

[applicant's name and address]

PCCS/00251/10

14 June 2011

Dear *[applicant's representative]*

I refer to your client's application to this office and write to inform you of my decision in respect of her complaints about Tayside Police. For clarity I have explained the reasons for my decision below.

From the information provided to my office I understand that your client is a foreign national living and working in Scotland. On 25 January 2010, Tayside Police received a call from your client's neighbour alleging that your client had called her "a Scottish slag". Enquiries established evidence to corroborate the allegation and your client was thereafter cautioned and charged under section 50A(1)(b) of the Criminal Law (Consolidation) (Scotland) Act 1995. The circumstances were reported to the Procurator Fiscal who subsequently took no proceedings.

On 27 January 2010, your client wrote a letter of complaint to Tayside Police in relation to the way in which an officer had acted towards her during the enquiry. The complaint amounted to incivility. Having received an apology from Tayside Police, and confirmation that the officer in question would be spoken to, the complaint was informally resolved on 6 February 2010.

On 10 May 2010, your client, through your own office, wrote to Tayside Police complaining about the standard of investigation into her neighbour's allegations. Specifically, your client was unhappy that a formal statement was not taken from her husband during the police enquiry. It is your client's contention that her neighbour's allegation was malicious and that she (your client) was not at the scene at the material time. She claimed that this would have been established had the attending officers asked for her husband's account. Your client also informed my office that a witness could also provide support for her position that she was not at the scene at the material time.

Following receipt of the complaint, unsuccessful attempts were made by Sergeant A to informally resolve the matter. Consequently, Sergeant A advised your office by e-mail on 3 August 2010 that he would report the circumstances of the complaint to a Divisional Superintendent who would "give it due consideration before allocating it to an Inspector to make enquiry."

On 14 August 2010, the Sergeant A submitted a brief report to Superintendent B outlining the circumstances of the complaint and the action he had taken thus far.

On 1 September 2010, my office received your client's application. My office contacted Tayside Police to establish whether the complaints had been concluded. On 2 September, my office received the following response:

"I have to advise that an initial complaint regarding incivility was received on 2 February 2010 and concluded on 1 March 2010. However, a further letter was received from the [local] Citizen Advice Bureau on behalf of [your client] making further allegations, particularly of neglect of duty.

The report is with our Divisional Superintendent and as such, is not concluded..."

My office advised you of the above position and advised that she could refer the matter to us if she remained unhappy following the conclusion of Tayside Police's involvement.

On 7 October 2010, Superintendent B sent the following response to your office:

"I refer to your letter of 12 May 2010 and to your series of electronic mail communications with Sergeant A.

The matters that have been raised by [the applicant] relate to a previous incident that was concluded with an officer receiving corrective advice. The complainer was made aware of the findings by letter.

The complainer is entitled to have such matters reviewed and it may be appropriate to contact the PCCS if she feels that she wishes to do so."

Having had regard to the paperwork supplied, it is my view that Superintendent B's response to you was incorrect. The complaints raised with the police in January 2010 related to incivility, whereas the complaints raised in May related to the quality of the police investigation into the allegations made against your client. Consequently, other than Sergeant A's unsuccessful attempts at informal resolution, your client's concerns over the quality of the investigation carried out by Tayside Police have not been dealt with.

For the reason given I do not believe that your client's complaints were dealt with reasonably by Tayside Police. Accordingly, I recommend that Tayside Police now investigate the complaint made by your client on 10 May 2010.

Your client has also raised concerns with my office that, given the alleged defects in the investigation carried out by Tayside Police, the report to the Procurator Fiscal did not contain all relevant facts and could not therefore be classed as "fair". This left your client with the perception that she has been treated differently because of her nationality. I therefore also recommend that Tayside Police consider these matters during its investigation.

My involvement in this case is now at an end, although it will be open for your client to apply to my office following the conclusion of Tayside Police's involvement in her complaints.

In accordance with my office's procedures, a copy of this letter will be published, in fully anonymised form, on my office's website. This will occur on 17 June 2011.

Yours sincerely

John McNeill
Police Complaints Commissioner for Scotland