

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/0810/0000278/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. The complaints relate to events at a local police office on 27 May 2007 following the complainer's arrest.

Complaint 1 – That at the charge bar:

1a a sum of money in the complainer's possession was not counted out in his presence

1b no signature was requested from the complainer for any of the valuables taken from him

1c the seal on the clear plastic bag used to store the complainer's valuables was not intact

Complaint 2 – That the complainer's requests for a doctor were ignored; and

Complaint 3 – That no attempt was made to provide the complainer with medication.

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 27 May 2007 the complainer was arrested in relation to an allegation of assault following an altercation outside his relatives' home. The complainer was subsequently taken to a local police office by Constables A and B.

On arrival at the police office local records show that the complainer was detained and a Custody Status form completed. This documentation records that a quantity of cash was taken from the complainer at the charge bar along with a number of other items.

In the application for review submitted to my office, the complainer maintained that a sum of money was taken from him to be held while he was in custody and that the police officer failed to count this money out in his presence. He also stated that the police officer at the charge bar did not ask him to sign any paperwork when his belongings were taken from him and placed in a clear plastic bag for holding. The complainer maintained that he requested the use of his mobile phone which was taken from the bag by the police officer before being returned to the bag without a new seal being applied.

The complainer also stated that he advised the force that he had been prescribed antidepressants, a supply of which was in his hotel room, and would need to take them in the morning. The Custody Status form recorded that this medication was required. The complainer stated that, while in a cell, he informed a police officer that his chest was tight, he had difficulty breathing and required an inhaler. The complainer maintained that the force made no attempt to obtain his medication and stated that he requested a doctor while he was being held and that this request was ignored.

4. Force internal handling

The complainer first made the force aware of his concerns in an undated letter received by Northern Constabulary on 12 June 2007. This correspondence detailed Complaints 1a and 3, in addition to a number of other issues that I have not been asked to consider. The Deputy Chief Constable wrote to the complainer on 12 June 2007 acknowledging his letter and advising that the case would be referred to Chief Inspector C at the Professional Standards and Conduct Unit. Chief Inspector C contacted the complainer by letter on 13 June 2007 stating that the Police Area Commander, Superintendent D, had been asked to appoint a senior police officer to contact him directly about his complaint about the police.

Inspector E was appointed and recorded the details on a Complaint Against the Police (CAP) form on 15 June 2007. The force received two letters dated 21 August 2007 from elected representatives. Both these letters enclosed copies of correspondence from the complainer dated 13 August 2007 which detailed Complaints 1b, 1c and 2 and reiterated Complaints 1a and 3.

A memorandum from Inspector E to the Area Commander dated 10 October 2007 stated that the complainer was contacted several times by telephone but that no meeting had been possible. Inspector E referred to Complaint 1a, confirming that he had reviewed the available CCTV which showed that the complainer's cash was not counted in his presence. Inspector E stated that an apology had been made to the complainer for this. In relation to Complaint 2, the memorandum stated that there was no evidence that the complainer asked to see a doctor. Inspector E noted that

on the custody record the complainer indicated that he took antidepressants but did not have any in his possession and the officer stated that there was no record of him being an asthma sufferer or requesting an inhaler. It is also recorded in this memorandum that the complainer had accepted conciliation and did not wish to provide a statement in the pursuance of his complaint about the police.

Superintendent D wrote to the complainer on 17 October 2007. This letter makes no reference to specific complaints and stated:

“Inspector [E] has advised me that you accepted the explanations offered by him and indeed that you did not wish to pursue the complaint further.In the circumstances I must thank you for drawing these matters to my attention and I have now closed this particular complaint.”

In a memorandum to the Area Commander dated 26 June 2008 Inspector E stated that he spoke with the complainer on 30 November 2007 and discussed the complaint about the police, and noted that the complainer would be satisfied with a letter of apology. Inspector E also stated that he reiterated that whilst he regretted the complainer’s perception that he did not receive proper care at the hands of the force, there was no evidence to support this or on which to base further enquiry.

On 25 January 2008, Acting Superintendent F, wrote to the complainer. This letter addressed Complaints 2 and 3 stating that:

“.....whilst acknowledging your view that you did not receive medical care appropriate to your needs whilst in custodyenquiry into the circumstances has been completed and has failed to provide any evidence to substantiate your claim.”

Copies of the force’s letters dated 17 October 2007 and 25 January 2008 were copied to the complainer’s elected representatives by Chief Inspector C on 15 February 2008.

5. PCCS review

A letter of complaint was received on 5 February 2008 together with other relevant information. The complainer was asked to complete and sign an application form which was received on 21 February 2008.

On 21 February 2008, my office sent a letter to Northern Constabulary requesting the case files, including CCTV footage, by 6 March 2008. On 5 March 2008 Northern Constabulary contacted my office by telephone to advise that the files had been despatched. The case files were received by my office on 6 March 2008 with a covering letter stating that the relevant CCTV recording was no longer held on file.

My office contacted Northern Constabulary on 25 June 2008 to request confirmation that the file provided by the force was complete. On 26 June 2008 an additional memorandum was supplied by the force to complete the file. A request was made to

the force on 22 September 2008 for a copy of its retention policy. This was provided electronically on the same date. A further email was received from the force on 23 September 2008 regarding the deletion of CCTV footage used in the investigation of these complaints. A copy of the retention schedule used by the force was also supplied on this date.

The complainer was updated on the progress of his complaint every 28 days in accordance with the PCCS published standards of service.

6. Consideration

There are a number of distinct issues raised by the complainer:

Complaint 1 – That at the charge bar:

1a a sum of money in the complainer's possession was not counted out in his presence

The complainer brought this complaint to the attention of the force in the letter received by Northern Constabulary on 12 June 2007. The complainer maintained that at the charge bar a sum of cash was taken from him by the custody officer and that this money was not counted in his presence before being placed in a clear plastic bag.

The Northern Constabulary Care and Custody Handbook states that:

"Whenever possible, the searching officer will count, in front of the custody, all monies found on their person. This should be done audibly, to be recorded on the audio recording equipment installed at the custody suite."

The Custody Status form completed at this time notes that the complainer was in possession of cash totalling £303.36 when searched by Constable B. Inspector E stated in the file note of 10 October 2007 that he had reviewed custody suite CCTV footage of this incident. Unfortunately, this footage has not been made available to my office by the force. In his letter to my office of 4 March 2008 Chief Inspector C stated that the police officers involved believed that the complaint had been conciliated and that the CCTV recording had been deleted.

Inspector E stated that the CCTV footage showed that the complainer was correct in his assertion that the money in his possession was not counted in his presence. Inspector E goes on to note that he apologised to the complainer during a telephone discussion and provided reassurance that the CCTV recording showed nothing untoward had occurred in relation to his money. The memorandum stated that the complainer made no allegations of impropriety and was simply drawing the force's attention to a procedural weakness.

There is no indication in the papers supplied to my office by Northern Constabulary that this matter has been addressed with Constable B to ensure that the custody procedure is correctly followed in the future. This is a learning point for the force.

I note that while Northern Constabulary has investigated this complaint and discussed the matter over the telephone, the force has not advised the complainer of its conclusions in relation to this matter in writing.

1b no signature was requested from the complainer for any of the valuables taken from him

The complainer stated in his correspondence to the PCCS dated 27 January 2008 that the force did not ask him to sign any paperwork for the items taken from him at the charge bar. I note this issue was brought to the attention of Northern Constabulary in correspondence enclosed by the complainer's elected representatives dated 21 August 2007. It appears that this issue has not yet been addressed by Northern Constabulary.

1c the seal on the clear plastic bag used to store the complainer's valuables was not intact

The complainer stated in correspondence with my office received on 21 February 2008 that a police officer removed his mobile telephone from a sealed plastic bag containing his valuables and then replaced the telephone using the same seal. I note this issue was brought to the attention of Northern Constabulary in correspondence enclosed by the complainer's elected representatives dated 21 August 2007. It appears that this issue has not yet been addressed by Northern Constabulary.

Complaint 2 – That the complainer's requests for a doctor were ignored

The complainer, in correspondence to this office dated 27 January 2008, stated that he made a request for a doctor as he was suffering from a tight chest and was experiencing difficulty breathing. The complainer maintained that he explained to the custody officer that on such occasions he used an inhaler and requested that he be provided with his inhaler or a doctor but that his request was ignored. The Northern Constabulary Care and Custody Handbook states:

"When a prisoner complains of, or shows symptoms of being in poor health, whether making a complaint or not or, if there is any suspicion that a prisoner may be ill, he or she should be asked if they wish to see a doctor...."

In the file note of 10 October 2007 Inspector E notes that there is no documentary or CCTV evidence to show that the complainer asked to see a doctor. Again, it has not been possible for my office to view any CCTV footage as the recordings are no longer on file. As such, I cannot consider whether this footage was relevant to this complaint.

No statements have been provided to my office by Northern Constabulary from police officers who checked on the complainer while he was in custody. There is no indication on the Record of Visits to Prisoner form that the complainer asked for a doctor to attend. It is noted that there is no record on this form of whether the complainer was spoken to during any visit. The Northern Constabulary Care and Custody Handbook states:

“On every occasion a visit is made to a cell, the prisoner, if awake, will be spoken to through the door hatch.”

Inspector E makes reference to conversations between the complainer and police officers while he was held in custody in the file note of 10 October 2007. Recording interaction of this type may be a point for the force to consider.

In response to this complaint A/Superintendent F stated in the letter to the complainer of 25 January 2008 that there was no evidence to substantiate his claim. From the evidence available to me, I am unable to determine whether the complainer made a request for a doctor while in custody. In my view, statements from the police officers who checked the complainer while he was in custody would have been of benefit to the complaint handling process in this case.

Complaint 3 – That no attempt was made to provide the complainer with medication

The complainer asserted in correspondence to my office received on 21 February 2008 that while he was being held in a cell he felt tightness in his chest and experienced difficulty breathing. The complainer maintained that he explained this to a custody officer and told the officer that he used an inhaler on such occasions. The complainer also stated in this correspondence that he was prescribed antidepressants which he would require in the morning.

The complainer does not appear to have been provided with any medication while in police custody. The Custody Status form records that the complainer was on antidepressants and these are listed as required medication. There is no reference on the form to asthma or a prescribed inhaler.

Inspector E stated in the memorandum of 10 October 2007 that there was no mention of the complainer suffering from asthma in the custody record. The force assert that, given this, there was no expectation that the complainer would have difficulties of this nature. Inspector E goes on to note that he assured the complainer that inhalers were available within the custody suite and that these would be given to anyone who required them. Inspector E stated that a review of CCTV footage did not provide any evidence of the complainer requesting an inhaler. The memorandum also stated that Inspector E advised the complainer that while the custody record indicated that he took antidepressants, this was not supported as he did not have any in his possession.

The Northern Constabulary Care and Custody Handbook states:

“A prisoner will not be given any prescribed medication even if it is in the prisoner’s possession unless a Doctor has been consulted and has sanctioned it in writing.”

It is noted that Inspector E’s memorandum in relation to the supply of inhalers to those who require them does not appear to be in line with this policy.

Again, I am unable to comment on the relevance of the CCTV footage referred to in the force file note of 10 October 2007 as it has not been made available to my office. There are no statements from police officers in the papers provided to my office by Northern Constabulary. I am of the view that the noting of statements from the police officers involved in this matter could have improved the quality of complaint handling in this case.

I also note that while the force has investigated this complaint to some extent and discussed the matter over the telephone, it has not advised the complainer of its conclusions in relation to this matter in writing.

Other matters arising from this review

There appear to have been a number of failures in the quality of the complaint handling provided by Northern Constabulary in this case. The force originally received this complaint on 12 June 2007. Inspector E stated in the memorandum of 10 October 2007 that the complainer accepted his conclusions regarding the complaint about the police and did not wish to provide any further statement. From the files provided to my office I note that the only statement that appears to have been taken from the complainer relates to the events pertaining to his arrest. While it is acknowledged that the complainer lives outwith Scotland, arrangements could have been made to have a statement taken by his local police force at an earlier stage in the complaint investigation. The force appears to be of the opinion that the complaint had been conciliated, while the complainer continued to be dissatisfied with the outcome. This serves to underline the importance of taking an initial statement to ensure that all the complainer’s concerns are considered and addressed in full.

Inspector E’s memorandum in this case refers to telephone conversations with the complainer. There is no evidence in the papers supplied to my office by the force that the dates and substance of these calls was recorded in any way. This is a learning point for Northern Constabulary.

As referred to in Complaints 2 and 3, there do not appear to have been any statements obtained from the police officers who were in contact with the complainer during his time in custody, including Constables A and B who are named on the CAP form. Northern Constabulary’s Professional Standards and Conduct Manual states that operational statements can provide an opportunity for officers to provide their accounts of events and that they can assist in bringing an early resolution in some cases. I am of the view that the force should have included officer statements in their investigation. Such statements may have assisted in clarifying various issues raised by the complainer. This is a learning point for the force.

As previously detailed in relation to Complaints 1a, 2 and 3, CCTV recordings from the custody suite at the police office were not made available to my office as they had been deleted. Chief Inspector C advised my office in his letter of 4 March 2008 that the police officers involved believed that the complaint had been conciliated and that the CCTV had been deleted. In a further email dated 23 September 2008, Chief Inspector C stated that the footage had been viewed by Inspector E directly on the force's system and that as the system overwrites after 30 days, the footage was no longer available. Chief Inspector C advised that this can be avoided by downloading the images required but that this did not occur on this occasion.

Northern Constabulary's policy for the retention of records and publications is in accordance with the Association of Chief Police Officers Scotland (ACPOS). ACPOS recommends that records (including audio and video tapes) relating to complaints of misconduct against police officers should be retained for six years. It is noted that cases should be assessed to determine if retention beyond this period is appropriate. As such, I am of the view that the CCTV footage should not have been deleted. This is procedurally unacceptable and is a learning point for the force.

Northern Constabulary's Professional Standards and Conduct Manual states that in all cases where local resolution is reached, a note of the steps taken and the complainer's satisfaction should be made and signed by both the complainer and the officer as this can be useful if the complainer raises the matter at a later date. I am of the view that the force should have sought to follow this policy regardless of the fact that the complainer lived outwith Scotland. This manual also states that the complainer will receive a letter from the Area Command or Service Unit explaining the steps taken and confirming the belief that the matter has been resolved. The force's letter of 25 January 2008 makes a brief reference to Complaints 2 and 3. However, it does not appear that full details of the complaints made and the steps taken to resolve these issues has been put in writing by the force to the complainer. Had this procedure been followed, it may have become clear at an earlier stage that not all the complainer's concerns had been addressed by the force.

7. Conclusion

Complaint 1 – That at the charge bar:

1a a sum of money in the complainer's possession was not counted out in his presence

This matter was investigated and the force has apologised by telephone for the procedural failing identified as per Inspector E's memorandum of 10 October 2007. However, it does not appear that the force has detailed its conclusions in writing. As such **I recommend that Northern Constabulary now respond in writing to the complainer regarding this complaint.**

1b no signature was requested from the complainer for any of the valuables taken from him

From the information available to me, the force has not recorded or considered this specific complaint. As such **I recommend that Northern Constabulary record this complaint and respond to the complainer.**

1c the seal on the clear plastic bag used to store the complainer's valuables was not intact

From the information made available to my office by Northern Constabulary, the force does not appear to have recorded or considered this specific complaint. As such **I recommend that Northern Constabulary now record this complaint and respond to the complainer.**

Complaint 2 – That the complainer's requests for a doctor were ignored

The matter was apparently discussed with the complainer during the force's review as per Inspector E's memorandum of 10 October 2007 and responded to in A/Superintendent F's letter of 25 January 2008 which stated that there was no evidence to substantiate the claim. I am of the view that in order to consider this complaint appropriately, the force should have obtained operational statements from the police officers and any other staff that were involved with the complainer on the evening in question. As such **I recommend that the force revisit this complaint and respond to the complainer in writing.**

Complaint 3 – That no attempt was made to provide the complainer with medication

The views expressed by Inspector E in the memorandum of 10 October 2007 do not appear to correspond with the Northern Constabulary's standard operating procedure in relation to provision of medication. This is an issue that the force should clarify to ensure that the correct policy is adhered to. The force has not investigated this complaint fully or advised the complainer of its conclusions in writing. As such **I recommend that the force revisit this complaint and respond to the complainer in writing.**

Other matters arising from this review

There have been a number of failings in the quality of complaint handling in this case. These omissions have resulted in a poor quality of service for this particular complainer. I recommend that Northern Constabulary satisfy itself that both ACPOS guidelines for retention of files and its own complaint handling procedures are followed in all cases.

Jim Martin
Police Complaints Commissioner for Scotland
October 2008