 November 2007, the complainer reiterated Complaint 1(d) and asserted that Northern Constabulary had not told the truth in stating that the complainer's relative refused to give a statement to the police. The complainer went on to note that his relative was advised by an Inspector to drop his complaint as he would be used as a witness in the complainer's complaint about the police.

Complaint 1(d) was not recorded on a CAP form and no response to Complaint 1(d) was provided to the complainer.

5. PCCS review

A letter of complaint was received on 17 November 2007. The complainer was asked to complete and sign an application for review form which was received on 7 January 2008 together with other relevant information.

On 7 January 2008 my office asked Northern Constabulary to provide the relevant complaint case papers by 21 January 2008. Northern Constabulary supplied the required information on 16 January 2008.

My office requested the relevant files from HMIC on 20 May 2008.

Following a further review of the files, on 18 July 2008 my office requested confirmation from the force that all information had been received. This was confirmed by the force on 5 August 2008.

The complainer was updated on the progress of his complaint regularly during the course of this review.

6. Consideration

Complaint 1(a) – That officers of Northern Constabulary failed to consider the complainer’s account of events when they visited his home on 14 November 2006.

Although the preliminary report was completed before Sergeant B’s statement was taken and Constable C’s statement is undated, it does appear that the events of 14 November 2006 were investigated prior to the force’s response to the complainer. In reviewing the file, Sergeant G concluded that there was nothing to suggest any wrongdoing on the part of the officers. In the force’s reply of 6 March 2007, the sequence of events on 14 November 2006, as viewed by the force, were clearly outlined to the complainer. The force appears to have investigated and addressed why, given the officers’ difficulty in communicating with the complainer, his account of events may not have been noted on 14 November 2006.

Complaint 1(b) – That the force is under the influence of an external organisation.

Inspector D concluded her preliminary report of 9 February 2007 requesting that a copy of this be forwarded to the APF as the allegation was serious and could be considered criminal. It is noted that in a memo dated 12 June 2007, the Deputy Chief Constable stated that he did not consider Complaint 1(b) to constitute a “*reasonable inference of criminality*”, therefore, it was not referred to the APF for consideration. It is not clear from the police complaint file, what information was used to reach the conclusion that this complaint did not reasonably infer criminality.

Additionally, once the decision had been made not to refer this complaint to the APF, it is my understanding that it would then fall on the force to investigate this complaint as a complaint against the police in line with the Professional Standards and Conduct Manual. However, there is no evidence to show that an investigation into this allegation was carried out. Therefore, although the force responded to this complaint on 6 March 2007, there was no explanation as to why Chief Inspector F did not consider there to be an influence from an external organisation at work in Area Z and it appears there was no investigation on which to base this opinion.

Although the complainer makes reference to the force generally being under the influence of an external organisation, he also stated that he was of the opinion that Sergeant B, specifically, was under this influence. However, it would appear that, although Sergeant G provided an operational statement about the events of 14 November 2006, at no point was Sergeant B asked to provide a statement or any information which might ascertain if there was any foundation to this particular

complaint. In his response, Chief Inspector F stated that he was not aware if the officer involved was a member of an external organisation, offering what appears to be a lack of his own personal knowledge on the matter and a strong character reference for Sergeant B, rather than providing the conclusions of any investigation into the matter.

In my view, Chief Inspector F's response to the complainer was disappointing and lacking in professional precision. In particular, his comment regarding Sergeant B's alleged allegiance to an external organisation and the way he subsequently discharged his duties as a police officer, was verging on the anecdotal.

This complaint was subsequently reviewed by HMIC, which issued a direction for the force to reconsider this aspect of the complaint. It appears that the force focused its attention on rebutting HMIC's report and avoiding a further examination of the complaint. In response, HMIC provided the force with further background and reasoning behind its direction. However, rather than engaging with the complainer as directed by HMIC, the force continued to rely on the contents of his letter dated 17 June 2007.

In a letter from the force to HMIC on 5 September 2007, the Chief Constable asserted that HMIC had also concluded that the allegation of influence from an external organisation had no founding and sought to clarify HMIC's position on its direction to reconsider the complaint. However, from the information available, I can find nothing to support the force's view that HMIC had come to this conclusion at this point. This appears to have been an assumption on part of the force in response to a comment from HMIC, regarding the complainer's **initial** evidence.

It appears the force perceived there to have been a breakdown in communication with the complainer. After informing HMIC it had previously had difficulties in obtaining information from the complainer on 5 September 2007, the force wrote to the complainer seeking his cooperation before committing its resources to further consider his complaints. I am of the view that once a force has received a complaint about the police it has a duty, regardless of how it may perceive a complainer or the complaint, to establish the key facts surrounding the complaint. It would have been of benefit had the force explained to the complainer that a detailed statement about his complaint was required to allow the force to investigate the allegation properly. The tone of the letter by the Deputy Chief Constable to the complainer on 5 September 2007 is unfortunate. Rather than encouraging the complainer to engage with the force it would appear to have had the opposite effect.

On 11 September 2007, HMIC noted the force's assertion that the complaint had no founding as it appeared to be based on "*common knowledge*". It then asked the force to satisfy itself that it had enough information to negate taking a statement and that whether this information (or any other information) required the force to take further action other than explaining its reasoning to the complainer. From the information available to me, there is no evidence that the force sought to satisfy itself on either of these points.

Therefore, it would appear to me that the force has failed to investigate or adequately address whether it had sufficient information to enable it to accurately respond to Complaint 1(b).

Complaint 1(c) – That the force did not ask the complainer for the dates and times he was stopped by the police before an investigation was carried out.

Complaint 1(c) was brought to the attention of the force in the complainer's letter to HMIC on 17 June 2007. Although it appears that no investigation was carried out by the force in response to this letter, in a memo dated 27 August 2007, Sergeant G made several observations about its contents. Specifically, in relation to Complaint 1(c), he stated that the complainer's assertion was correct as this information was not known to the force prior to the investigation. In my view it is unfortunate that Sergeant G chose to take the complainer's complaint so literally and that no effort was made to clarify this complaint with the complainer. It would appear that the complainer was complaining that he had not been asked for further information about these incidents prior to the force's response of 6 March 2007. Therefore, it appears that the force in its initial response, may have provoked Complaint 1(c) by alluding to an enquiry which did not involve the complainer and of which he had no knowledge. In addition, I note that there is no audit trail to confirm Chief Inspector F's statement, that enquiries were made in order to identify the officers whom the complainer stated had stopped and/or spoken to him. Had Complaint 1(c) been recorded as a complaint, and a statement noted from the complainer, the exact nature of the complaint could have been established. Furthermore, it appears that had the force originally involved the complainer in its enquiries, prior to responding on 6 March 2007, Complaint 1(c) may have been avoided.

Complaint 1(d) – That the force lied about the complainer's relative refusing to make a statement.

As Complaint 1(d) infers criminal behaviour on the part of the force, this allegation falls outside the remit of the Police Complaints Commissioner for Scotland, as defined within the Police, Public Order and Criminal Justice (Scotland) Act 2006, which states that a relevant complaint in relation to the Commissioner does not include "*a statement which consists of or includes an allegation of an act or omission which constitutes a crime.*" As such it does not form part of this complaint handling review. Complaints of a criminal nature continue to be considered under separate procedures by the Crown Office and Procurator Fiscal Service.

However, there are procedural elements of Northern Constabulary's handling of this complaint that I have considered as part of my review.

This particular complaint was brought to the attention of HMIC in the complainer's letter dated 17 June 2007, which was forwarded to the force on 27 July 2007. From the information available, although no investigation into the contents of this letter appears to have taken place, Sergeant G made several observations about the complainer's letter in a memo dated 27 August 2007. This included that the complainer was either wrong or was stating that Inspector D was not telling the truth.

In my view, as the complainer provided a written statement of dissatisfaction this matter should have been recorded as a complaint about the police. As Sergeant G indicated, this statement also inferred criminal behaviour therefore, it may also have been appropriate to refer it to the APF for consideration in line with force procedures. However, this was never recorded as a complaint about the police and therefore there was no referral to the APF, nor was there an investigation into the substance of this complaint.

Other matters emerging as a result of the review.

In the initial review of Complaints 1(a) and 1(b), Inspector D took a brief statement from the complainer, requested operational statements from the officers involved and prepared a preliminary report. In this report, she stated that although the origins of the complainer's complaint concerned trivial matters, the complainer went on to make "*serious allegations*" against Sergeant B which could be considered criminal and therefore, a copy of the report should be forwarded to the APF for information.

Rather than accepting the recommended course of action, Chief Inspector F instead instructed a Sergeant to review this Inspector's report. Chief Inspector F wrote to the complainer on 16 February 2007 to inform him that having received the preliminary report, he had appointed "***an independent senior Police Officer***" to review the complaint. However, the officer appointed was Sergeant G of his own department, an officer of the equivalent rank to the officer complained about; and an officer of lower rank than the Inspector who prepared the preliminary report. As such, I do not consider that an independent senior officer was appointed and it was misleading for Chief Inspector F to inform the complainer that this was the case. In my opinion, the complainer would be entitled to feel aggrieved that the review of his complaint was not carried out by an officer of such seniority and independence as implied by Chief Inspector F.

The report was not referred to the APF for consideration. In a memo to the Chief Constable dated 12 June 2007, the Deputy Chief Constable stated that he agreed with Chief Inspector F's decision and that the APF "*is only interested in reasonable inferences of criminality*". Having had sight of a report from a senior officer (Inspector D), which stated that a serious allegation has been made, neither Chief Inspector F nor the Deputy Chief Constable considered this sufficient to merit an independent review by the APF. However, it is also noted that there is no evidence that the allegation was investigated in order to ascertain if there was a "*reasonable inference of criminality*". Therefore, from the information available to me, it is not clear what information was used to determine that there was no "*reasonable inference of criminality*" at this point. This is a learning point for Northern Constabulary when dealing with other possible criminal complaints about the police.

During the handling of this complaint, there was significant correspondence from the force to HMIC, regarding its report in June 2007 and the subsequent direction to reconsider. I am both surprised and concerned at the tone of this correspondence and it is unfortunate that the level of service the complainer received was affected by this procedural disagreement between Northern Constabulary and HMIC.

It is also noted that the force made reference to the extent of the resources which may be employed in the handling of this complaint, both in an internal memo and in correspondence to the complainer. Had the force initially placed greater emphasis on engaging with the complainer in order to solve these issues, it may have been possible to either satisfy or dispose of the complainer's concerns at an earlier juncture. I am concerned that the force instead placed a great deal of time and effort on avoiding the issue of further investigation which has inevitably led to the complainer's dissatisfaction with Northern Constabulary's overall handling of his complaints about the police.

In my view, had the force complied with HMIC's direction to note a full statement from the complainer in relation to Complaint 1(b), and used this statement as the basis for the investigation, there is every possibility that this series of complaints could have been resolved without the involvement of my office.

7. Conclusion

Complaint 1(a) – That officers of Northern Constabulary failed to consider the complainer's views when they visited his home on 14 November 2006;

In my view, the force investigated the circumstances surrounding 14 November 2006 and adequately addressed this complaint in its response of 6 March 2007. **Therefore, I do not uphold this complaint.**

Complaint 1(b) – That Northern Constabulary is under the influence of an external organisation.

Despite the intervention by HMIC, there does not appear to have been an investigation into this complaint, nor does it appear that this complaint has been treated seriously by the force. **I now recommend that Northern Constabulary seek to obtain a comprehensive statement from the complainer, fully consider this complaint and respond to the complainer.**

Complaint 1(c) – That the force did not ask the complainer for the dates and times he was stopped by the police before an investigation was carried out.

I am disappointed that the force did not record Complaint 1(c) as a complaint about the police and that no formal investigation was carried out. I note from the information available to me, that although the force did seek to engage with the complainer regarding the dates and times he was stopped by the police, this was **after** the force had informed him they had conducted an enquiry. Therefore, **I uphold this complaint.**

Complaint 1(d) – That the force lied about the complainer's relative refusing to make a statement.

As noted in this report, Complaint 1(d) relates to an allegation of an act or omission which constitutes a crime, and thus does not fall within my remit to consider. However, it is noted that this has not been recorded as a complaint about the police and therefore, **I recommend that Northern Constabulary record this as a complaint about the police and take the appropriate steps to investigate the matter before responding to the complainer.**

Jim Martin
Police Complaints Commissioner for Scotland
October 2008