



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**

October 2009

Case reference: PCCS/0910/00328/PF-SP

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Introduction

The role of the Police Complaints Commissioner for Scotland (PCCS) was established by the Police, Public Order and Criminal Justice (Scotland) Act 2006 ("the Act") to consider and review the way police bodies handle complaints from the public. The Commissioner 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.

The Commissioner aims to review complaints in an independent, open and fair manner. In line with this aim the Commissioner will publish the reports of his complaint handling reviews, whilst bearing in mind individuals' rights to confidentiality. The following report therefore details the Commissioner's 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 asked the Commissioner to review Strathclyde Police's handling of his complaints. Through correspondence with the Commissioner's office and Strathclyde Police, the complainer has detailed the complaints listed below. The complaints relate to the purchase of a car by the complainer from Mr A and a subsequent dispute between them. The complaints are as follows:

Complaint 1 – that Detective Constable B would not assist the complainer and was rude to him during a series of telephone conversations;

Complaint 2 – that Detective Constable B did not respond to claims that threats were made towards the complainer and his family;

Complaint 3 – that the car was seized as a result of Mr A and Detective Constable B being friends;

Complaint 4(a) – that the car was impounded by the police;

Complaint 4(b) – that Strathclyde Police impounded the car without an explanation;

Complaint 5 – that Detective Constable B and Mr A were trying to obtain money from the complainer;

Complaint 6 – that the complainer has not received an apology from Strathclyde Police in relation to his car being impounded;

Complaint 7 – that the complainer had to pay for collection of the car from the police and subsequent repairs; and

Complaint 8 – that the car was impounded by the police for an unreasonable period of time without any information being given to the complainer.

2. Power to conduct a complaint handling review

Section 35 of the Act provides the Commissioner 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 the Commissioner's office requests the complaint case papers from the police body in question. The Commissioner examines the facts of the case, looking at information provided by both the complainer and the police body. The Commissioner considers whether the information available does, or does not, support the complaint, and whether or not the police body has responded to the complaint in a reasonable manner. The Commissioner also considers whether the police body communicated with the

complainer in a reasonable manner, including whether the police body handled the complaint within a reasonable timescale. The Commissioner then comes to a view on whether the conclusions drawn by the police body in handling the complaint were reasonable in all the circumstances.

Once the Commissioner has reached his conclusions he prepares a report which details his findings. 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, the Commissioner proposes 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 the Commissioner 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 police body. The complaint is therefore a relevant complaint.

2.2 Relevant complainer

The Act further provides that the Commissioner 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 February 2008 the complainer bought a car from Mr A in the Strathclyde area. The complainer agreed to pay £10,000 for the car. It was agreed that the complainer would pay £2,000 in cash as a deposit, with a further £8,000 to be paid by a bank transfer. The complainer paid the £2000 deposit and Mr A gave him the key for the car.

Whilst driving home to another part of the UK the complainer experienced mechanical problems with the car. He took the car to a garage, where a number of problems were identified. The complainer paid to have these repaired. A later visit to the garage revealed that the mileage of the car was incorrect. The car displayed a mileage of approximately 68,000 miles. However, it was discovered that the car was registered on 1 May 2007 with 120,000 miles on the clock. The complainer states that he contacted Mr A and asked to return the car and be given a refund, but Mr A refused.

The complainer states that on 26 February 2008 Mr A phoned him to explain that he had not received the bank transfer for the outstanding £8,000. According to the complainer he told Mr A that he did not know why the transfer had not gone through. However, he also advised him that he would not now authorise the further payment, as the car was "broken". According to the complainer, he agreed with Mr A that he would pay a further £6000 for the car but with an allowance for the price of the repairs. The complainer states that it was therefore agreed he would pay Mr A £4,000, with an additional £2,000 payable, less the cost of repairs to the car. The complainer then transferred £4,000 into Mr A's account. The complainer states that the total repair bill for the car was £2,300. Therefore the complainer did not transfer any more money to Mr A.

According to Mr A's statement to the police, on 26 February 2008 he had not received the bank transfer from the complainer. On the same day, he visited the complainer's bank where he was informed that the transfer had been stopped. Mr A states that he received an email from the complainer the same day saying that £4,000 was being transferred to his account. Mr A then phoned the complainer, who told him that he would not pay him any more money.

On 15 March 2008 Mr A visited a police station and reported that the complainer had not paid the agreed price for the car. A crime report was raised and allocated to Detective Constable B. Prior to investigating the matter, Detective Constable B states that he sought guidance from Procurator Fiscal Depute C who was of the view that it was safer to view the matter as fraud and proceed accordingly. Detective Constable B then marked the car as "stolen" on the Police National Computer (PNC).

On 21 March 2008 the car was identified in the area of the UK in which the complainer lives. This information was passed to Constables D and E of the local police who were on patrol in an unmarked police car. Constables D and E stopped the car on 21 March 2008. The complainer produced vehicle registration documents which confirmed that he was the owner of the car. He was then allowed to continue on his journey. Detective Constable B was made aware of this development and arranged for the car to be recovered from outside the complainer's address. The car was seized on 21 March 2008 by the local police acting on behalf of Strathclyde Police. The seizure was made pending further enquiries into the allegation that the complainer had obtained the car through fraud. The car was kept at a contractor's yard in the local area. After the car was impounded the complainer telephoned Detective Constable B on 21 March 2008 to discuss the matter. Detective Constable B states that he informed the complainer that he was a suspect and any conversation would have to take place under caution and in person. Detective Constable B states that the complainer then began to "rant" on the phone and said that this was overheard by Detective Constable F.

Detective Constable B states that some days later he received two phone calls within ten minutes of the other. The first call was from Mr A and the second from the complainer. Both individuals claimed that the other had made threats towards them and their families. Detective Constable B told both individuals to stop having contact with each other. Detective Constable B states that he told the complainer to report the matter at a local police station. Detective Constable B also states that Mr A did not wish to pursue the matter.

An enquiry update on the Strathclyde Police Crime Management System dated 9 April 2008 notes that Detective Constable B discussed the facts surrounding the case with Procurator Fiscal Depute G. Procurator Fiscal Depute G advised that the matter should be processed through the civil courts, as the complainer appeared to have acted in good faith. However, Procurator Fiscal Depute G recommended interviewing the complainer in relation to the case.

Following this, arrangements were made by Detective Constable B for the complainer to be interviewed under caution by a local police officer Sergeant H. The interview took place on 1 May 2008. A memorandum regarding the interview was sent to Detective Constable B on 7 May 2008.

Detective Constable B states that the matter was then referred to Solicitor I within Strathclyde Police Legal Services to determine whether the matter was a criminal or civil issue. An enquiry update on the Strathclyde Police Crime Management System dated 6 June 2008 notes that in terms of that legal advice the matter should not have been dealt with as a criminal offence.

Subsequent enquiry updates on the Strathclyde Police Crime Management System note that Mr A had outstanding finance on the car, which was still owned by the finance company. The finance company agreed for the car to be released to the complainer on 24 July 2008. A further update by Detective Constable B dated 8 September 2008 stated that the complainer was no longer a suspect in the investigation.

4. Internal handling

The complainer called his local police on 31 March 2008 stating that he wished to make a complaint about the police. During this call he raised complaint 3 (see page 4 above) and stated his belief that the police were "corrupt". It appears that the complainer was referring to Strathclyde Police when making this allegation. On the same day he attended a police station in his local area and made a formal complaint about Detective Constable B. The complainer gave background information in relation to the impounding of the car and specifically raised complaints 1 and 2. A complaint form was completed on the same day. In his statement to the local police the complainer stated:

"I have spoken to Detective Constable B on three or four occasions and he would not assist me and listen to my case. He was dismissive with me on the phone. I also informed him that Mr A had threatened my family over the phone and he was not at all interested."

The local police sent the complaint form to Strathclyde Police on 24 April 2008 and it was received there on 28 April. A Complaint about the Police (CAP) form was completed on the same day the complaint was received. The CAP form recorded a brief description of the complaint as:

"Complainer alleges officer would not assist him and listen to his side of the story regarding being stopped when his vehicle was shown as stolen".

The CAP form records the complaint as "incivility" and "neglect of duty" occurring during a telephone conversation between the complainer and Detective Constable B. The complaint was categorised as having occurred on-duty and as non-criminal, in accordance with Strathclyde Police's complaint handling procedures.

Superintendent J of Strathclyde Police's Complaints and Discipline branch wrote to the complainer on 30 April 2008 to acknowledge receipt of the complaint. He advised that the complaint would be investigated and that a senior officer would be in contact with the complainer to discuss the matter.

The complaint was passed to Detective Chief Inspector K who asked Detective Inspector L to conduct an investigation into the complaint.

Detective Inspector L recorded the complaint as follows:

"The complainer alleges that Detective Constable B would not discuss the circumstances surrounding the vehicle recently purchased by him from Mr A being seized by Police as a 'stolen vehicle' or assist him in respect of the same."

Detective Inspector L arranged for a statement to be taken from Detective Constable B in response to complaints 1 and 2. In his undated statement Detective Constable B denied the allegations made by the complainer. During the course of the investigation Detective Inspector L considered the following information:

- the complaint form prepared by the local police;
- a memorandum by the local police detailing the contents of the interview of 1 May 2008 in relation to the allegation of fraud;
- a print-out of the local police's incident report; and
- witness statements of Mr A, Sergeant H, Constables D and E and Detective Constable B.

Detective Inspector L's enquiry report, dated 30 May 2008, was forwarded to Detective Chief Inspector K. Detective Chief Inspector K sent a final response to the complainer on 9 June 2008. The response addressed complaint 1, but there was no reference to complaint 2.

On 27 June 2008 a memo was sent by a Chief Superintendent at the Complaints and Discipline Branch of Strathclyde Police to a Divisional Commander commenting on Detective Inspector L's report and Detective Chief Inspector K's response to the complainer. The memo pointed out that:

- Detective Inspector L's report was not in the format specified by police guidelines;
- not all of the complaints made by the complainer had received a response; and
- that the complaint and report had not been forwarded to Deputy Divisional Commander N.

The Chief Superintendent at the Complaints and Discipline Branch requested that a further response be sent to the complainer addressing all of his complaints. Following this request, a second statement was taken from Detective Constable B on 6 July 2008 which specifically responded to complaint 2. A further, final written response was sent to the complainer by Detective Chief Inspector K on 17 July 2008.

In response to Complaint 1, Chief Inspector K's letter of 9 June 2008 stated:

"Detective Constable B has provided an operational statement regarding this claim. In his statement he explains that at the time of these telephone discussions, your own status in relation to the ongoing enquiry was that of a 'suspect'. As such he did not wish to discuss the scenario surrounding the sale/purchase of the aforementioned vehicle to yourself, preferring to interview you under caution and in appropriate circumstances. I am not privy to the language used, tone of voice or attitude of either party during these telephone conversations, however Detective Constable B has denied the allegation made by yourself."

In response to complaint 2, Chief Inspector K's letter stated:

“I also note that you claim Mr A threatened you and your family during a telephone conversation. Mr A denies this allegation and in fact makes a similar claim that you threatened him. I can find no corroboration for either claim.”

The final response from Detective Chief Inspector K dated 17 July 2008 concluded that the complainer’s complaints against Detective Constable B had been fully investigated and that there was no evidence to substantiate them.

On 7 August 2008, Chief Inspector M of Strathclyde Police’s Complaints and Discipline Branch asked Detective Inspector L to clarify with the complainer a comment he had made during a telephone call to his local police on 31 March 2008, to the effect that the police were “corrupt”. In a statement he provided in response to this issue dated 28 August 2008, Detective Inspector L said that he had spoken to the complainer on 13 August 2008 about his allegation. The complainer had informed him at that time that this had been a misunderstanding and that he had used the term “corrupt” out of frustration. According to the statement, the complainer said he was not suggesting that the police were corrupt in any way in the handling of the enquiry.

It does not appear that Strathclyde Police has recorded or responded to complaint 3. Complaints 4(a) and (b), 5, 6, 7 and 8 were made only to the Commissioner’s office and therefore Strathclyde Police have not had an opportunity to deal with these.

5. PCCS review

The complainer first made contact with the Commissioner’s office by telephone on 7 April 2008. At that time Strathclyde Police were still dealing with his complaint. The complainer was advised that until Strathclyde Police completed its investigation, the Commissioner could not review the handling of his complaint.

The Commissioner’s office telephoned Strathclyde Police on 18 September 2008 to find out the status of its investigation. Chief Inspector M explained that the complaint had been concluded and was now closed. The Commissioner’s office then telephoned the complainer on 18 September 2008 to establish whether he still wished a review of the handling of his complaint. The complainer confirmed that he was still seeking such a review.

The complainer was asked to complete and sign an application form which was received by the Commissioner’s office on 28 January 2009. The Commissioner’s office asked Strathclyde Police to provide its papers on 22 September 2008. These were supplied on 2 October 2008.

6. Consideration

There are nine distinct issues raised by the complainer:

Complaint 1 – that Detective Constable B would not assist the complainer and was rude to him during a series of telephone conversations.

The complainer complained that, following the seizure of his car on 21 March 2009, he contacted Detective Constable B the same day to provide his side of the story. He states that during this call Detective Constable B would not assist him and was rude. Accordingly his complaint consisted of two elements:

- that Detective Constable B gave him no assistance; and
- that Detective Constable B was rude.

With regard to the first element of the complaint, the Commissioner notes that in his undated second statement Detective Constable B said that he advised the complainer during the call that any conversation between them would have to be conducted in person and under caution. Detective Constable B advised the complainer that the reason for this was that the circumstances behind the vehicle being seized were being treated as fraud. This was communicated to the complainer in Strathclyde Police's final written response of 17 July 2008. In the Commissioner's view, given that the matter was subject to a criminal investigation, the approach taken by Detective Constable B on the telephone was entirely appropriate. The complainer was a suspect and it is understandable that Detective Constable gave the complainer "no assistance". In the Commissioner's view Strathclyde Police has provided a reasonable response to this aspect of the complaint.

In relation to the second element of the complaint, according to Detective Constable B's statement it was the complainer who became agitated on the telephone after being told that he was suspected of obtaining the car by fraud. Detective Constable B states that despite trying to reason with the complainer, he began to "rant". According to its response of 17 July 2008, Strathclyde Police was unable to confirm the attitude of either party during the telephone call.

However, according to Detective Constable B's first statement Detective Constable F was present when the phone call took place between the complainer and Detective Constable B and overheard the complainer raising his voice. Accordingly Detective Constable F may have been able to comment on the tone and attitude of Detective Constable B during the phone conversation. From the information provided, it does not appear that Detective Constable F has been asked to comment on this issue. In the Commissioner's view, Strathclyde Police should obtain a statement from Detective Constable F in relation to the telephone conversation and respond to the complainer with its findings.

Complaint 2 – that Detective Constable B did not respond to claims that threats were made towards the complainer and his family

According to the complainer, following alleged threats made by Mr A against him and his family, he reported the matter to Detective Constable B over the telephone. In his statement of 31 March 2008, which was given to the police in his local area, the complainer claims that Detective Constable B did not respond to the allegation. The complainer has raised this issue repeatedly during his contact with the Commissioner's office.

The Commissioner notes from Detective Constable B's first statement that during the enquiry he received a telephone call from Mr A alleging that the complainer had made threats against him and his family. Detective Constable B states that some ten minutes later he received a call from the complainer making the same allegation against Mr A. Detective Constable B states that he told both individuals to cease contact with one another.

According to Detective Constable B's statement of 6 July 2008, Mr A had no corroboration of his claim that the complainer had made these threats and did not wish to pursue the matter. The complainer also had no corroboration of his allegation and was told by Detective Constable B that if he wished to make a formal complaint regarding Mr A's alleged threats he should attend at his local police office. According to his statement, Detective Constable B believed that the complainer had decided not to do this. Detective Constable B makes a similar comment in his undated statement.

There is no reference to this complaint in Detective Inspector's L enquiry report. It would appear that this oversight was the reason behind the Chief Superintendent's memo to Divisional Commander N of 27 June 2008, in which he said that not all of the complaints had been addressed. In its final response of 17 July 2008, Detective Chief Inspector K said that there was no corroboration either of the complainer's allegation of threats, or that made by Mr A.

It appears to the Commissioner that the threats the complainer alleges were made against him and his family were not taken seriously by Detective Constable B. This appears to be due to the fact that the allegations made by each individual were very similar and received within a short space of time. In the Commissioner's view the correct procedure for dealing with the complainer's allegation was for Detective Constable B to record this claim in accordance with the Scottish Crime Recording Standard (SCRS), which states that:

"A crime record must be raised for crime related incidents as defined by the SCRS, which are perceived to be a crime by the victim or any other person. No corroborative evidence is required before a crime record is raised, if on the 'balance of probabilities' a crime has occurred."

SCRS operates on the principle that all reports of incidents, whether crime related or not, will result in the creation of a report, which is auditable.

Complaint 3 – that the car was seized as a result of Mr A and Detective Constable B being friends

Strathclyde Police do not appear to have recorded this as a formal complaint. However, Detective Constable B referred to the complaint in his undated statement where he denied having any friendship whatsoever with Mr A and said that his first contact with him was on 23 March 2008 when he noted a statement from him. Despite this, Detective Chief Inspector L made no reference to this complaint in either of his responses to the complainer.

As Detective Constable B's statement addressed this matter satisfactorily, Strathclyde Police need do nothing further. However, this issue underlines the need for all complaints to be identified, followed through and for comprehensive responses to be communicated to complainers.

Complaints 4(a), 4(b), 5 and 6 were received at the Commissioner's office on 18 September 2008; complaints 7 and 8 were received on 28 January 2009. These complaints have not been made to Strathclyde Police and it therefore has not had the opportunity to respond to these additional areas of dissatisfaction. As the Commissioner's statutory remit is to examine the manner in which police bodies deal with complaints, it is clearly essential that police bodies deal with these first.

Other matters arising from this review

Although not made to Strathclyde Police, complaints 4(a) and 4(b) are, in the Commissioner's view, the key complaints in relation to this case in that the other complaints all arise from the seizure and impounding of the car. In the Commissioner's view these complaints could have been identified and resolved by Strathclyde Police if a discussion had taken place between the police and the complainer in order to clarify all of the complainer's concerns.

The Commissioner notes that Superintendent J wrote to the complainer to acknowledge receipt of his complaint and to inform him that a senior officer would be in contact to discuss his complaint. It does not appear, from the information available to the Commissioner, that the complainer was contacted by Strathclyde Police to discuss his complaints during the course of the investigation by Detective Inspector L. Had such a discussion taken place it might have been possible for Strathclyde Police to have identified and responded to complaints 4 - 8. Additionally, given that the complainer's statement was not taken by Strathclyde Police, the Commissioner would expect in future the police to contact a complainer to confirm the exact nature of a complaint.

As noted earlier, Detective Constable B submitted a statement that was undated. In the Commissioner's view, all statements, whether provided by civilian witnesses or police officers, should be dated as a matter of course.

7. Conclusion

Complaint 1: that Detective Constable B would not assist the complainer and was rude to him during a series of telephone conversations

Strathclyde Police has provided a reasonable response to this complaint. Accordingly, the Commissioner **does not uphold this complaint.**

In relation to the complainer's allegation that Detective Constable B was rude to him during the telephone conversation, the Commissioner **recommends that Strathclyde Police take a statement from Detective Constable C and issue a further response to the complainer based on his account.**

Complaint 2: That Detective Constable B did not respond to claims that threats were made towards the complainer and his family

In the Commissioner's view, this allegation should have been recorded as a crime in terms of the SCRS. However, in the Commissioner's view a distinction must be drawn between the need to record an allegation under the SCRS and the need to thereafter investigate the allegation. In the Commissioner's view, Detective Constable B's decision not to investigate the complainer's allegation was a reasonable exercise of his discretion in the circumstances. The Commissioner's conclusion is supported by the fact that the complainer appears not to have reported the allegation to his local police, despite Detective Constable B's suggestion that he do so.

Accordingly **the Commissioner does not uphold this complaint.**

Complaint 3 – that the car was seized as a result of Mr A and Detective Constable B being friends

This complaint was not recorded by Strathclyde Police as a formal complaint but was addressed by Detective Constable B in his undated statement. As the Commissioner has described the relevant passage in the statement, Strathclyde Police need do nothing further. However, Strathclyde Police's omission in this connection underlines the need for all complaints to be identified, followed through and for comprehensive responses to be communicated to complainers.

The complainer has made complaints 4(a) and (b), 5, 6, 7 and 8 to the Commissioner's office but does not appear to have raised them with Strathclyde Police. If he wishes to pursue them further, he should contact Strathclyde Police directly.

Other matters arising from this review

In the Commissioner's view, the handling of this complaint could have been improved if the complainer had been contacted by Strathclyde Police to clarify the nature of his complaints.

In addition, the Commissioner considers that all statements, whether provided by civilian or police witnesses should be dated. **The Commissioner recommends that Strathclyde Police ensure that all complaint handling staff are aware of the guidance contained within the Strathclyde Police Standard Operating Procedures for investigating complaints against the Police.**

John McNeill
Police Complaints Commissioner for Scotland
October 2009