



Request for complaint handling review of a complaint about

Tayside Police

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

October 2009

Case reference: PCCS/0910/00375/PF-TP

CONTENTS

Introduction

- 1. Request for review**
- 2. Power to conduct a complaint handling review**
- 3. Background**
- 4. 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 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 Tayside Police's handling of a complaint relating to its attendance at an incident on 14 March 2008. Specifically, the complainer claims that:

- (1) officers did not deal with the incident appropriately; and
- (2) officers at the scene pushed him.

As a result of this, the complainer feels that he was not treated by the officers respectfully.

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 Friday 14 March 2008, the complainer was in a local bar with his friend Mr A. Mr A states that at around 11 pm he received a phone call from his wife, Mrs B, who was worried and upset as a man, later identified as Mr C, had earlier tried to get into her car and was doing so again while she was on the phone. Mr A and the complainer immediately left the pub to find Mrs B and when they did, both men state that they saw someone trying to open the door handle on the passenger side of the car which Mrs B was driving. Mr A states that he immediately shouted at Mr C and approached the car, before taking the man toward the pavement and away from the car. Mr A states that he asked him what he was doing and that the complainer then joined him and also spoke to Mr C. Mr A states that Mr C was under the influence of alcohol.

Both men also confirm that Mr C telephoned someone on his mobile phone to tell them he was being “hassled”. The complainer states that he heard Mr C ask this person to come and get them “sorted out”. The complainer then approached two nearby police officers, Constables D and E, and told them what was happening.

Constable D states that having spoken to the complainer he approached Mr C who was heavily under the influence of alcohol. He then noted Mr C’s details in order to complete a person-check on the Police National Computer. According to Constable D the complainer appeared particularly aggrieved at Mr C and, in the officer’s opinion, was trying to intimidate him. Constable D states that as a result of this Mr C began shouting and swearing at the complainer. Constable D thereafter warned Mr C that if he continued shouting and swearing he would be arrested for committing a breach of the peace. According to Constable D, Mr C was then joined by another male who Mr C said was a friend who had come to collect him.

The complainer states that he confronted Mr C’s friend and asked if he was there to “sort me out”, because he had heard Mr C making this threat on his phone. The complainer states that this man proceeded to threaten him verbally before a police van, carrying Constables F and G, pulled up near them. The complainer states that he was asked to leave the scene by Constable D and that he told an officer from the van that he wanted to make a statement before leaving. He stated that this officer also asked him to leave the scene, whilst pushing him up the street and informing him that the issue was being dealt with. The complainer disagreed with the officer. He said that he was making a complaint and neither his statement nor anyone else’s had been noted. The complainer states that he was then pushed again by the officer and told to leave, at which point he saw Mr C and his friend leave the scene.

According to the complainer, Constables D and E then approached him again and told him that the incident had been dealt with. The complainer disputed this and claimed that the officer from the police van once again pushed him. Constables F and G then left the scene and the complainer continued to discuss the situation with Constables D and E. The complainer maintains that none of the officers was aware of all the facts relating to the incident.

According to Constable F, whilst in the control room he was alerted to a possible argument between three males at a taxi rank. He subsequently attended the scene in a police van with Constable G. Having spoken to the other officers at the scene, he spoke with the complainer and Mr A who confirmed that Mr C had been trying to get into Mrs B’s car. Constable F then explained to Mr A that Constable D proposed to warn Mr C. After a lengthy discussion with the complainer, in which Constable F explained to him that he was not in a position to make a complaint, Constable F and the three other constables left the scene.

4. Internal handling

The complainer initially made a complaint about the police at the local public enquiry office on 15 March 2008.

A Complaint about Police Staff (CAP) form was completed in which the complaints were noted as follows:

“The complainer believes that the Police did not deal with the matter correctly in that the male was simply allowed away. Also that the Police officers refused to listen or note his complaint and pushed him a number of times in an effort to get him to leave the location of the incident.”

It was also noted on the CAP form, and in an internal communication produced by Sergeant H, that discussion took place with the complainer in order to try and find a suitable resolution. According to Sergeant H, none was found as the complainer was adamant that the male who had tried to enter the car had not been dealt with appropriately and that the police had failed to deal with the complainer respectfully.

A statement was noted from the complainer on the same day by Sergeant H. The complainer described his version of events from the previous evening. According to the statement, the complainer’s main concerns were:

“1) That a person I was complaining about (the youth trying to open the door) was not dealt with by the officers concerned due to the fact they had not gathered all the information. If they had gathered all the information they would have realised there was a complaint to be answered in my eyes. Such as putting people in a state of fear and alarm. It is not a natural thing you do.

2) Another concern is the way I was physically pushed by the officer who arrived in the Transit, on three separate occasions.

... I would like to see the youth dealt with by some other way than just having his name and address taken... should there be sufficient evidence I would like the youth charged with a Breach of the Peace... In regard to my second concern, I would like a man to man apology from the officer concerned. I realise that is not possible. In a nutshell I feel that the guy responsible has not been dealt with and I haven’t been treated with respect.”

Inspector J produced a report in the form of an internal communication dated 17 April 2008. In this report he stated that on 20 March 2008 he visited the complainer and discussed the content of his statement.

The following day Inspector J visited Mr A and Mrs B and noted statements from them in relation to the incident.

Constables D, E, F and G all provided signed operational statements on 26 March 2008.

Inspector J viewed the CCTV footage relating to the incident and noted in his report that, due to the quality of the images, it was not possible to see the manner in which the complainer was pushed or restrained by the officers.

On 6 April 2008, Inspector J visited the complainer at his home address and explained his findings. He explained to the complainer that Mr A had told the officers who attended the scene that he did not wish to make a complaint and that the officers had made their decision based on the information available and their dealings with Mr A. Inspector J also explained to the complainer that, in his opinion, it would have been preferable for the officers to approach Mrs B directly rather than rely on Mr A's decision not to make a complaint. In addition, he informed the complainer that it was sometimes necessary for officers to restrain people or guide them away from a situation.

Inspector J stated that the complainer did not accept his explanation of events and that he believed he was siding with the officers. The complainer also questioned whether Mr A had told an officer at the time, or Inspector J at a later date, that neither he nor his wife wished to make a complaint about Mr C. According to the Inspector, the complainer was also of the view that although he was asked to leave, and failed to do so, the officers had no right to push him. He told the Inspector that on three occasions the male officer from the police van pushed him in the chest with both hands, saying "on your way". The complainer also stated that had he done the same to an officer he would have been charged with assault.

Inspector J noted a further statement from the complainer in which he stated that had he been made aware that Mr A did not want to make a complaint "none of that pushing would have been necessary as I would have been quite happy to have heard that". The complainer also stated he would be satisfied if the officer who pushed him made a personal apology and that he did not want to get the officer into trouble.

The complainer emailed Inspector J later the same day. He stated he had spoken with Mr A who told the complainer that, although he spoke to an officer, at no point did he mention whether or not he or his wife wished to press charges against Mr C. As this contradicted what the Inspector had told the complainer, he asked this to be looked into. Inspector J responded to the complainer on 7 April 2008 stating that Mr A's statement had been noted in the same way as the complainer's and had been read over by Mr A. He added that he would be speaking to Mr A and Mrs B again.

On 15 April 2008 Inspector J met with Mr A and Mrs B to clarify their earlier statements. Mrs B's statement shows that during this visit Inspector J apologised to her for the officers' failure to speak to her directly during the incident. Mr B's statement confirms that his recollection of the incident was that, when asked by the police if his wife wanted to make a complaint about Mr C, he replied:

'I don't know, I don't think so'.

Supplementary statements were also taken from Constables F and G on the 15 April 2008 and from Constables D and E on 16 April 2008.

After noting his observations on the complaint, Inspector J stated that, as a learning point, at least one of the officers present on 14 March 2009 should have spoken directly to Mrs B rather than accepting Mr A's response on her behalf. Inspector J's complaint was forwarded to Chief Superintendent K on 17 April 2008.

The report was date-stamped by Tayside Police's Professional Standards Department on 23 April 2008. A note headed "Superintendent L" was appended to this report, stating that, given the inference of assault and neglect of duty, it would be appropriate to consider appointing an investigating officer.

On 24 April 2008, Tayside Police sent to the Area Procurator Fiscal intimation of the complainer's complaint about the police.

The Area Procurator Fiscal responded to the Deputy Chief Constable on 30 April 2008, stating that it was:

"...not an allegation from which it may be reasonably inferred that a Police Officer has committed a criminal offence and I do not intend to take any action in this matter. I am content for this to be dealt with as an internal matter."

There was a note appended to this letter from the Area Procurator Fiscal to discuss the issue of misconduct.

On 14 May 2008, internal communications between Superintendent L and the four officers involved confirmed that the Deputy Chief Constable had reviewed the circumstances of the complaint and decided there was no basis for any misconduct proceedings.

On the same date, Superintendent L produced an internal communication to Chief Superintendent K. In the note, Superintendent L drew Chief Superintendent K's attention to the learning point that the officers concerned should have spoken directly to Mrs B rather than accepting Mr A's response. Superintendent L concluded by asking that corrective advice be issued to the officers involved.

Tayside Police responded to the complainer on 20 May 2008. The Deputy Chief Constable stated that the alleged assault had been reported to the Area Procurator Fiscal, who had decided to take no proceedings against any of the officers. As to how the incident on 14 March 2008 was dealt with by the officers involved, the Deputy Chief Constable stated:

"...it would have been prudent for the attending officers to have spoken to [Mrs B] to establish what had occurred and whether she wished to make a formal complaint. As you are aware the officers in attendance at this incident did not do so and were wrong in their actions. I am aware that Inspector J has apologised for this directly and I have asked that the officers are given corrective advice."

On 1 June 2008 the complainer responded in a letter addressed to the Deputy Chief Constable. The complainer stated that he was disappointed that the Area Procurator

Fiscal had taken no proceedings in this matter, given that the Deputy Chief Constable had decided to refer charges against the officers.

The complainer went on to request information about what steps had been taken to ensure that such a situation did not happen again. According to the complainer, he had said from the outset that a suitable outcome would be a personal apology from the officers concerned, although he had been told on more than one occasion that this was not possible. He stated that he found it:

“...peculiar that the Deputy Chief Constable can apologise on behalf of officers but that officers themselves are unable to do so. You will be aware that crime reduction initiatives have proved that an effective way to reduce criminal behaviour is for perpetrators to face their victims. The Police Force would do well itself to consider this form of remedy as part of giving ‘corrective advice’ to which you refer in your letter and I am willing to accept this remedy to draw a line under the matter, rather than having to pursue matters further with my MSP.”

Tayside Police sent a final response to the complainer on the 10 June 2008 in which the Deputy Chief Constable stated:

“In terms of the allegation of assault, as you are aware any criminal allegations made against police officers are reported to the Area Procurator Fiscal for his consideration as to the necessity of moving to prosecution. That decision is for the Area Procurator Fiscal and not one for the Police to make. In your case a report was given to the Area Procurator fiscal and as you are aware he has decided take no proceedings in this case. I am aware that you have discussed this matter with the Area Procurator Fiscal but this decision is for him to make and not a decision that I have any influence over.

I have apologised to you in my letter and am always concerned when any member of the public sees the need to complain about any aspect of Policing in Tayside. As far as I am concerned I have taken an appropriate course of action in addressing your concerns relating to the dealing with the original incident and apologising to you in this regard.”

5. PCCS review

The complainer first made contact with the Commissioner’s office by telephone on 29 May 2008. The complainer was thereafter asked to complete and sign an application form which was received by the Commissioner’s office on 6 June 2008. On the same date, the Commissioner’s office asked Tayside Police provide its case papers. These were received on 13 June 2008.

6. Consideration

Complaint 1: that officers did not deal with the incident appropriately

This complaint was clearly recorded on the CAP form which stated that the complainer believed the police had failed to deal with the matter correctly and that the male involved at the incident was “simply allowed away”.

The complainer’s dissatisfaction stems from his belief that the officers had failed to gather all the available information, were therefore unaware of the true nature of the incident and, as a result, did not take appropriate action against Mr C. The complainer’s statement contains the following passage:

“...they did not know all the facts. They were only aware he had tried to open the rear door at the taxi rank...they had obviously arrived at the conclusion that he had simply tried to open the door, mistaking the car for a taxi as opposed to [Mrs B] sitting at the traffic lights 50 yards up the street and him having opened the door at that point.”

Although the complainer’s position in his statement was that the officers failed to gather “all the information”, it appears to the Commissioner that his complaint is essentially that the officers failed to speak to Mrs B. Only Mrs B could have provided a direct account of Mr C having tried to enter her car on an earlier occasion; only Mrs B could have given a direct account of any fear or alarm she had experienced as a result of Mr C’s alleged actions. It does not appear that the complainer was himself a direct witness to the alleged crime. Indeed, the Commissioner notes from their statements that Constables F and G explained this to the complainer at the scene of the incident. Mr A could have given the police information about Mrs B’s telephone call to him, but it was Mrs B’s account that was crucial to a full understanding by the officers of the circumstances of the incident.

There is some uncertainty surrounding exactly what was said during the incident. The complainer questioned the fact that Mr A did not wish to make a complaint about Mr C regarding the incident. However, in both his statements Mr A confirmed that he had been asked if Mrs B wished to make a complaint and that he had said “I don’t know, I don’t think so”. The statements of the four officers at the scene differ slightly, but support the view that Mr A did not wish to pursue the matter. According to Constable D, Mr A stated that “he did not wish to make a complaint nor did [Mrs B]”; Constable E stated that Mr A “said on more than one occasion a complaint would not be made”; Constable F stated that it was explained to Mr A that “Constable D proposed warning the younger male regarding the incident [Mr C] and he appeared happy with this action”; according to Constable G, Mr A stated that Mrs B “did not want to make a complaint and she just wanted to go home”.

From the information available, although there may be some ambiguity over the wording of Mr A’s wishes, what is clear is that he and Mrs B were keen to leave the scene and made several attempts to encourage the complainer to do the same, prior to departing without him.

Following Inspector J's investigation, the Deputy Chief Constable responded to the complainer and stated that it would have been prudent for the officers to have approached Mrs B directly. He also noted that he was aware that Inspector J had apologised for this, and added that he had asked for corrective advice to be given to the officers.

The issue was brought to the attention of Tayside Police again when the complainer responded to its conclusion in respect of his complaint. In Tayside Police's final response to the complainer, the Deputy Chief Constable stated:

"In terms of corrective advice, I am of the view that they should have spoken to Mrs [B] to ensure that they had captured all the facts relating to the incident..."

It would have been helpful had Tayside Police highlighted that the complainer was not a witness to the alleged crime; however, the Deputy Chief Constable's response clearly addressed the crux of the complaint in relation to Tayside Police's handling of the incident. It is not possible to say now what action the officers might have taken had they spoken to Mrs B.

Complaint 2: that officers at the scene pushed the complainer.

In terms of section 34(3)(b) of the Act, the Commissioner's office has no power to review complaints about the police which consist of an allegation of an act which constitutes a crime. In the Commissioner's view, however, the purpose of section 34(3)(b) is to preserve the role of the Crown in considering criminal complaints about the police, and to prevent any conflict between its functions and those of the Commissioner. In the present case, the Area Procurator Fiscal did not consider that the officers' actions gave rise to a reasonable inference of criminality and therefore decided to take no proceedings. The allegation was thereafter considered by Tayside Police as potential misconduct, but the Deputy Chief Constable decided that there was no basis for proceedings against the officers.

Given that the Area Procurator Fiscal considered the allegation, and that it was thereafter treated, in effect, as a non-criminal allegation, the Commissioner considers that he has the power to review the manner in which Tayside Police dealt with this complaint. In the Commissioner's view, any other approach to section 34(3)(b) would mean that Tayside Police's handling of the complaint would not be open to independent scrutiny.

Although the Deputy Chief Constable decided that no misconduct proceedings against the officers were justified, the complainer was never informed of this decision, or the reasons for it. The conveying of such information is clearly essential if complainers are to be fully informed of the outcome of their complaints. Tayside Police should therefore provide the complainer with as much information as is necessary to properly inform him of the reasons why misconduct proceedings were not considered justified.

7. Conclusion

Complaint 1: that officers did not deal with the incident appropriately.

Tayside Police has fully investigated this complaint and, in doing so, identified a learning point and provided the complainer with a written apology. In the Commissioner's view, Tayside Police has dealt with this complaint in a reasonable and competent manner. **As such, the Commissioner does not uphold this complaint.**

Complaint 2: that officers at the scene pushed the complainer.

In the Commissioner's view, Tayside Police should have communicated to the complainer its decision not to pursue misconduct proceedings, and the reasons for that decision. **The Commissioner therefore recommends that Tayside Police give the complainer as much information as is necessary to properly inform him of the reasons why no misconduct proceedings were taken against the officers concerned. The Commissioner wishes to make clear that this recommendation is made with the sole aim of keeping complainers fully informed of the outcome of their complaints. The Commissioner expresses no view on whether misconduct proceedings were justified in the present case.**

As the issue raised by this complaint is capable of affecting the police service as a whole, the Commissioner intends to write to the Association of Chief Police Officers in Scotland (ACPOS) to highlight his views and provide guidance.

John McNeill
Police Complaints Commissioner for Scotland
October 2009