



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/0901/00267/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 complaint about Strathclyde Police:

Complaint: That Strathclyde Police have thwarted the complainer in his endeavours to complete his enquiries by preventing him from interviewing two police officers.

2. Power to conduct a complaint handling review

Section 35 of the Act provides me with the authority to examine the manner in which an appropriate authority has handled a complaint about a police officer, member of police staff or the service provided by a relevant authority.

In order to carry out such a complaint handling review I request the complaint case papers from the force in question. I examine the facts of the complaint case, looking at information provided to me by both the complainer and the police force. I consider whether the information available does, or does not, support the complaint, and whether or not the force has responded to the complaint in a reasonable manner. I also consider whether the force communicated with the complainer in a reasonable manner, including whether the police force handled the complaint within a reasonable timescale. I then come to a view whether the conclusions drawn by the force in handling the complaint were reasonable in all the circumstances.

Once I have reached my conclusions I prepare a report which details the findings of my case handling review. This is then forwarded the relevant authority in accordance with section 35(3) of the Act. The complainer will be advised of the conclusions of this review and of what action, if any, I propose to take in consequence of those conclusions. Where the complaint is in respect of an act or omission by an individual police officer that person will also be informed of the conclusions of this review.

2.1 Relevant complaint

Section 34 of the Act provides that I may review the handling of a complaint where the complaint is “a relevant complaint”, defined as

(1) ... a complaint which is given or sent ... to the appropriate authority in relation to the complaint.

(2) “complaint” means a written statement expressing dissatisfaction about an act or omission...

(3) But “complaint” does not include

- (a) any statement made by a person serving with, or who has served with, the police, about the terms and conditions of that person's service with the police; or*
- (b) a statement which consists of or includes an allegation of an act or omission which constitutes a crime.*

The complainer has supplied a written statement expressing dissatisfaction about an act or omission by a force. The complaint is therefore a relevant complaint.

2.2 Relevant complainer

The Act further provides that I may review the handling of a complaint where the complainer falls within one of the following categories (section 34(6)):

- (a) a member of the public who claims to be the person in relation to whom the act or omission took place;*
- (b) a member of the public not falling within paragraph (a) who claims to have been adversely affected by the act or omission;*
- (c) a member of the public who claims to have witnessed the act or omission;*
- (d) a person acting on behalf of a person falling within any of paragraphs (a) to (c)*

The complainer is a member of the public who claims to have been adversely affected by an act or omission by the police. The complainer is therefore a relevant complainer under the terms of section 34(6)(a).

3. Background

The complainer, in his capacity as a private detective, sought to interview two serving police officers of Strathclyde Police regarding a police investigation that led to two criminal trials. The complainer stated that he is acting on behalf of a number of individuals whose careers were affected as a consequence of the outcome of the proceedings.

The complainer wrote to the Complaints and Discipline Department of Strathclyde Police on 29 January 2008. He stated that he had previously interviewed numerous police officers, both serving and retired, by following the Strathclyde Police Information Resources Department's procedures and paying the appropriate fee. He asserted that once he had been given the all clear he then contacted the officer he wished to interview.

The complainer noted that in this instance he followed the procedure and contacted Constable A to arrange a meeting. He asserted in his letter of complaint that he understood that the officer had subsequently sought legal advice and declined to be interviewed. He stated that he followed the same procedure again and contacted

Detective Chief Superintendent B who made it clear by email that he had no intention of being interviewed.

The complainer stated that he understood from information provided by a number of individuals that the officers could not decline to be interviewed. He stated that his complaint was that he was being thwarted in his endeavours to complete his enquiries by Constable A and Detective Chief Superintendent B in particular and Strathclyde Police in general.

The complainer stated in correspondence to the PCCS that Strathclyde Police prevented him from interviewing the officers as they did not want him to contradict its findings.

4. Force internal handling

The complainer wrote a letter of complaint to the force dated 29 January 2008. The force stated in a letter to my office dated 9 April 2008 that the matter was answered by way of a letter without enquiry. Mr C, Legal Services Manager of the Litigation and Advice Department, wrote to the complainer on 7 February 2008. He stated:

“There is no obligation, in the circumstances which you set out, upon Constable [A], nor Detective Chief Superintendent [B] to make themselves available to you for precognition. Where you have already paid a fee to the Force’s Information Resources Department, and no precognition is secured, then the monies would simply be repaid to you...The Officers in question are not doing anything improper in declining to make themselves available to you for precognition...in connection with any proposed civil proceedings.”

5. PCCS review

The complainer telephoned the PCCS outlining his complaint about the police on 24 January 2008. The complainer had not yet made a complaint to Strathclyde Police and as such was advised by my office in writing on 24 January 2008 that the PCCS can only review a force’s handling of a complaint once its full internal investigation has been concluded and the force has provided a response.

On 11 February 2008 the complainer contacted my office again stating that he had received a response to his complaint from the force. That day the complainer was sent an application for review form for completion and signature, which was received on 18 February 2008 together with other relevant information.

Following further correspondence with the complainer confirming his grounds of complaint, on 20 March 2008, my office asked Strathclyde Police to provide the relevant complaint case papers by 3 April 2008. Following a conversation with this office Strathclyde Police sent the required information on 9 April 2008.

The complainer was updated on the progress of his complaint once every 28 days in accordance with the PCCS published standards of service.

6. Consideration

The complainer states in correspondence that he believes that Constable A and Detective Chief Superintendent B in particular and Strathclyde Police in general are “*thwarting*” him in his enquiries by preventing him from conducting the interviews.

I note that on receiving the complainer’s letter of 29 January 2008 Chief Superintendent D, Head of the Complaints and Discipline Branch, forwarded the correspondence to the Legal Services Manager of the Litigation and Advice Department Mr C. Mr C responded to the complainer on 7 February 2008 stating that the officers were not under any obligation to make themselves available for interview and as such were not doing anything improper by declining to make themselves available. He also notes that the request for interview is in connection with possible civil proceedings.

From the information supplied to my office I understand that the complainer’s private investigation, although relating to a police investigation and subsequent criminal proceedings, appears to focus on the matter of the professional reputation of the group of individuals and in this context his request for interviews is understood to be related to possible civil proceedings.

I note in common law that the courts will not order a witness in a civil case to submit to interview. As such it is my view that the response provided by Strathclyde Police, that the officers were not doing anything improper by declining to be interviewed, is correct.

I also note that the Complaints and Discipline Branch did not carry out an investigation into the complainer’s complaint based on their standard operating procedures for complaint handling and instead referred the matter to the Litigation and Advice department to respond to. It is my view that the Litigation and Advice department were best placed to answer the complainer’s complaint and as such I believe that, in the circumstances, forwarding the complainer’s correspondence to Mr C to respond was appropriate.

Furthermore I note that as the complainer did not interview the officers he was offered a refund on the fee he had paid.

7. Conclusion

Complaint: That Strathclyde Police have thwarted the complainer in his endeavours to complete his enquiries by preventing him from interviewing two police officers.

It is my view that by asking the Litigation and Advice department of the force to respond to the complaint, the force handled this matter appropriately. Moreover the response provided by the force was correct and as such **I do not uphold this complaint.**

Jim Martin
Police Complaints Commissioner for Scotland
January 2009