

Report of a Complaint Handling Review in relation to Police Scotland

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1. Role of the PIRC

Sections 34 and 35 of the Police, Public Order and Criminal Justice (Scotland) Act 2006 (“the Act”) provide that the Police Investigations and Review Commissioner (“the PIRC”) may examine the manner in which particular kinds of complaints are dealt with by Police Scotland and the Scottish Police Authority. Through agreements with UK police bodies operating in Scotland, the PIRC may also examine the manner in which these bodies deal with complaints. The PIRC cannot review complaints of criminal behaviour against police officers or police staff, or complaints made by persons serving, or who have served with the police, about the terms and conditions of their service.

In performing this review function, the PIRC obtains information from the police body which dealt with the complaint. This information is considered together with information provided by the person who made the complaint (“the applicant”). An assessment is then made as to whether in all the circumstances the complaint was dealt with to a reasonable standard. Among the factors taken into account when making this assessment are the following:

- whether sufficient enquiries into the complaint have been carried out by the policing body;
- 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;
- whether the policing body’s response to the complaint is adequately reasoned; and
- 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.

2. Key findings

The complaints in this case arose from how the police responded to concerns reported by members of the public about the actions of a group of political activists. Six complaints were reviewed, namely:

- 1) that, on 7 April 2016, an officer attended a meeting of activists which was taking place in a cinema;
- 2) that, on 20 May 2016, officers attended the home address of an activist, interrogated him on his intentions and instructed him not to protest at a particular location;
- 3) that, on 23 July 2016, officers attended a group of activists leafleting outside a shopping centre and requested their personal details;
- 4) that, on 28 August 2016, officers attended a group of activists leafleting outside a shopping centre, requested their personal details, threatened them with escalation if they did not provide these details, and appeared to side with a member of the public;
- 5) that, on 9 September 2016, officers denied members of the applicant's organisation the right to attend a court hearing, but granted entry to a group who held opposing political views; and
- 6) that the police action was an exaggerated response to events driven by a group of individuals holding a political ideology opposing that of the applicant's organisation, calling into question the impartiality of Police Scotland.

The review found that three of the complaints were handled to a reasonable standard and three were not. Two reconsideration directions were issued to Police Scotland and a recommendation was made.

3. Background

The applicant is a member of a political campaign group which organises events, meetings and small protests. On several occasions, members of the public reported concerns about the organisation's activities which prompted some form of action from Police Scotland.

On 7 April 2016, the group organised a meeting in a local cinema which was advertised on a social media page. This meeting was visited by Sergeant A. On 20 May 2016, Sergeant B and Inspector C attended the home address of a group member, Mr D, following receipt of information that a protest was planned for the following day. On 28 August 2016, Constables E and F attended and spoke with group members who were handing out leaflets outside a local shopping centre. On 9 September 2016, members of the group assembled to protest outside a court building, whereupon Sergeant G denied the group access to a court hearing for one of its members.

The applicant corresponded regularly with Chief Inspector H regarding her concerns and objections to the action taken by the police. On 7 September 2016, she formally submitted her complaints by email to Chief Superintendent M. Inspector J was appointed as the enquiry officer and the applicant received a response to her complaints from Chief Inspector K in a letter dated 4 January 2017.

4. The Review

Complaint 1: Attendance at cinema meeting

The applicant complained that, on 7 April 2016, an officer attended unannounced a meeting of activists which was taking place in a cinema. In her email correspondence with Chief Inspector H, the applicant asked him to clarify the legal basis for the visit, which she described as “a gross attempt to interfere with our right to protest”.

Police Handling of Complaint 1

Chief Inspector K’s response to the complaint stated that Sergeant A confirmed that he attended the meeting in order to provide the group with “any advice or assistance that [it] may require to facilitate any protest”.

The response advised that Sergeant A stated that he was met with a “relatively negative attitude” from the group and left when he established that he could not be of any help or assistance. The response stated that there was no underlying reason for the visit other than to offer support and answer any question the group might have.

The response stated that the applicant agreed that Sergeant A was professional, polite and offered no resistance to the meeting. The response acknowledged, however, that the attendance of the officer could have disrupted the overall running of the meeting.

For the above reasons, Police Scotland did not uphold the applicant’s complaint.

Consideration of Complaint 1

The crux of the applicant’s complaint is that the officer’s visit interfered with the group members’ right to protest. Under Article 11(1) of the 1950 Convention for the Protection of Human Rights and Fundamental Freedoms (“the ECHR”), everyone has the right to freedom of assembly. This includes the right to peaceful protest. Article 11 of the ECHR places a negative obligation on the police not to prevent, hinder or restrict peaceful assembly except in prescribed conditions. It also places a positive obligation on the police to safeguard the right to peaceful assembly and take reasonable measures to facilitate peaceful protests in certain circumstances.

While it does not state so explicitly, Chief Inspector K’s response suggests that Sergeant A attended the meeting in order to fulfill Police Scotland’s positive obligation in respect of facilitating any future protest. In this connection, the response is to an extent supported by the account provided by Sergeant A, who stated that he was asked to attend the meeting in order to provide any advice or assistance required.

However, it appears from the evidence available, including Sergeant A's account, that the visit was primarily motivated by concerns raised by a member of the public about the meeting, details of which that person had seemingly observed on a public social media page. Moreover, it is apparent from the evidence available, including Sergeant A's account, that he gathered information about the group during the visit which was thereafter recorded on police systems. The information recorded included an individual's personal details.

Accordingly, Chief Inspector K's assertion in the response that there was no reason for the visit other than to offer support and answer questions is not consistent with the material information available. It is therefore concluded that this complaint was not handled to a reasonable standard.

Under section 35(7) of the 2006 Act, a reconsideration direction is issued to Police Scotland. The reconsideration is not subject to the PIRC's supervision. In terms of section 37(1) of the Act, Police Scotland must now appoint a person to reconsider this complaint. The person appointed must not have had any previous involvement in the consideration of the complaint. Police Scotland must also adhere to the obligations set out in sections 38 and 40 of the Act, as appropriate.

Police Scotland should reconsider the complaint with direct reference to the observations made above. In doing so, Police Scotland should consider carefully whether the gathering of information about the group and the recording of it on police systems was compatible not only with the members' right to freedom of assembly under Article 11(1) of the ECHR, but also their right to respect for private life under Article 8(1) of the ECHR, as the storing of data relating to an individual's private life can amount to an interference within the meaning of Article 8.

Police Scotland should therefore consider whether it was: a) lawful; b) necessary to meet a legitimate aim under Articles 8(2) and 11(2) of the ECHR; and c) proportionate to the aim(s) pursued, to gather and record information about the activities of members of a group who do not appear from the evidence available to have been considered by the police to pose any threat to public safety or likely to commit any crime.

Police Scotland should then submit a report to the PIRC detailing the reconsideration of the complaint. Thereafter, Police Scotland should send a fresh response to the applicant which fully explains its findings in respect of each of the above points, and makes clear the outcome of the reconsideration.

Complaint 2: Attendance at Mr D's home

The applicant complained that, on 20 May 2016, officers attended unannounced the home of Mr D, interrogated him on his intentions and instructed him not to protest the following day at a named shopping centre. Again, the applicant perceived this to be a gross interference with the right to protest.

Police Handling of Complaint 2

Chief Inspector K's response stated that Sergeant B and Inspector C attended the home address of Mr D in order to ascertain whether information received by the police about a potential protest being led by

Mr D was correct, and to establish if there was any need for police support to accommodate the groups members' right to protest peacefully.

The response outlined that Sergeant B and Inspector C advised that Mr D was "rather amicable to the police visit" and offered information "freely and without concern". The response stated that "at no time was [Mr D] interrogated or legally required to offer any information" and stated that the attending officers "were not in a position to and did not advise him not to protest the following day".

For those reasons, Police Scotland did not uphold the applicant's complaint.

Consideration of Complaint 2

There are two aspects to the complaint: firstly; that officers attended Mr D's home address and asked him a series of questions; and, secondly, that they instructed him not to protest at the shopping centre.

(i) Attendance and questioning

From the evidence available, the officers were requested to attend Mr D's home address by Chief Inspector L following receipt of information suggesting that protests were planned for two shopping centres. As with Complaint 1, this information appears to have been reported to the police by a member of the public who viewed details of a planned demonstration on a social media page.

The response stated that the purpose of the visit was to gather information about the planned protest and ascertain whether a police presence might be required in order to accommodate the organisation's right to protest peacefully. However, while Inspector C stated that the visit was instructed by Chief Inspector L, neither Sergeant B nor Inspector C mentioned the purpose of the visit in their accounts.

The response also stated that Mr D was not interrogated or legally required to provide information by the officers, but instead provided the information freely. Although both officers recorded in their accounts that Mr D was amicable, with Sergeant B stating that Mr D "spoke away without any rancour or aggression or even annoyance at our presence", neither Sergeant B nor Inspector C addressed whether they questioned Mr D or legally required him to provide information.

Accordingly, the response in respect of this aspect of the complaint is not supported by the material information available.

(ii) Instructed not to protest

The response to this aspect of the complaint stated that the officers did not advise Mr D not to protest the following day. However, the applicant's specific concern is that Mr D was advised not to protest the following day *at the shopping centre*.

Neither Sergeant B nor Inspector C addressed in their accounts whether Mr D was advised not to protest at the shopping centre. Conversely, a Police Scotland incident report records that Mr D was visited at his home by officers at 2100hrs on 20 May 2016 and was "warned not to protest at either of

the shopping centres which he undertook not to do". This provides significant support for the applicant's allegation that officers instructed Mr D not to protest at the shopping centre.

In addition, an email from Chief Inspector H to the applicant confirmed that one of the reasons for the officers' visit to Mr D was to offer advice regarding the preferred location of such a protest. Chief Inspector H also stated that the preferred location of such a protest would be outside the shopping centre. This indicates that the location of the protest was indeed a live issue, which lends further support to the applicant's position.

For the above reasons, the response in respect of this aspect of the complaint is at odds with the material information available. It is therefore concluded that this complaint was not handled to a reasonable standard.

Under section 35(7) of the 2006 Act, a reconsideration direction is issued to Police Scotland. The reconsideration is not subject to the PIRC's supervision. In terms of section 37(1) of the Act, Police Scotland must now appoint a person to reconsider this complaint. The person appointed must not have had any previous involvement in the consideration of the complaint. Police Scotland must also adhere to the obligations set out in sections 38 and 40 of the Act, as appropriate.

In respect of aspect (i) of the complaint, Police Scotland should seek further accounts from Sergeant B and Inspector C in which they are asked to explain the reason for their attendance at Mr D's home, and address whether Mr D was questioned and told that he was legally required to provide information. This aspect of the complaint should then be reassessed on the basis of the evidence available using the balance of probabilities test.

In respect of aspect (ii) of the complaint, the police cannot impose conditions on the location of a peaceful protest that effectively negate the purpose of the protest¹. Police Scotland should give very careful consideration to whether Mr D being warned not to protest at particular locations was compatible with the rights afforded him under Article 11(1) of the ECHR and the obligation on the police not to prevent, hinder or restrict peaceful assembly except in certain prescribed circumstances. Police Scotland should consider specifically whether any interference was: a) lawful; b) necessary to meet a legitimate aim under Article 11(2) of the ECHR; and c) proportionate to the aim pursued.

Police Scotland should then submit a report to the PIRC detailing the reconsideration of the complaint. Thereafter, Police Scotland should send a fresh response to the applicant which fully explains its findings in respect of each of the above points, and makes clear the outcome of the reconsideration in relation to both aspects of the complaint.

Complaint 3: Attendance on 23 July 2016

The applicant complained that, on 23 July 2016, officers attended unannounced to a group of activists leafleting outside a shopping centre and requested the personal details of those present.

¹ ACPOS Manual of Guidance on Keeping the Peace (2010), paragraph 2.9

Police Handling of Complaint 3

Chief Inspector K's response stated that, on the date in question, after receiving a report from a member of the public who was concerned about the actions of the group, Police Scotland "quickly established that the protest was lawful, peaceful and causing no public disorder".

The response stated in general terms that officers will be dispatched when required upon assessment of a report from a member of the public. The response advised that it was normal practice for officers to request people's details, and stated that there was no legal requirement for the police to give advance notice of their attendance.

On those grounds, the complaint was not upheld.

Consideration of Complaint 3

In his enquiry into this complaint, Inspector J tried but was unable to identify the officers who might have attended on 23 July 2016. This is supported not only by the evidence available in the shape of the accounts of various officers but also the incident report relating to the call received on that date, which indicates that the control room sought available units for dispatch but no officers were free.

However, on the basis of the same evidence, it is unclear how Police Scotland was able to establish without dispatching officers that the protest was lawful, peaceful and causing no public disorder, or indeed why the control room might have sought to dispatch officers to such a protest. In this respect, Chief Inspector K's response is ambiguous.

Nonetheless, it is considered that the general terms stated in the response adequately address the crux of the complaint. This is because Police Scotland is duty bound to assess and respond to what may be genuine concerns reported by members of the public, and it would be difficult for the police to assess the veracity of a report received if officers were not to attend the relevant incident. In addition, officers are entitled to request people's details, albeit there may be no obligation for people to give them.

For the above reasons, it is concluded on balance that this complaint was handled to a reasonable standard. No further action is required of Police Scotland in this connection.

Complaint 4: Attendance on 28 August 2016

The applicant complained that, on 28 August 2016, officers attended unannounced a group of activists leafleting at a shopping centre, threatened the activists with "escalation" if their personal details were not provided, and appeared to side with a member of the public who then took photographs of the group.

Police Handling of Complaint 4

Chief Inspector K's response advised that Constables E and F asked for the protestors' personal details but their request was refused. The response stated that the officers concerned did not threaten the activists with escalation or anything similar following this refusal. The response stated that Constable E spoke with an individual who outlined concerns but was informed by the officer that the protest was peaceful and lawful.

For those reasons, Police Scotland did not uphold the complaint.

Consideration of Complaint 4

There are three aspects to this complaint: firstly, that officers attended the protest unannounced; secondly, that officers requested details from those present and threatened them with escalation if they did not comply; and, thirdly, that officers appeared to side with a member of the public who then took photographs of the group.

(i) Unannounced attendance

As reflected in Chief Inspector K's response, the police attended and spoke with the applicant and other group members when they were handing out leaflets in a public place. The officers appear to have been despatched following reports received by members of the public who were concerned about the protest, and attended to ensure that all was in order.

As stated in respect of Complaint 3, Police Scotland is duty bound to assess and respond to what may be genuine concerns reported by members of the public, and it would be difficult for the police to assess the veracity of a report received if officers were not to attend the relevant incident. Furthermore, as reflected in the response, when the officers engaged with the protestors, they ascertained that the protests were lawful and peaceful, and took no further action.

Accordingly, the response to this aspect of the complaint is adequately reasoned and supported by the material information available.

(ii) Threat of escalation

Chief Inspector K's response to this aspect of the complaint stated that the officers asked for the protestors' personal details but did not threaten them with escalation "or anything similar". However, Constable E stated in his account that he told one of the protestors that he would be "feeding back to [his] supervisor that they did not cooperate". While this is not a threat, it might explain why the protestors perceived that they were being threatened with "escalation", and should therefore have been acknowledged in the response.

Nonetheless, Sergeant N, the officer who instructed Constables E and F to obtain details from the protestors, stated in his account that he advised the officers that, if the protestors did not give their

details but were committing no offence, the officers were “powerless to require them”. This is supported by the account of Constable F who stated that, having told Sergeant N that the protestors had refused to give their details, the sergeant advised the officers to stand down. Therefore, while the balance of evidence supports that the matter was escalated to a supervisor, it does not support that the officers threatened the protestors with any form of action if they did not provide their details.

As a result, although the response to this element of the complaint contains a shortcoming, it is for the most part supported by the material information available.

(iii) Sided with member of the public

Chief Inspector K’s response to this aspect of the complaint stated that, when a member of the public expressed concerns about the protest to Constable E, the officer informed him that the protest was peaceful and lawful.

In his account, Constable E stated that a man approached him and contended that the protest was in breach of certain legislation. According to the officer, he advised the man that the legislation to which he was referring did not apply in Scotland. Constable E stated that the man accepted his explanation, pointed his mobile phone towards the protestors and then left. As there is nothing in Constable E’s account or the wider evidence available to support the contention that he sided with the member of the public, the response to this aspect of the complaint is in line with the material information available.

On the basis of the foregoing, it is concluded that this complaint was handled to a reasonable standard. Nothing further is required of Police Scotland in this respect.

Complaint 5: Denied right to attend hearing

The applicant complained that, on 9 September 2016, officers denied members of her organisation entry to a court hearing, whilst an opposing protest group was allowed to enter the court.

Police Handling of Complaint 5

Chief Inspector K’s response stated that 35 protestors were gathered outside the court building, using loudhailers, waving flags and chanting. The response explained that the decision was taken to deny the protestors access to the court building “to prevent unnecessary disruption or potential public order issues with an overarching focus on public safety”.

The response stated that no opposing campaigners were knowingly permitted access, adding that the court building is a thoroughfare and public access is generally permitted if there are no public order or safety concerns.

For those reasons, Police Scotland did not uphold the complaint.

Consideration of Complaint 5

In respect of the applicant's contention that an opposing group was allowed to enter the court, Chief Inspector K's response stated that no opposing campaigners were knowingly permitted entry. However, this matter does not appear to have been addressed in any of the accounts provided by Sergeant G, the officer in charge at the court that day, or elsewhere in the papers provided by Police Scotland. Accordingly, the basis for Chief Inspector K's position is unclear.

In relation to the members of the applicant's organisation being denied access to the court, the response indicated, in line with Sergeant G's accounts, that this was done to prevent potential disorder and on public safety grounds.

However, the response at the same time acknowledged that the protest was "lawful and peaceful", and stated that there were "no disturbances or issues" inside or outside the court building that day. In addition, Sergeant G stated that there were no arrests or police warnings issued during the protest. Given those factors, and the absence of anything in the wider evidence available to suggest that there was any criminality or public disorder that day, the precise grounds for Police Scotland's concerns about disorder and public safety are not clear.

For the reasons given above, it is considered that the response is not adequately reasoned. It is therefore concluded that this complaint was not handled to a reasonable standard.

It is recommended that Police Scotland provide the applicant with a further response which explains precisely why, if there were no concerns about the protesters outside the court, a different view was taken about allowing them inside the court building. Police Scotland should also establish and explain to the applicant the basis for the position that no opposing campaigners were knowingly permitted entry.

Complaint 6: Impartiality and independence

The applicant complained that Police Scotland was not impartial or independent because events were driven by a group of individuals holding a political ideology opposing that of her own organisation.

Police Handling of Complaint 6

Chief Inspector K's response stated that, although the protests were found to be peaceful and lawful each time the police attended, officers were still duty bound to follow up on information that suggested this might not be the case. The response advised that officers had respected the campaigners' refusal to provide their details when asked.

The response acknowledged that the complaint enquiry had highlighted challenges in relation to communication between the police and the protestors, and stated that it might have been prudent for

officers to contact the applicant or another member of the group to ascertain details of any protest. The response stated that this approach would be considered in the future.

For those reasons, Police Scotland did not uphold the applicant's complaint.

Consideration of Complaint 6

One of the applicant's main concerns seems to be that there were other methods the police could have used to gather the necessary information in order to facilitate any future protest. Following the complaint investigation, Police Scotland appears to have recognised this. As with any learning from complaints, this is to be welcomed.

Chief Inspector K's response explained that the police responded to calls received from members of the public highlighting concerns about the actions of the applicant and her organisation. The response acknowledged that each time officers attended, the protests were lawful and peaceful. As stated above in respect of Complaints 3 and 4, Police Scotland is duty bound to assess and respond to what may be genuine concerns reported by members of the public, and it would be difficult for the police to assess the veracity of a report received if officers were not to attend the relevant incident.

Accordingly, whilst it is clear that on several occasions the police acted on concerns raised by members of the public who may have held an opposing political belief to that of the applicant's group, the evidence available does not support the contention that Police Scotland was not impartial or independent when taking action.

On the basis of the above points, the response was adequately reasoned and Police Scotland was justified in not upholding the complaint. It is therefore concluded that this complaint was handled to a reasonable standard. No further action is required in this connection.

5. Conclusions

Complaint 1

It is concluded that this complaint was not handled to a reasonable standard.

Under section 35(7) of the 2006 Act, a reconsideration direction is issued to Police Scotland. The reconsideration is not subject to the PIRC's supervision. In terms of section 37(1) of the Act, Police Scotland must now appoint a person to reconsider this complaint. The person appointed must not have had any previous involvement in the consideration of the complaint. Police Scotland must also adhere to the obligations set out in sections 38 and 40 of the Act, as appropriate.

Police Scotland should reconsider the complaint with direct reference to the observations made above. In doing so, Police Scotland should consider carefully whether the gathering of information about the group and the recording of it on police systems was compatible not only with the members' right to freedom of assembly under Article 11(1) of the ECHR, but also their right to respect for private life

under Article 8(1) of the ECHR, as the storing of data relating to an individual's private life can amount to an interference within the meaning of Article 8.

Police Scotland should therefore consider whether it was: a) lawful; b) necessary to meet a legitimate aim under Articles 8(2) and 11(2) of the ECHR; and c) proportionate to the aim(s) pursued, to gather and record information about the activities of members of a group who do not appear from the evidence available to have been considered by the police to pose any threat to public safety or likely to commit any crime.

Police Scotland should then submit a report to the PIRC detailing the reconsideration of the complaint. Thereafter, Police Scotland should send a fresh response to the applicant which fully explains its findings in respect of each of the above points, and makes clear the outcome of the reconsideration.

Complaint 2

It is concluded that this complaint was not handled to a reasonable standard.

Under section 35(7) of the 2006 Act, a reconsideration direction is issued to Police Scotland. The reconsideration is not subject to the PIRC's supervision. In terms of section 37(1) of the Act, Police Scotland must now appoint a person to reconsider this complaint. The person appointed must not have had any previous involvement in the consideration of the complaint. Police Scotland must also adhere to the obligations set out in sections 38 and 40 of the Act, as appropriate.

In respect of aspect (i) of the complaint, Police Scotland should seek further accounts from Sergeant B and Inspector C in which they are asked to explain the reason for their attendance at Mr D's home, and address whether Mr D was questioned and told that he was legally required to provide information. This aspect of the complaint should then be reassessed on the basis of the evidence available using the balance of probabilities test.

In respect of aspect (ii) of the complaint, the police cannot impose conditions on the location of a peaceful protest that effectively negate the purpose of the protest. Police Scotland should give very careful consideration to whether Mr D being warned not to protest at particular locations was compatible with the rights afforded him under Article 11(1) of the ECHR and the obligation on the police not to prevent, hinder or restrict peaceful assembly except in certain prescribed circumstances. Police Scotland should consider specifically whether any interference was: a) lawful; b) necessary to meet a legitimate aim under Article 11(2) of the ECHR; and c) proportionate to the aim pursued.

Police Scotland should then submit a report to the PIRC detailing the reconsideration of the complaint. Thereafter, Police Scotland should send a fresh response to the applicant which fully explains its findings in respect of each of the above points, and makes clear the outcome of the reconsideration in relation to both aspects of the complaint.

Complaint 5

It is concluded that this complaint was not handled to a reasonable standard. It is recommended that Police Scotland provide the applicant with a further response which explains precisely why, if there were no concerns about the protesters outside the court, a different view was taken about allowing them inside the court building. Police Scotland should also establish and explain to the applicant the basis for the position that no opposing campaigners were knowingly permitted entry.

Complaints 3, 4 and 6

It is concluded that these complaints were handled to a reasonable standard. No further action is required of Police Scotland in respect of these complaints.

Kirstin McPhee
Review Officer

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