

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/0904/00316/PF-LB

CONTENTS

Introduction

- 1. Request for review**
- 2. Power to conduct a complaint handling review**
- 3. Background**
- 4. Force internal handling**
- 5. PCCS review**
- 6. Consideration**
- 7. Conclusion**

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 and his relative, Mrs A, were involved in an incident at public house X in February 2007 which resulted in their arrest by Lothian and Borders Police. Subsequently, the complainer made several complaints about the force's handling of the incident and has asked my office to review several aspects, particularly that:

Complaint 1 – The force inadequately investigated allegations of criminality and specifically that the complainer and Mrs A were not interviewed regarding the incident;

Complaint 2 – The force ignored the fact that Mrs A suffers from a fear of confined spaces;

Complaint 3 – Mrs A was not able to phone a relative and arrange care for two dependants who were at her home; and

Complaint 4 – There are inaccuracies in the police report.

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 and a person acting on behalf of a person who was a member of the public who claims to be the person in relation to whom the act or omission took place. The complainer is therefore a relevant complainer under the terms of section 34(6)(b) and (d).

3. Background

On Saturday 24 February 2007, the complainer, Mrs A and two friends (Mr and Mrs B) were involved in an incident at public house X, which resulted in the complainer and Mrs A being detained by Constables C and D during the early hours of Sunday 25 February 2007.

The complainer states that whilst in the public house, drinks which had been purchased were removed from a table without the purchaser's consent on two separate occasions which resulted in his friend and Mrs A discussing the matter with the bar manager. Unhappy about the incident, the group decided to leave. The complainer states that as Mrs A walked toward the door to leave, she kicked a bucket and mop which were on the floor. As Mrs A approached the door the complainer states that a member of security staff tried to prevent her from leaving and that a female member of staff was outside the door preventing it from opening. The complainer states he then stepped between Mrs A and the female member of security staff, removed her hands from Mrs A and pushed the female member of security staff.

Constable C states that door staff from public house X alerted Constable D to an incident which involved four individuals and that one of the females (Mrs A) was assaulting staff. Constables D and C state that on entering the public house they saw Mrs A holding a member of the security staff by the hair. Both constables also describe seeing the complainer struggling with another member of the security staff. With the aid of other members of security staff, the two constables broke up the incident. Thereafter, the complainer and Mrs A's details were noted. Both officers describe the complainer and Mrs A's manner as aggressive, particularly Mrs A.

The complainer states that the police arrived and spoke to Mrs A while he and Mr and Mrs B were still inside the public house. The complainer states that he heard Mrs A raise her voice and that as she has a problem with confined spaces and was in the recess of the door, the complainer informed a police officer who allowed her to move into the street. At this point the complainer was asked to leave the public house and informed he was being detained. Upon being handcuffed the complainer then asked where Mrs A was. When he was told that she was in a police vehicle he informed them that she would be scared in the confined space. The complainer states that he was, after some time, allowed to join Mrs A in the vehicle where he calmed her down and they were taken to police office Y. The complainer states that he has since been made aware that Mrs A had asked officers for permission to phone a relative to ask her to care for two dependents who were at home but that this request was denied.

The complainer states that upon arrival at police office Y, he was separated from Mrs A. He states that when Mrs A was being processed he heard her say to officers that she would be distraught if put in a cell but that she was ignored. The complainer states he then informed the police officer present in the room that Mrs A had a problem with confined spaces.

After being put in a cell himself, the complainer states that he asked one of the officers to check on Mrs A and that the officer informed him that she was crying but fine. He also states that after a number of hours, Constables D and C came to his cell and Constable D charged him with assault and breach of the peace. The complainer stated that he asked for an explanation but that Constable D was curt and not interested in what he had to say. The complainer also states that he expected to be interviewed but that statements were not noted from him, Mrs A, Mr B

or Mrs B. He also states that he was informed by Constable D and the custody officer that this was not necessary.

Both Constable C and D state that the staff in the public house wanted to make a complaint against the complainer and Mrs A and that they were both escorted to police office Y. They also state that when Mrs A was cautioned, she became aggressive and it was considered necessary to handcuff her. When she was placed into the rear of the police vehicle, she informed officers that she was claustrophobic but that for officer safety the decision was taken for her to remain in the vehicle due to her violent and aggressive behaviour.

Constable D states that at this time Mr and Mrs B approached him regarding where the complainer and Mrs A were being taken. He also states that it appeared they were both agitated and under the influence of alcohol and due to their demeanour, statements were not noted from them at the time.

Thereafter, both Constables state that Mrs A's aggressive and violent behaviour continued and she was kept in a cell, although due to her claustrophobia the cell hatch was left open. Once both the complainer and Mrs A had been processed, Constables C and D returned to public house X and noted witness statements.

Later, in the early morning of 25 February 2007, at 3.30am and 03.34am respectively, the complainer and Mrs A were cautioned and charged by Constable D in the presence of Constable C.

On receipt of a Standard Prosecution Report (SPR) the Procurator Fiscal took no proceedings against both the complainer and Mrs A.

The complainer subsequently made a complaint about Lothian and Borders Police regarding this incident.

4. Force internal handling

Complaint 1 – That the force inadequately investigated allegations of criminality and specifically that the complainer and Mrs A were not interviewed regarding the incident;

Complaint 2 – That the force ignored the fact that Mrs A suffers from a fear of confined spaces; and

Complaint 3 – That Mrs A was not allowed to phone a relative and arrange care for two dependants.

The complainer first brought these complaints to the attention of Lothian and Borders Police on 26 June 2007 when he attended police office Y. A Complaint Against Police Staff (CAP) form was completed recording complaints of excessive force, neglect of duty and oppressive conduct/harassment. A statement was also noted

from the complainer on the same day in which the complainer outlined his version of the events in the early hours of 25 February 2007.

Inspector E was appointed to investigate the complaint and noted an additional statement from the complainer on 15 August 2007 in which the complainer focused on his complaints about the police. He stated that his first complaint was that the incident at public house X had not been correctly investigated and specifically that he and Mrs A were not asked for their version of events. The complainer later added that Constable D neglected his duty by failing to record Mr and Mrs B's details when they attended police office Y on the night of the incident.

He also complained that Mrs A had asked officers for permission to phone a relative to ask them to go to her house and look after her dependants but that this had been refused.

The complainer stated that the custody officer at police office Y was *"oppressive by ignoring [Mrs A's] pleas regarding being put in a cell, as she was claustrophobic. She asked for the cell door to be left open but this was refused."*

Sergeant F noted a statement from Mrs A on 15 August 2007 in which she stated that she wished to make a complaint about how her and her relative (the complainer) were treated on the early hours of 25 February 2007. Mrs A outlined that there had been no explanation of events and that the officers acted aggressively and failed to respond to her fear of confined spaces.

On 26 August 2007, an operational statement was noted from Custody Officer G who was on duty at the time the complainer and Mrs A were taken into custody.

Sergeant F also noted statements from Mr and Mrs B on 4 September 2007, regarding the events on the 25 February 2007.

Constable C compiled a statement dated 10 September 2007 regarding the incident and the actions which followed, as did Constable D in an undated statement. Inspector E served investigation forms on Constables C and D and viewed both their notebooks, on 2 October 2007 and 1 November 2007 respectively.

Inspector E prepared a report for the attention of the Deputy Chief Constable in November 2007.

The report recorded the relevant allegations as: that Constables D and C failed to conduct a full and thorough investigation; that Constable C failed to listen to Mrs A's concerns regarding her claustrophobia and placed her in the back of a police van; and that Custody Officer G was dismissive and intimidating towards Mrs A to the point that she felt threatened and that he also failed to listen to her concerns regarding her claustrophobia. There was no reference to Complaint 3 in the report.

Having considered each complaint, Inspector E concluded that the allegations could not be substantiated and recommended that a letter be sent to the complainer and the officers concerned on that basis.

The CAP form records the allegations as unsubstantiated on 5 December 2007. Custody Officer G and Constables C and D were notified by memorandum on the same day that the complaints were found to be unsubstantiated.

The Deputy Chief Constable responded to the complainer by letter on the 5 December 2007.

Complaint 1 – The force inadequately investigated allegations of criminality and specifically that the complainer and Mrs A were not interviewed regarding the incident.

The Deputy Chief Constable stated that the officers present witnessed the complainer's and Mrs A's alleged behaviour and as such were justified in detaining them. He stated that he was satisfied that the officers, having conducted further enquiries, had sufficient evidence to report both individuals to the Procurator Fiscal. The Deputy Chief Constable concluded that he was unable to substantiate the allegation.

Complaint 2 – The force ignored the fact that Mrs A suffers from a fear of confined spaces.

The Deputy Chief Constable stated that having detained both individuals it was necessary to transport them to a police office which required a vehicle. He advised that in the interests of safety it was considered preferable to use a police van to convey Mrs A. He also noted that the complainer was permitted to travel in the same vehicle to help alleviate any distress Mrs A may have felt. Regarding the period in custody, the Deputy Chief Constable stated that it was necessary for both individuals to remain in custody while further enquiries were made and so the complainer and Mrs A were placed in cells. He concluded that Mrs A's concerns were taken into account and as a result, regular checks were made on her welfare whilst she remained in the cell. He concluded that the allegation was unsubstantiated.

Complaint 3 – That Mrs A was not allowed to phone a relative and arrange care for two dependants.

There was no reference to Complaint 3 in the Deputy Chief Constable's response.

The complainer responded to the Deputy Chief Constable in a letter dated 15 January 2007 expressing his extreme unhappiness at the time the force had taken to deal with the matter. The complainer also stated that the issue has not been properly investigated and the force had failed to answer specific allegations and reiterated Complaints 1-3.

In relation to Complaint 1, the complainer stated specifically that he had not received an explanation as to why he, Mrs A, Mr B and Mrs B were not interviewed at public house X before he and Mrs A were detained, nor at the police station.

In relation to Complaint 2, the complainer also stated that although it had been explained that it is standard procedure to put a detainee in the back of a vehicle, he requested confirmation that:

“...even after three people at the site have all indicated to your officers that [Mrs A] suffers from a fear of confined spaces that it is still standard practice to ignore a medical condition and therefore the welfare of a member of the public.”

Regarding Complaint 3, the complainer further stated that the force had failed to address his complaint that Mrs A was refused permission to phone and arrange support for her dependants when she was at public house X and again at the police office.

In addition the complainer made several requests for information from the force including police reports and statements.

This letter appears to have been received at the Complaints and Conduct Department on 24 January 2008. In a memorandum dated 24 January 2008 Chief Inspector H enclosed a copy of the letter to the Force Information Unit to consider several of the requests made. Chief Inspector H requested that the responses from the Force Information Unit be forwarded to the Complaints and Conduct Department to enable a composite response to be sent to the complainer.

The Deputy Chief Constable responded to the complainer in a letter dated 20 March 2008. With reference to the complainer's additional issues relating to Complaint 1, he stated:

“...you and [Mrs A] were detained at the premises, as there was reasonable cause to suspect you had both committed an offence...It was not necessary to take statements from you both. Further the officers established that there was sufficient evidence to report you both to the Procurator Fiscal for consideration of prosecution and statements obtained from your friends would not have changed this.”

The Deputy Chief Constable also noted that there were statements noted from the complainer's friends at a later date although this had no bearing on the decision to report the complainer and Mrs A to the Procurator Fiscal.

The Deputy Chief Constable responded to Complaint 2 and commented that officers are required to make operational decisions and manage risks. He noted that in this case, both the complainer and Mrs A had been detained and had to be transported to a police office whilst considering the safety of all concerned. He stated that:

“The medical condition that you say [Mrs A] suffers from could not be confirmed at the time and the decision to transport her in the cage of the van was an operational one taken by officers after considering all the circumstances presented to them. Part of that decision was to allow you to travel with your [Mrs A] in the van where in most circumstances you would be conveyed separately.”

The Deputy Chief Constable addressed Complaint 3 and noted that there was no evidence to confirm that this request was made, but had it been, the provision of a telephone call is not a lawful requirement. However, he also affirmed that persons in custody are entitled to have a reasonably named person notified of their arrest or detention and concluded that neither the complainer or Mrs A named such a person. In addition, the Deputy Chief Constable provided several answers and enclosed documentation relating to the complainer's requests for information.

From the information provided to my office, it appears that this was the last contact between Lothian and Borders Police and the Complainer.

Complaint 4 – There are inaccuracies in the police report.

From the information provided to my office, the complainer does not appear to have made this complaint to Lothian and Borders Police.

5. PCCS review

A telephone call was received by my office on 14 March 2008. The complainer was asked to complete and sign an application for review form which was received on 25 March 2008. On the same day, my office asked Lothian and Borders Police to provide the relevant complaint case papers by 8 April 2008. The case papers were received by my office on 8 April 2008.

The complainer wrote to my office in a letter dated 22 June 2008 confirming the specifics of his complaint about Lothian and Borders Police.

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 the force inadequately investigated allegations of criminality and specifically that the complainer and Mrs A were not interviewed regarding the incident.

This complaint was originally brought to the attention of the force in the complainer's statement of complaint to the police and formed part of the complaints investigation carried out by Inspector E. In his report, Inspector E stated that both Constables C and D witnessed the behaviour of the complainer and Mrs A and there was, therefore, reasonable cause to suspect the individuals had committed an offence which justified their detention. He also noted that having taken statements from witnesses, there was sufficient evidence to report the complainer and Mrs A to the Procurator Fiscal. He concluded that the allegation could not be substantiated.

The Deputy Chief Constable replied to the complainer explaining that the officers involved had witnessed first hand the behaviour of the complainer and Mrs A therefore, there was sufficient evidence to detain both individuals. He stated that:

“In the circumstances, as presented to them, there was justification in firstly detaining you both and, on completion of enquiries, sufficient evidence to report you to the Procurator Fiscal for consideration of criminal proceedings. I am satisfied that the officers acted correctly and therefore, I am unable to substantiate this allegation.”

The complainer, not satisfied with the force’s original response, reiterated Complaint 1 in his letter of complaint to the force, stating that he had not received a response regarding why statements had not been noted from him, Mrs A, Mr B and Mrs B.

In the force’s second and final response, the Deputy Chief Constable reiterated the force’s findings, that the evidence available to the officers at the scene had provided reasonable cause to suspect that the complainer and Mrs A had committed an offence. He further explained that:

“It was not necessary to take statements from you both. Further the officers established that there was sufficient evidence to report you both to the Procurator Fiscal for consideration of prosecution and statements obtained from your friends would not have changed this.”

It appears that the complainer believed the force’s investigation to be lacking primarily due its failure to take particular statements. The force, having investigated the circumstances surrounding the incident, concluded that it was not necessary to interview everyone at the incident due to first hand evidence available to the officers present. The sufficiency of evidence available to the officers at the scene was reasonably explained to the complainer in the force’s initial response. The force’s position was made clearer to the complainer in it’s second response by specifically confirming that it had not been necessary to note certain statements. Although it may have been beneficial had the force provided slightly more detail in its first response, my view is that the force provided a reasonable explanation in its combined response to the complainer.

Complaint 2 – The force ignored the fact that Mrs A suffers from a fear of confined spaces.

This complaint was also brought to the force’s attention in the complainer’s statement of complaint to the police and formed part of the complaints investigation carried out by Inspector E.

In his report, Inspector E stated that Constables C and D confirm that Mrs A intimated a fear of confined spaces but that given her aggressive behaviour Constable C made the operational decision that it was safest to transport her in the vehicle. Constable C stated that the complainer had asked if he could travel in the same vehicle to calm Mrs A and he again made an operational decision to agree to this. Inspector E stated that transportation to a police office was required and that

Mrs A's concerns were taken into consideration including allowing the complainer to travel in the same vehicle.

With regard to events during the custody process at the police office, Inspector E noted that any CCTV footage of the custody suite would have been overwritten as several months had passed between the incident and the complainer raising the complaint about the police.

Inspector E stated that having completed the custody process, it was necessary for Custody Officer G to place Mrs A in a cell. He also noted that not placing Mrs A in a cell was not a practical option from a resource or safety standpoint. Although Custody Officer G did not mention Mrs A's fear of confined spaces, he stated that Mrs A was incoherent, upset and tearful at the time of detention and did not wish to be placed in a cell. As a result, the Custody Officer left the hatch of the cell open and informed Mrs A that if she required anything she could use the buzzer. He also stated that during her time in custody (from 2.18am to 4.20am), the complainer was checked three times which is confirmed by the Custody Record.

Inspector E concluded that Constable C and Custody Officer G both acted correctly and the allegation could not be substantiated.

In the force's initial response the Deputy Chief Constable addressed the issue of transporting Mrs A and stated that:

"The circumstances were considered and in the interests of safety, it was decided that the preferred option was to convey [Mrs A] in a van. To assist in alleviating any distress she may have experienced during the journey, [the complainer] was permitted to travel in the same vehicle. The evidence shows that consideration was given to [Mrs A's] wishes and I find this allegation unsubstantiated."

In relation to the custody process, the Deputy Chief Constable stated that:

"...it was necessary that you remained in custody at the station. You were placed in a cell in line with custody procedures. Your concerns, however, were taken into account and staff carried out regular checks on your welfare while you were in the cell. I am unable, therefore, to substantiate this allegation."

The complainer remained unhappy with aspects of this complaint and in his letter of complaint he explained that although he understood it to be standard procedure to place detained individuals in the back of a vehicle, he requested confirmation that this would remain the case given that three people at the scene confirmed to officers present that Mrs A suffered from a fear of confined spaces.

In the second letter of response, the Deputy Chief Constable stated that in this case it was necessary to transport both the complainer and Mrs A and that the officers made an operational decision based on the circumstances presented to them. He also noted that part of this decision was to allow the complainer to travel with Mrs A.

It appears that having investigated the circumstances of Mrs A's detention, the force concluded that her concerns were reasonably considered. Although it is noted that there is no direct mention of her fear of confined spaces during the custody process by the Custody Officer, it is clear that her welfare was taken into consideration and that provisions were made to monitor and limit any distress. In my view the force has provided full explanations surrounding its decision to convey Mrs A in the rear of the police vehicle and to place her in a cell during the custody process despite any distress this may have caused.

Complaint 3 – Mrs A was not able to phone a relative and arrange care for two dependants who were at her home.

In the complainer's statement noted by Inspector E on 15 August 2007 he stated that:

"When [Mrs A] was outside the pub she tried to phone [a relative] to come up to the house and this was refused."

However, I note that this particular complaint about the police was not recorded and as such did not form part of Inspector E's report or the initial response from the Deputy Chief Constable, which is a learning point for the force.

Upon receiving no response to this particular complaint, the complainer reiterated it in his letter of complaint. He stated that the force had failed to address his complaint regarding the refusal to allow Mrs A a phone call to arrange care for her dependants, both prior to being detained in the vicinity of public house X and again at the police office.

Although it does not appear the complainer had previously informed the force that this request had been refused on two occasions, the force addressed this complaint in the Deputy Chief Constable's response dated 20 March 2008.

The Deputy Chief Constable stated that there was no evidence that this request had been made and also explained to the complainer that provision of a telephone call was not a legal entitlement. In addition it was explained to the complainer that although those in custody have the right to have a reasonably named person notified of their detention or arrest, neither Mrs A or the complainer wished such a person to be notified.

It appears that there is no additional report into this particular complaint. However, the circumstances surrounding it remain the same as those originally investigated by Inspector E. I note that the print out of the Reasonably Named Person (Detention) page from the police system for Mrs A shows that it was recorded she did not wish a reasonably named person to be notified.

Although it would have been preferable had the original complaint handling investigation by Inspector E identified this issue as a complaint about the police and addressed it as such in both his report and the force's original response, I consider this complaint to have been addressed in the force's second and final response to the complainer.

Complaint 4 – There are inaccuracies in the police report.

From the information provided to my office, the complainer does not appear to have made this complaint to Lothian and Borders Police.

7. Conclusion

Complaint 1 – The force inadequately investigated allegations of criminality and specifically that the complainer and Mrs A were not interviewed regarding the incident.

In my view, the force has fully investigated this complaint and provided the complainer with a satisfactory response. **As such I do not uphold this complaint.**

Complaint 2 – The force ignored the fact that Mrs A suffers from a fear of confined spaces.

Having investigated the circumstances surrounding Mrs A's detention the force provided a reasonable response to this complaint on two occasions. **As such I do not uphold this complaint.**

Complaint 3 – Mrs A was not able to phone a relative and arrange care for two dependants who were at her home.

This complaint was not identified in the original complaints investigation, which is a learning point for the force. However, when the complainer again brought this complaint to the attention of the force, the complainer was provided with a reasonable response. **As such, I do not uphold this complaint.**

Complaint 4 – There are inaccuracies in the police report.

From the information available to me, it does not appear that this complaint has been referred to the police in the first instance. I would therefore suggest that, if the complainer wishes a response to this issue that he should now make the complaint formally to the force. Accordingly, this complaint has not formed part of my review.

Jim Martin
Police Complaints Commissioner for Scotland
April 2009

NOTE: This report was first published on 25 April 2009, following which a typographical error was identified by the force concerned. The error occurred in the penultimate paragraph of page 15 of the report, which read "As such, I do uphold this complaint." The relevant passage in the amended version of the report reads "As such I do not uphold the complaint", which accurately

**reflects the terms of the consideration and conclusion sections of the report.
The amended version was published on 16 June 2009.**