

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/0901/00247/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 emanating from an incident on 25 February 2007 which resulted in the complainer's arrest for assault and breach of the peace. The complainer's specific complaints are:

Complaint 1 – Sergeant A and Sergeant B failed to investigate a criminal allegation which led to the complainer's arrest, and in particular that they failed to interview the complainer under caution;

Complaint 2 – Sergeant A and Sergeant B arrested the complainer unnecessarily;

Complaint 3 – The complainer was taken to a police office where he had previously worked and was known to some of the officers on duty;

Complaint 4 – The complainer was held in custody without cause and for longer than was necessary;

Complaint 5 – The force failed to obtain a statement from the complainer's relative who had been a witness to the incident on 25 February 2007;

Complaint 6 – The time taken by the force to forward a Standard Prosecution Report (SPR) to the Procurator Fiscal was unreasonable;

Complaint 7 – Sergeant A and Sergeant B failed to provide an accurate representation of the facts to the Procurator Fiscal and as a result the prosecution was malicious; and

Complaint 8 – Sergeant A and Sergeant B fabricated evidence in the SPR.

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 25 February 2007 a member of the public, Mr C, contacted Strathclyde Police to complain that he had been assaulted by the complainer who was a serving police officer. Sergeant B and Sergeant A both attended after being notified that an off duty police officer was involved. The statements of both Sergeants show that upon arrival at the scene, they spoke to the complainer who explained that Mr C had accused him of striking him on the chest while pointing at him. In addition, the complainer stated that although he had an argument with Mr C and may have poked him on the chest, he could not be sure whether or not he made any physical contact with Mr C.

Both Sergeants noted statements from Mr C and a witness, Mr D, before the complainer was arrested for breach of the peace and assault. Sergeant B states that at the time of his arrest, the complainer was offered the opportunity to give a statement or make a counter allegation which he declined. However, Sergeant A states that the complainer asked why he was being arrested without the officers first speaking to his relative, a witness. He states that the complainer was then informed if he wished to make a counter allegation, this would be looked into when he was at the police office.

The complainer states that when the officers arrived, he informed them about the allegation against him and asked them to take a statement from him. However, the officers did not take a statement from the complainer but did take statements from Mr C and Mr D before arresting the complainer. The complainer also states that when he was told he was to be arrested, he offered to attend the police office voluntarily and drive himself, but this was declined and the officers proceeded to arrest him.

The complainer was then taken to X police office where he was cautioned and charged at 4.09pm. The statements of both Sergeants and Inspector E show that whilst in X Police Office, Sergeant B and Inspector E visited the complainer and his request to make a complaint or counter allegation was discussed but the complainer decided to await legal advice before doing so. Whilst in custody the complainer was fingerprinted and had photographs and DNA samples taken before being released at 8.10pm the same day.

Strathclyde Police submitted a Police Report to the Procurator Fiscal who marked the case no proceedings.

The complainer subsequently made a complaint about the police to Strathclyde Police regarding the circumstances surrounding his arrest and charge with the offences.

4. Force internal handling

The complainer initially raised complaints 1-4, 6 and 7 in a letter dated 8 June 2007 stating that he wished to make a formal complaint regarding the manner in which he was dealt with on 25 February 2007.

This letter was received by the Complaints and Discipline branch of Strathclyde Police on 8 June 2007. A Complaint about the Police (CAP) form was completed on the same day which recorded the complainer's complaint about the police as:

*"Failing to investigate a crime – neglect of duty;
Neglect of duty – failure to submit SPR* timeously;
Neglect of duty – failure to release from custody earlier; and
Unlawful arrest."*

*Standard Prosecution Report

Chief Inspector F of Strathclyde Police Complaints and Discipline branch responded to the complainer's letter on 13 June 2007, advising that Inspector G had been appointed to conduct an enquiry.

The complainer was interviewed by Inspector G on 17 July 2007. In his statement, the complainer asserted that he had nothing more to add to his initial letter of complaint but confirmed his complaint as:

- Neglect of Duty

"They should have interviewed me under caution before any decision was made so they could have a balanced account of what had taken place. Therefore, in my opinion, to report me to the Procurator Fiscal in these circumstances, without my account of events can only be regarded as a malicious prosecution."

- Unlawful/Unnecessary Arrest or Detention

"I was known, was of good character, had waited for an hour whilst they carried out enquiries and stated my availability to attend voluntarily at the police office. However, these Sergeants arrested me, according to Sergeant [B]...on the basis of a Divisional memo which had stipulated that all minor assaults should be arrested in order that DNA can be taken."

- Irregularity in Procedure

"I have an issue with being taken to [X] police office, where I used to work..... on the same shift...that was on duty at the time."

- Neglect of Duty

"...the incident in question happened on 25 February 2007 and, according to my lawyer who I asked to call the Procurator Fiscal every second day, it [the SPR] did not reach the Procurator Fiscal until the week beginning 16 April 2007. I find this delay totally unacceptable..."

- Neglect of Duty

"I want to complain about a neglect of duty against the Officer who authorised my detention at [X] Police Office for four hours....Why was I kept in custody so long? What took four hours to do which prevented me from being released?"

Inspector G also arranged for statements from several other witnesses during his investigation which are listed in date order below:

- Sergeant B, dated 11 July 2007,
- Sergeant A, dated 15 July 2007,
- Mr C, dated 8 August 2007 ,
- Sergeant H, dated 12 August 2007,
- Ms I, dated 13 August 2007,
- Mr J, dated 13 August 2007,
- Mr D, dated 17 August 2007,
- Sergeant E, dated 21 August 2007,
- Constable K, dated 28 August 2007,
- Force Support Officer/Divisional Assistant Custody Officer L, dated 28 August 2007; and
- Force Support Officer/Divisional Assistant Custody Officer M, dated 28 August 2007.

As part of the investigation, on 13 August 2007, Case Worker N carried out house to house enquiries at the location of the original incident. This resulted in statements from two neighbours regarding the incident, Mr J and Ms I.

Inspector G contacted two other possible witnesses to the event: the complainer's ex-wife Mrs O and her relative, Mrs P. However, it was noted that neither Mrs O nor Mrs P were present when the police arrived or when the complainer was arrested and therefore could not provide any information regarding the complainer's complaint about the police.

During the course of the enquiry Inspector G also contacted the Procurator Fiscal's office to ascertain when the police report was received. Additional information was sought from the complainer on 22 August 2007.

Inspector G's report, dated 29 November 2007, was forwarded to the Chief Superintendent. The report concluded that there were no procedural shortcomings identified during the course of the investigation.

The force sent a full and final response to the complainer on 7 January 2008.

Complaint 1 – Sergeant A and Sergeant B failed to investigate a criminal allegation which led to the complainer's arrest, and in particular that they failed to interview the complainer under caution.

Chief Superintendent Q responded, stating that:

“In respect of your belief that you should have been interviewed under caution, that is an operational matter for the decision of the officers dealing with a situation....I am satisfied having reviewed the matter that the Sergeants who dealt with you did not neglect their duty.”

Complaint 2 – Sergeant A and Sergeant B arrested the complainer unnecessarily.

In reply, Chief Superintendent Q stated that the officers were faced with substantive evidence that the complainer was responsible for a crime *“following a pre-existing domestic situation”*. She also stated that the complainer was still at the scene of the incident a short time later and the officers involved believed his arrest was *“necessary and justified and in accordance with the law of Scotland.”*

Complaint 4 – The complainer was held in custody without cause and for longer than was necessary.

Chief Superintendent Q also addressed this complaint, noting that the correct procedures had been carried out in the correct order. However she also stated that:

“...it would have been preferable for these procedures to have been expedited. I believe that such action would have resulted in your release at an earlier stage and it is to be regretted that the necessary steps were not taken to achieve this.”

The Chief Superintendent concluded that the delay was not intentional and therefore there had been no neglect of duty by Strathclyde Police.

Complaint 6 – The time taken by the force to forward a Standard Prosecution Report (SPR) to the Procurator Fiscal was unreasonable.

The Chief Superintendent stated that the investigation by Inspector G had established that the report was submitted to the Procurator Fiscal on 7 March 2007, which she considered to be a reasonable period of time.

This final response from the force also confirmed that the fingerprints, DNA and photographs that had been taken from the complainer on 25 February 2007 had been destroyed. The force concluded its response to the complainer stating that it had not been appropriate to take formal action against any of the officers involved.

A file note dated 7 January 2008 shows that Chief Superintendent Q instructed Sergeant H be made aware that she considered it would have been preferable for the relevant processes to have been expedited and therefore reduce the amount of time the complainer was held in custody. On 11 January 2008 it was confirmed to Chief Superintendent Q that Sergeant H was made aware of her views regarding the period of time the complainer was held in custody.

5. PCCS review

A telephone call was received by my office on 14 January 2008 during which the complainer outlined his complaint about Strathclyde Police. The complainer was asked to complete and sign an application for review form on the same day. The complainer sent documents pertaining to his complaint about the police to my office which were received on 17 January 2008. The complainer's application for review form was then received on 12 February 2008.

My office asked Strathclyde Police to provide the relevant complaint case papers on 13 February 2008. On 18 February 2008 my office received a request from the force to clarify the details of the complaint. The details of the complaint were clarified with the force in two telephone calls with the Complaints and Discipline branch on 18 February 2008 and 22 February 2008. The case papers were received from the force on 4 March 2008.

On 22 July 2008, further information was requested from Strathclyde Police regarding its guidelines for sending reports to the Procurator Fiscal, the guidelines for interviewing suspects under caution and other relevant documentation. This information was received by my office on 6 and 14 August 2008. In addition, my office contacted the force by telephone on 7 August 2008 to request information regarding its contact with the Procurator Fiscal which was received on 8 August 2008.

During the course of this review, my office updated the complainer regularly.

6. Consideration

Complaint 1 – Sergeant A and Sergeant B failed to investigate a criminal allegation which led to the complainer's arrest, and in particular that they failed to interview the complainer under caution.

In the force's response of 7 January 2008, Chief Superintendent Q stated that the decision to interview the complainer under caution is an operational matter and that she was satisfied that the officers had not neglected their duty.

However, it is noted that the letter of 7 January 2008 does not make reference to the fact that Sergeant B and Sergeant A's accounts appear to differ slightly in relation to the complainer being provided with an opportunity to be interviewed. According to Sergeant B, at the time of his arrest he was given the opportunity to give a statement or make a counter allegation. Sergeant A stated that any counter allegation that the complainer wished to make would be looked into, but once the complainer was processed at X police office. Neither of the Sergeants stated specifically why the decision was made not to interview the complainer under caution. Although, in his statement, Sergeant A did state that the complainer was arrested in view of corroboration of the relevant facts.

Although this complaint appears to have been investigated and the Chief Superintendent explained that it is an operational decision for the officers concerned, it may have been of assistance to the complainer had the force fully addressed this particular complaint by providing a more comprehensive response.

Complaint 2 – Sergeant A and Sergeant B arrested the complainer unnecessarily.

The response from Chief Superintendent Q dated 7 January 2008 stated that the officers concerned were faced with “*substantive evidence that you were responsible for a common law crime following a pre-existing domestic situation*”. The Chief Superintendent also stated that the complainer believed that his arrest resulted from a local instruction to increase the number of DNA samples obtained from those charged with assault. The force appear to have investigated the reasons behind the complainers arrest and the statements show that the officers involved believed there was sufficient evidence to arrest the complainer.

In my view it would have been preferable had the force in its response, addressed each particular issue raised by the complainer. In addition, it is not clear to me what relevance the phrase “*pre-existing domestic situation*” had in the decision to arrest the complainer. Again, it may have been of assistance to the complainer had the force fully addressed this particular complaint by providing a more comprehensive response to this complaint.

Complaint 3 – The complainer was taken to a police office where he had previously worked and was known to some of the officers on duty.

I note that although in his initial letter of complaint the complainer stated that he felt he should not have been taken to a police office where he had worked with the team on duty, this was not recorded as a complaint on the CAP form. However, the complainer reiterated his dissatisfaction regarding this in his statement of complaint noted on 17 July 2007.

In his report Inspector G made reference to a telephone conversation with the complainer on 22 August 2007, when he discussed this particular complaint. Inspector G noted that he explained to the complainer that although it is good practice to take an officer to a different police office in such circumstances, this is not specified in any force procedure. Inspector G stated that the complainer was satisfied with the position that the officers’ actions did not amount to an irregularity in procedure and did not wish to pursue this area of complaint. In the complainer’s statement of 22 August 2008, he stated that it was explained to him that there is no formal procedure in place regarding this.

Having provided an explanation to the complainer the force appear to consider this matter closed. In my view it would have been of assistance had the force provided a written response to the complainer in relation to Complaint 3 in order to provide a formal conclusion.

Complaint 4 – The complainer was held in custody for longer than was necessary.

From the information contained in the police complaint file, it would appear that the complainer was initially processed at X police office at 4.09pm and released around 4 hours later at 8.10pm. The Lord Advocates guidelines state that an arrested person should not be detained unnecessarily and it is generally accepted that once a person has been arrested they should be liberated as soon as possible unless there is a specific reason to detain them in custody.

It is difficult to understand how Chief Superintendent Q arrived at the conclusion the complainer's time in custody could have been expedited. According to the statement of the Duty Officer Sergeant H, all persons arrested must be fingerprinted, photographed and in some circumstances, have DNA taken which requires a crime report number to be generated. The crime report in the police file shows that the crime report was raised at 5.24pm on 25 February 2008, and at 7.24pm, the complainer's DNA was taken. Constable K who took the DNA sample and Force Support Officer/Divisional Assistant Custody Officer L who was present when it was taken, both stated that they had to wait for a crime reference number before proceeding with the samples and did not consider four hours to be an excessive timescale. Force Support Officer/Divisional Assistant Custody Officer M who was on duty at the time stated that given the circumstances, such as the amount of prisoners, the complainer was released timeously.

It is clear from the information provided that the force conducted a thorough investigation into the circumstances surrounding Complaint 4 and it appears that the appropriate action was taken to progress the complainer through the relevant procedures necessary.

Complaint 6 – The time taken by the force to forward a Standard Prosecution Report (SPR) to the Procurator Fiscal was unreasonable.

The complainer stated that it was not until the week beginning 16th April 2007 that the police report arrived at the Procurator Fiscal, which he found "*totally unacceptable*". The complainer stated that this information came from his lawyer who was not willing to become involved with the complaint investigation and did not want to be contacted by the force. The complainer also stated that the report should be submitted to the Area Procurator Fiscal for consideration within 14 days in line with the force's own guidelines. However, it appears that this particular timescale refers to complaints about the police, rather than that for reporting a crime.

In his report, Inspector G stated that he had contacted the personal assistant to the Procurator Fiscal, Ms U. She confirmed that the Procurator Fiscal had sent a letter to the force on 13 March 2007 confirming receipt of the police report sent to her on 7 March 2007, a copy of which he had obtained. There is also a letter in the police file requesting that a statement be noted from a member of staff at the Procurator Fiscal's office. There is no copy of the letter dated 13 March 2007 in the police file received by my office, nor any statement from an employee at the Procurator Fiscal's office/ However, there is a letter from the Procurator Fiscal dated 3 May 2007 in which the force is advised that the case against the complainer had been marked '*no proceedings*' and in which there is a reference to the force's letter of 7 March 2007. Although the specific date cannot be confirmed, it would appear that the force's letter dated 7 March 2007 was received by the Procurator Fiscal.

Strathclyde Police 'Standard Operating Procedures on Reports to Procurator Fiscal/Reporters etc', state that the report should be sent as soon as possible and within 28 days of the date that sufficient evidence became available. Therefore, if the report was sent to the Procurator Fiscal on 7 March 2007 as the police file suggests, this timeframe would fall within the force's standard operating procedures. As such, there is no substantial evidence to support the complainer's position and it would appear that Chief Superintendent Q's response was appropriate.

Complaint 7 – Sergeant A and Sergeant B failed to provide an accurate representation of the facts to the Procurator Fiscal and as a result the prosecution was malicious.

I note that there is a contradiction in the complainer's statement which may have led to some ambiguity regarding this complaint which does not appear to have been recorded or considered by the force. The complainer stated that *"...to report me to the Procurator Fiscal...can only be regarded as malicious prosecution"* but he followed this by stating *"However, I am not saying that these officers' motivation was malicious"*.

As Complaint 7 infers criminal behaviour on the part of Strathclyde Police, this allegation falls outside the remit of the Police Complaints Commissioner for Scotland, as defined within the Police, Public Order and Criminal Justice (Scotland) Act 2006, which states that a relevant complaint in relation to the Commissioner does not include *"a statement which consists of or includes an allegation of an act or omission which constitutes a crime."* As such it does not form part of this complaint handling review. Complaints of a criminal nature continue to be considered under separate procedures by the Crown Office and Procurator Fiscal Service.

Complaint 5 – The force failed to obtain a statement from the complainer's relative who had been a witness to the incident on 25 February 2007; and

Complaint 8 – Sergeant A and Sergeant B fabricated evidence in the SPR.

There is no evidence in the papers supplied to my office by Strathclyde Police or the complainer to indicate that Complaints 5 or 8 have been referred to the force for its consideration. Notwithstanding that Complaint 8 infers criminality on part of the force and would therefore fall outside my remit, the PCCS reviews the manner in which the force has handled a complaint and therefore only consider complaints which have been made to the force in the first instance. As such these complaints do not form part of this review. However, the complainer has been advised as to the procedure for making these complaints about the police in the first instance, should he wish to do so.

Matters emerging as a result of the review

The complaints considered by Strathclyde Police during the investigation into his complaint about the police were recorded as unsubstantiated and closed on 7 January 2008. Strathclyde Police recommends in its Complaints About the Police Standard Operating Procedures that an enquiry into a complaint of this nature should

be completed and the report submitted to the Chief Superintendent normally within 10 weeks. Although it is not clear when the report was forwarded to the Chief Superintendent, Inspector G's report is dated 29 November 2007. I note that this is a period of more than 24 weeks after the Complaints and Discipline branch received the complainer's letter of complaint on 8 June 2007. The timescales for investigating the complainer's complaints about the police were considerably longer than those recommended in the force's Standard Operating Procedures. It is of concern that there is no information in the police file to indicate why there was such a delay.

7. Conclusion

Complaint 1 – Sergeant A and Sergeant B failed to investigate a criminal allegation which led to the complainer's arrest, and in particular that they failed to interview the complainer under caution.

Although in my view, a more comprehensive response to the complainer would have been preferable, the force appears to have fully investigated the circumstances surrounding the investigation which led to the complainer's arrest and have explained that the officers were acting within the law. **As such, I do not uphold this complaint.**

Complaint 2 – Sergeant A and Sergeant B arrested the complainer unnecessarily.

In my view, the force has investigated the circumstances surrounding the arrest. Although the response may have benefitted from further information, the force addressed this complaint in its final response of 7 January 2008. **As such, I do not uphold this complaint.**

Complaint 3 – The complainer was taken to a police office where he had previously worked and was known to some of the officers on duty.

It appears that this complaint was closed during the force's investigation and that the complainer was offered a reasonable explanation. **As such, I do not uphold this complaint.** However, I note that it would have been of assistance to the complainer had the force formally concluded this complaint by providing a written response.

Complaint 4 – The complainer was held in custody without cause and for longer than was necessary;

Notwithstanding the response from the force, it is clear from the information provided that the force conducted a thorough investigation into the circumstances surrounding this complaint. **I do not uphold this complaint.**

Complaint 6 – The time taken by the force to forward a Standard Prosecution Report (SPR) to the Procurator Fiscal was unreasonable.

In the absence of any evidence to support the complainer's view **I do not uphold this complaint.**

Complaint 7 – Sergeant A and Sergeant B failed to provide an accurate representation of the facts to the Procurator Fiscal and as a result the prosecution was malicious.

I note that there was a contradiction in the complainer's statement which may have led to some ambiguity regarding this complaint which does not appear to have been recorded or considered by the force. However, this complaint falls outwith the remit of the PCCS as it infers criminality on part of Strathclyde Police.

Complaint 5 – The force failed to obtain a statement from the complainer's relative who had been a witness to the incident on 25 February 2007; and

Complaint 8 – Sergeant A and Sergeant B fabricated evidence in the SPR.

The force may wish to clarify with the complainer Complaints 5 and 8 as, from the information available to me, they do not appear to have been referred to the police in the first instance. Accordingly, these complaints have not formed part of my review.

Jim Martin
Police Complaints Commissioner for Scotland
January 2009