

PCCS



Police Complaints Commissioner
for Scotland

Request for complaint handling review of a complaint about

Tayside Police

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

October 2008

Case reference: PCCS/0810/00399/PF-TP

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Introduction

The role of the Police Complaints Commissioner for Scotland was established by the Police, Public Order and Criminal Justice (Scotland) Act 2006 (“the Act”) to consider and review the way police authorities, police forces and policing agencies handle complaints from the public. I was appointed by the Scottish Ministers as the first Police Complaints Commissioner for Scotland, taking up my powers from 1 April 2007. My office provides a free and independent service, reviewing the handling of complaints fairly, looking at both sides of what has happened and looking at the facts.

I aim to review complaints in an independent, open and fair manner. In line with this aim I will publish the reports of my complaint handling reviews, whilst bearing in mind individuals’ rights to confidentiality. The following report therefore details my consideration, but does not include individual names of complainers, police officers or others affected by the events detailed therein.

1. Request for review

The complainer has requested that I review the handling of his complaints about Tayside Police. His complaints originate from the manner in which the force dealt with incidents involving his relative making emergency calls unnecessarily.

Complaint 1 – That Police Constable A took hold of the complainer’s wrist and used excessive force during an incident on 13 June 2007;

Complaint 2 – That an officer challenged the complainer to come out of his house and fight on 18 July 2007;

Complaint 3 – That the complainer was unlawfully arrested on 20 July 2007;

Complaint 4 – That Police Constable F took hold of the complainer’s wrist, punched and kicked him using unreasonable force on 20 July 2007; and

Complaint 5 – That while in custody, Police Constable F threatened to pull the hair from the complainer’s head.

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 been the main carer for his relative, who has significant physical and learning difficulties, since 1998. In statements taken from the complainer in November 2007, December 2007 and March 2008, he explained that his relative began suffering from panic attacks, caused damage to his home and made a

number of unnecessary calls to the emergency services. She made the first call to the emergency services requesting assistance from the police on 13 June 2007 and thereafter, on 18 July 2007 and 20 July 2007. On each occasion Tayside Police responded to the emergency call which the complainer felt was unnecessary. This resulted in altercations between the complainer and the officers who attended. Further emergency calls were made by the complainer's relative on 23 July 2007, 7 August 2007 and 8 August 2007, although the complainer stated that the force handled these later incidents better and with more understanding of his situation. The complainer made complaints about his treatment by officers who dealt with the incidents at the time. He went on to make the same complaints at later dates.

4. Force internal handling

Complaint 1 – That Police Constable A took hold of the complainer's wrist and used excessive force during an incident on 13 June 2007;

Complaint 2 – That an officer challenged the complainer to come out of his house and fight on 18 July 2007;

Complaint 3 – That the complainer was unlawfully arrested on 20 July 2007;

Complaint 4 – That Police Constable F took hold of the complainer's wrist, punched and kicked him using unreasonable force on 20 July 2007; and

Complaint 5 – That while in custody, Police Constable F threatened to pull the hair from the complainer's head.

The force recorded that an emergency call was received from the complainer's relative on 13 June 2007. Although the complainer had contacted the force's control room to notify them that the matter was in hand and assistance was not required, Constable A and Constable B responded to the call.

A second call to the force was noted later the same night, when the complainer called to complain about an officer grabbing his wrist. This call was responded to by Sergeant H and Sergeant J. The complainer stated that he was not happy at the way Constable A had handled the incident earlier and alleged that during the visit, Constable A grabbed him by the wrist.

The complainer asserted in his statement of 12 December 2007, that he felt the sergeants that visited him regarding his complaint were trying to justify Constable A's actions. Both sergeants noted in their statements of 11 December 2007 that although the complainer was at times not calm, the procedures for making a complaint about the police were explained to him and he was provided with a leaflet about this. Sergeant H also noted a short statement from the complainer during the visit. The complainer told Sergeant H that the matter could not be resolved that night and he would consider his position.

On 18 July 2007, the complainer's relative again made an emergency call stating that she had fallen out with him. Constables C, D and E visited the complainer's house. After establishing that the complainer's relative was in no danger, the officers stated that they unsuccessfully attempted to explain to the complainer why they had attended. The incident log recorded a call from the complainer approximately an hour later. He stated that he wished to complain about one of the officers who had earlier dealt with the matter. The controller asked what his specific complaint was, and that the complainer stated that he was waiting for a Sergeant to call him back. The controller noted that it was unclear from the call what the complainer's complaint was. The complainer called again later to enquire when Sergeant K would be visiting him. The incident log recorded that he was given advice. He complained later that night about the lack of action by officers, and Inspector P was notified of the complaint. Inspector P then called the complainer to discuss the matter. The complainer agreed with Inspector P that he would meet Sergeant K the next day. The incident log noted that he was given advice and the matter was closed.

In the complainer's statement dated 29 November 2007, he stated that on 18 July 2007, three police officers had attended at his home following a call made by his relative. He stated that this was in spite of the fact that he had called the control room to explain the situation and that he believed there was no problem. He also stated that when speaking to the officers at his back door, the officers threatened him. He then telephoned and spoke with Sergeant K.

The following day, 19 July 2007, the complainer went to a police station to speak with Sergeant K. In his statement of 12 December 2007 the complainer explained that during the meeting, Sergeant K noted the situation and told him she would visit his home and speak with his relative. He also stated that she said she "*would put things in place to hopefully have any similar matters dealt with better*". He stated that he was happy that she was dealing with his complaint. In this statement the complainer acknowledged that the Sergeant may not have had time to put anything in place before the next incident occurred the following day on 20 July 2007.

On 20 July 2007, the complainer's relative made another emergency call to the force. The incident was attended by Constable F and Constable G. The complainer was not happy that the force had attended at his house again, as he had previously advised the force of the circumstances surrounding the emergency calls. Constable F alleged that during the incident, the complainer assaulted him by slapping him on the face and knocking his glasses off, and he therefore arrested the complainer. In his statement of 12 December 2007, the complainer stated to Inspector P that he did not assault Constable F. He stated that he touched Constable F's shoulder to get attention at which point the officer moved away from the complainer "*colliding with the doorframe and knocking his hat squint*".

The complainer's relative was left in the care of another family member, and the complainer was taken to the police station, where he was held overnight and charged with assaulting a police officer. When he arrived at the charge bar, he was asked standard procedural questions and the appropriate forms were completed. The CCTV footage at this time showed that the complainer indicated he had injuries to his wrists, which the force noted were consistent with being handcuffed. A report

was later submitted by Constable G to the Procurator Fiscal, regarding the alleged assault of an officer by the complainer.

The complainer alleged, when he called the force on 28 November 2007, that he was assaulted by Constable F and wrongfully arrested using excessive force.

While he was in custody, the processing officers required a sample of DNA for their records. In his statement of 12 December 2007, the complainer stated that the DNA procedure was not explained and when he asked why he had to give the sample, an officer threatened to pull his hair out by the root if he did not cooperate. In his statement of 15 December 2007, Constable F stated that when the complainer asked whether the police were empowered to take his DNA, he informed him *“that it was a legal obligation of any person who had been arrested [to provide a DNA sample] and that a sample could be taken by force if necessary by removing hair from a person’s head.”*

On 22 July 2007, Sergeant K provided information by email to all officers in her division and to the control room regarding the complainer and his circumstances, and set out procedures for handling such situations in the future.

Further calls were made by the complainer’s relative to the force over the next three months. However in the complainer’s statement of 18 December 2007 he stated that the force handled these later incidents with more understanding of his situation.

The complainer telephoned the force again on 28 November 2007 stating that he wished to make a complaint about officers who dealt with the incidents in July 2007. He stated that although he had made these complaints before he felt that they had *“fallen on deaf ears”*. The complainer’s complaints were recorded the next day in a statement taken by Acting Sergeant L and his complaints were noted on a Complaint Against the Police (CAP) form. Acting Sergeant L also completed a brief report to Superintendent T on the 29 November 2007 about the complaints. The matter was then passed to the Professional Standards Department.

Following receipt of the complaint about the police by the Professional Standards Department, statements were obtained from numerous witnesses.

Inspector P completed his preliminary report on 24 December 2007. The report addressed complaints 1 to 5 above. Inspector P noted that the complainer referred to various injuries and had attended his local GP on 24 July 2007. He also arranged to view the CCTV footage of the complainer at the charge bar.

Inspector P referred to the complainer’s family circumstances and obtained recordings of calls the complainer made to the control room. He noted in his report that, in relation to the first incident on 13 June 2007, it would have been reasonable for Constable A to *“take hold of [the complainer] in a low level measure of restraint to calm the situation”* and that the allegation against Constable A held no substance.

Inspector P commented in his report that the complainer admitted in his statements that on 18 July 2007 he was shouting and swearing at officers. He noted that the officers’ statements confirmed that Constable C had asked the complainer to come

outside to speak to them, but not to fight. He concluded that there was no substance to the allegation.

In relation to the incident of 20 July 2007, the report noted that the officers refuted the allegations against Constable F. Inspector P also noted that officers had claimed that the complainer was obstructive during the DNA procedures. Inspector P also stated that the complainer, by his own admission, was under the influence of alcohol.

A handwritten note to Superintendent T on 10 January 2008 stated that most of the complainer's complaints appeared to be unfounded and could be dealt with at divisional level. However, because there was a criminal allegation an investigating officer should be appointed.

On 5 February 2008 the initial report regarding the incident on 20 July 2007, was submitted to the Area Procurator Fiscal.

The Area Procurator Fiscal then wrote to the Deputy Chief Constable, stating that he was satisfied there were allegations of criminal conduct and requested a full report by 15 April 2008. Chief Inspector W noted on this letter that Inspector R was appointed as investigating officer on 20 February 2008. She signed a declaration (under the Police Conduct (Scotland) (Regulations) 1996) stating that she was not a material witness and had no other interest in the complaint.

Inspector R then carried out an investigation under the Police (Conduct) (Scotland) Regulations 1996. In March 2008, Inspector R obtained witness statements from the complainer, his mother, two of his friends and his GP.

On 15 April 2008, Superintendent V of the Professional Standards Department wrote to the Area Procurator Fiscal stating that due to an "*unforeseen delay*", the report would not be submitted within the requested timescale given, but would be sent as soon as possible.

On 2 May and 6 May 2008, Inspector R formally advised Constable F and Constable A of the allegations which both Constables refuted. Inspector R then completed her report dated 20 May 2008 which dealt primarily with Complaint 1 and Complaint 4. The report concluded that there were no misconduct issues to be considered after the Area Procurator Fiscal had made a decision regarding the criminal allegations.

The criminal complaints were then passed to the Area Procurator Fiscal on 26 May 2008 for consideration. On the same date, the Deputy Chief Constable wrote to the complainer advising him that the police enquiry had been concluded and a report had been submitted to the Area Procurator Fiscal.

The Area Procurator Fiscal wrote to the Deputy Chief Constable on 3 June 2008 advising that no proceedings would be taken against the officers in respect of these complaints. The Deputy Chief Constable wrote to the complainer on 9 June 2008, making reference to the decision by the Area Procurator Fiscal and advised that having reviewed the complaint had found "*insufficient evidence to substantiate any misconduct on the part of the officers*".

On 16 June 2008, the complainer wrote to the Deputy Chief Constable stating that he was not happy with the outcome, and would refer his complaint to the PCCS. The force responded to the complainer stating that it had voluntarily referred his complaint to the PCCS.

5. PCCS review

An initial telephone call was received from the complainer on 16 June 2008. The complainer was asked to complete and sign an application for review form which was received on 9 July 2008 together with other relevant information.

On the same date, my office received a letter dated 4 July 2008 from Tayside Police enclosing the relevant complaint case papers and requesting that a complaint handling review be carried out.

On 22 October 2008, my office contacted Tayside Police to request its standard operating procedure regarding DNA sampling. This was received by my office on 23 October 2008.

The complainer was updated every 28 days throughout the review process in line with our standards of service.

6. Consideration

Complaint 1 – That Police Constable A took hold of the complainer’s wrist and used excessive force during an incident on 13 June 2007;

Complaint 2 – That an officer challenged the complainer to come out of his house and fight on 18 July 2007;

Complaint 3 – That the complainer was unlawfully arrested on 20 July 2007;

Complaint 4 – That Police Constable F took hold of the complainer’s wrist, punched and kicked him using unreasonable force on 20 July 2007; and

Complaint 5 – That while in custody, Police Constable F threatened to pull the hair from the complainer’s head.

In relation to **Complaint 1** and **Complaint 4**, I note that both complaints were investigated by the force initially as criminal allegations and were reported to the Area Procurator Fiscal, who then took no proceedings.

In the investigating officer’s report, Inspector R included witness statements from police officers, family and friends of the complainer. She also obtained a statement from the complainer’s GP. I note that the Deputy Chief Constable informed the

complainer in his letter of 9 June 2008 that he had considered the report submitted by Inspector R under the Police (Conduct) (Scotland) Regulations 1996 and concluded that there had been no misconduct on the part of the officers involved. It is my view, that although this may have been the case, it would have been of assistance to the complainer had he received an explanation regarding how this conclusion was reached.

Complaint 2, Complaint 3, and Complaint 5 were also noted as complaints against the police, but were of a non-criminal nature. I note that in Inspector P's initial report he made some reference to **Complaint 2**, and based on the information gathered from witness statements, concluded that there was "*no substance to the allegations*". In relation to **Complaint 5**, he also noted that the complaint was unsubstantiated. Inspector P made no reference to **Complaint 3**.

I note that in her report dated 20 May 2008, Inspector R referred to **Complaint 2** and **Complaint 5**, but no conclusion appeared to be reached about these complaints individually. I also note that there is no reference to **Complaint 3**. Her report stated a general conclusion, "*.. that there are no misconduct issues to be considered in relation to Constables A and F after the Area Procurator Fiscal has made a decision regarding this case.*" The Deputy Chief Constable later advised the complainer of this in his letter dated 9 June 2008.

From the information provided to my office it appears that the force did take steps, in line with its procedures, to investigate four of the complaints about the police although it does not appear to have addressed **Complaint 3**.

The conclusions reached by the force in relation to **Complaints 1,2,4 and 5**, do not appear to have been communicated fully to the complainer. The only response to the complainer from the force throughout the complaint handling process appears to have been the letter from the Deputy Chief Constable on 9 June 2008, advising him that no misconduct issues had been found in the case of either officer he had complained about. It is evident that the complaints were investigated and the force's decision was based on the results of the investigation. In my view the complainer should have been given a reasonable explanation as to how the force reached its conclusion.

7. Conclusion

Complaint 1 – That Police Constable A took hold of the complainer's wrist and used excessive force during an incident on 13 June 2007;

Complaint 2 – That an officer challenged the complainer to come out of his house and fight on 18 July 2007;

Complaint 4 – That Police Constable F took hold of the complainer's wrist, punched and kicked him using unreasonable force on 20 July 2007; and

Complaint 5 – That while in custody, Police Constable F threatened to pull the hair from the complainer's head.

I am of the view that these complaints were dealt with appropriately through the force's complaint handling procedures. However, I am also of the view that the force could have explained to the complainer how it decided the outcome of his complaints. **I therefore recommend** that the force now provide a more comprehensive explanation to the complainer.

Complaint 3 – That the complainer was unlawfully arrested on 20 July 2007.

Although the force noted this as a complaint about the police, it does not appear to have considered the complaint at any stage in the complaint handling process. **As such, I recommend** that the force now consider the complaint and respond to the complainer.

Jim Martin
Police Complaints Commissioner for Scotland
October 2008