

# PCCS



Police Complaints Commissioner  
for Scotland

**Request for complaint handling review of a complaint about**

**Strathclyde Police**

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

**November 2008**

Case reference: PCCS/0811/00244/PF-SP

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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 the following complaints about Strathclyde Police:

**Complaint 1:** The complainer is dissatisfied with the way Strathclyde Police responded to his report about two vehicles parked on a pavement.

**Complaint 2:** The complainer is dissatisfied with the quality of service provided by Inspector A when conducting enquiry into Complaint 1.

## **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 the morning of 27 October 2007 two commercial vehicles were parked on the pavement outside bank premises on a road in the complainer's local area whilst the drivers of the vehicles were carrying out refitting work within the building. The complainer stated in a letter to the force dated 29 October 2007 that the vehicles must have been driven onto the pavement next to a pedestrian crossing. He asserted in a letter to my office dated 1 February 2008:

*"Let's be clear about this. These drivers were breaking the law. This particular area of pavement is protected by wooden stakes, set in at the edge of the road to prevent vehicles parking there. There are double yellow lines right around the scene, preventing anyone legally parking at the kerb."*

Around 11 am that day the complainer stated that he approached the driver of one of the vehicles and asked him to move the vehicle. The complainer maintained in his statement dated 20 November 2007 that the driver informed him that the bank had given permission to park the vehicles on the pavement. The complainer then

telephoned Strathclyde Police to complain that the vehicles were parked on the pavement.

On his return to the location at 12:30 pm the complainer could see that the vehicles were still parked on the pavement. Around 2 pm the complainer telephoned the police to enquire about the progress of his complaint. He stated that he was informed that officers had visited the scene and decided that the drivers were legitimately parked as they were not causing an obstruction. The complainer disagreed with this assessment and informed the officer that he wished to make a complaint about the police.

Inspector A contacted the complainer by telephone at 6 pm that evening to discuss his complaint about the police. Inspector A noted, in his statement dated 10 December 2007, that the complainer was unhappy because the officers who had responded to the initial call about the vehicles had not moved them or charged the persons responsible. Inspector A informed the complainer that he would research the information the complainer had provided him, speak to the officers involved and update him by telephone the next day. Following the phone conversation the complainer realised that he had spoken to Inspector A on a previous occasion regarding an unrelated complaint about the police.

Inspector A maintained in his statement that he contacted the Traffic Supervisor at the Road Policing Complex who provided him with information relating to the matters raised by the complainer. Inspector A stated that he also spoke to Constable B on 28 October 2007, who had attended the scene with Constable C. Inspector A stated that he confirmed with Constable B that the drivers of the vehicles were working in the bank, that there was no actual complainer as the call had been placed anonymously and that there was sufficient clearance around the vehicles to allow pedestrians past. Inspector A noted that Constables B and C had previously sought advice from the Traffic Department on the issue.

Inspector A telephoned the complainer again the following day (Sunday 28 October 2007). The complainer noted in his statement that Inspector A informed him that he had concluded his enquiries and that the officers were correct in their assessment of the situation.

In his statement Inspector A provided an account of the telephone conversation with the complainer on 28 October 2007. He stated that he outlined the information supplied by the Road Policing Complex and explained to the complainer that Constables B and C, after attending the area, decided that there was no obstruction to pedestrians. Inspector A noted that the complainer replied to this, stating that the vehicles had been driven on and off the footpath, that pedestrians could not get past and that he had been told by someone that the power granted by the double yellow lines on the road extended to the footpath as far back as the nearest building. Inspector A stated that the complainer informed him that he had taken photographs of the vehicles in situ. Inspector A maintained in his statement that the complainer was not happy with the answer provided. He stated that he informed the complainer that if he wished the drivers of the vehicles to be charged he would arrange for a witness statement to be taken from him.

The complainer asserted that during the telephone call, he asked Inspector A if they had spoken before and Inspector A replied curtly that they had. The complainer informed Inspector A that he believed that he had brought the baggage of a previous enquiry to the current one when he should have been more professional. The complainer asserted that Inspector A then hung up the telephone.

In contrast Inspector A noted in his statement that, during the telephone call, the complainer began to raise his voice and made reference to Inspector A having a terrible attitude towards him. Inspector A stated that he saw no point in continuing the conversation as it had deteriorated into the complainer repeating the “baggage” claims and him responding by denying that he was acting in anything less than professional manner. Inspector A maintained that he ended the call after he advised the complainer that he was going, and said goodbye.

Inspector A noted that the complainer informed him that he was going to write to the Chief Constable regarding his attitude and the fact that the original complaint about the vehicles parked on the road had not been dealt with.

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

Following the complainer’s telephone conversation with Inspector A he sent a letter outlining complaints 1 and 2 to the Chief Constable on 29 October 2007. His letter of complaint was acknowledged on 31 October 2007.

The complainer’s complaints were recorded on a Complaint About the Police (CAP) form. An enquiry was conducted into the complaints by Inspector D and a report was submitted to Superintendent E on 12 December 2007.

#### **Complaint 1: The complainer is dissatisfied with the way Strathclyde Police responded to his report about two vehicles parked on a pavement.**

The complainer wrote a letter of complaint to the force dated 29 October 2007. He summarised the circumstances surrounding Complaint 1, maintaining that the Highway Code states:

*“Do not park partially or wholly on the pavement unless signs permit it”*

and that Section 34 of the ‘Road Traffic Act’ notes:

*“Subject to the provisions of this section, if without lawful authority a person drives a [motor vehicle] – on any road being a footpath or bridleway – he is guilty of an offence.”*

He then asked:

*“How, then, does Strathclyde Police square this with the judgement of its officers on Saturday?”*

During the course of the enquiry into his complaints about the police, a statement was noted from the complainer on 20 November 2007. In this statement he maintained that he was “*deeply dissatisfied*” with the way Strathclyde Police responded to his complaint about the parked vehicles. He asserted that:

*“These van drivers clearly broke the law and were given carte blanche to carry on doing so by the 2 officers.”*

The complainer also maintained that he telephoned the bank and was informed by an employee that permission had not been given to anyone to park on the pavement. He stated that he would like the two officers who decided to allow the vehicles to remain in situ to be advised that they were wrong and to be disciplined for not upholding the law.

Inspector D outlined the complainer’s concerns in his report dated 12 December 2007, stating that the complainer believed that the officers, in failing to charge the drivers with unlawfully parking on the pavement and having the vehicles moved, were in neglect of duty. He stated:

*“It is the strongly held view of the complainer that this was a pedestrian safety issue and as such there were no mitigating circumstances which would justify the officers exercising discretion.”*

In the course of the enquiry conducted by Inspector D statements were taken from Constables B and C on 21 November 2007 and 28 November 2007 respectively.

Inspector D stated in his report that the officers decision to leave the vehicles in situ was influenced by the fact that the vehicles were being used by tradesmen engaged in refitting work within the bank, there was no obstruction to vehicular traffic and no substantive obstruction to pedestrians. In addition Inspector D noted that the report by the complainer at the time was anonymous and whilst the officers were present no other member of the public raised concerns about the way in which the vehicles were parked.

Superintendent E sent a final letter to the complainer dated 13 December 2007 summarising the findings of Inspector D’s enquiry. He stated that the account of the officers show that when they responded to the anonymous report of vehicles being parked on a pavement they observed two vans parked as described. He stated that the officers spoke to the drivers and learned that they were carrying out refitting work within the bank. He stated that the officers made an evaluation of the situation and formed the opinion that, under the circumstances it was reasonable to allow the vehicles to remain in situ to allow the workmen access to their tools and equipment. Superintendent E stated that in reaching the decision the officers took due cognisance of public safety and satisfied themselves that the vehicles were not causing an unnecessary obstruction. He stated:

*“When dealing with any infringements of the law, officers must endeavour to adopt a consistent and fair approach. With incidents such as this, officers are faced with many variables and the decision as to what action to take is a matter of balance and judgement. The options available to the officers in this*

*situation were enforcement, warning or to take no action. In taking the last option, the officers chose to exercise discretion, taking full cognisance of all the facts and circumstances. It is my view that this was an appropriate response. To have chosen the other options would have been unnecessarily overbearing and officious. If it remains your view that the officers were in neglect of their duty by taking this course of action, then that is a matter of regret."*

The complainer stated in a letter to my office dated 1 February 2008 that Superintendent E failed in his duty to conclude that there had been an operational failing in this issue.

**Complaint 2: The complainer is dissatisfied with the quality of service provided by Inspector A when conducting enquiry into Complaint 1.**

In the complainer's letter to the force dated 29 October 2007 he described the attitude displayed by Inspector A during their initial telephone call as disgraceful. The complainer stated that Inspector A had been off hand with him because he had dealt with him during a previous complaint enquiry and maintained that he had *"...brought the baggage of the previous inquiry to this one."* The complainer asked the Chief Constable in his letter:

*"What defence is there for asking someone who clearly has a grudge against me to investigate my complaint?"*

The complainer asserted that as Strathclyde Police record their incoming calls he was sure that it would be possible to verify the truth of his allegation.

The complainer reiterated this complaint in his statement taken on 20 November 2007. He maintained that:

*"It was clear to me Inspector [A] had no genuine interest in dealing with my complaint because of the manner he adopted on the phone. Overall, I would say that it is a disgraceful way to behave towards someone with a genuine concern about pedestrian safety. I am dissatisfied with the quality of service he provided to me at this time."*

The complainer further stated that in his opinion Inspector A should be relieved of any customer service duties.

Inspector D stated in the enquiry report that Inspector A maintained that from the outset the complainer was hostile and unhelpful. Inspector D noted that Inspector A stated that he tried to explain the action taken by the officers, with which Inspector A agreed, having taken advice from the Traffic Department. Inspector D stated that in spite of this Inspector A was unable to conciliate matters or reach a resolution that was acceptable to the complainer. He noted that Inspector A denied being anything less than professional in his dealings with the complainer, maintaining that he was polite and courteous in spite of the complainer's hostile and confrontational approach during the telephone conversation.

Inspector D confirmed that he contacted the officer responsible for telephone tape recording in the Area Control Room who advised that the telephone conversations between the complainer and Inspector A had not been recorded.

Superintendent E responded to the complainer in a letter dated 13 December stating:

*“Given the small number of supervisory officers at my disposal it is not unreasonable to expect that regular correspondents find themselves dealing with the same individual within the Sub Division. For his part, Inspector [A] denies being anything other than professional in his dealings with you and highlights that he took the time to thoroughly investigate the matters you complained of before phoning you back with a comprehensive update of his findings.”*

He concluded that:

*“Examining the evidence of this aspect of your complaint from both sides, it is clear that there are two different points of view, with no independent evidence to support either. Given the contradictory evidence I am unable to reach a conclusion with any certainty. Nevertheless, I can tell you that in Strathclyde Police we value all members of our communities and we endeavour to treat everyone with courtesy and consideration at all times. It is, therefore, a matter of regret if it remains your view that on this occasion the actions of Inspector [A] did not accord with that value.”*

## **5. PCCS review**

The complainer contacted my office by telephone on 7 January 2008. He was asked to complete and sign an application for review form which was received on 5 February 2008 together with other relevant information.

On 6 February 2008 my office asked Strathclyde Police to provide the relevant complaint case papers by 20 February 2008. The force supplied the required information on 21 February 2008.

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

## **6. Consideration**

I note that Inspector A initially provided a response to the complainer regarding Complaint 1 during the telephone conversation on 28 October 2007. As the complainer subsequently made this complaint formally and this was investigated in line with the force’s complaints procedure, for the purposes of this review I have

considered the complaint enquiry undertaken by Inspector D and the response subsequently provided by Superintendent E.

**Complaint 1:** The complainer is dissatisfied with the way Strathclyde Police responded to his report about two vehicles parked on a pavement.

In the complainer's view, by parking their vehicles on the pavement outside the bank, the drivers of the vehicles broke the law and that in failing to charge the drivers and having the vehicles moved, Constables B and C neglected their duty. He maintains that the vehicles were in contravention of the Highway code and the 'Road Traffic Act' and also notes that the road nearest to the pavement that the drivers had parked on had double yellow lines.

Superintendent E stated in the final letter to the complainer that when dealing with any infringements of the law, officers must try to take a fair and consistent approach. He stated that the officers were faced with many variables and the decision as to what action to take was a matter of balance and judgement. He acknowledged that in the situation the officers could have enforced the law or warned the drivers, however they chose to take no action. Superintendent E concluded that the officers attending at the scene evaluated the situation, used their discretion and decided that, as there was no risk to public safety and the vehicles were not causing an unnecessary obstruction, under the circumstances it was reasonable to permit the vehicles to remain in situ to allow the workmen access to their tools and equipment.

The response provided by Superintendent E to the complainer does not deny that two of the options available to the attending officers were enforcement or warning, and as such addresses the issue that the vehicles had contravened the law by parking on the pavement. While understanding the complainer's concerns and acknowledging the relevant legislation it is my view that part of the duty of a police officer is to use common sense and considered judgement. The remit of the PCCS is to consider the manner in which a complaint about the police has been handled, it is not to determine whether the vehicles were causing an obstruction to pedestrians.

From the information available and the statements provided by Constables B and C it is evident that the officers considered the safety of the pedestrians and whether it was in the public interest to charge or warn the drivers of the vehicles before making a considered judgement to allow the vehicles to remain in situ. As such it is my opinion that the response provided by Superintendent E was reasonable.

**Complaint 2: The complainer is dissatisfied with the quality of service provided by Inspector A when conducting enquiry into Complaint 1.**

In the complainer's letter to the force dated 29 October 2007 he described Inspector A's attitude as disgraceful. The complainer stated that Inspector A had been off hand with him because he had dealt with him during a previous complaint enquiry and maintained that he had held a grudge against him.

Superintendent E explained in the final letter to the complainer that Inspector A denied being anything other than professional in his dealings with the complainer and maintained that he had thoroughly investigated the concerns he had raised. He

concluded that as there was no independent evidence to support the view of the complainer or Inspector A he was unable to reach a definitive conclusion.

Superintendent E also addressed the complainer's concern that Inspector A had been appointed to conduct an enquiry into his complaint despite his belief that he had a grudge against him. He stated that as there are a small number of supervisory officers at his disposal it is not unreasonable to expect that the complainer could find himself dealing with the same officer in the Sub Division on more than one occasion.

It is evident that the accounts of the conversation provided by Inspector A and the complainer conflict. I consider that, on the basis of the information provided by the force and the complainer, there is no additional evidence to support the view of either party. It is my view that, in the circumstances, the force provided a satisfactory response to the complainer.

I am of the opinion that Strathclyde Police carried out a thorough investigation into the complainer's complaints, obtaining relevant and detailed statements from those involved and completing a comprehensive enquiry report.

## **7. Conclusion**

**Complaint 1:** The complainer is dissatisfied with the way Strathclyde Police responded to his report about two vehicles parked on a pavement.

The response provided by the force acknowledges that there were a number of options available to the attending officers, including enforcement, warning or to take no action. Superintendent E stated that Constables B and C determined that the vehicles were causing no unnecessary obstruction and there was no risk to public safety. As such the attending officers exercised common sense and considered judgement and allowed the vehicles to remain in situ. It is my view that the response provided to the complainer was appropriate and as such **I do not uphold this complaint.**

**Complaint 2:** The complainer is dissatisfied with the quality of service provided by Inspector A when conducting enquiry into Complaint 1.

The accounts provided by Inspector A and the complainer regarding their telephone conversations differ. The force, in the absence of independent evidence, were unable to confirm nor deny the allegations made by the complainer. I am satisfied that the force provided a reasonable response to the complainer and as such **I do not uphold this complaint.**

Jim Martin  
Police Complaints Commissioner for Scotland  
November 2008