

PCCS



Police Complaints Commissioner
for Scotland

Request for complaint handling review of a complaint about

Lothian and Borders Police

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

April 2009

Case reference: PCCS/00904/0000465/PF-L&B

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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 Lothian and Borders Police. The complaints are as follows:

Complaint 1 – That Constable A was aggressive and disrespectful towards the complainer;

Complaint 2 – That the complainer was charged by Constable A without adequate enquiry;

The complainer has also raised his dissatisfaction with the force following the conclusion of its investigation into the above complaints. This dissatisfaction was:

Complaint 3 – That a letter sent to the complainer by the Deputy Chief Constable was not accurate.

2. Power to conduct a complaint handling review

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

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

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

2.1 Relevant complaint

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

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

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

(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 22 December 2006, the force received a call from the complainer's neighbour advising that the external air vent for his gas fire had been deliberately blocked. Constables A and B were asked to attend the call. Constable A's statement shows that upon attendance, he and Constable B spoke to the complainer's neighbour, viewed the air vent and formed the opinion that it had been deliberately blocked. As a result, Constables A and B noted a formal statement from the complainer's neighbour and his partner. These statements refer to an ongoing civil dispute with the complainer and confirm that when using the fire they, and other family members,

had recently been feeling nauseous, sick, lightheaded and tired. Constable A's statement also makes reference to a previous occasion where the complainer had been recently warned by the police over a similar incident where he had admitted deliberately blocking his neighbour's air vent.

Constable B's statement shows that both she and Constable A then attended the complainer's home and that the complainer was cautioned at common law, detained under section 14 of the Criminal Procedure (Scotland) Act 1995 on suspicion of Culpable and Reckless Conduct and taken to Police Station Y. Upon being taken to the police station, the complainer was interviewed by Constables A and B and subsequently arrested and charged with Culpable and Reckless Conduct.

Constable A's statement also shows that on 2 January 2007, he called a gas company for an opinion on the circumstances surrounding the blocked air vent. On the same day, the gas company sent an employee, employee X, to attend and view the air vent. Constable A's statement asserts that he and Constable B met with employee X to allow him to view both the air vent and two photographs which the complainer's neighbour had taken and provide information on the surrounding circumstances. Employee X's statement notes that in his opinion it was highly dangerous to cover the air vent as shown in the photographs. Employee X's statement also notes that, based on the information provided to him regarding the symptoms suffered by the complainer's neighbours, it was his opinion that they were exhibiting '*classic Carbon Monoxide poisoning symptoms.*'

A standard prosecuting report relating to the incident was subsequently submitted to the Procurator Fiscal.

4. Force internal handling

The complainer submitted a letter of complaint to the force on 6 January 2007. This letter expressed his concern at the conduct of the two police officers who attended his home on 22 December 2006 and 2 January 2007. On 15 January 2007, Superintendent C wrote to the complainer advising that he would arrange for a senior officer to visit him.

On 27 February 2007, Inspector D and Sergeant E visited the complainer at his home. In a memo dated 14 March 2007, Inspector D advised Superintendent F that she had attempted to explain the force action taken on 22 December 2006 and 2 January 2007 but the complainer was not willing to accept this explanation. Inspector D advised:

'[the complainer] is not happy with the police, as he has been charged with an offence that he can't see he committed. I discussed at length the processes that Police Officers go through investigating a crime and the processes once the Procurator Fiscal receives the report but he was not satisfied with my replies. I explained that what he was telling me related to the charge and a court appearance but he is adamant that he wants the matter fully

investigated as to why police officers were on his property without permission and why he has been charged with an offence that he did not commit.'

On 4 April 2007, Superintendent G of the force Complaints and Discipline Department wrote to the complainer advising that as the complainer was the subject of a report to the Procurator Fiscal, the matter was:

'sub judice and therefore remains to be dealt with through due judicial process.

If at the conclusion of such proceedings you feel aggrieved at the conduct of the officers concerned with the case, please contact me and I will appoint an independent senior officer to investigate the matter'.

On 18 March 2008, the complainer wrote to the force stating that he was found not guilty of the charge against him and asked that the force 're-activate' its investigation into the actions of Constables A and B. On 27 March 2008, Superintendent H wrote to the complainer advising that the Deputy Chief Constable had now appointed a senior officer to investigate his complaint and would communicate with the complainer upon receipt of the investigating officer's report.

On 27 March 2008, Inspector J was appointed to investigate the complainer's complaints. Through the course of his investigation, Inspector J obtained statements from:

- The complainer;
- Constable A;
- Constable B;
- Employee X;
- Constable K; and
- Constable L.

Inspector J also obtained copies of statements that were given by employee X, Constable A, Constable B and Constable K in 2007 and copies of statements given by the complainer's neighbours following the incident in 2006.

In May 2008, Inspector J submitted a report of his investigation to the Deputy Chief Constable. Inspector J's report detailed the complaints as being:

- That [Constable A] neglected his duty by failing to make adequate enquiry into allegations made against the complainer and failed to consider documentation presented to him; and
- That, in his dealings with the complainer, [Constable A] was aggressive in his attitude towards the complainer and was not prepared to listen to his version of events.

In relation to Complaint 1, as recorded by the force, Inspector J's report concluded that:

'All of the officers who attended at the complainer's home address, and the gas engineer, speak to the fact that [Constable A] was professional and polite throughout his dealings with the complainer.'

In relation to Complaint 2, as recorded by the force, Inspector J's report concluded that:

'Having considered the actions of the complainer, the symptoms suffered by his neighbours, and the advice given by the qualified gas engineer, [Constable A] was justified in charging the complainer and submitting the subsequent report for consideration of the Procurator Fiscal.'

On 29 May 2008, the Deputy Chief Constable wrote to the complainer with the force conclusions into his complaints. In relation to Complaint 1, the Deputy Chief Constable stated:

'Other officers who attended your home, and the gas engineer, have all stated that the officer was professional, polite and respectful towards you. I am therefore unable to uphold your complaint.'

In relation to Complaint 2, the Deputy Chief Constable stated:

'...you complained that an officer failed to make adequate enquiry into allegations made against you and failed to consider documentation from your solicitor that you presented to him.'

The officer and his colleague both state that, when investigating your case, advice was received from the gas engineer and the possible repercussions of your actions were considered. In addition, officers involved in previous incidents were consulted and, having taken all the available information into account, the officer acted correctly in submitting his report to the Procurator Fiscal for consideration of prosecution.'

I understand that the documentation you referred to related to a civil dispute between yourself and your neighbour and would therefore not have influenced the police enquiry. I therefore find this allegation to be unsubstantiated.'

On 6 June 2008, the complainer wrote to the force expressing his views on the content of the Deputy Chief Constable's reply. The complainer concluded this letter by stating:

'If, when you have considered this letter, you are still of the opinion that I have no grounds for complaint against [Constable A], I would be obliged if you would advise me on the next step in having my complaint investigated.'

On 12 August 2008, the Deputy Chief Constable responded to the complainer's letter of 6 June 2008 where he advised that:

'I am satisfied that [Constable A] made adequate enquiry into the allegation made by your neighbour and acted correctly in submitting a report to the

Procurator Fiscal. On this occasion the Procurator Fiscal took the view that the evidence contained in [Constable A's] report was credible and sufficient for proceedings to be instigated.

The Sheriff hearing a case thereafter passes judgement based on the evidence presented during a trial. Any comments made by a Sheriff at the end of a trial, either on the evidence led or the credibility of witnesses, are based on his/her observations. If the Sheriff had any concerns that he/she felt required further investigation this would have been highlighted at the time.'

The Deputy Chief Constable's final response letter concluded by stating that if the complainer remained dissatisfied, he was entitled to have the manner in which his complaint was handled reviewed by my office.

5. PCCS review

An initial letter was received from the complainer on 18 August 2008 detailing the complaints which he had made to the force. This letter also enclosed correspondence between the complainer and the force. The complainer was asked to complete and sign an application for review form which was received by my office on 20 August 2008 alongside other relevant documentation.

My office asked the force to provide the relevant complaint case papers by 3 September 2008. The case files were received from the force on this date.

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

6. Consideration

Complaint 1 – That Constable A was aggressive and disrespectful towards the complainer.

From first contacting the force on 6 January 2007 regarding his complaints about the police, the complainer has consistently communicated this complaint to the force. From this correspondence, it is clear that the complainer is unhappy with Constable A's conduct during visits to his home on 22 December 2006 and 2 January 2007.

I note that during his investigation into the conduct of Constable A, Inspector J took statements from the complainer, Constable A, Constable B and employee X and that these statements did not provide any evidence to support the complainer's version of events on either 22 December 2006 or 2 January 2007.

Based on this evidence, Inspector J's report reasonably concluded that there was no evidence to substantiate it.

However, during the course of my review, it became apparent that the complainer's wife may have been a witness to the events complained of and that a statement was not obtained from her. As a result of this, my office asked the force to confirm whether the complainer's wife was asked to give a statement relating to the complaint. On 8 April 2009, the force advised my office that while an attempt was made to obtain a statement from the complainer's wife, this proved unsuccessful.

It is of concern that the information initially supplied to my office by the force did not make any reference as to why a statement was not taken from a potential witness to the events complained of. In addition, it is my view that the subsequent explanation given by the force does not show that, in attempting to obtain a statement from the complainer's wife, it has explored all options available.

Complaint 2 – That the complainer was charged by Constable A without adequate enquiry.

The complainer has written to my office explaining that Constable A appeared to accept without question everything his neighbours had told him, in particular the claim that they had been suffering Carbon Monoxide poisoning. The complainer has also advised my office that:

'PC [A] was informed on 22/12/06 that I had some professional expertise in the combustion of gas having spent over thirty years as a senior engineer in oil refining. However, he was not prepared to listen to anything I said before charging me.'

The complainer also states that Constable A made no attempt to have his neighbours medically tested or their home chemically tested. From this, it is clear that the complainer is unhappy with the depth and quality of Constable A's investigation before he was charged.

I note that prior to his arrival at the scene on 22 December 2006, Constable A was aware of the complainer having been recently warned by Constable K for having secured a wooden board over his neighbour's air vent. Constable A, having personally viewed the way in which the wooden board had now been placed against the vent, took the view alongside Constable B that the complainer had again deliberately attempted to cover up his neighbour's air vent. As a result of this, the complainer was immediately cautioned and detained under suspicion of Culpable and Reckless conduct.

I note that the statement given by Constable A on 4 August 2007 shows that before questioning the complainer at Police station Y he:

'spoke with Constable [K] via telephone regarding the previous incident and was advised by him that he had warned the accused to refrain from covering the air vent again due to it being dangerous to do so'.

During the interview conducted on 22 December 2006 the complainer admitted under caution that, on both occasions, he had placed the piece of wood over the air vent in order to 'baffle sound'. I note that shortly after the interview was concluded, the complainer was charged with Culpable and Reckless conduct.

It is my understanding that, by having charged the complainer, Constable A believed there to be enough evidence to submit to the Procurator Fiscal at this point. It is also my understanding that, having charged an individual, the police can continue its investigations in relation to the offence and include this in the report to the Procurator Fiscal. From the files supplied to my office, Constable A submitted his report to the Procurator Fiscal including all the evidence he had gathered. Following submission of this report, it was for the Procurator Fiscal to decide whether there was sufficient evidence and in the public interest to prosecute. I note that the complainer was subsequently prosecuted for his actions in December 2006.

It is my view that Inspector J has accurately captured the complainer's complaint, investigated the pertinent parts and obtained evidence from relevant and appropriate sources. It is also my view that the content of the Deputy Chief Constable's letters to the complainer of 29 May 2008 and 12 August 2008 appropriately responded to the complaint.

Complaint 3 – That a letter sent to the complainer by the Deputy Chief Constable was not accurate.

This complaint was included in the complainer's application for review form received by my office on 20 August 2008 where he made it clear that he is unhappy with the Deputy Chief Constable's response to him of 29 May 2008. The application form noted:

'[the Deputy Chief Constable] who in his letter of 29th May claims that [Constable A] obtained advice from a "gas engineer" before charging me. This is totally untrue. I was charged on 22nd December and no advice was obtained from a "gas engineer" before 2nd January.'

As noted in Section 4 of this review, the complainer wrote to the force on 6 June 2008 expressing his views on the content of the Deputy Chief Constable's letter. I note that he did not complain about the letter's accuracy at this time nor did he give any indication as to why the letter was inaccurate. Having considered the content of the letter in the course of my review, it does not appear that it contains any inaccuracies.

However, it does not appear that the force has been made aware of this specific area of dissatisfaction. As the complaint relates to the actions of a senior police officer I have informed the complainer, should he wish to pursue the matter further, to write to Lothian and Borders Joint Police Board.

7. Conclusion

Complaint 1 – That Constable A was aggressive and disrespectful towards the complainer.

Notwithstanding that, on the evidence obtained, Inspector J's report reasonably concluded that there was no evidence to substantiate this complaint, the force has not satisfied my office that it has explored all options available in attempting to take a statement from the complainer's wife. **I now recommend that the force explore such options and, if a statement is successfully taken, revisit its consideration of the complaint.**

Complaint 2 – That the complainer was charged by Constable A without adequate enquiry.

It is my view that the force has correctly captured the complainer's complaint, investigated its pertinent parts, obtained evidence from relevant and appropriate sources and communicated its findings to the complainer in a reasonable manner. As such, **I do not uphold this complaint.**

Complaint 3 – That a letter sent to the complainer by the Deputy Chief Constable was not accurate.

Having considered the content of the letter in the course of my review, it does not appear that it contains any inaccuracies. However, it does not appear that the force has been made aware of this specific area of dissatisfaction. As the complaint relates to the actions of a senior police officer I have informed the complainer, should he wish to pursue the matter further, to write to Lothian and Borders Joint Police Board.

Other matters arising

As noted in Section 4 of this review, the complainer wrote initially to the force on 6 January 2007 expressing his concern over the conduct of Constables A and B on 22 December 2006 and 2 January 2007. I note that the force responded on 4 April 2007 explaining that, as the complainer was the subject of a report to the Procurator Fiscal, it would not be considering his complaints unless the complainer remained dissatisfied at the conclusion of the judicial process.

From the Standard operating Procedures (SOP) provided to my office by the force, I cannot find any evidence of this process being part of official force policy. As a result of this action the recording and investigating of the complainer's complaints was delayed by approximately 11 months. It is my view that the force should apologise to the complainer for this delay.

However, I note that the force has subsequently considered its use of this procedure and has informed my office that all complaints about the police will be recorded and investigated upon first contact¹.

Jim Martin
Police Complaints Commissioner for Scotland
April 2009

¹ PCCS review of Miscellaneous Files Lothian and Borders Police pages 6 and 21-22 published August 2008