

# 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/0810/00253/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 complainer's complaints arise from allegations of child abuse made against him in April 2003.

**Complaint 1** – That the force did not follow the correct procedures during the investigation into the allegations raised against the complainer in April 2003;

**Complaint 2** – The complainer is not happy about a report being sent to the procurator fiscal when he believes it clearly shows there is no evidence against him.

**Complaint 3** – That the force did not take action in relation to a criminal complaint the complainer made against Relative A;

**Complaint 4** – That Chief Inspector B advised the complainer that a report was submitted to the Area Procurator Fiscal as he had failed to answer questions during an interview; and

**Complaint 5** – That the force did not update the complainer about enquiries made by Chief Inspector B in relation to Mr C.

## **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 has raised a number of complaints with the force in relation to allegations of child abuse made against him in April 2003. The referral was originally made to Northern Constabulary by the Social Work Department. The sequence of

events is based upon the statements of the complainer, police officers and other witnesses and is detailed chronologically below.

Relative A, in her statement of 28 April 2003, asserted that on an unspecified date in 1995 X advised her that the complainer had touched him inappropriately. This incident was not reported to the police at that time. Relative A maintains that on 23 April 2003, Y disclosed that the complainer had touched her private parts and that she was in pain. Relative A stated that she sought the advice of a number of parties before contacting the Social Work Department. Statements were obtained from X and Y on 28 April 2003 and Y was examined by a paediatrician and police surgeon at a local hospital on 29 April 2003. This examination determined that there were some issues that gave cause for concern. Statements were obtained from further witnesses Mrs L and Mrs M on 30 April 2003. The complainer voluntarily attended a local police office on 30 April 2003 and was cautioned and interviewed by Constable F and Detective Constable G before being permitted to leave the police office. Additional statements were obtained from X and Y on 6 May 2003. On 15 May 2003 the complainer voluntarily attended a local police office with a solicitor and was again cautioned and interviewed by Constable F and Detective Constable G before being arrested, processed and released. During this interview, the complainer did not make any comment regarding the specific allegations although he denied any wrong doing. A report was submitted to the procurator fiscal. The complainer states that in August 2003 the procurator fiscal advised that there would be no proceedings taken against him.

The complainer contacted the force on 6 April 2007 and advised that he wished to make a criminal complaint against Relative A as she had lied in her statement to the police regarding the alleged abuse of X and Y. In a statement dated 6 April 2007 the complainer maintained that he had been informed by the Social Work Department that they had acted on information provided by Relative A when reporting the matter to the police. The complainer maintained that the allegations made against him in relation to both X and Y were false. This matter was considered by the force and a decision reached that no further investigation of this allegation would be made. Detective Constable J visited the complainer at his home on 7 May 2007 to advise him of the force's decision.

#### **4. Force internal handling**

On 6 May 2007 the complainer contacted the force by email to make a formal complaint about Northern Constabulary and raised Complaint 3. A Complaint Against the Police (CAP) form was completed by Inspector E. The force responded by email on 9 May 2007 and advised the complainer that the Chief Constable had passed the matter to Chief Inspector B, Head of Professional Standards and Conduct Unit for attention. Chief Inspector B wrote to the complainer on 9 May 2007 and advised that the local Area Commander Chief Inspector D had been asked to arrange for a senior police officer to contact him in relation to his complaint about the police.

The complainer emailed the force on 13 May 2007 and raised Complaint 1. Chief Inspector B wrote to the complainer on 15 May 2007 and stated that a senior police officer had been appointed to carry out a preliminary enquiry and that this officer would contact him shortly. On 17 May 2007 Inspector E was appointed as the investigating officer. A statement was taken from the complainer by Inspector E on 28 May 2007. In this statement the complainer reiterated Complaints 1 and 3. Inspector E compiled a preliminary report which was submitted to the Deputy Chief Constable on 7 June 2007.

Chief Inspector B wrote to the complainer on 15 June 2007 and advised that he had received a copy of the preliminary report. This correspondence also notes that following Chief Inspector B's telephone conversation with the complainer that day, he had decided to review the complaints about the police personally. A further statement was obtained from the complainer on 3 July 2007 which reiterated Complaints 1 and 3. Chief Inspector B obtained statements from the officers involved in the criminal investigations referred to by the complainer and interviewed two further officers regarding their involvement in the case on 19 October 2007. Chief Inspector B wrote to the complainer on 5 November 2007 providing the force's final conclusions.

### **Complaint 1 – That the force did not follow the correct procedures during the investigation into the allegations raised against the complainer in April 2003**

With regard to Complaint 1, Chief Inspector B provided the complainer with details of each stage of the police investigation into the allegations made against him in April 2003.

*“On 28<sup>th</sup> April 2003, Northern Constabulary were informed by the Social Work Department, [Local] Council, that child abuse allegations had been raised in regard to [X and Y]. As a result of these allegations a joint enquiry into the matter was undertaken by Northern Constabulary and [Local] Council Social Work Department. This was entirely consistent with the detailed procedures for investigating allegations of child abuse.*

*These procedures, at the time, instructed that when child abuse allegations are received that the matter is recorded and staff trained in child protection matters are appointed to undertake enquiry into the circumstances. These procedures were followed in regard to the allegations made against you. The matter was recorded on the Northern Constabulary Incident Recording Database and a trained child protection officer, Constable [F] was appointed to undertake enquiry in conjunction with a Social Worker.*

*I have found the enquiry undertaken by Constable [F] to have been according to standard police procedures. [Relative A] and [X and Y] were all interviewed in regard to the allegations made. Medical evidence was also obtained.*

*You attended [a local police office] on two occasions, 30<sup>th</sup> April 2003 and 15<sup>th</sup> May 2003, during which you were interviewed in regard to the allegations made against you by Constable [F] and Detective Constable [G]. At the conclusion of your interview on 15<sup>th</sup> May 2003 you were arrested in connection with the*

*allegations made against you. Following your arrest a Police Report was submitted to the Procurator Fiscal detailing the circumstances of the allegations made against you....*

*I conclude at this stage therefore that due process was followed by the police officers involved and that the allegation in your E-mail, dated 13<sup>th</sup> May 2007, that due process was not followed is not substantiated.”*

**Complaint 2** – The complainer is not happy about a report being sent to the procurator fiscal when he believes it clearly shows there is no evidence against him.

It does not appear from the information provided to my office by Northern Constabulary that the complainer brought Complaint 2 as worded to the attention of the force. However, when responding to Complaint 1 in his letter dated 5 November 2007, Chief Inspector B addressed this matter by stating that the case against the complainer had been referred to the procurator fiscal based on the evidence gathered.

*“Having examined the evidence gathered by Constable [F], including the statements made by [Relative A], and [X and Y]. I conclude that Constable [F] was entirely correct in reporting the matter to the Procurator Fiscal.*

*The role of the police in attending to criminal allegations is to gather evidence and report the matter to the Procurator Fiscal.....Constable [F's] decision to report the matter to the Procurator Fiscal concerning the allegations made against you was based on the evidence she had gathered.”*

**Complaint 3** – **That the force took no action in relation to a criminal complaint the complainer made against Relative A**

In response to Complaint 3, Chief Inspector B again provided the complainer with details of each stage of the police enquiry from receipt of the allegations made against Relative A on 6 April 2007 including consultation with the local social work department. In conclusion, Chief Inspector B stated:

*“The evidence of [Relative A] was secondary and in support of the evidence given by [X and Y], which formed the basis of the allegations against you. My understanding is that [Relative A] reported matters as raised by [X and Y] and it was [their] evidence which formed the basis of the police investigation.*

*I conclude at this stage that I concur with Chief Inspector [D's] view that it would not have been in the interests of [X and Y] to re-interview them in regard to this matter.*

*In conclusion I find that Chief Inspector D was correct in his judgement instructing that no further enquiry was required into the complaint you had raised against [Relative A].”*

From the information provided to my office by Northern Constabulary the complainer does not appear to have brought Complaints 4 or 5 to the attention of the force.

## 5. PCCS review

A letter of complaint was received on 16 January 2008 with a copy of the final response by the force to the complaints about the police. The complainer was asked to complete and sign an application for review form which was received on 22 January 2008.

My office asked Northern Constabulary to provide the relevant complaint case papers on 28 January 2008. The force supplied the required information on 7 February 2008.

On 1 September 2008 my office obtained verbal confirmation from the force that there had been no further correspondence with the complainer since the case papers were received at my office and that these files were complete.

An email request was made to the force on 3 September 2008 to obtain copies of interview recordings/transcripts and arrest documentation. These records were supplied on 16 September 2008.

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 five distinct issues raised by the complainer:

### **Complaint 1 – That the force did not follow the correct procedures during the investigation into the allegations raised against the complainer in April 2003**

In his email to the force of 13 May 2007 the complainer stated that he wished to make a complaint against Northern Constabulary as it did not follow due process in dealing with the allegations made against him in April 2003.

Chief Inspector B reviewed the joint action taken by the force and the local council in terms of Northern Constabulary's Crime Management Handbook and child protection policy. The force wrote to the complainer on 5 November 2007 and provided a detailed explanation of the steps taken during the enquiry.

I am satisfied that Northern Constabulary has investigated this complaint thoroughly and provided the complainer with a comprehensive response. However, I note that while statements were obtained from Constable F and Detective Constable G as part of the enquiry, there is no statement available from Inspector H, who appears to have acted as the Designated Person in this case. The Designated Person is an officer of Inspector rank or higher who is accountable for child protection to the area commander as per the Northern Constabulary Crime Management Handbook. A file note shows that Chief Inspector B interviewed Inspector H at 4.30pm on 19 October

2007. While Chief Inspector B recorded the fact that Inspector H had a limited recollection of this particular case, I am of the view that it may have been helpful had a formal statement been noted from Inspector H.

**Complaint 2 – The complainer is not happy about a report being sent to the procurator fiscal when he believes it clearly shows there is no evidence against him**

While this matter does not appear to have been directly referred to the force by the complainer, Northern Constabulary has addressed this issue in the course of responding to Complaint 1.

The force reviewed the statements and evidence gathered during the original enquiry as stated in the response provided to the complainer on 5 November 2007. Chief Inspector B advised the complainer that he concluded that Constable F was correct in reporting the matter to the procurator fiscal. Chief Inspector B also explained the role of the police in attending to criminal allegations.

From the information available it is evident that there was sufficient evidence gathered by the force to warrant a report being made to the procurator fiscal and there is nothing other than the assertion of the complainer to suggest otherwise. It is my view that the response provided to the complainer by the force was accurate and appropriate.

**Complaint 3 – That the force took no action in relation to a criminal complaint the complainer made against Relative A**

The complainer brought this matter to the attention of the force by email on 6 April 2007. In his statement of 3 July 2007, the complainer stated that having originally complained to the force that Relative A had made false allegations, Detective Constable J subsequently advised him of the decision by the force not to take further action.

The force reference document, Child Protection C-13, supplied to my office by Northern Constabulary states that the best interests of the child are paramount. Section B, Standards specifies that:

*“2. The application of these principles and adoption of best ‘joint’ practice between agencies should avoid or prevent unnecessary or repeated interviews and medical examinations of the child victim/witness.”*

The force response of 5 November 2007 stated that Detective Constable J consulted Chief Inspector D for guidance on how to proceed before updating the complainer. Chief Inspector B obtained statements from both officers during the enquiry into this complaint. Chief Inspector D confirmed in his statement that as the Designated Officer for child protection, he consulted Social Worker K regarding the complainer’s assertion and decided that it would not be in the best interests of X and Y to reinterview them as there was no new evidence. Chief Inspector D did not consider the complainer’s belief that Relative A had lied to be relevant as the crucial evidence had come from X and Y. Chief Inspector B detailed the reasons for the force taking

no further action regarding the complainer's assertions in his response of 5 November 2007. I am of the view that Northern Constabulary has investigated this complaint thoroughly and communicated its findings to the complainer.

**Complaint 4 – That Chief Inspector B advised the complainer that a report was submitted to the Area Procurator Fiscal as he had failed to answer questions during an interview; and**

**Complaint 5 – That the force did not update the complainer about enquiries made by Chief Inspector B in relation to Mr C**

There is no evidence in the papers supplied to my office by Northern Constabulary or the complainer to indicate that Complaints 4 or 5 have been referred to the force for its consideration. The PCCS reviews the manner in which the force has handled a complaint about the police and therefore can only consider complaints that have been made to the force in the first instance.

#### **Other matters arising from this review**

The force has conducted a thorough investigation and communicated its findings to the complainer in a timeous manner. While no final report was completed by the investigating officer Chief Inspector B, his response to the complainer's complaints about the police was detailed and comprehensive. I note that the force advised the complainer that he should contact Chief Inspector B if he felt that it could be of further assistance and that from the information available it does not appear that the complainer advised the force of his continued dissatisfaction or his additional concerns.

## **7. Conclusion**

**Complaint 1 – That the force did not follow the correct procedures during the investigation into the allegations raised against the complainer in April 2003**

The force reviewed this matter and provided a comprehensive and detailed response to the complainer. As such **I do not uphold the complaint.**

**Complaint 2 – The complainer is not happy about a report being sent to the procurator fiscal when he believes it clearly shows there is no evidence against him.**

Although this matter does not appear to have been directed to the force in these exact words by the complainer, in my view Northern Constabulary has provided a full and reasonable response following its enquiries into Complaint 1. As such **I do not uphold this complaint.**

**Complaint 3 – That the force took no action in relation to a criminal complaint the complainer made against Relative A**

From the information available to me it is evident that enquiries were made into the complainer's allegations and a full explanation of Northern Constabulary's actions was communicated to him. As such **I do not uphold this complaint.**

**Complaint 4 – That Chief Inspector B advised the complainer that a report was submitted to the Area Procurator Fiscal as he had failed to answer questions during an interview; and**

**Complaint 5 – That the force did not update the complainer about enquiries made by Chief Inspector B in relation to Mr C.**

From the information available to me it would appear that the complainer has not brought Complaints 4 and 5 to the force. Accordingly, these complaints have not formed part of my review. The complainer has been advised under separate cover on how to proceed if he wishes to pursue these matters with the force.

Jim Martin  
Police Complaints Commissioner for Scotland  
October 2008