

learningpoint

The PIRC's Review Team is committed to improving complaint handling by police bodies operating in Scotland and promoting a culture of transparency, accountability and learning in their handling of complaints.

During 2016/2017, 48% of the recommendations we issued to policing bodies resulted from deficiencies in the response letters they issued to complainers. This edition of Learning Point focuses on the recurring issues we have identified in how Police Scotland responds to complaints. It also examines common issues which police complaint handlers face when reaching determinations and composing response letters.

Our hope in sharing this information is to provide the necessary guidance to new and experienced police complaint handlers alike and assist policing bodies in improving the standard of the response letters issued to members of the public.

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1 Officers addressing the allegations

Once an Enquiry Officer (EO) has agreed the Heads of Complaint with the complainer, the EO should notify the officer(s) subject to the complaint of the allegations made against him/her and afford him/her the opportunity to provide a statement to address the complaints. It is recognised that subject officers cannot be compelled to provide a formal statement in reply to the complaints made against them. However, in order that the subject officers can make an informed decision, it is vital that the EO fully advises them that, whilst they have the right not to address the allegations made against them, failure to do so may have a significant impact on the determination of the complaint.

It is important to remember that the primary purpose of complaint handling is to resolve the complaint and use it as an opportunity to identify learning and improve service delivery. Accordingly, the focus of complaint handling generally is not to determine whether subject officers should be sanctioned. Instead, it should be about establishing whether things have gone wrong; how they

can be prevented from happening in the future; and whether there is an opportunity for individual and/or organisational learning. However in cases where a complaint enquiry identifies significant individual failures on the part of the subject officers, this may result in internal disciplinary proceedings.

1.1 Dealing with simple denials

We routinely review complaint handling where subject officers have either refused to provide a statement addressing the complaints made about them or have provided a very brief statement indicating that they deny all of the allegations (such as “I refute the allegation”). A one line statement like that is unlikely to be sufficient to address the allegation. More importantly, such denials have limited evidential value for the complaint handler, who must apply the balance of probabilities test to the available evidence, to allow him/her to reach a determination. A subject officer’s failure to address an allegation properly may mean that there is little or no evidence to counter the complainer’s account. In such

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cases, the complaint is liable to be upheld.

A detailed statement from the complainer, especially if supported by other evidence, will almost always outweigh a simple denial from subject officers.

Example A:

Summary of available evidence:

Complainer: I attended a meeting with Constable A on DD/MM/YY to receive an update on the investigation. During the meeting, Constable A was rude, raised his voice, made me very upset, and I left the room in tears.

Civilian Witness B: When the complainer came out of the meeting room she was visibly upset.

Constable A: I refute the allegation.

Determination: The complainer's account is supported by the civilian witness who observed her to be upset following the meeting with Constable A. Constable A did not provide an account of what took place at the meeting but issued a general denial. As Constable A did not address the allegation or provide an

account detailing what took place during the meeting, the account of the complainer, partially supported by the account of the civilian witness, outweighs the general denial by Constable A. Complaint upheld.

Example B:

Summary of available evidence:

Complainer: I attended a meeting with Constable A on DD/MM/YY to receive an update on the investigation. During the meeting, Constable A was rude, raised his voice, made me very upset, and I left the room in tears.

Civilian Witness B: When the complainer came out of the meeting room she was visibly upset.

Constable A: During the meeting, I provided the complainer with an update on the investigation and provided advice to her on how to keep her property safe in the future. The complainer became upset when I informed her that there was very little prospect of recovering the property that was stolen from her farm. I did not once raise my voice during the meeting nor did I say anything rude. I was

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polite and courteous throughout the meeting.

Determination: Both the complainer and the subject officer provided differing accounts. Both acknowledge that the complainer became upset during the meeting. The evidence of the civilian witness supports both accounts equally, as both acknowledge that the complainer was upset. Accordingly, the complaint handler is presented with two apparently credible accounts about what happened in the meeting room and there is nothing in the available evidence that would allow the complaint handler to prefer one account over the other. Complaint not upheld.

As can be seen from examples above, the subject officer’s account (or lack of it) can have a significant impact on the final determination of the complaint. Therefore, the EO must ensure that the subject officer is fully aware of this and where necessary provide the subject officer with an opportunity to expand upon their initial statement before determining the complaint.

1.2 Addressing the issue

The amount of information provided to subject officers

regarding the complaints made about them is crucial to their ability to adequately address each specific allegation. In order to provide a meaningful reply, subject officers must be informed not only of the general nature of the complaint (i.e. incivility, unnecessary arrest, excessive force) but also of the more specific details of the complaint. The more detail that is included within the complainer’s statement, the more detail will be expected and required from the statement provided by subject officers.

Example C:

Complaint: Throughout his career, Superintendent A disregarded the law.

Superintendent’s statement: I deny the allegation. Throughout my career I have always obeyed the law and operated within strict statutory parameters. I have no previous criminal convictions, have never been subject to any criminal or counter-corruption enquiries and have an exemplary disciplinary record.

Example D:

Complaint: During an investigation into a missing person in Oct 2006, Superintendent A did not follow all lines of enquiry

“ If the subject officer in Example D had chosen simply to deny the allegation without providing any detail and if the EO had established the subject officer’s involvement in door-to-door enquiries in the street where the complainer resided as part of the missing person enquiry in Oct 2006, the complaint may well have been upheld. ”

because when I told him about a possible sighting of the missing person on Tuesday of that week, he told me that it wasn’t important and to forget about it. I believe this amounted to neglect of duty.

Superintendent’s statement: During the missing person enquiry in question, back in 2006, I was still a young constable with only two years of service. I was responsible for door-to-door enquiries on the day in question. As part of these enquiries I spoke to the complainer at the front door of his home address. At this point the complainer advised me that his next door neighbour told him that he thought he had seen the missing person a few days earlier. I was aware that my colleagues had already spoken to that neighbour and were in the process of taking a statement. I advised the complainer to that effect and having confirmed that he himself was unable to add any further information, I thanked him for his time and carried on with my enquiries. I did not tell the complainer that information he provided was not important or asked him to forget about it.

As can be seen from the examples provided above, the extra detail contained in the complaint in Example D has

been met with a detailed response by the subject officer. In contrast, a general complaint such as that outlined in Example C has been addressed by the subject officer in general terms.

If the subject officer in Example D had chosen simply to deny the allegation without providing any detail and if the EO had established the subject officer’s involvement in door-to-door enquiries in the street where the complainer resided as part of the missing person enquiry in Oct 2006, the complaint may well have been upheld. This is because there is very little evidential value in the denial which provides no detail or account of what actually took place.

Similarly, if the complainer’s allegation was supported by other evidence uncovered by the EO, then the balance of available evidence would naturally shift in favour of the complainer.

In the example given below the subject officer has provided a statement in reply to the complaint, but has not addressed the specific allegation.

Example E:

Complaint: Constable A was very rude and called me a

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“waste of space” and said that I am “a bad mother” and my children should be “placed into care”. I think even Constable B was shocked at the way Constable A spoke to me.

Constable A’s statement: I deny the allegation. Throughout my dealings with the complainer I remained calm, courteous, and professional.

Constable B’s statement: I was present throughout the discussion and can confirm that Constable A was polite and courteous throughout.

Example E is a typical incivility complaint. In the first instance, the EO should establish whether the subject officer actually used the phrases that the complainer alleged and then determine whether in the particular circumstances of the case, the phrases are considered to be uncivil.

In this scenario, both officers have sought to address the complaint by stating that Constable A (the subject officer) was polite and courteous towards the complainer. However, the actual allegation made by the complainer is that Constable A used specific phrases that the complainer considered to be rude. Given that the officers have not confirmed or

denied whether Constable A used these phrases, neither officer has addressed the specific allegation made against Constable A and therefore in the absence of any other evidence, the balance would again tip in favour of the complainer.

In these circumstances, there is an onus on the EO to advise the officers that their statements fail to address the specific allegations made and to seek a further statement or clarification. It is imperative that the response letter issued to the complainer is factually accurate, evidence-based, and addresses the specific allegations made by the complainer.

Example F:

Response letter: “Constable A denied the allegation and stated that throughout his dealing with you, he remained calm, courteous and professional. His account in this regard is supported by Constable B.”

The above example of a response letter is not factually inaccurate, but it does not address the specific complaint. It is highly likely that this would lead to the PIRC Review Team concluding that the complaint had not been reasonably handled because of a lack of

enquiry by the EO or the response letter not being adequately reasoned.

Further guidance on these issues can be found at paragraphs 6.7.9 to 6.7.10 of Police Scotland's Standard Operating Procedure on Complaints About the Police ("the CAP SOP").

2 Recording and responding to multiple complaints

Although there has been a noticeable improvement by Police Scotland's complaint handlers in the recording of complaints over the last two years, a number of issues persist. For example, we regularly receive complaint files in which the EO has grouped complaints into one overarching complaint or into batches of complaints. The practice of grouping complaints creates a significant risk that some complaints will be overlooked. Furthermore, this practice makes it more difficult for subject officers to address each complaint individually, increasing the likelihood that the response will be directed to general dissatisfaction rather than to the specific allegations that have been made. This in turn is likely to lead to further dissatisfaction

for the complainer and possibly result in the complaint being referred to the PIRC Review Team.

Complaint handlers are therefore reminded that if any aspect of a complaint can be upheld or not upheld on its own, then it should be recorded as a separate Head of Complaint.

Example G:

In a recent case (038/16), the following complaint was recorded:

"...spoke to an officer who was dismissive of my report, did nothing to provide suitable advice and was rude and unprofessional when complaint was made. Also made a parting comment when advised of making complaint..."

Response: This area within [the police office] is extensively covered by visual and audio CCTV equipment...This has been reviewed and...throughout your time within [the police office], the officer has been found to be nothing other than respectful, polite and professional and does not make the comment you maintain but correctly stipulates that it is your right to make a complaint should you wish. I find no evidence

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to substantiate your allegation and therefore your complaint is not upheld.

As illustrated above, the original complaint contained a number of different components. At the very least, there are two distinct Heads of Complaint, namely: a) that the officer was dismissive and did not provide correct advice, and b) that the officer was rude, unprofessional, and made a parting comment. Both of these Heads of Complaint are capable of being upheld or not upheld independently of each other. Accordingly, they should have been recorded separately and considered individually. This practice should also serve to assist subject officers in addressing every strand of the complaint in their statements, which will in turn enable the EO to reach a determination in relation to each Head of Complaint.

Where different strands of a complaint have been correctly identified by the EO as individual Heads of Complaint, it is important that each Head of Complaint is also individually recorded, considered and a determination reached on whether or not it is upheld. Accordingly, complaint handlers are discouraged from making a single determination

in relation to multiple complaints, e.g. “For the reasons stated above, none of your complaints are upheld”.

3 Reflecting the evidence

A key consideration in our examination of the handling of complaints is to assess whether the response is in line with the material information available. For instance, the response must accurately reflect the content of statements and be consistent with any audio or video footage. However, one of the most frequent adverse findings made in our complaint handling review reports is that the response is not supported by the evidence.

In one case (508/13), an officer denied the allegation of incivility made against him. The response stated that the officer’s position was supported by his two colleagues. However, our review found that one of those colleagues had not actually been present at the relevant time.

In another case (676/13) the response stated that only one witness supported the complainer’s allegation that an officer swore at him. Our review found that the

allegation was in fact supported by two witnesses.

A common example of where the EO's response letter does not reflect the evidence is where it incorrectly states that an officer has expressed a particular position in his or her statement.

For instance, in one case (643/16), the complainer alleged that an officer had been uncivil and accusatory. The response stated that the officer said in her statement that she had not been uncivil or accusatory. Our review found that the officer had made no mention of whether she had been accusatory.

In another case (193/15), the complainer alleged that an officer had slammed a door. The response stated that the officer denied that she had slammed the door. Our review found that the officer did not in fact address whether or not she had slammed the door.

In a further case (302/16), the complainer alleged that an officer had threatened him and sworn at him. The response stated that the officer denied these allegations. Our review found that the officer had not actually addressed these allegations.

We have also found further instances of responses not reflecting the evidence, where the response differed from audio or video recordings.

For example, in one case (038/16), the complainer alleged that an officer had made a discourteous comment to him. The response stated that CCTV footage had been viewed and the officer did not make the comment. Our review found that the footage in fact showed the officer making the comment.

In another case (153/17), the complainer alleged that an officer told her during a phone call that he would not make a reasonable adjustment for her disability. The response stated that the recording of the call had been listened to and the officer at no time told the complainer that he would not make a reasonable adjustment. Our review found that the recording actually showed the officer stating clearly that he would not make a reasonable adjustment.

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Police Scotland requires to ensure that close attention is paid to the analysis of evidence during the complaint enquiry and that senior officers satisfy themselves that the evidence is properly reflected in the response letter, before the letter is issued.

4 Reference to relevant legislation or protocol

In addressing complaints, the complaint handler should give due consideration and include reference in the response letter to the terms of any relevant Standard Operating Procedure (SOP), policy, guidance document, legislation, or case law. This is particularly important in 'Irregularity in Procedure' complaints where, in the majority of cases, the complainer questions either an operational decision or legal/procedural basis for the actions of police officers.

Given that SOPs provide guidance to officers on the approved course of action to follow whilst dealing with specific types of incidents, investigating particular crimes or even dealing with specific types of enquiries, it is highly likely that there is an

applicable SOP which complaint handlers can refer to in their response letters. There may be rare occasions where police officers may be justified in following a particular course of action that does not accord with the relevant SOP. In such cases, where the complainer questions a particular course of action undertaken by an officer, it is imperative not only to refer to the relevant SOP, but also to provide an explanation why the officer's departure from the SOP is considered by the complaint handler to be justified in the particular circumstances of the individual case.

It goes without saying, that the CAP SOP is relevant to every complaint case brought to the attention of Police Scotland. This is due to the fact that this SOP sets out the accepted complaint handling principles and processes and details the standards required when handling complaints. It is however unnecessary to explicitly refer to the CAP SOP in the response letter unless particularly required. Nonetheless, as part of the review process, we will consider whether the relevant provisions of the CAP SOP have been followed in addressing the complaint.

In the event that a complainer alleges that the specific terms

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“ In its purest form, the act of apologising is an act of contrition. It is a recognition that the complainant has suffered or been disadvantaged because of actions or omissions and it is an opportunity to make amends. For this reason, when it is appropriate to give an apology, it must be unambiguous and sincere. ”

of legislation or statutory provision have not been followed or that their rights have been infringed, then the response letter must reflect a determination based on, and through reference to, the relevant legislation or provision.

For example, where a complainant makes an allegation that he/she was unlawfully searched for drugs, it is imperative that the response refers to the powers of search available to police officers in terms of the Misuse of Drugs Act 1971. Similarly, if a complainant alleges that his/her human rights have been breached, the response should consider the matter with direct reference to the relevant article(s) of the European Convention on Human Rights (ECHR).

For example, in a recent case (642/16), the complainant alleged that the police had interfered with the human rights of protesters. Whilst the response to the complaint considered the actions of the officers complained about, it failed to address whether those actions were compatible with Police Scotland's obligations under the ECHR. Indeed, no mention was made of the ECHR in the response. We directed Police Scotland to reconsider these complaints.

5 The apology

In our application form for a complaint handling review, we ask complainants to specify what they expect from the review process. Unsurprisingly, one of the most common responses is quite simply that they wish to receive an apology.

An apology should always be made when the determination recognises that something went wrong or that the standard of service provided fell short of what would be expected. In its purest form, the act of apologising is an act of contrition. It is a recognition that the complainant has suffered or been disadvantaged because of actions or omissions and it is an opportunity to make amends. For this reason, when it is appropriate to give an apology, it must be unambiguous and sincere.

The choice of language used when apologising can have a significant impact on the complainant's perception as to whether or not the apology is genuine. For this reason, it is always best to avoid the use of words such as "if", "but", "however" or "any" in the apology. The inclusion of these words can give the impression that the apology is conditional and that the

organisation is not willing to take responsibility for any failings identified.

We often see response letters that have been issued to complainers in which shortcomings have been identified, the complaints have been upheld and yet there is no apology. For example, in a recent case (256/17) the complainer alleged that, whilst he was in police custody, he was refused access to medical treatment for an injury to his nose. The response letter stated the following:

“...With the information available to me and on the balance of probabilities, I must conclude that this allegation is upheld and that you did not receive medical treatment whilst within custody at [named police office]. I do note however, that medical treatment was requested for you and the reason this was not received was due to a breakdown in communication rather than an intentional decision not to have you medically examined...As custody division are responsible for the care and welfare of prisoners, the circumstances have been highlighted to them to address”.

In this case, although the complaint was upheld, failings

acknowledged and an explanation provided about the steps that would be taken to address the shortcomings, the response did not offer an apology. This is despite the fact that paragraph 6.14.7 of the CAP SOP states that the final letter of response should provide clear apologies if failings have been identified. As the complainer did not receive an apology, we recommended that Police Scotland provide the complainer with a further response that offered an apology.

The Scottish Public Services Ombudsman (SPSO) recommends that, when issuing an apology, consideration should be given to “the 4Rs”: Regret (“I am sorry/apologise”); Responsibility (“we did not”); Reason (“there was a breakdown in communication”) and Remedy (“the circumstances have been highlighted to Custody Division for them to address”).

A good example encompassing the 4Rs is as follows (from case 108/17):

“I apologise for the level of service you have received (regret) from the reporting of this incident to its conclusion, as it has fallen below the standard I would expect to be

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delivered by our Officers. You have every right to expect that this matter would have been concluded in a more timely manner and certainly prior to any timescales being exceeded (responsibility).

The Enquiry Officers and their Supervisor have been given suitable management advice in order to minimise the possibility of similar events occurring in the future and Officers across the division have been reminded of the requirement to carry out enquiry diligently, without undue delay and to meet timescales. Whilst I appreciate that this will be of little consolation to you, I am determined this will not be repeated.” (remedy)

The above example appears sincere as it is unconditional, accepts that a shortcoming occurred and specifically apologises for that.

6 Sharing outcomes and learning

In many cases, the complainer is motivated to make a complaint in an effort to seek reassurance that the police will learn from an experience and take appropriate steps to ensure that any failings identified do not arise again. Police Scotland should view

complaints positively insofar as most allegations present an opportunity for organisational or individual learning, which in turn can enhance the service provided to the public.

Furthermore, it is not a good use of resources for the police to continually have to deal with complaints arising from the same issues or shortcomings. Instead, Police Scotland should actively take steps to identify recurrent complaint themes, address the root causes and thereby reduce the likelihood of similar circumstances arising in the future.

From a complaint handling perspective, it is crucial to explain to the complainer any learning identified or action taken as a consequence of their complaint. This is made clear at paragraph 6.14.5 of the CAP SOP, which states that the response to a complaint should include “...any action to be taken as a result of the complaint and any learning identified for Police Scotland”.

This also applies to action taken regarding individual officers, as indicated at paragraph 6.14.11 of the CAP SOP. If misconduct proceedings are taken or not taken against any officers, the complainer should be notified

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of the outcome and the reasons for it. The complainer should also be informed of any other measures taken or intended to be taken in respect of the officer(s) concerned, such as corrective advice or improvement action. Providing complainers with this information promotes transparency in complaint handling and allows the public to understand why particular decisions have been reached.

In a recent case (238/17), the response letter to the applicant was as follows:

“I understand and can sympathise with your frustrations that this information was not shared with our partner agencies and I offer an unreserved apology that it was not done so and therefore uphold your complaint in this regard”.

It is clear from the response that Police Scotland acknowledged a failure to follow process, upheld the complaint and offered an apology. However, the crux of the complainer’s concern was that she was seeking reassurance that no one else would endure the same experience. In the papers provided to us by Police Scotland, it was evident that the EO had identified

organisational learning as follows:

“It has been established that staff within Custody Division have not been trained to use the Vulnerable Person Database [VPD] and therefore cannot complete adult concern forms (vulnerable persons reports)... This concern has been raised nationally with the Risk and Concern Project Team and also with Custody Division. Custody Division are in the process of rolling out pilot projects in the training of VPD with the view to training being rolled out nationally”.

The response letter would have been significantly enhanced if the complaint response had detailed the learning identified during the complaint enquiry. Had this been included, it would have given the applicant the assurance that Police Scotland had identified the reason for the failing and taken the steps necessary to prevent it being repeated.

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