

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**

January 2009

Case reference: PCCS/0901/00180/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 his complaints about Strathclyde Police. The complainer has detailed a number of complaints that he wishes me to consider, all originating from the police action taken on 19 December 2006 following a criminal allegation being made about the complainer. The complaints are listed as follows:

Complaint 1 – That Strathclyde Police lack procedural understanding. The complainer has highlighted the following areas where he feels the force lack such understanding:

Complaint 1a – That the complainer was illegally taken from his home and unlawfully arrested by Strathclyde Police on 19 December 2006;

Complaint 1b – That the complainer was held against his will on 19 December 2006 at police station A;

Complaint 1c – That Strathclyde Police had no warrant to enter the complainer's home on 19 December 2006;

Complaint 1d – That Strathclyde Police had no warrant to remove items from the complainer's home on 19 December 2006;

Complaint 1e – That Strathclyde Police did not provide the complainer with an appropriate adult;

Complaint 1f – That, before arresting the complainer, Strathclyde Police should have given him a warning;

Complaint 2 – That Strathclyde Police did not acknowledge the complainer's mental health or take into account his learning difficulties;

Complaint 3 – That the complainer's safety was threatened by the officers who arrested him;

Complaint 4 – That the complainer was forced by Strathclyde Police to say that he was guilty;

Complaint 5 – That Strathclyde Police violated his Human Rights;

Complaint 6 – That the complainer has been victimised by Strathclyde Police for being mentally ill;

Complaint 7 – That the complainer's home was being observed without his knowledge;

Complaint 8 – That the complainer's accuser was given preferential treatment by Strathclyde Police on account of her gender; and

Complaint 9 – That Strathclyde Police discriminated against the complainer on account of his disability;

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

Following a complaint being made from a member of the public on 19 December 2006, Constables B and C attended at the home of the complainer. There were difficulties in gaining entry to the house which resulted in Inspector D and Sergeant E attending.

Upon gaining entry to the complainer's home, Inspector D's statement shows that when he asked the complainer if he suffered from a mental illness, the complainer informed him that he suffered from schizophrenia and pointed out the medicine he had been prescribed for his condition. All four officers' statements show that the complainer was then arrested by Constable B and taken to police station A.

Upon arrival at police station A, the complainer was examined by the police casualty surgeon, Doctor F. Doctor F's statement shows that at about 10.05pm on 19 December 2006, he examined the complainer to establish if he was fit for detention. Doctor F's statement shows that, following the complainer advising him he suffered from schizophrenia, it was his impression that *'there was no acute psychiatric illness.'* Doctor F's statement concludes by stating that the complainer was prescribed medication and was fit for both detention and normal observations.

The Standard Prosecution Report submitted to the Area Procurator Fiscal shows that the police casualty surgeon recommended that the complainer be kept in custody for a court psychiatric evaluation.

4. PCCS review

After an initial e-mail was received from the complainer on 31 October 2007 he was asked to complete and sign an application for review form. My office received an e-mail from the complainer on 9 January 2008 stating that he had learning difficulties. On 10 January 2008, my office completed an application for review form on behalf of the complainer which was based on the information that he had already provided. The complaint, as noted on the form, was:

[The complainer] states that on 19 December 2006 he was arrested in his home by four officers from Strathclyde Police. He states he was accused of [an offence] and that he was given no opportunity to defend himself.

[The complainer] believes that his safety was threatened by the officers attending his home that night. He states that he tried to explain to officers that he was mentally ill but this was not acknowledged by the police. [The complainer] further believes that officers did not take into account his learning difficulties when dealing with him.'

The application for review form was received by my office on 22 January 2008. A number of further e-mails between case officers and the complainer took place during the course of enquiries by my office.

My office asked Strathclyde Police on 24 January 2008 to provide the relevant complaint case papers by 7 February 2008. On the 25 January 2008, the force responded advising that it had been:

'unable to trace the incident referred to and....would be grateful if you would provide....further information such as the location and the exact nature of [the complainer's] complaint.'

On 25 January 2008, my office supplied the force with a description of the complainer's complaints as detailed in his PCCS application form.

On 30 January 2008, Superintendent G informed my office that the complaint, which had not previously been raised with the force, had now been recorded and directed to the appropriate police division for investigation. On 2 July, confirmation was received from the force stating that:

'As you will recall, arrangements were to be made to have [the complainer] interviewed by a Senior Officer from his local Division. I can advise you that arrangements were made to interview [the complainer], who has mental health issues, in the presence of a Mental Health Worker but he has failed to make himself available. Despite numerous further requests, the complainer.....remains unco-operative. I can advise you that the matter has been investigated by a local Senior Officer on what limited information is available and a response has been sent to him to conclude the matter.'

My office asked Strathclyde Police on 22 August 2008 to provide the relevant complaint case papers by 4 September 2008. The papers were received on 3 September 2008.

Since the complainer first contacted my office, he has sent a number of e-mails detailing other areas where he is dissatisfied with the actions of Strathclyde Police on 19 and 20 December 2008. These areas have been listed in Section 1 of this review.

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

5. Force internal handling

The force was first notified of the complainer's dissatisfaction, about the events that occurred on 19 December 2006, by my office on 25 January 2008. On 5 February 2008, the force e-mailed the complainer stating:

'I refer to your recent contact with the Police Complaints Commissioner for Scotland, when you intimated that you wished to make a complaint against Officers of Strathclyde Police. A Senior Officer from your local area will contact you at an early date in order to discuss your concerns.'

On 5 February 2008, Chief Superintendent H sent a memo to the relevant police division stating that a Complaint About the Police (CAP) form had been raised and asked that a senior officer be appointed to *'interview [the complainer] and establish his exact complaints.'*

The CAP form shows that the force had noted the complainer's complaints as:

'Complainer alleges that his mental illness was not taken into consideration when arrested. He also complains of his own safety being threatened due to officers not taking cognisance of his mental illness or learning difficulties.'

On 6 February 2008, the complainer sent an e-mail to the force asking that, as he suffers from a mental health disability, any meeting between him and the force be at Premises J. Following this request, an internal force e-mail shows that Superintendent G requested that the complainer be interviewed in the presence of an appropriate adult. On 19 February 2008, Inspector K responded to the complainer that he had been allocated his complaint and was content to meet at a location of the complainer's choice to alleviate any concerns that he may have.

On 17 March 2008, a Mental Health Advocacy Worker (MHA Worker) contacted the force on behalf of the complainer to arrange a mutually agreeable time and place for the complainer and the force to meet. The MHA Worker suggested locations for he meeting and asked the force to confirm if this was suitable. On 18 March 2008, Inspector L was re-allocated the complainer's complaint.

On 22 March 2008, the complainer e-mailed the force to confirm that he would be able to meet the force with his MHA Worker and friend. On 25 March, Inspector L responded advising that he had now been allocated the complaint and requested details of a suitable time to meet with the complainer, MHA Worker and friend. On 2 April 2008, the complainer e-mailed Inspector L to reiterate certain aspects of his complaints and advise that he felt his lawyer should be present. Inspector L responded advising the complainer that he had tried to contact his MHA Worker but that he was on holiday. Inspector L also advised he would try and contact his MHA Worker within the week to arrange a suitable time to meet.

On 8 April, Inspector L e-mailed the complainer to advise that he had again tried to contact his MHA Worker but that he was off work as he was unwell. Inspector L asked the complainer if there was another individual that could be present during the meeting in order that the matter could be resolved. The complainer responded advising that he was meeting another support worker on 14 April and would speak to him at a later date.

Inspector L, on 9 April e-mailed the complainer asking for the name of another support worker to allow him to progress the complainer's complaints. He also advised that he would be happy to contact Social Services to ascertain if they could provide someone to sit in on the meeting. On 10 April 2008, the complainer e-mailed Inspector L with the name and contact details of another support worker who could replace the complainer's original MHA Worker.

On 13 April 2008, it appears that the complainer's sister contacted the force using the complainer's e-mail address stating that the suggestion of a social worker was not acceptable.

On 30 April 2008, Inspector L wrote to the complainer to advise that he had spoken to his original MHA Worker with the intention of setting up a meeting. On 7 May 2008, the complainer sent an e-mail to Inspector L advising that he could meet with the force but not in a police station.

On 17 May 2008, what appears to have been the complainer's brother and friend e-mailed the force from the complainer's e-mail address advising that

'there may not be any meeting as we don't trust the police or the way they treat members of the public who are mentally ill'.

On 27 May 2008, Inspector L e-mailed the complainer, apologising for the delay in replying and advising that he was still hopeful that he could meet to discuss the issues. On 28 May 2008, Inspector L again e-mailed the complainer to advise that the complainer's MHA Worker was off work and asked whether he could meet with the support worker previously suggested by the complainer on 10 April 2008. On 28 May 2008, the complainer e-mailed Inspector L advising that, although he was not sure if this person was familiar with the law, this option would be acceptable. Approximately two hours later, an e-mail was sent to Inspector L from the complainer's e-mail address to Inspector L stating that following speaking to his support worker:

'to be frank they don't think that they would be able to trust your department after what went down. I would require more than one intermediary present'.

At 7.00 pm on 28 May 2008, Inspector L received an e-mail from the complainer's e-mail address stating that the complainer was not sure of the force and asked what can possibly come out of a meeting with the police. The email also requested that the case be passed to the PCCS.

On 29 May 2008, Inspector L sent an e-mail to the complainer with the force position on his complaints at that point. The e-mail explained:

'In light of the fact that you have been unable to meet up with me to discuss your concerns I am unable to progress your complaint. Any appointments that I have made you have cancelled and any other arrangements that I suggest you state are unsuitable. This aligned to the fact that it appears different individuals are replying to your emails leave me no alternative but to return your correspondence to [the] PCCS. I have tried since March to resolve this and offer you an explanation as to the circumstances. If your concern is that you feel that no cognisance was taken as to your mental health then I offer this explanation:

You were brought to [police station A] at 21.26hrs on 19 December 2006. It was realised that you may have mental health issues so a Casualty Surgeon attended and examined you at 22:05hrs, this being only 39mins after your arrest. He deemed you fit to be detained and prescribed medication for you. You appeared at court where a report would have been requested into your mental health, you would also have had legal representation.....I regret that I have been unable to assist you in this matter but I feel I have tried all avenues that have been available to me.'

On 31 May 2008, Inspector L was contacted by what appears to have been the complainer's brother advising him that it was the complainer's MHA Worker who had held things up, not the complainer. On 3 June 2008, in response to an e-mail dated 2 June 2008, Inspector L e-mailed the complainer's address stating that he had obtained statements from the police officers named in the complainer's complaint. He also advised that he had taken a statement from the police casualty surgeon. Inspector L's e-mail continued:

'I feel that I am in the position to clear up some of the concerns that [the complainer] and yourself may have in relation to his apprehension but unless I can meet up with [the complainer] I cannot get his side of the story. As said previously I have been trying for 3 months to resolve this. If you wish to arrange a meeting I will turn up just let me know when and where'.

On 5 June 2008, what appears to be the complainer's brother e-mailed Inspector L advising that a meeting was to be arranged with the complainer's MHA Worker. On 9 June 2008, Inspector L received an e-mail from the complainer's e-mail address stating that:

'we need to bring this meeting forward as [person M] and [the complainer] cannot make 2:30pm'.

On 16 June 2008, Inspector L forwarded a report to the Deputy Commander of the division concerned regarding the complainer's complaint and what attempts the force had made to address it.

Inspector L's report provided a background to the circumstances surrounding the events. In response to the allegation that no notice was taken of the complainer's mental health, the report states:

'this was in fact recognised at a very early stage and his medication taken with him to the Police Office. He was thereafter examined by a Police Casualty Surgeon, Doctor [F], within 39 minutes of being brought to the Police Office. Doctor [F] acknowledged the complainer's mental illness and reports "No acute psychiatric illness"...There is no independent evidence to support the complaint. The officers complained about refute the allegation.'

Inspector L stated in his report:

"The complainer has failed to make himself available to the reporting officer. All attempts have been made by both Police and his Mental Health worker to make appropriate arrangements. All efforts have been deemed unsuitable by the complainer."

On 19 June 2008, Superintendent N sent a letter to the complainer in response to the complaints it had recorded and investigated. This letter stated:

'Unfortunately, as you are aware all arrangements have that [Inspector L] has made to meet with you have been deemed unsuitable by you and cancelled by yourself at short notice. To date you have been unable to provide any alternative dates and arrangements.

In light of the foregoing and unless you make yourself available for a meeting, Inspector [L] will be unable to address any issues that you may have.

Enquiry has however been carried out into the issues surrounding your arrest and I am satisfied that the proper procedures were followed. I am aware that you subsequently appeared at [Sheriff Court Z] where sentencing has been deferred'..

On 23 June 2008, the Deputy Divisional Commander noted in the relevant section of the CAP form that the:

'complainer has failed to make himself available for interview and no progress has been made in pursuing allegations.'

On the same date, the Deputy Divisional Commander signed off Inspector L's report and forwarded it to Chief Superintendent H of the force Complaints and Discipline Branch.

On 26 June 2008, Superintendent G noted the disposal of the case on the CAP form that the complaint had been 'abandoned/unsubstantiated'.

6. Consideration

There are a number of distinct issues raised by the complainer. It should be noted that after my office provided the force with details of the issues identified with the complainer, he subsequently made both my office and the force aware of a number of other complaints about the police. The subsequent complaints appear to have been sent by a number of individuals, all from the same e-mail address, claiming to act on behalf of the complainer. However, the complaints recorded by the force are clear:

'[the] complainer alleges that his mental illness was not taken into consideration when arrested. He also complains of his own safety being threatened due to officers not taking cognisance of his mental illness or learning difficulties.'

Throughout its investigation into these complaints, the force were made aware of other potential areas of concern by the complainer and his representatives. It is clear that the difficulties encountered in engaging with the complainer contributed to the problems in identifying the grounds of complaint. Given the circumstances, it is my view that the force has acted reasonably in only recording the complaints which my office informed it of on 25 January 2008.

I note that the force investigated the matter on the information available and concluded that the complainer's complaints were unsubstantiated or withdrawn. It is clear from Superintendent N's final response of 19 June 2008 that because the force were unable to meet with him, it was unable to address any issues that the complainer had at that time. I also note that Superintendent N also informed the complainer that she was satisfied that the proper procedures were followed. It is my view that, in relation to the complaints recorded by the force, this was a reasonable and appropriate response.

It is my view that the force has made reasonable attempts to make substantive contact with the complainer and his representatives in order to identify and progress his complaints and it is unfortunate that a meeting could not be arranged. Inspector L is to be commended for the efforts and the manner in which he attempted to engage the complainer in order to resolve the matter.

It is also my view that the force has made reasonable attempts to investigate the complaints which were referred by my office on 25 January 2008. However, I am in agreement with the force that it has not been able to address all the issues that the complainer may have, and until a meeting can be arranged with the complainer and his representatives the force may never be able to reach a comprehensive, evidence based conclusion to his complaints.

7. Conclusion

It is evident that the force has attempted to progress the complainer's complaints in a reasonable and pragmatic way but it is clear that there are areas where the force have not, and could not have, addressed the complainer's concerns.

However, it is my view that until a meeting can be arranged with the complainer, it would not be reasonable to ask the force to conduct any further work or investigation into his complaints.

Jim Martin
Police Complaints Commissioner for Scotland
January 2009