



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/00158/PF-GP

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 requested that the Commissioner reviews the handling of his complaints about Grampian Police. His complaints are as follows:

- (1) that Grampian Police refused to investigate alleged frauds which the complainer had reported;
- (2) that despite providing Grampian Police with new information regarding his allegations of fraud, no further investigation was undertaken;
- (3) that Detective Inspector A did not confirm in writing the reasons for not investigating further; and
- (4) that Grampian Police refused to recover court papers despite being provided with sufficient evidence that they had been stolen.

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 or around 22 July 1986, the complainer was involved in an accident at work which resulted in him sustaining injuries to his back. He subsequently raised civil proceedings at Sheriff Court Z against his previous employer in connection with the incident.

During the course of these proceedings, medical evidence was gathered by both the complainer's solicitor (Solicitor B) and his former employer's solicitor (Solicitor C). Included in this medical evidence were the case notes of the general practitioner (Doctor D) whom the complainer had attended soon after the accident.

The complainer believes that, during the proceedings, Solicitor C misled the court relating to an entry which Doctor D had made in December 1986 which stated that the complainer had "fully recovered". The complainer states that this entry was not in relation to his back injury and that the court was, in effect, misled as to his physical condition at the relevant time. The complainer also believes that, during the proceedings, Solicitor C misled Doctor D by sending him a letter stating that:

"... he was no longer required to attend court as the meaning of his clinical notes had been agreed."

The sheriff found in the complainer's favour and awarded a sum to be paid to him for the loss of earnings and the pain and suffering he had incurred as a result of the accident. However, the complainer maintains that the actions of Solicitor C had a significant bearing on the level of damages he was awarded by the court.

The complainer also alleges that the court papers relating to his case were taken from the court by Solicitor B and never returned. The complainer believes this was done by Solicitor B to avoid being sued for negligence by the complainer.

At some point in 1999 the complainer reported to Grampian Police his concerns regarding what had taken place during his civil action. Detective Constable E took note of these concerns but advised the complainer that Grampian Police would not be taking any action in relation to his claims.

The complainer has since received various pieces of information under the Freedom of Information (Scotland) Act 2002 which he believes show that Solicitors B and C acted criminally. Following receipt of this information, the complainer has repeatedly asked Grampian Police to charge both solicitors with theft, fraud and perverting the course of justice. The complainer is unhappy with Grampian Police because of its refusal to do so.

4. Internal handling

The complainer has sent various letters asking that Grampian Police investigate his allegations. However, the only letter supplied to the Commissioner's office which can be classed as a complaint about the police was sent to Grampian Joint Police Board (the Board) on 12 August 2008. This letter referred to a telephone call the complainer had received from Detective Inspector A on 5 June 2008 during which he was advised that Grampian Police would not be conducting further investigation into his allegations.

The complainer's letter to the Board advised that he was not satisfied with this and that Detective Inspector A had made this decision without sight of the original correspondence from 1999. The complainer was also dissatisfied because Detective Inspector A had not sent him a letter explaining his position, as was agreed and understood during their conversation.

On 4 September 2008, the Board forwarded the complainer's letter to Grampian Police's Professional Standards Department for consideration. Upon receipt, the Professional Standards Department classified the complainer's concerns as follows:

"It is alleged by the complainer that on 05/08/2008, following a telephone conversation with the Subject Officer at FHQ [Force Headquarters] he understood he would receive a written response detailing the reasons why a Police enquiry would not be instigated and to date the Subject Officer has failed to do so."

On 17 September 2008, Detective Chief Inspector F was allocated the complaint. According to a file note dated 30 September 2008 contained within the papers supplied to the Commissioner's office, Detective Chief Inspector F understood the complaint:

"...centres on a telephone conversation between Detective Inspector [A] and [the complainer] who wished to make complaint regarding a criminal conspiracy which occurred during... and subsequent to a civil hearing involving [the complainer] and his former employers."

According to the file note, Detective Inspector A had advised the complainer that he did not consider the matter to be criminal in nature. Detective Inspector A had advised the complainer that he would confirm his findings in writing but had not in fact done so. The file note also stated that Detective Chief Inspector F had compiled a full and detailed response to the complainer. Detective Chief Inspector F also advised that he had provided Detective Inspector A with "management advice" regarding his failure to follow up in writing his telephone conversation with the complainer.

5. PCCS review

On 10 October 2008, the complainer contacted the Commissioner's office to advise that Grampian Police had concluded its investigation of his complaint and that he wished the Commissioner to conduct a review.

On 13 October 2008, Grampian Police was asked to provide the complaint case papers which were received by the Commissioner's office on 22 October 2008.

During the Commissioner's review, it became apparent that all the information relating to the complaints had not been forwarded to the Commissioner's office by Grampian Police. On 17 July and 14 August 2009, the Commissioner's office requested further information from Grampian Police. This information was received on 14 and 16 August 2009 respectively.

6. Consideration

The complaints listed in Section 1 of this report arise from the complainer's dissatisfaction with the refusal by Grampian Police to investigate two instances of alleged fraud. Accordingly, this review will concentrate on how Grampian Police dealt with these allegations of fraud and the reasonableness of its responses to the complainer. The two areas where the complainer believes that a fraud or theft has been committed relate to:

- the allegation that Solicitor C deliberately misled the court in order to reduce the amount of damages awarded to the complainer; and
- the alleged theft by Solicitor B of the papers relating to the claim in order to avoid being sued by the complainer for the allegedly negligent way in which he pursued the complainer's case.

The complainer believes that Solicitor C misled the court relating to an entry which Doctor D had made in December 1986 stating that the complainer had "fully recovered". The complainer states that this entry was not in relation to his back injury and that the court was, in effect, misled as to his physical condition at the relevant time. The complainer believes that this had a significant bearing on the level of damages he was awarded by the court for the injuries he sustained in 1986.

The Commissioner's office has obtained a copy of the sheriff's findings in the complainer's civil action. It is clear from these that the evidence showing that the complainer had fully recovered by December 1986 was taken by the court to relate to the injuries sustained to his back. It is also clear that this had an impact on the level of damages awarded by the sheriff. However, other than the sheriff's judgement, there does not appear to be any paperwork now in existence that can shed light on what was argued before the court.

According to the files supplied to the Commissioner's office, Detective Chief Inspector F considered the information supplied by the complainer. Detective Chief Inspector F reached the conclusion that Doctor D was not asked to attend personally in court, because the meaning of the term "fully recovered" had been agreed by both Solicitor B and Solicitor C before the hearing. Detective Chief Inspector F also attempted to explain to the complainer that it was open to Solicitor B to call Doctor D as a witness if he had felt there was any dispute as to what Doctor D's notes referred to. He added that any failure to do so was not a criminal matter.

In the Commissioner's view, based on the information supplied, Detective Chief Inspector F's response to the complainer was reasonable. The response demonstrates that Detective Chief Inspector F clearly understood the essence of this area of dissatisfaction, communicated why he did not believe an investigation into the allegation was merited and pointed the complainer in the proper direction through reference to the Law Society of Scotland. In the Commissioner's view, based on the evidence, this was a reasonable approach to the handling of this part of the complaint.

In relation to the second area mentioned above, the complainer believes that Solicitor B stole the papers from the court in order to avoid being sued for alleged negligence whilst acting on his behalf. Although the complainer has not explained to any great degree why he believes his solicitor was negligent, it appears that this is because of the way in which Doctor D's finding that he had "fully recovered" was presented before the court. The complainer is also unhappy that Grampian Police has refused to recover the court papers relating to his case despite being provided with evidence that they had been stolen.

The formal term for the court papers referred to by the complainer is "the process". The process comprises the documents which are lodged in court in connection with a civil case. Among other things, the process includes the summons, written motions and copies of any productions such as medical reports. The Commissioner understands that the process belongs to the court whilst the case is being heard.

The Commissioner notes that the Law Society has investigated a complaint made by the complainer regarding Solicitor B removing, and not returning, the process from the court. The Commissioner's office has been supplied with the conclusions of the Law Society which confirm that the process was indeed lost by Solicitor B. The Law Society also found that, whilst Solicitor B's actions amounted to unsatisfactory conduct, "it was not possible to hold, on the evidence submitted, that it could be proved beyond reasonable doubt that the loss of... the court process were deliberate acts."

In summary, Detective Chief Inspector F's response to the complainer concluded that there was no evidence to suggest criminality. In the Commissioner's view this was a reasonable stance for Detective Chief Inspector F to have taken. However, whilst explaining that the client files belonged to Solicitor B and that their loss or destruction was not a criminal matter, Detective Chief Inspector F's response omitted to state his position in relation to the process.

In relation to the complainer's dissatisfaction that Grampian Police has never, in effect, physically recovered the court process from Solicitor B, it is evident from the information supplied to the Commissioner's office that these papers no longer exist. In the Commissioner's view, in the absence of any evidence of criminality, other than the complainer's belief, Grampian Police was under no duty to attempt to recover such papers.

It is unfortunate that Detective Inspector A did not supply the complainer with written confirmation of the reasoning behind his decision not to investigate the complainer's repeated allegations. However, Detective Chief Inspector F's response offered Detective Inspector A's apologies for this omission and advised that Detective Inspector A had received counselling in this regard.

Other matters

It is apparent from the Commissioner's review that Grampian Police has failed to adhere to its own complaint handling procedures whilst dealing with this complaint.

The complaint handling Standard Operating Procedure (SOP) used by Grampian Police at the time the complaint was made states that, upon receipt, a Complaint About the Police form will be raised and an investigating officer appointed to look into the complaint. The SOP also provides that statements will be taken from relevant witnesses and that the investigating officer will submit a report outlining:

- the complaint made;
- evidence to support;
- evidence to contradict;
- conclusions; and
- learning points.

The files supplied to the Commissioner's office do not show that any of the above steps have been taken. The purpose of following the SOP is to achieve consistently high standards which are transparent and auditable. The Commissioner would reiterate the importance of officers charged with oversight of complaints satisfying themselves that all relevant processes have been followed. This is a learning point for Grampian Police. As noted above, however, the Commissioner considers that Detective Chief Inspector F has provided a reasonable response to the complainer regarding his complaints.

As detailed above, Grampian Police did not initially supply the Commissioner with all the papers it held in relation to these complaints. On two occasions during the course of the review, the Commissioner's office required to approach Grampian Police for additional information. The Commissioner acknowledges Grampian Police's explanation that the file containing the additional papers was initially missing and also the speed with which the problem was rectified once the matter was brought to its attention. Needless to say, however, in order that the Commissioner can carry out a thorough review, all information held by police bodies in relation to a complaint must be supplied when requested to do so.

7. Conclusion

In the Commissioner's view, whilst not adhering to its own complaint handling processes, Grampian Police has given the complainer a reasonable explanation as to why it has not conducted an investigation into his allegations of fraud. It has also apologised for Detective Inspector A's omitting to send the complainer written confirmation of his decision. Accordingly, no further action is recommended in relation to these complaints.

John McNeill
Police Complaints Commissioner for Scotland
November 2009