



Request for complaint handling review of a complaint about

Central Scotland Police

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

January 2009

Case reference: PCCS/0901/00275/PF-CSP

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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 Central Scotland Police which relate to his arrest for assaulting an individual and his subsequent counter complaint of assault.

Complaint 1: That the force failed to record and investigate a complaint the complainer made to the force whilst he was in custody.

Complaint 2: Having made a complaint on 14 April 2007 and again on 10 May 2007 the force did not contact the complainer until 24 June 2007.

Complaint 3: The force used stalling tactics to delay the report to the Procurator Fiscal.

Complaint 4: That whilst the complainer was in custody he was not considered for hospital attention or offered pain relief.

Complaint 5: That the complainer was not treated equally, fairly and without prejudice.

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 13 April 2007 the complainer was in a local bar with his relative, Relative A. Whilst at the premises the complainer and Relative A became involved in a physical altercation with Person B, which resulted in Person B sustaining serious injuries.

Immediately after the incident the complainer left the bar. An ambulance was called and Constables C and D and T/Sergeant E attended at the scene. Relative A was detained, taken to a local police office where he was arrested and kept in custody until he appeared in Court.

The complainer, having heard that the police were looking for him, attended at his local police office voluntarily on 14 April 2007. The complainer was interviewed under caution by Constables C and D before being charged and kept in custody. During the interview the complainer informed the officers that he had been in the bar with Relative A when Person B verbally threatened them. The complainer stated that he had *“prevented an unprovoked and indefensible attack”* on Relative A by Person B. The complainer maintained that he had acted in self-defence and had sustained injuries to his body. Constable D noted in his statement, compiled on 26 November 2007, that the complainer showed them his torso however neither he nor Constable C could see any obvious injury. The complainer asserted in his statement of complaint taken on 17 December 2007 that after questioning he was informed that he was going to be charged. He noted that whilst in the interview room with the officers he told them:

“If I am being charged, I want the other guy charged as well, I am making an official complaint.”

The complainer stated that the officers informed him that he was to give his response at the charge bar, which the complainer states he subsequently did. Constables C and D recorded in their witness statements relating to the incident that the complainer stated at the charge bar:

“I want the guy counter charged he was the one looking for trouble and he was the one that caused it. He hit me first.”

Constable D asserted in his statement that having reviewed the statements from the available witnesses at the time of the incident and consulted his supervisors, there was no evidence of the complainer having been assaulted. He stated that after consultation with his supervisors the complaint of assault against Person B was not progressed as it was deemed there was no evidence to substantiate it.

The complainer remained in police custody until his appearance at court on 16 April 2007.

The complainer noted in his letter of complaint to the Chief Constable dated 16 November 2007 that whilst in custody on 15 April 2007 he spoke with the arresting officers and specifically asked if he was going to be interviewed in relation to the complaint he made about Person B the previous day.

The complainer stated in his letter to the Chief Constable that whilst at his local police office on 14 April 2007 he reported and requested medical attention for his injuries. He stated that, as he was offered help to get off the cell floor, his injuries were noticeable to various police officers and staff. A police doctor attended the complainer whilst he was in custody on 15 April 2007. The complainer stated that the doctor commented on his bruising and pressed his ribs causing him pain.

Constable D stated that the doctor found a faded yellow bruise to one side of his ribcage and concluded that it was an old injury.

The complainer noted in his letter to the Chief Constable that several weeks after the incident he had still heard nothing from the police about his complaint against Person B. He stated that he was concerned that his complaint had not been taken seriously and as such he attended at his local police office on 10 May 2007 and spoke to Inspector F. The complainer stated:

“...I was utterly astonished to learn that the police had not investigated my complaint at all. No further witnesses had been sought in relation to the whole incident and it was basically status quo.”

He stated that he insisted that the complaint against Person B be investigated. The complainer asserted that Inspector F asked if he could provide any corroboration, which he states he did. Inspector F asserted in his statement compiled on 7 December 2007 that he noted the details provided by the complainer and advised him that he would ensure that Constable D was notified and that the matter would be progressed. Inspector F stated that following his meeting with the complainer he advised T/Sergeant E of the meeting and instructed Constable D to progress matters in a timely manner.

Constable D stated that in May 2007 Constable C was allocated correspondence from the complainer’s solicitor which outlined that the complainer wished to make a complaint against Person B and provided details of two witnesses in support of this. Constable D asserted that he and Constable C encountered difficulties in obtaining statements from the witnesses provided by the complainer, as they proved difficult to get hold of and were evasive. Statements were subsequently obtained from the witnesses on 3 and 25 June 2007.

The complainer asserted that he contacted Inspector F again on 14 June 2007 and advised him that he had not heard anything further regarding his complaint about Person B. Inspector F noted in his statement that he recalled apologising to the complainer for the delay, personally ensuring that matters be progressed. Inspector F stated that he advised T/Sergeant E of the situation and explained that the lack of progress was unacceptable and the matter needed to be progressed urgently. Inspector F stated that he was aware that Constable D had been absent from front line duty for a number of reasons.

The complainer stated that he was eventually contacted by his local police office on 24 June 2007 and asked to provide a statement in relation to his complaint about Person B. The complainer attended the police office that day and a statement was noted from him by Constable J.

The complainer noted in his letter of complaint that he had been advised by the Procurator Fiscal’s office that it did not receive details of his complaint about Person B until 19 July 2007, a further delay of four weeks after taking his statement. The complainer stated that he was informed by the Procurator Fiscal that they were taking no further action based on the information contained in the police report.

4. Force internal handling

The complainer wrote a letter of complaint to the Chief Constable dated 16 November 2007. A Complaint about the Police (CAP) form was subsequently completed. T/Superintendent G was appointed to conduct an enquiry into the complainer's complaints on 21 November 2007. A letter was sent to the complainer on 22 November 2007 by T/Chief Superintendent H advising him that he had called for a report on the circumstances referred to in his letter. T/Superintendent G sent the enquiry report to T/Chief Superintendent H on 21 January 2008. A final letter was sent to the complainer by T/Chief Superintendent H on 30 January 2008.

Complaint 1: That the force failed to record and investigate a complaint the complainer made to the force whilst he was in custody.

The complainer raised this complaint in his letter to the force dated 16 November 2007 and in his statement taken on 17 December 2007. He stated that he informed officers that he wished Person B to be counter charged in the interview room with Constables C and D and in response to the charge in the presence of the duty charge bar sergeant. He also asserted that he asked the arresting officers on 15 April 2007 if he was going to be interviewed in relation to his complaint against Person B and was informed that *"it was up to the fiscal"*. He stated that no attempt was made to gather further information, seek corroboration or to investigate his complaint.

T/Superintendent G stated in the enquiry report dated 21 January 2008 that there was no doubt that the complainer made a reply to the caution and charge requesting Person B to be charged, however asserted:

"This is not and cannot be construed as a statement of complaint of assault but it is clearly his reply to being cautioned and charged. It would not be reasonable to consider this anything other than that given the context in which it was said and noted."

He further stated that the custody record made no reference to a counter complaint of assault having been made whilst the complainer was in custody and notes that the CCTV records are no longer available. He also maintained that the police report submitted to the Procurator Fiscal made it clear that the complainer was of the opinion that Person B instigated the assault, however, noted that there was no corroborative evidence to support this. In conclusion T/Superintendent G stated that the complainer did not make a complaint of assault whilst in police custody between 14 April 2007 and 16 April 2007. He asserted that the complainer's response to the caution and charge was recorded properly.

T/Superintendent H stated in the final letter to the complainer:

"I am satisfied that as a direct response to being cautioned and charged you did indeed make a reply which indicated that you wanted "the other guy charged". This reply was noted by Constable [C] in her police notebook. I

would advise you that it is a common occurrence when a person is cautioned and charged that remarks are made indicating a desire for the other party to be charged. The reply that you made when charged was not taken as a formal complaint and I would contend it cannot be construed as such and I am satisfied therefore that my officers properly recorded your reply when cautioned and charged. I would also advise you that your reply was contained in the police report submitted to the Procurator Fiscal on 16 April 2007 and your position would have been clear from that early stage.”

He further stated:

“I do not agree that nobody made any attempt whatsoever to gather information and seek corroboration to investigate your complaint. Furthermore, officers did attend at [the premises] following the incident for which you were later charged. As I understand it, you had left the premises prior to the arrival of my officers, so you may therefore be unaware that my officers canvassed all persons present to seek out witnesses to the incident. I can find no evidence to support the view that at that stage no effort was made to gather information, indeed enquiries made by my officers identified a number of eye witnesses.”

Complaint 2: Having made a complaint on 14 April 2007 and again on 10 May 2007 the force did not contact the complainer until 24 June 2007.

The complainer stated in his letter to the Chief Constable that he believed that the delay from making his complaint against Person B on 14 April 2007 and again on 10 May 2007 to the police contacting him on 24 June 2007 to obtain a statement was unacceptable.

T/Superintendent G stated in the enquiry report that from receipt of the solicitor’s letter in May 2007 it took until 24 June 2007 to note a statement from the complainer. He noted that in the intervening period effort was made to pursue the investigation, however, there was difficulty in tracing the witnesses named by the complainer and a delay due to Constable D being on leave and other commitments. He noted that the police report libelling a charge against Person B was created on 1 July 2007 and was sent to the Procurator Fiscal on 19 July 2007. He stated that at least ten weeks had passed from receiving the complainer’s solicitor’s letter before the police report was passed to the Procurator Fiscal and as the investigation was not complex he found this delay unacceptable.

T/Chief Superintendent H stated in the final letter to the complainer:

“As I have alluded to earlier, I can find no evidence that you made a formal complaint of assault on 14 or 15 April 2007 beyond your reply to caution and charge which I have already covered.

I would, however, accept that on 10 May 2007, the position altered and it is quite clear from that date on, there is no doubt that you wished to make a formal counter- complaint and from that point on the investigation of your

complaint should have progressed. I also accept that we have failed to investigate this timeously which had lead to you having to once again press for the matter to be dealt with. I apologise for this delay."

T/Chief Superintendent H stated that the officers concerned had been made aware of the complainer's displeasure and had subsequently been counselled.

Complaint 3: The force used stalling tactics to delay the report to the Procurator Fiscal.

The complainer stated in his letter to the force dated 16 November 2007 that he was aware that the Procurator Fiscal did not receive details of his complaint until 19 July 2007, a delay of a further four weeks from taking his statement. The complainer stated that the force used "*stalling tactics*" on his complaint against Person B.

The complainer noted in his statement of complaint that he felt that the fourteen week delay after having made his complaint about Person B, to the force submitting the report to the Procurator Fiscal, was damaging in terms of his credibility and was concerned that people's recollections may have altered during this time. He also asserted that if the police do not take a complaint seriously then this would be reflected in their delayed report and could ultimately influence the prosecutor's thinking which in turn could affect whether he received a fair trial.

T/Chief Superintendent H stated in the final letter to the complainer that:

"You may wish to be aware that we have a target of twenty-eight days for the submission of a police report to the Procurator Fiscal, this period of time commences from the date that the accused is cautioned and charged. In normal circumstances, the period from 24 June 2007 to 19 July 2007 would not be unacceptable, however in view of the fact that you had complained of assault on 10 May 2007 then the delay was unacceptable."

However, he advised that he could find no evidence of stalling tactics used to delay the report to the Procurator Fiscal. He noted that the complainer's contention that he was the victim of assault and not the perpetrator was conveyed in the earlier report to the Procurator Fiscal on 16 April 2007. He further stated that he could find no evidence that the complainer had been disadvantaged in the eyes of the Procurator Fiscal.

Complaint 4: That whilst the complainer was in custody he was not considered for hospital attention or offered pain relief.

The complainer noted in his letter of complaint to the Chief Constable that at no time was he offered pain relief or considered for hospital attention whilst he was in custody. He asserted that following his release from custody he attended a local hospital on 17 April 2007 where he was informed that he had sustained fractured ribs.

T/Superintendent G noted in his enquiry report that when he interviewed the complainer's doctor he confirmed that the complainer attended at hospital on 17 April 2007 and was found to have a left sided rib injury for which he was advised to take pain relief. He noted that the police doctor had examined the complainer in custody on 15 April 2007 and noted that the complainer's rib area was tender to touch and that he had a yellowish mark consistent with an old bruise. T/Superintendent G stated that given the conflicting medical opinions it could not be ascertained when or how the complainer injured his ribs.

T/Chief Superintendent H stated in the final letter to the complainer:

"It is clear from the information available to me that you were indeed examined by a police surgeon when you were in custody between 14 and 16 April 2007. This examination took place around 1354 hours on 15 April 2007. I note from our records that after this examination you were returned to a cell and that you were spoken to or visited more than twenty times after this examination but I can find no record of you having raised further concern regarding your condition or a need for further medical assistance.

I am sure you are acutely aware of the duty of care that we have for persons in custody and had you raised any further concerns regarding your wellbeing these would have been investigated."

Complaint 5: That the complainer was not treated equally, fairly and without prejudice.

The complainer stated in his letter to the Chief Constable:

"...what I do expect from the police, who are supposed to serve all of the public, is to be treated equally and fairly without prejudice. This has evidently not happened."

T/Chief Superintendent H stated that:

"I agree that you have a right to be treated equally and fairly, without prejudice. I do not agree that you have been treated unfairly or with prejudice. I do, however, accept that we have failed to carry out a timeous investigation into your complaint."

5. PCCS review

A telephone call was received from the complainer on 4 February 2008. The complainer was asked to complete and sign an application for review form which was received on 12 February 2008 together with the correspondence he had sent to Central Scotland Police.

On 13 February 2008 my office asked Central Scotland Police to provide the relevant complaint case papers by 27 February 2008. On 20 February 2008 Central Scotland Police asked for an extension on this date for administration reasons. The force supplied the required information on 3 March 2007.

Standard Operating Procedures were requested from the force on 17 December 2008.

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

6. Consideration

Complaint 1: That the force failed to record and investigate a complaint the complainer made to the force whilst he was in custody.

The complainer maintains that he made a complaint of assault against Person B in the presence of Constables C and D during the interview and at the charge bar on 14 April 2007. Whilst in custody on 15 April 2007 the complainer maintains that he asked when he would be interviewed in relation to his complaint against Person B. The essence of his complaint is that the force made no attempt to gather further information, seek corroboration or to investigate his complaint against Person B.

There is no additional information to support the complainer's contention that he raised the matter of Person B being counter charged during the interview or whilst in custody. However, it is accepted that at the charge bar, in response to being cautioned, the complainer made a remark indicating that he wished Person B to be counter charged with assault. I note that Constable D asserted in his statement that the complainer's allegation against Person B was not progressed as it was deemed there was no evidence to substantiate it. This was also noted by T/Superintendent G in the enquiry report.

I understand that during the complainer's conversation with Inspector F on 10 May 2007 he provided the names of two witnesses who he believed could corroborate his complaint against Person B and as such the force recorded the complainer's allegation against Person B as a crime.

T/Chief Superintendent H stated in his final letter to the complainer that it is a common occurrence when a person is cautioned and charged that they often wish the other person to be charged. He concluded that for this reason the reply made by the complainer was not taken as a formal complaint and that he would contend that it cannot be construed as such. He also noted that officers obtained statements from witnesses in the bar and as such he can find no evidence to support the complainer's contention that no effort was made to gather information.

From the Association of Chief Police Officers Scotland (ACPOS) Scottish Crime Recording Standard, it is my understanding that an incident will be recorded as a crime in all cases if:

the circumstances amount to a crime or offence as defined by Scots Law,

and

there is no credible evidence to the contrary.”

From the information available it is apparent that the officers who attended the scene considered the complainer's counter allegation, sought advice from a supervisor and concluded that there was no witness evidence available to support the allegation. In light of the above guidance the stance taken by the officers not to record the complaint as a crime at that time appears justifiable. Furthermore, the original report to the Procurator Fiscal contained all information provided by the complainer, including his reply to caution and charge.

However, I note that the response provided to the complainer by T/Chief Superintendent H does not reflect the reasoning provided by the arresting officer, Constable D, in his statement for not recording the complaint against Person B as a crime. Moreover, T/Chief Superintendent H does not explain in his response to the complainer why a complaint made in response to a charge cannot be construed as formal allegation.

Complaint 2: Having made a complaint on 14 April 2007 and again on 10 May 2007 the force did not contact the complainer until 24 June 2007.

The complainer stated that the delay between making his complaint and the force contacting him was unacceptable.

T/Chief Superintendent H responded to the complainer stating that although he does not accept that the complainer made a formal complaint about Person B during his time in custody in April, he acknowledges that the complainer made a formal complaint on 10 May 2007. He states that the enquiry should have been progressed and concludes that the force failed to investigate the complaint timeously. As such T/Chief Superintendent H apologised and advised the complainer that the officers concerned were made aware of the complainer's displeasure and counselled in this regard.

Although the force apologised to the complainer for the delay in investigating his complaint against Person B, I note that T/Chief Superintendent H did not explain to the complainer why this delay occurred. In my view, it would have been helpful if the force had communicated to the complainer, within reason, why there was a delay.

Complaint 3: The force used stalling tactics to delay the report to the Procurator Fiscal.

The complainer is unhappy that there was a further delay of almost 4 weeks from giving his statement to the force on 24 June 2007 to the submission of the police report to the Procurator Fiscal on 19 July 2007. He stated that the force used stalling tactics on his complaint.

The force responded to the complainer stating that although the normal target for submitting reports to the Procurator Fiscal is twenty-eight days from the date that the accused is cautioned and charged, in light of the fact that the complaint of assault was registered on 10 May 2007, the delay was unacceptable.

T/Chief Superintendent H stated that he could find no evidence of stalling tactics or that the complainer was disadvantaged in the eyes of the Procurator Fiscal.

The response provided by T/Chief Superintendent H acknowledges that the force failed to complete the investigation into the complaint against Person B in a timely manner. In my view, from the information provided, there is nothing to suggest that the force deliberately stalled to delay the report. In my opinion by acknowledging its failings and apologising to the complainer the force responded appropriately. However as stated above, I believe that it would have been helpful had the force explained to the complainer, within reason, why there was a delay in completing the investigation.

Complaint 4: That whilst the complainer was in custody he was not considered for hospital attention or offered pain relief.

The complainer stated in his letter to the Chief Constable that he was seen briefly by a doctor on 15 April 2007, however, was not considered for hospital attention or offered pain relief.

T/Chief Superintendent H stated in the final letter to the complainer that the complainer was examined on 15 April 2007 and that following this examination there is no information to suggest that the complainer raised further concerns regarding his condition.

From the information available it is evident that, in line with force standard operating procedures for custody and care, officers sought medical assistance for the complainer as he had complained of sore ribs. In the course of the enquiry the custody record was retrieved. From the information provided to this office there is nothing to suggest that during his time in custody the complainer raised further concerns about his wellbeing with staff. Furthermore, although the procedures for custody state that paracetamol tablets are available to be given to prisoners by the custody officer without prior medical advice, there is no information to suggest that the complainer requested pain relief from custody officers.

In addition, I note that the complainer is concerned that he was not considered for hospital attention or provided pain relief by the doctor. It is my view that this is a matter for the police doctor.

In light of the above it is my opinion that the response provided by the force to the complainer was reasonable.

Complaint 5: That the complainer was not treated equally, fairly and without prejudice.

The complainer stated in his letter to the force that he believed that he had not been treated equally, fairly or without prejudice by the force.

T/Chief Superintendent H stated in the final letter to the complainer that he does not agree that the complainer has been treated unfairly or with prejudice.

From the information supplied to my office there is no further information provided by the complainer, other than the matters already detailed, to support his contention that he has been treated unfairly or with prejudice. As such it is my view that the response provided to the complainer was sufficient.

7. Conclusion

Complaint 1: That the force failed to record and investigate a complaint the complainer made to the force whilst he was in custody.

From the information available I understand that Constable D considered the allegation made by the complainer, reviewed the available evidence and took advice from his superiors before concluding that there was no evidence to support the allegation at that time. This decision appears to be in line with ACPOS Scottish Crime Recording Standard. **I do not uphold this complaint.** However, it is my view that the response provided by T/Chief Superintendent H does not reflect the arresting officer's reasoning behind the complainer's allegation against Person B not being recorded as a crime on 14 April 2007. This should be a learning point for the force.

Complaint 2: Having made a complaint on 14 April 2007 and again on 10 May 2007 the force did not contact the complainer until 24 June 2007.

In light of the fact that the force acknowledged its failing, provided the complainer with an apology and subsequently counselled the officer involved, **I do not uphold the complaint.**

Complaint 3: The force used stalling tactics to delay the report to the Procurator Fiscal.

From the information available I note that there is nothing to suggest that the force used stalling tactics to delay the report. In my opinion, by acknowledging its failings and apologising to the complainer the force responded appropriately. As such **I do not uphold this complaint.**

Complaint 4: That whilst the complainer was in custody he was not considered for hospital attention or offered pain relief.

The complainer was examined by a police doctor on 15 April 2007. From the information available there is nothing to suggest that following this examination the complainer raised further concerns about his wellbeing with staff or requested pain relief. Furthermore, I note that the complainer is concerned that he was not considered for hospital attention by the doctor. It is my view that this is a matter for the police doctor . As such **I do not uphold this complaint.**

Complaint 5: That the complainer was not treated equally, fairly and without prejudice.

From the information available there is nothing to suggest that the complainer was not treated equally and fairly without prejudice. The response by the force to the complainer was appropriate. As such **I do not uphold this complaint.**

Jim Martin
Police Complaints Commissioner for Scotland
January 2009