

learningpoint

Learning Point summarises those complaint handling reviews 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 to develop and build on good practice.

This edition of Learning Point covers reviews issued between April and June 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.

Issue 11: September 2015

pirc

Police Investigations &
Review Commissioner

contents

- 1 Responses to complaints
- 2 Police powers
- 3 Interviewing child witnesses
- 4 The composition of identification “photo-boards”
- 5 Inadequate enquiries into complaints
- 6 Implementation of recommendations made in reviews

1 Responses to complaints

In PIRC 353/14 the complainer made a number of complaints in connection with an alleged failure by officers to deal with an incident of dangerous driving. The PIRC found that in responding to many of the complaints, Police Scotland had not adhered to its standard operating procedure on complaints about the police. In particular, the complainer was not informed whether or not his complaints were upheld, nor were specific reasons given for the findings made in the response.

PIRC/474/14 involved an allegation of excessive force arising from the police stopping the complainer on suspicion of driving under the influence of alcohol (the complainer later provided a negative breath test). The complainer alleged that he had been manhandled by an officer who then wrestled him to the ground for no apparent reason. In its response, Police Scotland informed the complainer that the officer concerned had denied the allegation and was supported by his colleague, as well as by CCTV footage of the incident. Police Scotland concluded that the complainer had offered

“active resistance” in the knowledge that he was under arrest.

However, no explanation was given as to the meaning of “active resistance” which is a term defined in Police Scotland’s standard operating procedure on the use of force. In addition, the PIRC considered that the CCTV footage cast doubt on Police Scotland’s position that the complainer had offered active resistance following his arrest. While the footage showed the complainer offering what might be described as active resistance in the early stages of the incident, it did not appear from the footage that he did so following the point at which the officers claimed he was arrested. The incident had occurred on a narrow traffic island and the footage showed that one of the officers was at one stage fully on the road for several seconds while traffic was passing close behind. The complainer’s leg was also seen to protrude onto the road briefly. The PIRC considered that Police Scotland should have considered, not only whether excessive force had been used, but also whether taking the applicant to the ground at such a location exposed the officers and the complainer to unnecessary risk. The PIRC

“ The PIRC considered that Police Scotland should have considered, not only whether excessive force had been used, but also whether taking the applicant to the ground at such a location exposed the officers and the complainer to unnecessary risk. The PIRC recommended that Police Scotland reassess the officers’ statements and the CCTV footage and obtain the opinion of a specialist in officer safety techniques as to whether the officers’ actions were appropriate in the circumstances. ”

recommended that Police Scotland reassess the officers’ statements and the CCTV footage and obtain the opinion of a specialist in officer safety techniques as to whether the officers’ actions were appropriate in the circumstances.

The PIRC also continues to deal with cases in which specific complaints are not addressed at all by the police¹. As noted in the last edition of Learning Point, 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.

2 Police powers

In PIRC 422/14, the complainer alleged that she had been unlawfully arrested following her refusal to leave licensed premises. In its response, Police Scotland informed the complainer that she was arrested because she had refused to leave the

premises, and that her complaint was therefore not upheld.

In the review, the PIRC noted the terms of section 116(1) of the Licensing (Scotland) Act 2005 which provides that a person who behaves in a disorderly manner and refuses or fails to leave the premises when asked to do so by a responsible person or a constable, commits an offence. Accordingly, in dealing with the complaint it was necessary for Police Scotland to assess not only whether the complainer refused to leave the premises, but also whether the complainer had behaved in a disorderly manner. It did not appear that Police Scotland had considered the latter issue and the PIRC therefore recommended that this be done and a further response issued to the complainer.

The complainer in PIRC 394/14 had been detained and subsequently arrested for an alleged offence under section 38 of the Criminal Justice and Licensing (Scotland) Act 2010 (threatening or abusive behaviour). Specifically, it was alleged that she had banged on a wall adjoining her neighbour’s property and played a radio at full blast, apparently because the

¹ See e.g. PIRC 460/14; PIRC 318/13; PIRC 174/14; PIRC 421/14 and PIRC 484/14.

neighbour had given evidence against her earlier court proceedings. The complainer was reported to the Procurator Fiscal, partly on the basis that, as the householder, she was deemed to be in charge of the property and therefore responsible for the alleged acts. She thereafter complained that her arrest was unlawful on the basis that she was not the only adult in the household. In its response, Police Scotland considered there to be sufficient evidence to detain the complainer and that much of the rationale for this conclusion also applied to her subsequent arrest.

In PIRC 484/14 the complainer was a police officer who was involved in a road traffic incident while off-duty. He was subsequently detained for an alleged attempt to pervert the course of justice and later complained that his detention was unlawful. In its response, Police Scotland informed the complainer that the decision to detain him was made on the advice of the Professional Standards Department (PSD), and that the detention was necessary and proportionate.

The PIRC commented that in addressing this complaint it was necessary for Police Scotland to consider whether there was sufficient evidence to justify the detention and, if so, to provide the complainer with details of this. As it was, Police Scotland's response merely outlined the nature of the alleged offence and advised that the decision was based on the advice of the PSD. Accordingly, the PIRC recommended that Police Scotland provide the complainer with a further response explaining fully the basis for the detention².

² See also PIRC 716/14 in which the PIRC recommended that Police Scotland provide the complainer with a further response explaining the precise legal basis on which entry was forced to his property. A similar recommendation was made in PIRC 489/14, another case involving forced entry to premises.

“ The PIRC highlighted that in the context of a case such as this one an arrest and charge should take place only where there is evidence from two or more sources that an offence has been committed and that the suspect is responsible for this. ”

The PIRC highlighted that in the context of a case such as this one an arrest and charge should take place only where there is evidence from two or more sources that an offence has been committed and that the suspect is responsible for this. In the PIRC's view, the complainer's status as the householder did not, in itself, corroborate that she had committed the alleged offence. The PIRC recommended that Police Scotland reassess whether there was sufficient evidence to justify the complainer's arrest and thereafter issue a further response to the complainer.

3 Interviewing child witnesses

In PIRC 448/14 the complainer was alleged to have pushed a child while working in a professional capacity. The complainer subsequently alleged that the child had not been interviewed by public protection officers in the presence of a social worker, and therefore that there had been a failure to comply with procedure. In its response, Police Scotland informed the complainer that a joint interview protocol was in place and that whether or not a child would be interviewed in this way was dependent on the circumstances.

The PIRC referred to Police Scotland's standard operating procedure on child protection which provides that the decision on whether to undertake a joint investigative interview is one taken by the police, social work and health representatives at an Inter-agency Referral Discussion (IRD). The inference from Police Scotland's response to the complaint was that it was not considered necessary for the child to be jointly interviewed, and it was therefore necessary to explain to the complainer the reasons for such a decision. It was also necessary for

Police Scotland to confirm to the complainer whether the decision not to jointly interview the child was made at an IRD, as specified in the procedures. The PIRC therefore recommended that Police Scotland provide the complainer with a further response addressing these issues.

4 The composition of identification "photo-boards"

The complainer in PIRC 490/14 had been detained in respect of a serious offence. Officers subsequently produced a photo-board containing the images of the complainer and 11 other men, from which the alleged victim picked out two images, one of whom was that of the complainer. The complainer was acquitted of the alleged offence and thereafter made a number of complaints regarding the police investigation. In particular, he alleged that the images on the photo-board were of men significantly younger than himself and of a different racial origin to his own. In its response, Police Scotland explained that there had been difficulties in obtaining stand-ins comparable to the complainer, and that this was due to the limited number

“ The inference from Police Scotland's response to the complaint was that it was not considered necessary for the child to be jointly interviewed, and it was therefore necessary to explain to the complainer the reasons for such a decision. It was also necessary for Police Scotland to confirm to the complainer whether the decision not to jointly interview the child was made at an IRD, as specified in the procedures. ”

“ In a report produced in relation to the complaints, Police Scotland noted that the complainer’s assertions in relation to this allegation were unclear. However, no attempt was made to obtain a statement from the complainer in order to fully understand the nature of her concerns. The PIRC therefore recommended that a statement be sought from the complainer and that a further response issued fully addressing her concerns. ”

available on the Criminal History System (CHS). Reference was also made to the fact that some of the stand-ins appeared similar in age to the description given by the alleged victim.

The PIRC referred to the police standard operating procedure on identification procedures which was in place at the time the photo-board was produced. This provided that witnesses be shown a photograph of the suspect along with photographs of 11 other persons who resemble the suspect. The procedures also stated that it was more important that the stand-ins resemble the suspect than any descriptions given by witnesses. The PIRC commented that in dealing with the complaint, Police Scotland should have searched the CHS retrospectively with a view to establishing why there was a limited pool of persons of similar appearance to the complainer. A recommendation was therefore made to Police Scotland to conduct such a search.

5 Inadequate enquiries into complaints

PIRC 346/14 involved allegations about a missing

person enquiry in relation to the complainer’s son, who was subsequently found dead. One of the allegations was that the report submitted by the police to the Procurator Fiscal was “potentially wrong”. In a report produced in relation to the complaints, Police Scotland noted that the complainer’s assertions in relation to this allegation were unclear. However, no attempt was made to obtain a statement from the complainer in order to fully understand the nature of her concerns. The PIRC therefore recommended that a statement be sought from the complainer and that a further response issued fully addressing her concerns³.

In PIRC 242/14, the complainer was interviewed by the police in relation to an allegation that she had committed perjury. She complained that during the interview she was subject to certain questioning purely because of her religion. In its response, Police Scotland informed the complainer that the line of questioning was relevant and pertinent on the basis that, despite her religion, she had given

³ A similar recommendation was made in PIRC 448/14 in which the complainer alleged a failure to take information into account before charging her with offences.

“ Two of the officers in attendance denied that the complainer was kicked; however, the remaining officers did not address this allegation in their statements. In addition, none of the officers addressed the allegation that the complainer was pinned to the wall. Furthermore, during the course of Police Scotland’s enquiries into the complaint no statement was obtained from the complainer’s wife who was in close proximity to the officers and the complainer during the incident. The PIRC therefore recommended that enquiries be made with the officers and the complainer’s wife and that a further response be issued to the complaint. ”

evidence under affirmation rather than by oath. The complainer thereafter informed Police Scotland that she had in fact given evidence on oath. In a subsequent response, Police Scotland advised the applicant that the question of whether she had affirmed or took the oath was irrelevant to the police enquiry.

The PIRC concluded that the complainer had given evidence on oath and that this ought to have been established during the investigation of her complaint. The PIRC also highlighted an inconsistency between Police Scotland’s initial response to the complaint (in which it said that the issue of whether the complainer affirmed or took the oath was important to the police investigation and the complainer’s interview); and its subsequent response (in which it said that the issue was irrelevant to the investigation). It was therefore recommended that Police Scotland resolve this inconsistency and also apologise to the complainer for the failure to establish during the complaint investigation that she took the oath.

The complainer in PIRC 340/14 alleged that during his detention by police officers he was kicked, and pinned

against a wall. Two of the officers in attendance denied that the complainer was kicked; however, the remaining officers did not address this allegation in their statements. In addition, none of the officers addressed the allegation that the complainer was pinned to the wall. Furthermore, during the course of Police Scotland’s enquiries into the complaint no statement was obtained from the complainer’s wife who was in close proximity to the officers and the complainer during the incident. The PIRC therefore recommended that enquiries be made with the officers and the complainer’s wife and that a further response be issued to the complaint⁴.

In PIRC 276/14 the complainer alleged that a member of police staff had been uncivil to him when he attended a police station to report a theft. In its response, Police Scotland informed the complainer that the member of staff concerned disputed the allegation and that her position was verified by an officer.

However, neither the member of staff nor the officer specifically addressed the complainer’s allegation in

⁴ See also PIRC 421/14 in which statements were not taken from two potential witnesses.

“ The PIRC concluded that Police Scotland required to explain to the applicant why the circumstances were such that it was not considered necessary for the child to be jointly interviewed. It was also considered necessary for Police Scotland to explain whether the decision not to jointly interview the child had been made at an inter-agency referral discussion (IRD), as stipulated by Police Scotland’s standard operating procedure on child protection. ”

their operational statements. The PIRC highlighted a passage in Police Scotland’s standard operating procedure on complaints about the police, which provides that officers who are witnesses to an incident must provide a full operational statement addressing the allegations. Reference was also made to a further passage within the procedures which provides that where an officer who is subject to complaint does not address the specific allegations, it is prudent for the enquiry officer to ask precise questions in order to establish their position. As it did not appear that any such enquiries had been undertaken, the PIRC recommended that Police Scotland seek further statements from the officer and member of staff concerned, specifically addressing the allegation made by the complainer.

6 Implementation of recommendations made in reviews

In PIRC/448/14 the applicant (a social worker) was charged with assaulting a child whose home she had attended in a professional capacity. One of the complaints was that the child had not been interviewed by public protection unit officers in the

presence of a social worker, and that the officers who dealt with the incident had therefore not complied with the relevant procedures. In its response to the complaint, Police Scotland informed the applicant that in terms of a joint interview protocol “not all [children] would be interviewed in this way as it would be dependent upon the circumstances reported.” The complaint was not upheld on this basis.

The PIRC concluded that Police Scotland required to explain to the applicant why the circumstances were such that it was not considered necessary for the child to be jointly interviewed. It was also considered necessary for Police Scotland to explain whether the decision not to jointly interview the child had been made at an inter-agency referral discussion (IRD), as stipulated by Police Scotland’s standard operating procedure on child protection.

In responding to the recommendation, Police Scotland considered the relevant guidance given to officers in connection with child interviews and confirmed that the standard procedure in such circumstances is for a “child concern” report to be submitted and an IRD to decide on the next stage of

“ Police Scotland concluded that the child had not been at immediate risk and that there were no formal time constraints on either officer. It was found that the child should not have been interviewed until such time as a decision was made following an IRD. Police Scotland’s response to this recommendation was thorough, objective and carefully considered. Following receipt of the response, the PIRC wrote to the Professional Standards Department commending the Chief Inspector concerned for her approach to the matter. ”

the enquiry. Police Scotland found that while an IRD had taken place, the attending officers had by that stage obtained a statement from the child. Accordingly, the decision to note the statement had been taken by the officers themselves rather than by the IRD.

Accounts were sought from the officers concerned who acknowledged that a joint interview had been preferable but that no-one within the Family Protection Unit had been available to assist at that time. The officers also stated that they felt there was a time constraint involved and that they had therefore noted a statement themselves rather than awaiting guidance.

Police Scotland concluded that the child had not been at immediate risk and that there were no formal time constraints on either officer. It was found that the child should not have been interviewed until such time as a decision was made following an IRD. Police Scotland’s response to this recommendation was thorough, objective and carefully considered. Following receipt of the response, the PIRC wrote to the Professional Standards Department commending the Chief Inspector concerned for her approach to the matter.

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

www.pirc.scotland.gov.uk