

independent and effective investigations and reviews

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Police Investigations &
Review Commissioner

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Report of a Complaint Handling Review in relation to Police Scotland

What we do

We obtain all the material information from Police Scotland and the applicant. We then use this to review how the complaint was dealt with and conclude whether the complaint was handled to a reasonable standard*. In doing so, we consider factors such as:

- whether Police Scotland carried out sufficient enquiries into the complaint;
- whether Police Scotland's response to the complaint was supported by the material information available;
- whether Police Scotland adhered to the relevant policies, procedures and legal provisions in dealing with the complaint;
- whether Police Scotland's response was adequately reasoned; and
- where the complaint resulted in Police Scotland identifying measures necessary to improve its service, that these measures were adequate and have been implemented.

Finally, where we deem appropriate, we give reconsideration directions, make recommendations and identify learning points for Police Scotland.

*Sections 34 and 35 of the Police, Public Order and Criminal Justice (Scotland) Act 2006 as amended ("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.

Executive Summary

The Complaints

The complaints in this case arose following the applicant's report of what in his view amounted to a homophobic hate crime. We have reviewed two complaints, namely that:

1. Police Scotland incorrectly recorded the matter as a 'hate incident' rather than a 'hate crime'; and
 2. the perpetrator was not identified because the police did not apply sufficient vigour to their investigation and concluded it prematurely.
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Police Scotland's Decision

Police Scotland did not uphold either of the applicant's complaints.

Our Findings

We have found that Police Scotland did not handle either of the applicant's complaints to a reasonable standard.

Consequently, we have made two recommendations to address the shortcomings in Police Scotland's handling of the complaints. In summary, we have asked Police Scotland to issue a fresh response to each complaint in order to explain fully why the matter reported by the applicant was downgraded from a hate crime to a hate incident, and whether all possible enquiries were conducted to identify the person responsible for posting a comment online.

We expect our recommendations to be implemented by Police Scotland within two months of the date of this report.

Background

On 30 May 2017, the applicant was informed by a friend, Mr A, about a public comment left under an online article the applicant had written for a local newspaper website. Although the comment had been removed from the website before the applicant saw it, the applicant considered the comment to amount to a homophobic hate crime. He therefore reported the matter to the police.

On 2 June 2017, Constable B interviewed the applicant, noted his statement and thereafter created a crime entry and investigation plan on Police Scotland's incident recording system. Constable B then informed her supervisor, Sergeant C, of the circumstances surrounding the incident.

On 7 June 2017, Police Scotland's Crime Management Unit marked the case as not being a crime, but rather an inappropriate use of hate language which was insufficient to constitute an offence under the Communications Act 2003 ("the 2003 Act"). However, as the applicant believed this to be a hate incident, the Crime Management Unit had recorded it as such, and had also marked that enquiries could be progressed as planned to identify who made the online comments and speak to the person if required.

Sergeant C discussed this with Inspector D and they agreed to investigate the matter in line with the standard operating procedure for hate incidents. Officers confirmed with the local newspaper that its IT services were outsourced and that it did not have information about the user who posted the online comment. However, copies of the comment were seized. Officers were also able to take a statement from Mr A, but no new information was gathered. After carrying out some further enquiries, Sergeant C determined that he had done everything possible to trace the person who made the online comments. Sergeant C informed the applicant of this by letter on 7 October 2017.

The applicant submitted his complaints via Police Scotland's online complaint form on 7 September 2017. Sergeant E was appointed as the enquiry officer. The applicant met with Sergeant E on 29 October 2017, at which point he agreed and signed a heads of complaint form. The applicant subsequently received a response to his complaints from Chief Inspector F in a letter dated 12 January 2018.

Complaint 1

The applicant complained that Police Scotland incorrectly recorded the matter as a 'hate incident' rather than a 'hate crime'.

Police Scotland's Handling of Complaint 1 (not upheld by the police)

In his response letter, Chief Inspector F informed the applicant about the way police record crimes in Scotland, with reference to the Scottish Crime Recording Standard (SCRS)¹. He explained that this definitively identifies when and how specific crimes and incidents are recorded. Should there be any dubiety, the Crime Registrar is consulted to provide guidance on the matter.

Chief Inspector F advised that the SCRS states that an incident will be recorded as a crime if the circumstances amount to a crime defined by Scots Law or an offence under statute, and there is no evidence to the contrary. He further explained, with regard to hate incidents, that the SCRS states that there will be occasions when incidents occur where no crime has been committed but the incident itself is perceived to have been motivated due to hate or prejudice. Such cases will be recorded as hate incidents.

Chief Inspector F stated that the Crime Registrar was consulted in relation to the incident reported by the applicant, who directed that this particular occurrence be recorded as a hate incident in accordance with the SCRS principles. He advised the applicant that there is no difference in the way an incident is investigated, whether it is recorded as a crime or an incident. On that basis, Chief Inspector F did not uphold the complaint.

Our Review of Complaint 1

We have examined Police Scotland's complaint file, which includes an incident history log and statements from Constable B, Sergeant C and the applicant. We have also considered the relevant guidelines, namely the SCRS, Police Scotland's standard operating procedure on Crime Recording ("the Crime Recording SOP") and Police Scotland's standard operating procedure on Hate Crime ("the Hate Crime SOP")².

The Crime Recording SOP and the SCRS make clear that an incident should be recorded as a crime in all cases where the circumstances amount to an offence or crime and there is no credible evidence to the contrary³. The police will determine whether the circumstances as reported amount to a crime, and no corroborative evidence is required before a crime record is raised if, on the balance of probabilities, a crime has occurred⁴. The Crime Recording SOP also states that the role of the Crime Registrar is critical to the management and compliance of the SCRS. The Crime Registrar has ultimate authority to determine whether a matter is recorded as a crime or an incident and is the final arbiter for all cases in which no crime is deemed to have been committed.

The SCRS and the Hate Crime SOP contain provisions about the recording of hate incidents and hate crimes. These guidelines state that, in cases where an incident occurs in which no crime is committed,

¹ Scottish Crime Recording Standard – Crime Recording and Counting Rules (April 2017)

² See Appendix

³ Paragraph 2.1.1 of the Crime Recording SOP

⁴ Paragraph 2.2(c) of the Crime Recording SOP

but the incident is perceived to have been motivated by hate or prejudice, then it will be recorded as a 'hate incident', rather than a 'hate crime'. A 'hate crime' is defined as a crime motivated by malice or ill-will towards a particular social group.

There are therefore two elements that require to be satisfied for a hate crime to be recorded: a) there must first have been a crime; and b) that crime has to have been motivated by hate or prejudice against a social group. The SCRS further states that the use of apparent 'hate' language is not sufficient to prove a hate crime – there must also be evidence that the offender's behaviour was motivated by prejudice and was not simply an inappropriate use of language.

In Chief Inspector F's response, he noted that the Crime Registrar directed that this be recorded as a hate incident rather than a hate crime, although the response gave no further detail as to why the Crime Registrar took this decision. The statements from Constable B and Sergeant C show that the incident was initially recorded as a crime. However, following a review by the Crime Management Unit, the matter was reclassified as a hate incident. An entry in the incident history log provides a brief reason for this, explaining that the Crime Management Unit considered the comment to be an inappropriate use of hate language that was not sufficient to constitute an offence under Section 127 of the 2003 Act⁵. The entry also shows that it was instead recorded as a hate incident due to the applicant's perception of the online comment, albeit the Crime Management Unit was to be informed if there was any further information to suggest that a crime should be recorded.

There is nothing in the papers provided to suggest that anyone from the Crime Management Unit was asked to provide an explanation as to why they considered the language to be "*inappropriate*" rather than "*grossly offensive*" or of an "*indecent, obscene or menacing character*" as required to constitute the offence under the 2003 Act. In any event, we consider the lack of explanation in Chief Inspector F's response to be a material shortcoming in the handling of this complaint. As the crux of the applicant's complaint was about the matter having been downgraded from a crime to an incident, the response should have provided a clear explanation as to why it was downgraded, in order to assist the applicant in understanding why this was deemed to be the correct course of action. As this did not happen, we consider that the response was inadequately reasoned and we conclude that the complaint was not dealt with to a reasonable standard.

Our Conclusion on Complaint 1

We conclude that Police Scotland did not handle this complaint to a reasonable standard.

We recommend that Police Scotland carry out further enquiries to establish why exactly the requirements of section 127 of the 2003 Act were considered not to have been met. Police Scotland should then assess whether that was the right decision. The applicant should thereafter be provided with a fresh response which details the further enquiries and explains fully whether it was correct for the matter to be recorded ultimately as a hate incident rather than a hate crime.

⁵ Section 127 of the Communications Act 2003 states that a person is guilty of an offence if he or she sends by means of a public electronic communications network a message or other matter that is grossly offensive or of an indecent, obscene or menacing character.

Complaint 2

The applicant complained that the perpetrator was not identified because Police Scotland did not apply sufficient vigour to the investigation and concluded it prematurely.

Police Scotland's Handling of Complaint 2 (not upheld by the police)

In his response letter, Chief Inspector F explained that enquiries were carried out with the local newspaper whereupon it was established that, as their IT system was outsourced, they were unable to provide either a screenshot of the alleged comments or an IP address for any person who posted on their site. Chief Inspector F noted that the comment had been removed prior to police attending and that the organisation was advised to moderate its site and user comments, which had apparently not been the case up to that point.

Chief Inspector F referred to the applicant's statement, in which the applicant had said he had a "*gut feeling*" that Mr A was responsible for posting the derogatory comments (under a pseudonym). Chief Inspector F advised that Mr A was interviewed regarding this incident and denied any part in putting the comments on the website. Mr A further stated that it was he who drew the comments to the applicant's attention. Chief Inspector F advised that, although Mr A had been traced and interviewed by police on 1 October 2017, Mr A could not provide any additional information to further the enquiry or identify the perpetrator.

Having obtained no further information from the local newspaper as to the identity of the user who posted the comments, Chief Inspector F was satisfied that all available lines of enquiry were pursued by the investigating officers and that, in the absence of further information, the incident was correctly concluded. He remarked that the applicant had been updated accordingly to that effect. On that basis, Chief Inspector F did not uphold the complaint.

Our Review of Complaint 2

Whilst this matter was recorded as a hate incident rather than a hate crime, the Hate Crime SOP acknowledges that the impact of a hate incident can be just as devastating for victims⁶. The Hate Crime SOP requires the police to undertake thorough investigation of both hate crimes and hate incidents.

In relation to the level of enquiry conducted to identify the person who had posted the comment, Sergeant C recorded in his statement that, as the newspaper's IT was outsourced and as the matter was no longer regarded as being a crime, then it was "*impossible*" to try to retrieve any personal data such as IP addresses or emails associated with the username. Sergeant C's assertion suggests that the matter may have been investigated more thoroughly had it been recorded as a hate crime rather than a hate incident. In that regard, Chief Inspector F's response ought to have considered whether enquiries should have been made with the IT company directly to determine whether an IP address or email account could be identified, and also whether such enquiries would have been conducted had the matter not been downgraded to a hate incident.

Sergeant C went on to explain the other enquiries he carried out before concluding that the person responsible for posting the comment could not be traced. He contacted the Divisional Intelligence Unit for assistance, but stated that no further information could be gleaned that may have linked a person to

⁶ Paragraph 2.1.2 of the Hate Crime SOP

the named user account. Sergeant C also identified a number of people in the local area with the same initial and surname as that associated with the online comment. It is not clear from the papers provided whether, given the relatively high number of people identified, contacting each of those people was considered by Sergeant C to be disproportionate to the matter under investigation. The content of Sergeant C's statement should therefore have been clarified during the complaint enquiry, as this would have allowed Chief Inspector F to fully understand Sergeant C's rationale for concluding the investigation. Chief Inspector F would then have been better placed to determine whether all reasonable lines of enquiry had been followed and whether the enquiry was closed prematurely as the applicant contended.

For the reasons given above, we consider that the response was not adequately reasoned or detailed enough to allow the applicant to understand the level of enquiry conducted into the hate incident. As a result, we conclude that this complaint was not dealt with to a reasonable standard.

Our Conclusion on Complaint 2

We conclude that Police Scotland did not handle this complaint to a reasonable standard.

We recommend that Police Scotland, with reference to our observations above, seek clarification from Sergeant C as to his rationale for concluding the investigation.

A fresh response should thereafter be issued to the applicant which details fully Police Scotland's position on whether all reasonable lines of enquiry were pursued and whether the enquiry was closed prematurely. If any potential enquiries were not undertaken, the response should explain precisely why this was the case.

What happens next

We have made two recommendations which we expect to be implemented within two months of the date of this report. We will continue to liaise with Police Scotland until we consider that the recommendations have been implemented to our satisfaction.

Lynn McCord
Review Officer

Peter Innes
Senior Review Officer

Appendix

Extracts from Police Scotland's Standard Operating Procedure on Hate Crime

2.1 Hate Incident:

2.1.1 Police Scotland defines Hate Incidents as:

“Any incident which is perceived by the victim, or any other person, as being motivated by malice or ill will towards a social group but which **does not** constitute a criminal offence”.

2.1.2 Whilst there may be an insufficiency of evidence to constitute a crime, the impact of a Hate Incident can be just as devastating for victims. The police have a duty to accurately record and **investigate** all Hate Incidents, to ensure that the most vulnerable members of society are protected.

...

2.2 Hate Crime

2.2.1 Police Scotland defines Hate Crime as:

“Any crime which is perceived by the victim or any other person as being motivated by malice or ill will towards a social group.”

2.2.2 Perpetrators of Hate Crimes focus upon demonstrating malice or ill will towards individuals on the basis of their actual or presumed sexual orientation, transgender identity, disability, race or religion. The police have a duty to accurately record and investigate all Hate Crimes to ensure that members of social groups are protected.

...

2.2.5 Like all criminal proceedings in Scotland the standard of proof remains. The evidence of a single witness, however credible, is not sufficient to prove a charge against an accused person. There must be corroboration of the evidence of that witness, either by the testimony of another witness or by evidence of facts and circumstance.

...

4.7 **Police Scotland has a duty to undertake a thorough investigation of all Hate Crimes / Incidents.**

...

7 Investigation of Hate Crimes and Incidents

7.1 While it is accepted that not every Hate Incident will result in an offender being identified and criminal proceedings being instigated, this in no way diminishes the effect of such incidents for victims. Police Scotland will ensure each reported incident of Hate Crime / Incident is thoroughly investigated in a professional manner using processes that are transparent and accountable.

7.2 Police officers receive local and national training regarding investigative techniques and processes.

7.3 This training is equally applicable to Hate Crime / Incident, however, there are some considerations applicable to Hate Crime which officers attending incidents should consider in addition to the techniques and processes utilised in other enquiries. These include:

- Victims' care and support;
- Witnesses' care and support;
- Community impact;
- Community tensions;
- Interpreters (language / sign, etc); and
- Cultural awareness and personal sensitivity.

...

7.7.7 Think about trying to prevent any repeat incidents and reduce repeat victimisation through methods of prevention:

...

- Preserve all evidence and if uncertain regarding procedures contact the local Criminal Investigation Department (CID);

...

- Trace and identify any witnesses to the crime / incident by conducting full house to house enquiries;

...

7.8 Internet Enquiries:

7.8.1 Internet crimes are becoming increasingly more common. With this in mind a quick guide to obtaining information for evidential purposes has been outlined below.

7.8.2 If you attend at an incident and require taking information from a computer screen as evidence then ask the complainer / victim to carry out the following:

- Press the 'Print Screen' button on the key computer keyboard
- Thereafter open a new word document
- Press 'Ctrl' and 'v' at the same time; the screen shot should appear
- Ask the complainer to print the page
- You should then take a note of the IP address (long letter and numbers on toolbar at top of internet page)
- Lodge all evidence as a documentary production(s).

7.8.3 Further guidance can be found in the Digitally Stored Evidence PSoS SOP and Internet Research and Investigations PSoS SOP.