

PCCS



Police Complaints Commissioner
for Scotland

Request for complaint handling review of a complaint about

Grampian Police

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

November 2009

Case reference: PCCS/00096/PF-GP

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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 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 requested that the Commissioner review the handling of his complaint about Grampian Police. The complaint is that Grampian Police refused to renew the complainer's shotgun certificate and infringed his democratic rights.

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

According to the complainer, during 2004 to 2006 he made several complaints to Grampian Police in relation to its handling of a series of disputes between him and his former wife. He also made complaints about the Firearms and Licensing Department of Grampian Police. According to the complainer Grampian Police investigated his complaints, some of which he claims were upheld, and provided him with written responses.

The complainer states that in December 2006 he applied to the Firearms Licensing Department of Grampian Police for renewal of his shotgun certificate. According to the complainer, Mr A from Grampian Police Firearms Licensing Department, visited him at his home as part of the renewal process, checked where he stored his gun and questioned him on his reasons for keeping a gun.

According to the complainer, following this meeting, on or about 20 December 2006, he received a telephone call from Mr A informing him that his application had been approved and that a certificate had been passed to a senior officer for signing. The complainer states that Mr A issued him with a temporary certificate as the renewed certificate would not be signed until after the Christmas period.

On 9 January 2007, the Chief Constable of Grampian Police wrote to the complainer to inform him that his shotgun certificate would not be renewed. The letter states:

"I consider that your recent history of domestic unrest coupled with your constant and obsessive complaints to the Police, Procurator Fiscal Service and your elected Members of Parliament bring me to the conclusion that you cannot be permitted to possess a shotgun without danger to the public safety or the peace."

The Chief Constable's letter concluded by stating that the complainer could appeal his decision to a sheriff, in accordance with sections 28A (6) and 44 of the Firearms Act 1968.

The complainer emailed Grampian Police on 11 January 2007, seemingly in an attempt to appeal the Chief Constable's decision. In response to the complainer's email Chief Inspector B wrote to the complainer on 16 January 2007 stating that his appeal should be made to Peterhead Sheriff Court within 21 days of the complainer having received the Chief Constable's letter. According to the complainer he did not lodge an appeal with the sheriff as he was unable to afford this.

4. Internal handling

The complainer claims to have written to Grampian Police on 21 January 2007 raising his complaint and commenting on several other previous complaints he had made about the police. Grampian Police states that it has no record of having received this letter. The letter was sent again to Grampian Police on 12 May 2008 (see below).

An initial assessment of the complaint was completed by Grampian Police on 19 May 2008. The assessment categorised the complaint as a “quality of service” complaint in relation to policing policy. The complaint was recorded as follows:

“... the complainer believes that the decision not to renew his certificate was taken by either Chief Superintendent [C] or Deputy Chief Constable [E] as some sort of retribution for previously complaining about Grampian Police.”

Inspector F made enquiries into the complaint, the details of which are contained in a file note dated 2 July 2008. According to the file note, on 30 June 2008 he discussed the complainer’s case with Mr G and Mr A from the Firearms Licensing Department and examined the complainer’s previous complaints about Grampian Police. On 2 July 2008 he discussed the case with Chief Inspector H who in turn spoke to Superintendent I who had previous knowledge of the case. According to Inspector F’s file note, Superintendent I instructed that it should be reiterated to the complainer that any complaint or grievance in respect of the refusal to renew his shotgun certificate should have been made at the time to the sheriff. Grampian Police therefore did not investigate the complaint.

A final written response was sent to the complainer by Chief Inspector H on 4 July 2008. The letter concludes:

“Your letter does not provide us with any new complaint and given that any grievance for refusal to renew your shotgun licence should have been made with the Sheriff, I do not propose to take any further action in relation to this issue.”

5. PCCS review

The complainer initially wrote to the Commissioner’s office on 6 August 2007. He was then asked to complete and sign an application form, which was received on 1 October 2007. The Commissioner’s office thereafter contacted Grampian Police which said it had no record of the complainer’s complaint. Following further, extensive correspondence, on 12 May 2008 the Commissioner’s office passed to Grampian Police a copy of the complainer’s letter of complaint dated 21 January 2007.

The complainer emailed the Commissioner’s office again on 11 August 2008, stating that he had received a response from Grampian Police and wished the Commissioner to deal with his case. Grampian Police thereafter provided the Commissioner’s office with its papers, which were received on 26 August 2008.

6. Consideration

The complainer believes that the renewal of his shotgun certificate was refused in retribution for complaints he has made about Grampian Police. According to the complainer, the complaints made previously to Grampian Police have been made directly by him and also by his MP on his behalf. The complainer therefore believes that Grampian Police has not only refused the renewal of his shotgun certificate in retribution for making complaints, but that it has also infringed his democratic right to make use of his MP as a mechanism for making such complaints.

The complainer was informed by Grampian Police on two occasions of his right to appeal the Chief Constable's decision to the sheriff: the first in the Chief Constable's letter of 9 January 2007; the second in the letter sent by Inspector B on 16 January 2007. The complainer was therefore fully aware of the remedy open to him if he wished to challenge the Chief Constable's decision not to renew his shotgun certificate. As noted earlier, the complainer decided not to appeal to the sheriff, apparently because he was unemployed at the time and could not afford the fee or the services of a solicitor.

The Commissioner has no knowledge of the complainer's financial circumstances at the time, or whether he made enquiries with a solicitor to establish whether any appeal might have been funded by legal aid. The Commissioner is also not aware whether, in the absence of legal aid entitlement, the complainer considered presenting an appeal to the sheriff himself. In any event, it is clear that the only way in which the complainer could have overturned the Chief Constable's decision was through such an appeal.

In the Commissioner's view, the complainer's complaint is not about some peripheral aspect of the process by which the Chief Constable's decision was reached; rather, it is a complaint about the merits of the decision itself. He complains about the fairness of the decision which he believes was taken as retribution for him making complaints about Grampian Police. He believes that he was a responsible gun-owner and does not accept that the renewal of his shotgun certificate would have rendered him a threat to public safety. He alleges that the action taken by the Chief Constable was "punitive and unwarranted" and is indicative of arrogance on the part of Grampian Police. He also alleges that several of his previous complaints about Grampian Police were upheld and that he was assured that lessons had been learned as a result of these. The complainer also implies that the difficulties he has experienced with Grampian Police stem from his former wife having had an affair with a serving police officer.

The reason for listing these grievances is that each and every one of them would have been relevant to an appeal to the sheriff under the Firearms Act 1968. They go to the very heart of the decision made by the Chief Constable. Although the Commissioner can legitimately deal with complaints about the general process by which the Chief Constable's decision was reached (such as excessive delay in determining the complainer's application, or incivility on the part of officers involved in assessing it) he does not consider it appropriate to carry out an assessment of the merits of such decisions. Only a sheriff can carry out such an assessment,

employing all the powers at his/her disposal to hear evidence and consider the decision in full.

Accordingly, the Commissioner considers that the decision by Grampian Police not to investigate the complaint further was reasonable in the circumstances. The complainer was fully aware of how to challenge the Chief Constable's decision and did not take this opportunity. In the Commissioner's view, the only way in which the merits of such a decision can be challenged is through an appeal to the sheriff.

7. Conclusion

For the reasons given the Commissioner considers that the manner in which Grampian Police handled the complainer's complaint was reasonable. Accordingly, no further action is required of Grampian Police.

The Commissioner wishes to reiterate, however, that his decision in this case is based on the fact that the complaint relates to the merits of the Chief Constable's decision, and therefore was a matter solely for the sheriff. Had the complaint related to the decision-making process, such as delay in determining the complainer's application for renewal, the Commissioner would expect this to have been recorded and investigated by Grampian Police in accordance with its standard operating procedures for dealing with complaints.

John McNeill
Police Complaints Commissioner for Scotland
November 2009