

learningpoint

Learning Point summarises those complaint handling reviews produced by the PIRC in which opportunities for learning for Police Scotland and other policing bodies in Scotland have been identified. Although reviews are generally published, Learning Point brings together key decisions to allow policing bodies within Scotland improve their practices in relation to the handling of complaints.

This edition of Learning Point covers reviews issued between April 2014 and March 2015. It is not intended to be an exhaustive account of all the decisions made during this period. Rather, the focus is upon principles which have wider application than the individual case.

It is intended that future editions of Learning Point will be issued quarterly in June, September, December and March to allow emerging issues to be identified and addressed quickly.

Issue 10: April 2015

pirc

Police Investigations &
Review Commissioner

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Responses to complaints

One of the most common findings in reviews is that the police response to the complaint is not of the required standard. Many of the shortcomings identified could be easily avoided by greater adherence to the relevant provision of the PIRC's statutory guidance¹.

The need to reflect the available evidence

The PIRC has dealt with numerous cases recently in which the police response to the complaint does not reflect the evidence obtained during the complaint investigation. In the majority of these cases, the response fails to accurately reflect the terms of operational statements given by officers; in other cases, the statements of civilian witnesses have been misrepresented.

In PIRC/290/13, the complainer was informed that the officer subject to complaint had denied any wrongdoing, when the officer concerned had not actually addressed the complaint within his statement. Similarly, in PIRC/334/13 Police Scotland responded to a complaint of incivility by

stating that the officers concerned had strongly refuted that they were abrupt towards the complainer. The PIRC found, however, that neither officer had specifically addressed the complaint in their respective statements.

The complainer in PIRC/533/13 alleged that officers had done nothing to stop members of the public using mobile telephones to record his interaction with the officers in relation to an offence. In its response to the complaint, Police Scotland informed the applicant that, according to the officers, they had not witnessed anyone taking footage of the incident. In fact, only one officer had stated this: the other two officers did not address the complaint in their statements.

The same issue arose in PIRC/668/13, in which the complainer alleged that excessive force was used during a "strip search". In its response, Police Scotland stated that all the Police Custody and Security Officers (PCSOs) involved in the search had denied that excessive force was used. In terms of their statements, however, of the three PCSOs involved, only one had denied the allegation. Another could not recall the specific details of the complainer's time in

¹ See paragraph 269 of the guidance which lists the features of an effective response.

“ There are several other cases in which the police response has not accurately reflected the available evidence. The issue itself has been highlighted in a number of previous editions of Learning Point and it is essential that policing bodies, particularly Police Scotland, address this aspect of their complaint handling. ”

custody, whereas the third PCSO was unable to recall the incident at all.

In PIRC/508/13, the complainer alleged that an officer had been uncivil towards her and members of her family. In its response, Police Scotland informed the complainer that the officer concerned had denied the allegation and was supported in this by his two colleagues. It was explained to the complainer that while her allegation was supported by her daughter, the complaint could not be upheld. The PIRC found that in fact the officer's denial of the allegation was supported by only one of the officers as the third officer had not been present during the incident. In addition, no statement had been obtained from the complainer's husband who was also present.

PIRC/354/13 is an example of a response in which the evidence obtained from a civilian witness was misrepresented. The complainer alleged that she had not been given the opportunity to explain her position regarding an alleged offence prior to her detention. Police Scotland informed the complainer that her partner Mr A provided no support for the complaint, when in fact Mr A was broadly supportive of

the complainer's position in his statement.

There are several other cases in which the police response has not accurately reflected the available evidence². The issue itself has been highlighted in a number of previous editions of Learning Point and it is essential that policing bodies, particularly Police Scotland, address this aspect of their complaint handling.

The need to address the specific allegation

The PIRC has found that in many cases the police response does not address the specific allegation made by the complainer. In PIRC/430/13, for example, the complainer alleged that during the interview of his 15 year old daughter, an officer threatened to “withhold” charges against her until she was 16 years of age so that they would appear on her “adult record”. The officers present at the interview did not address the complaint in their operational statements and, no doubt as a result of this, the response to the complaint consisted mainly of a summary of the procedures which apply in respect of

² See e.g. PIRC/372/13; PIRC/471/13; PIRC/549/13; PIRC/519/13; PIRC/676/13; PIRC/290/13 and PIRC/330/13

“ The PIRC has recently agreed with Police Scotland a practice whereby complaints which are to be investigated are explicitly agreed by asking complainers to sign a list of these in a pro-forma document. It is anticipated that the adoption of this practice will result in all complaints being recorded and addressed by the police in the first instance. ”

offences committed by persons under and over the age of 16. No attempt was made to address whether, regardless of the applicable procedures, the officers had made the alleged threat³.

The PIRC has also found that some complaints are not addressed at all in the police response⁴. This invariably leads to recommendations by the PIRC to record and address the complaints. The PIRC has recently agreed with Police Scotland a practice whereby complaints which are to be investigated are explicitly agreed by asking complainers to sign a list of these in a pro-forma document. It is anticipated that the adoption of this practice will result in all complaints being recorded and addressed by the police in the first instance.

Properly reasoned responses

In PIRC/374/14, the complainer alleged that the police took too long to investigate allegations that he and his partner were being stalked and harassed by an

individual. In its response to the complaint, Police Scotland explained that the investigation was complex, that updates on progress had been given, and that the complainer had provided additional information throughout which had added to the length of time taken to complete the investigation.

The PIRC highlighted in the review that the investigation had taken 15 months to complete and that no explanation had been given by Police Scotland as to whether the nature of the additional information supplied by the complainer warranted the delay. The PIRC recommended that Police Scotland assess whether the rationale given for the length of the enquiry was reasonable in the circumstances. As the officer who investigated the complaint had some supervisory involvement in the enquiry into the complainer's criminal allegation, the PIRC also recommended that the matter be considered by an officer with no previous involvement in that matter.

Police Scotland's response to the recommendation clearly remedied the deficiencies identified by the PIRC in the review. Detailed enquiries were made by an officer with

³ Other examples of this include PIRC/403/13 (BTP); PIRC/022/14; and PIRC/025/14

⁴ See e.g. PIRC/ 533/13; PIRC/ 495/13; PIRC/356/13; PIRC/471/13; PIRC/435/13; PIRC/381/13; PIRC/067/14; PIRC/072/14; PIRC/381/14; PIRC/022/14; and PIRC/025/14

“ Police Scotland’s response to the recommendation clearly remedied the deficiencies identified by the PIRC in the review. Detailed enquiries were made by an officer with no previous involvement in the criminal case, who found that unacceptable delays had occurred during the investigation of the alleged offence. The case is a good example of Police Scotland taking positive action in relation to a PIRC recommendation and of the learning that can be derived from complaints. ”

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Police Powers

The complainer in PIRC/293/13 has a sensory disorder related to his having Asperger’s Syndrome. This manifests itself in the complainer not wearing shoes. The complaints arose from an incident in which the complainer visited a bar and was asked to leave due to his not wearing shoes. The complainer attempted to explain his condition to staff within the bar but, following his refusal to leave the premises, the police were contacted. One of the officers noted on his arrival that there was no sign of any disturbance. The complainer handed the officer a tablet computer which contained a prepared statement about his condition, and his reasons for not wearing shoes. However, after refusing the police request to leave the premises, the complainer was arrested for a contravention

of section 116 of the Licensing (Scotland) Act 2005. He was handcuffed and taken to a police station where he was held until the early hours of the following morning. He subsequently complained that, as no allegation of disorderly conduct had been made against him, there was no basis for his arrest under section 116. Police Scotland concluded that the officers had acted within their powers under section 116(2) and therefore did not uphold the complaint.

The PIRC found that the police had misinterpreted section 116(2) both at the time of the complainer’s arrest and during the handling of the subsequent complaint. Section 116(2) makes it an offence for a person to refuse or fail to leave licensed premises after the end of the period of licensed hours. As the applicant’s arrest took place in the afternoon, well within the period of licensed hours, section 116(2) did not apply. Section 116(1) provides that a person commits an offence if he behaves in a disorderly manner and refuses or fails to leave a licensed premises on being asked to do so. However, as there was no evidence that the complainer had behaved in a disorderly manner, section 116(1) also

“ The High Court found that police officers had no implied power under section 14 to enter private property in order to effect a detention. The court therefore concluded that the officers had acted unlawfully in entering the appellant’s home, and that she had been entitled to prevent them from doing so. ”

did not provide a basis for the complainer’s arrest. The PIRC recommended that the complainer be provided with an apology for his arrest and subsequent time in custody.

In PIRC/430/13, the complainer was arrested for obstructing officers in the execution of their duty, namely the detention of the complainer’s daughter under section 14 of the Criminal Procedure (Scotland) Act 1995. The complainer had sought to prevent the officers entering his home to do so. The issue raised by one of the complaints was whether the complainer’s arrest for obstruction was appropriate. In particular, at the point at which the complainer tried to prevent the officers entering his home his daughter had not yet been detained, and there was accordingly a question about whether the officers were acting in the execution of their duties at that time.

The PIRC noted that at the complainer’s subsequent trial the sheriff had found that his daughter had not been legally detained. The PIRC also took into account the High Court’s decision in *Gillies v Ralph* (2008 SCCR 887) in which an appellant was acquitted in circumstances very similar to those of the complainer’s case.

The appellant in *Gillies* had been convicted of obstructing police officers in their attempt to enter her home to detain her partner. The High Court found that police officers had no implied power under section 14 to enter private property in order to effect a detention. The court therefore concluded that the officers had acted unlawfully in entering the appellant’s home, and that she had been entitled to prevent them from doing so.

The PIRC recommended that Police Scotland consider the sheriff’s findings at the complainer’s trial and issue a further response. The PIRC subsequently liaised with Police Scotland regarding the decision in *Gillies* and highlighted its similarity to the circumstances of the complainer’s case.

In PIRC/202/14, the complainer’s allegation was effectively one of wrongful arrest for an alleged contravention of section 38 of the Criminal Justice and Licensing (Scotland) Act 2010. In its response to the complaint, Police Scotland confirmed that the complainer had been arrested but stated that as the matter had been reported to the Procurator Fiscal, the matter could not be commented upon further.

“ In its findings, the PIRC referred to the Scottish Investigators’ Guide to Serious Sexual Offences, which provided that officers “should discuss with the victim and the SIO who can be present at the interview”... The PIRC recommended that Police Scotland reconsider the complaint, taking into account the terms of the Guide and the content of its website. ”

The PIRC explained in the review that in order to arrest a suspect there generally required to be corroborated evidence that an offence had been committed and also that the suspect was responsible for this. As there appeared to be only one source of evidence against the complainer, the PIRC recommended that Police Scotland explain to the complainer whether there was considered to be sufficient evidence to justify his arrest.

In responding to the recommendation, Police Scotland clearly identified the issue which the PIRC had highlighted in the review. A further response was issued to the complainer explaining that the complaint was upheld on the basis that there was insufficient evidence to justify his arrest. The case is a further example of positive action being taken in response to a PIRC recommendation.

Interviewing victims of sexual offences

PIRC/221/14 concerned a victim of an alleged rape and sexual assault who complained that she was not told by the police she could have someone present when being interviewed about her

allegations. Police Scotland did not uphold the complaint on the basis that the complainer had not asked for anyone to be present during the noting of her statement.

The PIRC did not consider that the complainer’s allegation had been properly addressed. In its findings, the PIRC referred to the Scottish Investigators’ Guide to Serious Sexual Offences, which provided that officers “should discuss with the victim and the SIO who can be present at the interview”. In addition, Police Scotland’s website states that a victim of sexual crime may have a friend, relative or counsellor present when providing a statement. It was considered by the PIRC that alleged victims should be informed of this prior to the police interview. The PIRC recommended that Police Scotland reconsider the complaint, taking into account the terms of the Guide and the content of its website.

Custody complaints

Mental health

In PIRC/330/13, the complainer’s son Mr A, who has Asperger’s Syndrome, was detained under section 14 on suspicion of a serious offence. Both officers involved in the detention were

“ The PIRC also concluded that, while the provision of an Appropriate Adult was an important factor, other issues should have been considered during the handling of the complaint. In particular, the police should have established whether the officers gave proper consideration to Mr A’s mental health and whether any steps might have been taken to deal with the difficulties that had transpired. ”

aware of Mr A’s condition prior to detaining him but had limited information as to how it affected his behaviour. The officers felt that they could employ their communication skills to overcome any issues that might arise. Following the detention, a struggle occurred between Mr A and the officers. Mr A was thereafter found to have a fractured ankle.

Mr A was subsequently acquitted of resisting arrest, the sheriff commenting that the officers had not explained how Mr A had sustained the injury. The sheriff also remarked that the police would want to learn lessons about how to deal with people with Asperger’s Syndrome.

One of the complainer’s allegations was that Mr A should have been treated by the officers as a vulnerable adult on account of his condition. In the response to the complaint, the police focussed on whether an Appropriate Adult should have been appointed during Mr A’s time in custody. The PIRC found that, in terms of the relevant standard operating procedure (SOP), the police were justified in not appointing an Appropriate Adult when Mr A was first detained. However, contrary to the SOP, Mr A’s rights under section 14 had not

been repeated to him at the police station in the presence of an Appropriate Adult. Likewise, an Appropriate Adult should also have been present when Mr A was subject to the charge bar procedure.

The PIRC also concluded that, while the provision of an Appropriate Adult was an important factor, other issues should have been considered during the handling of the complaint. In particular, the police should have established whether the officers gave proper consideration to Mr A’s mental health and whether any steps might have been taken to deal with the difficulties that had transpired. It was considered that such an approach would have given due weight to the sheriff’s comments at Mr A’s trial.

The PIRC issued a reconsideration direction instructing the police to reassess the circumstances of Mr A’s detention and arrest and to consider whether the officers gave proper consideration to his mental health.

Medical treatment in custody

In PIRC/655/13, the complainer was stopped by officers on the basis that he matched the description of a

“ The PIRC also noted the terms of the relevant SOP which states that “if there is the slightest reason to believe” that a person in custody is suffering from illness or injury, the custody supervisor is to discuss this with a healthcare professional. According to the relevant SOP, this applies even though the person has not complained of his/her condition. ”

man who had been acting suspiciously on private property. The applicant was placed in handcuffs and his bag found to contain several hand tools. For “informal identification purposes”, a witness was brought to the scene to view the applicant holding the bag. During this time, the complainer’s jacket was placed over his handcuffs so that they could not be seen. According to the complainer, he informed officers that he was having difficulty holding the bag while handcuffed. The complainer was subsequently found to have a fractured right wrist, but medical evidence suggested that this was unlikely to have been sustained by his holding the bag while handcuffed.

One of the complainer’s allegations was that his requests to see a doctor while in custody were initially ignored, despite his being in obvious pain. The complainer had not disclosed any injury on his arrival at the police station; however, some time later he informed a custody sergeant that he had a sore wrist which he said had been caused by carrying a heavy bag while handcuffed. The sergeant did not consider at this time that the complainer was in need of immediate medical attention; however, a doctor was subsequently

contacted after the complainer’s wrist became swollen. Police Scotland did not uphold the complaint.

The PIRC found that although the complainer had not disclosed any injuries on his arrival at the station, and CCTV footage showed him signing paperwork with his right hand, the footage also showed him apparently expressing concern about his wrist to the officers who had detained him. The PIRC also noted the terms of the relevant SOP which states that “if there is the slightest reason to believe” that a person in custody is suffering from illness or injury, the custody supervisor is to discuss this with a healthcare professional. According to the relevant SOP, this applies even though the person has not complained of his/her condition.

The PIRC recommended that Police Scotland assess whether the decision by the custody sergeant not to contact a healthcare professional when first notified of the complainer’s sore wrist was consistent with the SOP; and also whether the officers involved in the complainer’s detention should have notified custody staff of the concerns which the complainer had expressed to them regarding his wrist.

“ The PIRC has dealt with a number of cases recently in which officers have not addressed complaints in their statements and no further opportunity to do so has been provided.

In order to allow officers to address complaints effectively, it is clearly important that they are notified of the specific allegation made by the complainer. ”

A similar issue arose in PIRC/194/14 in which the complainer had informed a custody sergeant that he suffered from tablet-controlled diabetes. The complainer subsequently alleged that a request he made for his medication was not treated with appropriate urgency. In its response to the complaint, Police Scotland stated that at no time had the complainer sought medical assistance and that custody staff had acted in accordance with practice and procedure.

The PIRC highlighted the relevant part of the SOP (see above) as well as other passages which relate specifically to custodies who suffer from diabetes. These indicated that a healthcare professional should have been contacted after the complainer informed the sergeant that he suffered from the condition. The PIRC considered that this undermined Police Scotland's finding that custody staff had acted in accordance with procedure. The PIRC recommended that Police Scotland reassess the complaint taking into account the relevant passages of the SOP⁵.

⁵ See also e.g. PIRC/536/13 and PIRC/309/14

Inadequate enquiries into complaints

The content of operational statements

As noted earlier, officers who are subject to complaints often do not address these in their operational statements. It is acknowledged that officers are under no obligation to respond to complaints; however, it is important that they are made aware of the possible consequences of not doing so (i.e. that the complaint may be upheld on the available evidence). Where officers do not address complaints, the PIRC expects enquiry officers to provide them with a further opportunity, and to note any refusal to do so.

The PIRC has dealt with a number of cases recently in which officers have not addressed complaints in their statements and no further opportunity to do so has been provided⁶.

In order to allow officers to address complaints effectively, it is clearly important that they are notified of the specific allegation made by the complainer⁷.

⁶ E.g. PIRC/340/13; PIRC/354/13; PIRC/435/13; PIRC/330/13

⁷ See PIRC/334/13 in which the officers were informed of the

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Failure to obtain accounts from non-police witnesses

In PIRC/330/13, the complainer alleged that her son Mr A had not resisted arrest as claimed by two officers. Police Scotland did not uphold the complaint on the basis of the officers' accounts that Mr A had struggled violently with them. Mr A's position that he had not resisted arrest was supported by the complainer; however, the police had not made enquiries with Mr A's father, who was also present during the incident, as to whether Mr A had resisted arrest. The PIRC considered that such enquiries were essential to the proper determination of the complaint. A recommendation was therefore made to obtain an account from the father and to issue a further response to the complaint based on the evidence as a whole⁸.

The submission of near-identical operational statements

The PIRC continues to deal with cases in which officers have submitted near-identical operational statements as

part of a complaints investigation⁹. In PIRC/545/13, the police appeared to have considered the complainer to be a credible witness, but the complaint was not upheld on the basis of the accounts submitted by the officers involved in the incident. Those accounts contained a number of paragraphs which were identical, suggesting that a degree of co-ordination had taken place between the officers when preparing their statements. The PIRC commented that were civilian witnesses to adopt such a practice it would raise questions over their reliability and credibility. In the PIRC's view, such concerns apply equally to police officers who adopt such a practice.

The PIRC expects that whenever this practice is identified during the handling of a complaint, the officers concerned are requested to submit fresh operational statements. Officers should be reminded that such statements must represent their own account and must not be copied from those submitted by colleagues¹⁰.

complaint of incivility but were not told of the specific nature of the allegation.

⁸ See also e.g. PIRC/659/13 and PIRC/015/14 in which similar issues were raised.

⁹ This issue was first highlighted in Learning Point in January 2012

¹⁰ A further example of this is PIRC/015/14

The standard of proof in determining complaints

In PIRC/545/13, the complainer alleged that an officer had spoken to her in a disrespectful manner following her being stopped for an alleged road traffic offence. In its response to the complaint, Police Scotland advised that both officers involved clearly recalled the conversation, and that no evidence had been found to corroborate the complainer's allegation.

the complaint appeared to consider her to be a credible witness.

A similar issue arose in PIRC/198/14 in which the police had received a call to attend an incident involving an intoxicated male harassing members of the public. On arrival at the locus, the officers saw the complainer (who is autistic) and believed that he matched the description of the suspect. It transpired that the complainer was not the male in question. The complainer subsequently alleged that one of the officers had used excessive force by grabbing him by the arms and pushing him against a wall. In its response to the complaint, Police Scotland referred to the evidence in support of the allegation (the accounts given by the applicant, his mother and the applicant's care worker) and the officers' denial of this. The complaint was not upheld on the basis that there were "two conflicting versions of events" and no independent evidence.

It was unclear to the PIRC whether the appropriate standard of proof had been applied in determining the complaint. The police had based the decision not to uphold the complaint on the fact that there were two

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The PIRC found that the response to the complaint was not supported by the available evidence in that one of the officers had stated that he had no recollection of the conversation with the complainer. The PIRC also highlighted that in order for a complaint to be upheld on the balance of probabilities it is not necessary that a complainer's account be corroborated: the test is whether, based on all the available evidence, the complainer's account is more probable than any opposing account. In the present case, it was unclear why the account given by the complainer was considered not to be more probable than that given by the officer concerned, particularly when the officer who investigated

“ The PIRC found that a sufficient explanation had not been provided as to why the complainer’s account, supported by his mother and care worker, was not preferred, on the balance of probabilities, over those of the officers. It was therefore recommended that Police Scotland reassess the complaint in terms of the available evidence. ”

conflicting accounts. The PIRC highlighted, however, that there are frequently conflicting accounts in relation to complaints and in those circumstances (as stated in Police Scotland’s complaints SOP) a judgement requires to be made as to whether one account is more probable than the other. Such a judgment will involve an assessment of the credibility and reliability of witnesses, as well as the extent of support for the respective positions.

The PIRC found that a sufficient explanation had not been provided as to why the complainer’s account, supported by his mother and care worker, was not preferred, on the balance of probabilities, over those of the officers. It was therefore recommended that Police Scotland reassess the complaint in terms of the available evidence¹¹.

In PIRC/472/13, the complainer alleged that an officer had made inappropriate comments following his attendance at an incident in which the complainer was allegedly assaulted. In its response, Police Scotland upheld the complaint on the basis that

both the complainer and her partner alleged that the comments were made, whereas the officer concerned did not recall making them. Police Scotland also explained that its decision in relation to the complaint was made on the balance of probability that the comment was more likely than not to have been made. The PIRC found that Police Scotland’s response accurately summarised the evidence, was well-reasoned and that the standard of proof had been applied correctly.

Recording of complaints

The PIRC has noted in a number of cases that separate allegations made by complainers have been recorded by Police Scotland as a single allegation¹². The approach taken by the PIRC is that where an allegation is capable of being upheld or not upheld independently of others, it is necessary to record this as a separate allegation. This helps to ensure that all allegations are accurately recorded.

Conflicts of interest

In PIRC/373/14, the complainer had made allegations about officers who

¹¹ Similar issues were raised in PIRC/218/14 and PIRC/676/13

¹² See e.g. PIRC/634/13

“ The PIRC concluded that the approach taken by Police Scotland to this issue was too narrow and that what should have been considered was whether any connections (past or present) between the Chief Inspector and the officers subject to complaint were sufficient, on an objective view, to raise doubts about his impartiality. ”

were serving, or who had recently served, within a local professional standards department of Police Scotland. The complainer stated that due to the “obvious conflict of interest” the allegations should not be dealt with by that department.

In its response, Police Scotland stated that, as none of the complainer’s allegations related to officers currently working within the department, there was nothing inappropriate in these being dealt with under the direction of a Chief Inspector within that department.

The PIRC concluded that the approach taken by Police Scotland to this issue was too narrow and that what should have been considered was whether any connections (past or present) between the Chief Inspector and the officers subject to complaint were sufficient, on an objective view, to raise doubts about his impartiality. This reflects the terms of paragraph 32 of the PIRC’s statutory guidance.

If you have any feedback on learningpoint please email kirsty.gordon@pirc.gsi.gov.uk

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