

Report of a Complaint Handling Review in relation to Central Scotland Joint Police Board

under section 35(1) of the Police Public Order and Criminal Justice (Scotland) Act 2006

Summary and Key Findings

On 4 August 2006, the applicant lodged a number of complaints about Central Scotland Police concerning the manner in which officers had dealt with a road traffic collision in which he was involved. During the investigation of his complaints, the applicant sent a number of letters personally addressed to the Chief Constable and Deputy Chief Constable.

The applicant thereafter made complaints to Central Scotland Joint Police Board about alleged acts and omissions by the Chief Constable and Deputy Chief Constable. A Complaints Sub - Committee was convened and the applicant's complaints were considered under the terms of the Police (Conduct) (Senior Officers) (Scotland) Regulations 1999.

The Commissioner found that all the complaints were dealt with reasonably by Central Scotland Joint Police Board.

The Commissioner identified a learning point during the course of the review. This related to the request by Central Scotland Joint Police Board that the applicant set out his complaints in such a way as to reflect the categories of misconduct set out in the Schedule to the 1999 Regulations.

The Commissioner's role

Section 35 of the Police Public Order and Criminal Justice (Scotland) Act ("the Act") gives the Commissioner the power to examine the manner in which a policing body has dealt with a "relevant" complaint, as defined in the Act.

The Commissioner is independent of the police service and performs his functions in a fair and impartial manner. Before considering a complaint, the Commissioner's office obtains all papers held by the policing body against which the complaint has been made. These papers are considered alongside information provided by the applicant. The Commissioner then assesses whether the policing body's handling of the complaint was reasonable in all the circumstances. The Commissioner will look at the entire handling process, from the initial investigation by the policing body to the final response issued to the applicant. Among the factors which the Commissioner takes into account are the following:

- whether the policing body's response to the complaint is supported by all material information available;
- whether in dealing with the complaint the policing body has adhered to all relevant policies, procedures and legal provisions;
- where the complaint has resulted in the policing body identifying measures necessary to improve its service, whether these measures are adequate and have been implemented;
- whether the policing body's response to the complaint is adequately reasoned; and
- whether the policing body has communicated with the applicant in a reasonable manner.

Background

On 3 August 2006, the applicant's van was involved in a road collision with another vehicle. Two police officers from Central Scotland Police attended at the scene and dealt with the incident. The applicant was subsequently reported to the Procurator Fiscal who raised proceedings against him. The proceedings were later abandoned.

On 4 August 2006, the applicant lodged a number of complaints about Central Scotland Police concerning the manner in which the incident had been dealt with. Following an investigation into these complaints, one of the attending officers was required to attend a misconduct hearing. The applicant was informed of the outcome of his complaints by the Deputy Chief Constable on 20 April 2007. The handling of these complaints has been reviewed separately by the Commissioner in report reference PCCS/00038/08/PF-CSP which should be read in conjunction with the present report.

During the investigation into his complaints, the applicant wrote a number of letters personally addressed to the Chief Constable and Deputy Chief Constable.

On 15 August 2007 the applicant wrote to Her Majesty's Inspectorate of Constabulary for Scotland (HMICS) detailing his dissatisfaction with the Chief Constable and Deputy Chief Constable. These complaints were in relation to both officers' involvement in the handling of his original complaints.

On 19 September 2007, the applicant's letter of complaint about the Chief Constable and Deputy Chief Constable was forwarded to Central Scotland Joint Police Board ("the Board") which deals with complaints about senior officers.

The Complaints

The applicant's letter of 15 August 2007 contained the following complaints:

- (1) that a letter sent to the applicant by the Deputy Chief Constable contained false information;
- (2) that a letter sent to the applicant by the Deputy Chief Constable did not offer an apology or proper explanation;
- (3) that letters sent to the Chief Constable and Deputy Chief Constable were ignored;
- (4) that correspondence was not acknowledged;
- (5) that the applicant's complaints were only acted upon following prompting by HMICS;
- (6) that the Deputy Chief Constable has failed to provide information and respond to a complaint;
- (7) that the Deputy Chief Constable failed to deal with a complaint;
- (8) that a letter sent to the applicant by the Deputy Chief Constable failed to provide full explanation;
- (9) that a letter sent to the applicant by the Deputy Chief Constable failed to provide full explanation;
- (10) that a letter sent to the applicant by the Deputy Chief Constable failed to provide full explanation; and
- (11) that the Deputy Chief Constable "wilfully" failed to disclose details of disciplinary and misconduct proceedings.

The Commissioner's Review

This section sets out the Commissioner's views on the manner in which the applicant's complaints were handled by the Board and the Commissioner's views on this.

Internal Handling

On receipt of the applicant's letter of 15 August 2007, the Clerk to the Board wrote to the applicant asking him to detail the specific personal actions of the Chief Constable and the Deputy Chief Constable which he believed constituted misconduct. The applicant was asked to detail these in accordance with the categories listed in the Schedule to the Police (Conduct) (Senior Officers) (Scotland) Regulations 1999 ("the Regulations").

On 11 December 2007, the applicant wrote to the Board listing four categories which he felt his complaints fell under, namely:

- suppression of complaints;
- acting towards, or treating, any person in an oppressive or improper manner;
- neglect of duty; and
- wilful or careless falsehood.

It should be noted that the applicant believed that each of his complaints fell under a number of different categories.

Upon receipt of this letter, the Clerk to the Board wrote to the applicant on 7 January 2008 advising that the matter was receiving attention. On 22 January 2008, the Clerk to the Board wrote to the applicant advising that a Complaints Sub-committee would have to convene before the allegations made by the applicant could be considered. The letter also advised the applicant that he would be informed when a date had been set. On 25 February 2008, the Board wrote to the applicant advising that a Complaints Sub-committee would convene on 27 February 2007 to consider his complaints.

The Complaints Sub-committee ("the Committee") met on 27 February 2008 as planned. At that meeting the members of the Committee were provided with papers relating to the complaints raised by the applicant, a copy of the Regulations and guidance in relation to the Board's responsibility in dealing with complaints.

The Committee considered the complaints under the four categories of misconduct listed by the applicant. The Committee had available to it all the applicant's letters of complaint about Central Scotland Police and, in particular, his letter dated 11 December 2007. The applicant had listed in that letter the complaints he believed to be about the Chief Constable and Deputy Chief Constable. A note of the Committee's discussion was prepared.

On 6 March 2008, the Clerk to the Board wrote to the applicant with the Board's determination. The letter explained that the Board had considered the applicant's complaints in terms of the four categories listed above. The letter also explained that the Committee

"... required to decide whether or not it could reasonably be inferred from your complaint that the acts or omissions complained of amounted to or may have amounted to misconduct."

In response to the complaints, the Clerk stated the following:

"Following very careful consideration, the Committee concluded that it could not reasonably be inferred that the acts or omissions referred to in your complaint amounted to personal misconduct by either of the named chief officers in terms of the Regulations. In reaching this view, the Committee acknowledged your strength of feeling with regard to the incident in which you had been involved and the manner in which you considered your complaint to have been dealt with thereafter. The Committee was of the view, however, that your complaint had been dealt with by the Deputy Chief Constable (being the chief officer in charge of that function) who had written personally to you detailing the outcome of the complaint and the actions taken by Central Scotland Police to address failings which had been identified. The Committee took cognisance of the fact that the early stages of the complaint had not been dealt with expeditiously or in accordance with the standards normally expected in such matters, but that this too was addressed by the Deputy Chief Constable who had apologised for those shortcomings and who had taken action to address them and to provide you with information, to the extent to which that information was publicly available, about the actions he had taken. The Committee accepted that you remained dissatisfied with the outcome to your complaint but did not conclude that there was misconduct on behalf of the Deputy Chief Constable in his handling of your complaint which would have justified further action in terms of the Regulations ..."

The Committee considered the matters you had raised with regard to your letters being acknowledged and, in particular, your concerns about (a) lack of acknowledgments, (b) delays in receiving acknowledgments and (c) disparities between dates you knew letters to have been submitted and dates on which they were said to have been received. While concluding that these matters did not amount to personal misconduct in terms of the

Regulations but referred more to issues of operational efficiency, the Committee nevertheless advanced the view that letters of acknowledgment should be issued promptly to anyone writing to the Police Force and that procedures for receiving and handling correspondence should be reviewed, to the extent that that has not already been done.”

The applicant responded to this letter on 26 June 2008 indicating that he considered the decision of the Committee to be “seriously wrong”. He asked for clarification of the category into which the decision fell and asked to be supplied with a list of documents.

On 14 August 2008 the Clerk to the Board provided a substantive reply to the applicant’s letter of 26 June 2008 and enclosed the documents he had requested. The Clerk answered the questions he had posed and advised that he could refer the matter to the Commissioner’s office if he was unhappy about the way that the Board had considered his complaint.

Consideration

When a complaint is made about a senior member of a police force, it is dealt with by the relevant police board or authority, in this case Central Scotland Joint Police Board. The Board comprises elected council members for the area in which Central Scotland Police has jurisdiction. The Board’s function in relation to complaints is discharged by a Complaints Sub-committee.

When a complaint is received about a senior officer, the relevant board or authority will consider whether the alleged acts or omissions fall within the definition of misconduct as set out in the Schedule to the Regulations. If the Board believes that the alleged act or omission falls within the definition of misconduct it will appoint an investigating officer who, under regulation 5 must be a Chief Constable of another Scottish police force. However, an investigating officer will not be appointed where it is decided that:

- the complaint does not contain any allegation of an act or omission of a senior officer which would, if proven, amount to misconduct on his part (regulation 5(3)(b));
- the complaint is unfounded or frivolous in nature (regulation 5(4)(a)); or
- the complaint contains allegations of acts or omissions of a senior officer which would, if proven, amount to misconduct of a minor or trivial nature only (regulation 5(4)(b)).

If the board or authority is of the opinion that the complaint does not contain sufficient information to establish whether an alleged act or omission amounts to misconduct, it can take such steps as it considers necessary under the terms of regulation 5(2)(b) to obtain further information.

The Commissioner notes that the Board convened a meeting of the Committee on 27 February 2008. The Committee had at its disposal all relevant correspondence and considered the complaints under the headings provided by the applicant.

In the final response to the applicant the Committee advised that, after careful consideration, it decided that it could not be reasonably inferred that the acts or omissions of either officer amounted to misconduct (regulation 5(3)(b)). The Commissioner notes that the Committee provided reasons for its decision and explained that the Deputy Chief Constable had dealt with the applicant’s original complaints. The Committee concluded that letters of acknowledgement should be issued promptly and that the procedures for receiving and handling correspondence should be reviewed. It did not, however, believe that these matters amounted to misconduct in terms of the Regulations.

The Commissioner will now assess each of the specific complaints brought to the Board and establish whether its handling of these was reasonable.

Complaint 1: Alleged provision of false information

The applicant is dissatisfied that, in a letter dated 24 November 2006, the Deputy Chief Constable informed him that his complaint about Central Scotland Police had been received at headquarters on 10 August 2006. The applicant states that he personally delivered this letter to headquarters by hand on 4 August 2006. The applicant believes, therefore, that the information provided to him by the Deputy Chief Constable was a “fabrication”. The applicant also detailed his dissatisfaction that his subsequent requests for clarification of this issue had been ignored and expressed his concern that “dishonest and untrue statements” had been copied to other parties.

According to the applicant’s letter to the Board of 11 December 2007 this complaint fell under the following categories of misconduct:

- suppression of complaints;
- acting towards, or treating, any person in an oppressive or improper manner;
- neglect of duty; and
- wilful or careless falsehood.

From the information provided by the Board, it is clear that the applicant’s initial complaint had been received by Central Scotland Police on 4 August 2006. In this respect, the information provided to the applicant by the Deputy Chief Constable was incorrect. However, there is no evidence that this was anything other than a simple administrative error. In addition, the Commissioner does not consider that this error had any effect on the substantive handling of the applicant’s original complaints.

For these reasons, the Commissioner considers that the Board handled this complaint in a reasonable manner. Accordingly no further action is required in this connection.

Complaint 2: The content of the Deputy Chief Constable’s response

The applicant is dissatisfied about the contents of a letter which the Deputy Chief Constable issued to him on 7 July 2007. In particular the applicant is dissatisfied that the Deputy Chief Constable offered no apology or explanation for incorrectly advising him that his original letter of complaint had been received on 10 August 2006. The applicant believed that a specific passage in the Deputy Chief Constable’s response was a “fabrication” and felt that this fell within the following categories of misconduct:

- suppression of complaints;
- acting towards, or treating, any person in an oppressive or improper manner;
- neglect of duty; and
- wilful or careless falsehood.

Having reviewed the passage to which the applicant refers, the Commissioner notes that it relates to the shortcomings which had been identified in the initial handling of his complaints. The passage is as follows:

“Your complaint was progressed and I feel that the shortcomings in the initial handling of the complaint have already been dealt with and I have offered my apology for these.”

As noted above, the Commissioner considers that the error within the Deputy Chief Constable’s letter of 24 November 2006 was an administrative one which did not affect the substantive handling of the original complaints. The Commissioner does not attach the same level of importance to this issue as the applicant and does not believe that it may amount to misconduct in terms of the Regulations.

For these reasons, the Commissioner agrees with the Board's assessment and finds that this complaint was handled in a reasonable manner. Accordingly no further action is required in this connection.

Complaint 3: Alleged ignoring of letters

The applicant claims that the Deputy Chief Constable and Chief Constable ignored letters he had sent to them on 11 December and 26 December 2006, respectively. In both letters the applicant expressed his frustration at not having received a substantive response to the complaints he had lodged in August 2006. In his letter of 26 December 2006 to the Chief Constable the applicant detailed his belief that staff of Central Scotland Police were:

“... deliberately engaged in a programme of delay, obfuscation, irksomeness, prevarication, non-transparency, non-accountability, total lack of (duty of) care and, possibly, even worse.”

The applicant felt that these matters fell under the following categories of misconduct:

- suppression of complaints;
- acting towards, or treating, any person in an oppressive or improper manner; and
- neglect of duty.

From the information provided by the Board, the Commissioner notes that the letters referred to above were acknowledged by the head of the Professional Standards Department on 12 January 2007. While these letters did not address the applicant's concerns over the way in which his complaints were being investigated, it is clear that the investigation of his complaints was still ongoing at that time.

Additionally the Commissioner notes that the Deputy Chief Constable advised the applicant by letter dated 17 January 2007 that he was not satisfied with the attempts that had been made to investigate the applicant's complaint thus far and that the matter would be investigated again by an officer from the Complaints and Conduct Department.

For these reasons, the Commissioner agrees with the Board's assessment and finds that this complaint has been handled in a reasonable manner. Accordingly no further action is required in this connection.

Complaint 4: Alleged failure to acknowledge correspondence

The applicant states that the acknowledgment of letters should be automatic and that he should not have to “threaten” a Deputy Chief Constable with complaints to HMICS and others before one is issued. The applicant also complains that the Deputy Chief Constable had failed to apologise in this connection.

The applicant clearly believes that he should receive personal responses from the Chief Constable and Deputy Chief Constable and that these officers are responsible for the complaint handling process. Whilst the Deputy Chief Constable is ultimately responsible for how complaints are dealt with, he is supported by other officers and staff in discharging this responsibility. Indeed, the investigation into the applicant's complaints was devolved to other officers in Central Scotland Police. In light of this the Commissioner does not believe it would be reasonable, or indeed practical, for a complainer to receive personal responses from Chief Constables and Deputy Chief Constables on each occasion a letter is addressed to them personally.

In the Commissioner's view, any omission to issue a personal acknowledgement in such circumstances would not, in itself, amount to possible misconduct in terms of the Regulations. In any event, as noted above the letters to which the applicant refers were acknowledged by the head of the Professional Standards Department on 12 January 2007. This letter also included an apology to the applicant.

For these reasons, the Commissioner agrees with the Board's assessment and finds that this complaint has been handled in a reasonable manner. Accordingly no further action is required in this connection.

Complaint 5: Alleged failure to act

In his letter of complaint the applicant detailed his belief that his complaints were only "acted upon" by Central Scotland Police after he had sought the intervention of HMICS on the matter.

As highlighted in report reference PCCS/00038/07/PF-CSP mistakes were clearly made in the initial handling of the applicant's original complaints. As noted in that report, Central Scotland Police has accepted responsibility for this and an apology issued to the applicant in this connection.

For these reasons, the Commissioner agrees with the Board's assessment and finds that this complaint has been handled in a reasonable manner. Accordingly no further action is required in this connection.

Complaint 6: Alleged failure to provide information or deal with complaint

The applicant explained in his letter of complaint that, despite numerous promptings, he had still not received any information about two individuals who may have witnessed the lead up to the road collision. The applicant also detailed his belief that the Deputy Chief Constable had failed to respond to his complaint about the lack of attention given to these witnesses. The applicant felt that this complaint fell under the following categories of misconduct:

- suppression of complaints;
- acting towards, or treating, any person in an oppressive or improper manner; and
- neglect of duty.

This matter is commented on by the Commissioner in his report reference PCCS/00038/07/PF-CSP (complaint 1(b)). Although the Commissioner concluded that the Deputy Chief Constable's response was deficient in failing to address this issue, he found no evidence that this occurred as a result of possible misconduct.

The Commissioner therefore agrees with the Board's assessment and finds that this complaint has been handled in a reasonable manner. Accordingly no further action is required in this connection.

Complaint 7: Alleged failure to deal with information

In his letter of complaint the applicant stated that the Deputy Chief Constable had not taken into account the fact that one of the occupants of the other vehicle was an employee of Central Scotland Police, the implication being that this may have had an influence on the attending officers' actions. He felt that this complaint fell under the following categories of misconduct:

- suppression of complaints;
- acting towards, or treating, any person in an oppressive or improper manner; and
- neglect of duty.

The Commissioner commented on this matter in his report reference PCCS/00038/07/PF-CSP (complaint 1(c)). Although the Commissioner concluded that the Deputy Chief Constable's response was deficient in failing to address this issue, again he found no evidence that this had occurred as a result of possible misconduct.

For these reasons, the Commissioner agrees with the Board's assessment and finds that this complaint has been handled in a reasonable manner. Accordingly no further action is required in this connection.

Complaint 8: Failure to provide full explanations

The applicant is dissatisfied that the Deputy Chief Constable's response of 4 April 2007 did not fully explain the failings of the Inspector originally appointed to investigate his complaints. The applicant believes that this "secrecy" is unacceptable and that the Deputy Chief Constable appears to be "oblivious to the needs of transparency and accountability". The applicant felt that this complaint fell under the following categories of misconduct:

- suppression of complaints;
- acting towards, or treating, any person in an oppressive or improper manner; and
- neglect of duty.

The Commissioner commented on this matter in report reference PCCS/00038/07/PF-CSP (complaint 2). Although the Commissioner concluded that the Deputy Chief Constable's response should have been fuller, again he found no evidence that this deficiency had occurred as a result of possible misconduct.

For these reasons, the Commissioner agrees with the Board's assessment and finds that this complaint has been handled in a reasonable manner. Accordingly, no further action is required in this connection.

Complaint 9: Failure to provide full explanation

The applicant also expressed dissatisfaction at the way in which the Deputy Chief Constable had dealt with his complaint about the officer who initially investigated his complaints. He believes that the Deputy Chief Constable's conduct was "simply and utterly dishonest and amoral" and felt that this matter fell under the following categories of misconduct:

- suppression of complaints;
- acting towards, or treating, any person in an oppressive or improper manner;
- neglect of duty; and
- wilful or careless falsehood.

Like the above complaints, the Commissioner commented on this matter in report reference PCCS/00038/07/PF-CSP (complaint 2). Again, the Commissioner found no evidence of possible misconduct on the part of the Deputy Chief Constable.

Accordingly, the Commissioner agrees with the Board's assessment and finds that this complaint has been handled in a reasonable manner. No further action is required in this connection.

Complaint 10: Failure to provide full explanation

The applicant also alleges that the Deputy Chief Constable's response of 20 April 2007 failed to disclose why the chair of the misconduct hearing had reached the conclusion that the attending officers had not been biased.

Again, this issue was commented on by the Commissioner in report reference PCCS/00038/07/PF-CSP (complaint 1(c)). Although the Commissioner concluded that a number of the Deputy Chief Constable's response was deficient in this connection, again he found no evidence that this occurred as a result of possible misconduct.

For these reasons, the Commissioner agrees with the Board's assessment and finds that this complaint has been handled in a reasonable manner. Accordingly no further action is required in this connection.

Complaint 11: Failure to disclose information

The applicant alleged that the Deputy Chief Constable's response failed to disclose the details of the disciplinary and misconduct proceedings. He also explained that the Deputy Chief Constable had failed to deal with a number of the applicant's complaints about one of the attending officers. The applicant felt that these matters fell under the following categories of misconduct:

- suppression of complaints;
- acting towards, or treating, any person in an oppressive or improper manner; and
- neglect of duty.

This is also an issue addressed by the Commissioner in report reference PCCS/00038/07/PF-CSP (complaints 1(c) and 1(d)). Although the Commissioner concluded that the Deputy Chief Constable's response was deficient in this connection, again he found no evidence that this occurred as a result of possible misconduct.

For these reasons, the Commissioner agrees with the Board's assessment and finds that this complaint has been handled in a reasonable manner. Accordingly, no further action is required in this connection.

Conclusions, Recommendations and Learning

Although the Commissioner believes that some of the applicant's original complaints were not dealt with reasonably by Central Scotland Police, he does not consider that this occurred because of possible misconduct on the part of the Chief Constable and Deputy Chief Constable. Having considered all the information made available during the course of this review, the Commissioner considers that the Board has discharged its statutory responsibility under the Regulations. Accordingly the Commissioner considers that the manner in which the applicant's complaints were dealt with was reasonable. No further action is required in this connection.

In a letter he submitted to the Commissioner's office in June 2009 the applicant highlighted that the former Deputy Chief Constable had retired in March 2008 shortly after the Board had considered the applicant's complaints. In his letter the applicant stated that the "suspicion that [the Deputy Chief Constable] was sacked is axiomatic."

In more recent correspondence with the Commissioner's office the applicant raised the possibility that the retirement of the previous Deputy Chief Constable and latterly the Chief Constable "were as a consequence of my complaints".

The applicant has not formally raised this issue as a complaint with the Central Scotland Joint Police Board. However, as the issue arguably concerns the manner in which his complaints were dealt with by the Board, the Commissioner has decided to include it in this review.

The Commissioner has established that the former Deputy Chief Constable retired in March 2008 after 32 years service with the police. The former Chief Constable joined the police in the early

1970's and served as Chief Constable of Central Scotland Police from 2000 until his retirement in late 2008. Both officers therefore retired from the police with service well in excess of that required to retire on a full pension. A representative of Central Scotland Joint Police Board has confirmed to the Commissioner that, to her knowledge, neither officers' retirement was linked to the applicant's complaints.

The Commissioner has considered the manner in which the Board dealt with the applicant's complaints as detailed in this report. There was no evidence within the papers examined to support the applicant's view that the retirement of either officer was as a consequence of his complaints. Nor has the applicant provided any such evidence. In these circumstances, based on the information provided to him, the Commissioner does not consider there to be any substance to the applicant's allegation. If the applicant has any evidence to support his position it is open to him to make a complaint to Central Scotland Joint Police Board.

Learning Point

As noted above, on receipt of the applicant's letter of complaint, the Board asked the applicant to set out his complaints by reference to the categories of misconduct listed in the Schedule to the Regulations. While on this occasion the applicant responded positively to this request, the Commissioner does not consider it appropriate that such requests are made of complainers. In the Commissioner's view, it was the Board's responsibility to classify the complaints in terms of the categories within the Schedule. It is not difficult to envisage a situation in which such a request might constitute a barrier to a complaint being dealt with by the Board. This might occur, for example, where a complainer was unable to satisfy the request due to a lack of communication skills or an inability to understand the Regulations or the categories contained within the Schedule. The Commissioner raises this issue as a learning point for the Board.

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