

[Applicant's name and address]

PCCS/00106/11

10 August 2011

Dear [Applicant]

I refer to your application to this office and write to provide you with my decision in your case.

Section 35(1) of the Police Public Order and Criminal Justice (Scotland) Act 2006 allows the Commissioner to examine the manner in which a "relevant complaint" about the police has been dealt with by the police body concerned. According to section 34(1), a "relevant complaint" is a complaint made by any of the persons noted in section 34(6). This section provides that the person making the complaint must be a "member of the public" or someone acting on their behalf.

There is no doubt that many of the matters raised by you are written statements expressing dissatisfaction about acts or omissions by persons serving within the police. However, I must be satisfied that in making your complaints, you are a "member of the public". I have reached the conclusion that you do not fall within this category.

Your complaints concern the actions of officers and staff at the Scottish Police College which have come to your attention as a result of you occupying a professional role there. Your complaints could only have arisen from you occupying a position at the college and could not have been made by a "member of the public", applying the common understanding of that term. A member of the public would not have encountered the situations which gave rise to your complaints. Your complaints were made as a member of staff at the college.

I also do not consider that in making your complaints you were acting on behalf of a member of the public. In my view, that term was intended to apply to solicitors or other persons representing a member of the public. At the very least it requires the member of the public concerned to be identified and to have given his/her authority for the representative to act on his/her behalf. As I understand matters, neither of these factors applies to your case.

In your application, you state that Fife Constabulary has failed accurately to record your complaints with particular reference to homophobic/racial issues. Where the criterion that a complainer must be a "member of the public" is not met, your concerns would not be categorised as "relevant complaints" for recording purposes. I understand that you feel strongly about the incidents that

gave rise to your complaints and would suggest if you wish to pursue these matters, it would be more appropriate to do so through the grievance procedures at the college.

You do, however, raise one complaint in which I consider the “member of the public” criterion to be met, namely:

- that the response of “no comment” was recorded as “no reply” by officers of Fife Constabulary during the caution and charge procedure.

The reason I have taken this view is that this complaint was made in your capacity as a suspect under investigation by Fife Constabulary. Your status as a suspect was not in any way dependent upon your position as a police officer and member of staff at the college.

I therefore believe that this complaint should have been recorded by Fife Constabulary and I have recommended that this now be done. Nevertheless, I am satisfied that this issue was addressed by the Deputy Chief Constable in his letter to you dated 2 March 2011. I agree with his opinion that there has been a reasonable interpretation of the words used and have nothing further to add to what you have already been advised in this connection.

I also note from your application that you believe that Fife Constabulary carried out insufficient investigation into your criminal allegations prior to submitting the case to the Area Procurator Fiscal (APF). In other words, your complaints in this connection concern the manner in which criminal complaints have been dealt with by the police. My office deals solely with the way in which non-criminal complaints are dealt with. Any concerns you have regarding the way in which criminal complaints have been dealt with should be directed to the Crown Office and Procurator Fiscal Service at the address given below:

COPFS
25 Chambers Street
Edinburgh
EH1 1LA

In accordance with my normal practice, a copy of this letter will be published, in anonymised form, on my office’s website. This will occur on 15 August 2011.

My involvement in your complaints is now at an end.

Yours sincerely

John McNeill
Police Complaints Commissioner for Scotland