



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**

January 2009

Case reference: PCCS/0901/00160/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

Tayside Police are responsible for the provision and staffing of premises which University A use to provide services to the Crown Office and Procurator Fiscal Service. The complainer, as an employee of University A, made various complaints to Tayside Police in August 2006 regarding the conduct of two employees of the force at these premises and has requested that my office review the following complaints:

Complaint 1 – That two police employees abused and harassed a member of the complainer’s staff;

Complaint 2 – That a police employee conducted himself in an inappropriate manner;

Complaint 3 – That a police employee was under the influence of alcohol whilst on duty;

Complaint 4 – That Tayside Police do not manage its staff effectively;

Complaint 5 – That Tayside Police show a low level of concern for health and safety; and

Complaint 6 – That Tayside Police did not inform the complainer of information which could have had health and safety implications.

The complainer has written to my office stating that he is unhappy with the way the force dealt with his complaints. In particular, that he had not received a written statement from the force explaining its position regarding his complaints and that no apology had been given by the force for the actions of its employees.

The complainer is very specific about the reasons why he is unhappy with the way the force handled his complaints. Therefore, this review is confined to examining the manner in which Tayside Police has handled his complaints according to force procedures and guidance in place at the relevant time.

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 to 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-

(a) by a police authority;

(b) by a joint police board;

(c) by a police force;

(d) by the authority;

(e) by the agency; or

(f) by a person who, at the time of the act or omission, was a person serving with the police.

(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.

(7) For the purposes of this section, a person is serving with the police if the person-

(a) is a constable of a police force;

(b) is employed or appointed by virtue of section 9 of the 1967 Act (employment otherwise than as a constable) by a police authority or a joint police board;

(c) is a member of the staff of the authority; or

(d) is a member of the Agency.

The complainer has supplied a written statement expressing dissatisfaction about an act or omission by a person employed or appointment by virtue of section 9 of the 1967 Act by a police authority or a joint police board. 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 acting on behalf of a person falling within paragraphs (a) to (c) above. The complainer is therefore a relevant complainer under the terms of section 34(6)(d)

3. Background

On 4 August 2006, the complainer wrote to the force detailing Complaints 1-4 as a result of incidents that he stated occurred on 31 July 2006 and 3 August 2006 at police premises B. This appears to have resulted in a dispute between the complainer, as an employee of University A, and the force.

On 14 August 2006, the complainer wrote to the force reiterating his concerns and detailing Complaints 5 -6.

4. Force internal handling

On 8 August 2006, the Deputy Chief Constable (DCC) wrote to the complainer advising that he had noted his concerns and that he had directed the Professional Standards Department to appoint a suitable senior officer to investigate the allegations.

Inspector C was appointed to investigate the complainer's complaint. On 10 August 2006, the complainer wrote to Inspector C referring to a recent conversation between

them and provided details of a number of witnesses who he believed could corroborate Complaints 1, 2 and 3.

Between 10 August 2006 and 15 August 2006, Inspector C obtained statements from six of the witnesses and on 14 August 2006 submitted a report to Superintendent D which provided a summary of the evidence obtained until this point Inspector C's report concluded that:

'In summary it would seem apparent that there is basis behind the complaints of inappropriate conduct and concern regarding the sobriety of [the police employees].....I will continue my enquiries and will submit a full preliminary report once sufficient information comes to hand'.

On 23 August 2006, the DCC, Superintendent D, Detective Superintendent E and Mrs F of the force Human Resources Department met to discuss the progression of the issues raised. From the minutes of the meeting, it appears that it was agreed that the matter:

'should progress through Staff Discipline to address discipline and competency matters raised'

On 25 August 2006, Inspector C sent a memo to Superintendent D advising that the complainer had declined to *'provide any form of statement saying that he was not obliged to and, in any case, he had no relevant information or facts to impart'*.

On 28 August 2006, the police employees were interviewed separately by the force Human Resources Department regarding the allegations made by the complainer in his letters of 4, 10 and 14 August 2006. Both individuals were informed that the allegations would be investigated in line with force guidance on Support Staff Discipline Procedures.

On 30 August 2006, the complainer wrote to Inspector C reiterating his complaint about one of the employees.

On 31 August Mr G sent a memo to Detective Superintendent E referring to a meeting the previous day between himself, the complainer and another at which an interim operating practice at police premises B was agreed.

On 7 September 2006, Inspector C wrote to the complainer informing him that enquiries into the issues highlighted were being carried out by the force's Human Resources Department and that Detective Chief Inspector H would now be the complainer's main point of contact.

On 8 September 2006, Detective Chief Inspector H submitted a report to Assistant Chief Constable J regarding the allegations. Detective Chief Inspector H's report referred to the investigation that had been conducted by Inspector C and stated that his report should be read in conjunction with Inspector C's 14 August 2006 report into his investigation. Detective Chief Inspector H's report listed the allegations that had been made and the police employees response to them. On 10 October a decision was made to issue advice and guidance to both employees.

On 20 December 2006, the force files show the complainer instigated a meeting between himself and representatives of the force regarding working practice procedures at police premises B.

On 7 March 2007 the complainer wrote to Her Majesty's Inspectorate of Constabulary regarding his dissatisfaction with the way that the force had handled his complaints.

On 9 March 2007, Detective Chief Inspector H in a memo to Superintendent D, referred to a meeting with the complainer in October 2006 where he stated that he updated the complainer on the progress of his complaints.

On 9 March 2007, the force Professional Standards Department asked the Human Resources Department for the outcome of its enquiry.

On 12 March 2007 Detective Sergeant K, in a memo to Superintendent D, provided an update on some of the issues raised by the complainer.

On 14 March 2007 Detective Chief Superintendent L wrote to the complainer to advise that a review of the Health and safety of the police premises was in progress and that enquiries were ongoing into other issues raised.

On 20 March 2007, the DCC received a letter from Her Majesty's Inspectorate of Constabulary (HMIC) advising that it had received a letter from the complainer expressing dissatisfaction with the way the force had handled his complaint. HMIC also asked if the matter had been registered by the force as a complaint against the police for the purposes of the Police (Conduct) (Scotland) Regulations 1996.

On 22 March 2007, the force Human Resources Department advised the Professional Standards Department that the police employees had been given advice and guidance.

On 23 March 2007, the force responded to HMIC advising that the complaint had been considered under the terms of police staff disciplinary procedures and that it formed part of a course of events which had not yet reached a conclusion.

On 3 October 2007, HMIC requested that the force provide an update on the complainer's complaints. On 7 November 2007, the force sent a response to HMIC with its position on the complainer's dissatisfaction. Superintendent M explained that:

'I note that.....[the complainer] states one of his main grounds for his dissatisfaction is that he has never been updated in writing as to the outcome of his complaints.....I have sought clarification from [Detective Chief Inspector H] in relation to this and he advises that [the complainer] was not given a written update but instead was invited to attend a face to face meeting at Tayside Police Headquarters, Dundee, as this was felt the most appropriate way to deal with the matter.....I am advised that during this meeting [the complainer] was provided with a full update as to the findings arising from the

police enquiry into his complaint and he indicated that he was satisfied as to both the outcome and the measures that were to be implemented to prevent the same issues occurring again. This initial meeting was followed by regular informal contact with [the complainer].....It is conceded that [the complainer] has never been provided with a written update in relation to his complaints as it was felt by Detective Chief Superintendent L that a series of face to face meetings provided better opportunity for matters to be discussed. It is therefore disputed that [the complainer] has not been provided with updates as he alleges’.

On 25 March 2008, after the PCCS requested the case files from the force, Detective Chief Superintendent L provided the complainer with a written response regarding the issues which he had raised over the previous 18 months. In relation to Complaint 1, Detective Chief Superintendent L stated:

‘[Police staff were} interviewed in relation to this. They described this as an element of banter in the course of normal working process, a two way process between them and [witness N]. They were provided with corrective advice that this should cease, which I am informed is now the case’.

In relation to Complaint 2, Detective Chief Superintendent L stated:

‘[Police staff] were interviewed in relation to this point and denied this had taken place. As the allegation was vague and without specific complaint it is difficult to specifically tackle. [Police staff] were made aware such behaviour is unacceptable’.

In relation to Complaint 3, Detective Chief Superintendent L stated:

‘At the time of complaint no supporting evidence was found.

In relation to Complaint 4, Detective Chief Superintendent L stated:

‘It is acknowledged there was the requirement to provide further line management within the [police premises B], and a supervisor was stationed there for a number of months following your complaint. Focused supervision continues via a Detective Sergeant who has line management responsibility’.

Detective Chief Superintendent L’s letter also reiterated the allegations that had been put to the police employees on 28 August 2006. She explained that the police employees had denied that a number of the alleged events occurred. However, she also advised that she had arranged ‘training interventions’ for both members of staff which focused on diversity and equality issues, health and safety issues within police premises B and soft skills guidance to assist them in dealing with others in their professional capacities.

Detective Chief Superintendent L concluded her letter by stating:

‘As previously stated the intention of this letter is to cover a number of issues you have raised over an extended period of time. I welcome further

discussion in relation to this and I would emphasise that although there have been problems within the professional working relationships within [police premises B], it is important that we continue to talk these issues through and ensure progress is maintained.

In order to assist in maintaining professional working relationships I feel it might be of value for you to meet on a regular basis with Detective Chief Inspector [H], thereby providing opportunity for issues to be raised and resolved. I have also instructed that any future complaints or issues raised by you will be dealt in a more formal manner, fully investigated and you will be provided with a written outcome.'

5. PCCS review

In a telephone call to my office on 6 December 2007 the complainer advised that, following his request that Her Majesty's Inspectorate of Constabulary (HMIC) consider his complaints about Tayside Police, HMIC had written to him advising that, as the members of staff complained about were civilian employees, it did not have the power to review his complaint.

The complainer was asked to complete and sign an application for review form which was received by my office on 21 January 2008 together with other relevant documentation. A number of telephone calls between case officers and the complainer took place during the course of enquiries by my office.

On 21 January 2008, my office asked Tayside Police to provide the relevant complaint case papers by 5 February 2008. My office also requested the files held by HMIC on this date.

On 13 February 2008, Chief Inspector P wrote to my office advising that the Headquarters Crime Management Division were dealing with the complainer's complaints and had not fully completed their enquiries into the complaints. However, he also stated that it was anticipated that all outstanding enquiries would be resolved within the next few days and that the relevant paperwork would be submitted to my office as soon as was reasonably possible.

My office contacted the force on 28 February 2008 for an update on the force's position and was advised that it was hoping to have the files prepared for 3 March 2008. On 18 March 2008, my office again asked the force to provide the relevant case papers by 25 March 2008. The files were received by my office on 1 April 2008.

On 9 December 2008, my office asked the force for relevant SOP's used by the force when dealing with complaints about its civilian staff. The relevant SOP's were received from the force on 10 December 2008.

The complainer remained updated on this correspondence and on the progress of his complaint in accordance with the PCCS published standards of service.

6. Consideration

Whilst it is clear that the complainer is technically a legitimate complainer it is my view that, in the main, the issues raised by him relate to the roles and responsibilities of the various organisations and their members who have an interest in using and maintaining the police premises in question. These roles and responsibilities are set out in various agreements between these organisations and it is not within my remit to review them. The PCCS is not an appropriate forum to resolve differences of professional opinion and I would expect any future attempts at resolving such disputes to be managed in accordance with the agreements in place.

However, because of the procedural nature of the complainer's dissatisfaction and for a sense of completeness my consideration will address the areas of dissatisfaction detailed by the complainer regarding the manner in which the force has dealt with his complaints. The complainer is dissatisfied with the force's investigation into his complaints because:

- He did not receive in writing any statement explaining the outcome of the force investigation into his complaints;
- He has not been given a verbal or written statement from the force as to whether or not they find that the allegations within the complaint are well founded or not; and
- The force has not offered an apology for the actions of the police employees.

I note that following the force investigation, it was decided that the police employees would receive further training and guidance in respect of diversity and equality, health, safety and soft skill guidance to assist them in dealing with others within police premises B. Force support staff disciplinary procedure guidance states:

'Minor cases of misconduct may best be dealt with by informal advice, coaching and counselling with the objective of encouraging and helping employees improve rather than through the disciplinary procedure.'

Superintendent M's response to HMIC dated 7 November 2007 shows that, following a meeting at Tayside Police Headquarters in October 2006, the complainer was verbally updated with both the outcome of the force enquiry to date and the measures that were to be implemented to prevent the same issues occurring again. As a result of this, Superintendent M advised HMIC that although he conceded that the complainer had never received a written update he disputed the complainer's claim that he had never received any update into the conclusion of his complaints.

In both his letter to HMIC and my office, the complainer stated that he had a meeting with Detective Chief Superintendent L and the University Secretary in mid January 2007 where he was informed that no disciplinary proceedings would be taken and that both technicians would be given further training. It is clear, therefore, from the complainer's correspondence that he was updated verbally with the outcome of the force's enquiries. However, from the files supplied to my office, no record appears to

have been kept confirming the content and detail of this meeting, or the meeting which occurred in October 2006.

I note that the Support Staff Discipline Policy is silent on the type of response a complainer should receive to a complaint about the police. The SOP titled "Complaints Procedure – Support Staff guidance" received by my office from the force states:

'At the end of the investigation and any subsequent action, feedback will be given to the complainer. They will be notified of whether their complaint has been upheld or not and brief details of what action has been taken (if any). Because of confidentiality, it is not possible to give precise details to the complainer'.

The complainer is a professional who has by his own admission been verbally updated on the actions taken by the force in relation to the two force employees. The detailed letter by the force dated 25 March 2008, refers to "this written response in support of the verbal updates already provided to you." This letter containing just over five full pages of explanation, does not include an apology regarding the conduct of the police staff, nor does it refer to allegations being upheld or not, but does give a comprehensive response to the issues raised by the complainer.

7. Conclusion

It is clear that at the time of writing to both HMIC and my office, the complainer had not received a written response to his complaints.

The complainer has since received a detailed response from the force to his complaints which included confirmation that any future complaints will be dealt with more formally, and that he will receive a written outcome.

I am satisfied that the force has now provided a reasonable explanation to the complainer and that it has put in place further measures to deal with any future issues that may arise. Given that this is a dispute arising from a professional arrangement I am satisfied that the force has now appropriately dealt with the issues raised and make no further recommendation.

The PCCS is not an appropriate forum to resolve differences of largely professional opinion and I would hope that any future attempts at resolving such disputes to be managed in accordance with the agreements in place.

Jim Martin
Police Complaints Commissioner for Scotland
January 2009