

independent and effective investigations and reviews

pirc

Police Investigations &
Review Commissioner

PIRC/00505/17
January 2019

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 Complaint

The complaint in this case arose following the applicant being reported to the police for allegedly acting in a threatening and abusive manner. We have reviewed the handling of one complaint, namely that Police Scotland did not recover CCTV footage, stopping the applicant from receiving a fair trial.

Police Scotland's Decision

Police Scotland did not uphold the applicant's complaint.

Our Findings

We have found that Police Scotland handled the applicant's complaint to a reasonable standard. We have determined that no further action is required of Police Scotland in relation to this complaint.

Background

On 31 December 2017, Police Scotland received a report that the applicant had been verbally abusive toward Mr A, a fellow customer at a local shop.

Constables B and C began an investigation into the incident, noting statements from Mr A and Mr D, the shop assistant. While at the shop, Constable C viewed the CCTV footage which had no audio. According to Constable C, although the footage was of low quality, it was arranged that it would be copied to a disc for the police to collect later.

Upon obtaining the two witness statements and viewing the CCTV footage, Constables B and C agreed that there was sufficient evidence to arrest the applicant for a contravention of section 38 of the Criminal Justice and Licensing (Scotland) Act 2010. The officers therefore attended the applicant's address whereupon he refused to open the door.

On 1 January 2018, Constables B and C were requested to speak with Mr A who had contacted the police again regarding the applicant. While they were on the way to Mr A's home, the constables observed the applicant walking on the street and spoke with him. At this time, they arrested him and he was taken into custody to appear in court on 3 January 2018.

On 11 January 2018, Constable B visited the shop to obtain the CCTV footage prior to the trial. However, he was advised that the footage had not been burnt to a disc and had since been overwritten. Constable B was therefore unable to seize the footage as evidence.

The applicant submitted his complaint about the police by telephone on 2 February 2018. Inspector E and Sergeant F attended the applicant's home to discuss the complaint. The applicant received a response to his complaint in writing from Superintendent G, dated 5 April 2018.

The applicant appeared in court on 16 March 2018 and was found not guilty.

The Complaint

The applicant complained that Police Scotland did not recover the CCTV footage, which stopped him from receiving a fair trial at court.

In his statement of complaint, the applicant said that he told his solicitor that there would be CCTV in the shop but, at a later date, was informed that this was not available as it had been overwritten. The applicant went on to state: *"I believe the CCTV would have freed me from blame for this incident"*.

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

In his response to the applicant, Superintendent G described the enquiries undertaken by Constables B and C. He advised that statements had been obtained from two witnesses and that Constable C had viewed the footage at the shop.

Superintendent G stated that *“any CCTV footage which is identified, is considered as a source of potential evidence and on occasion can be seized as a production”*. Superintendent G then cited extracts from Police Scotland’s Standard Operating Procedures on Productions and Disclosure of Evidence in Criminal Proceedings.

Superintendent G continued by advising that the relevant footage was viewed at the locus by Constable C who stated: that the footage showed the applicant entering the shop whilst two witnesses were in conversation; that the footage showed the applicant purchasing items at the till and, as he was leaving, turning in the direction of Mr A and Mr D and appearing to speak; that there was no audio and therefore nothing could be heard; and that shop staff advised him that the footage would remain on the hard drive for fourteen days before it was overwritten.

Superintendent G stated that Constable B returned to the shop on 10 January 2018 to collect the footage however it had already been overwritten without being burnt to a disc. Superintendent G went on to say that a memo was submitted to the Procurator Fiscal explaining this on 10 January 2018. Superintendent G stated that, while it was unfortunate that the footage was unable to be seized, there would have been little gained from it due to the fact there was no sound recorded, therefore it could not be considered as *“best evidence”*. He continued by stating that the two witnesses in the shop were the only people who could confirm what was said by the applicant.

Superintendent G concluded by stating that he did not consider that the actions of Constables B and C prevented the applicant from receiving a fair trial at court, and he did not uphold the applicant’s complaint.

Superintendent G’s response is appended to this report.

Our Review of the Complaint

We have been provided with copies of the police incident report, the prosecution report sent by the police to the Procurator Fiscal and statements taken from Mr A, Mr D, Constable B and Constable C.

While Superintendent G stated in his response that Constable B returned to the shop to collect the footage on 10 January 2018, both Constable B’s statement and the incident report suggest that this in fact happened on 11 January 2018. Similarly, although Superintendent G stated that Constable B sent a memo about the footage to the Procurator Fiscal on 10 January 2018, both Constable B’s statement and the prosecution report indicate that this actually occurred on 23 January 2018. Aside these discrepancies, we are satisfied that Superintendent G’s response was in line with the material information available.

In his statement, Constable C said that, upon viewing the footage, he saw the applicant enter the shop where Mr A and Mr D seemed to be in conversation. Constable C stated that, as the applicant left the shop, he appeared to speak in the direction of Mr A but the footage was of low quality and had no sound. Constable C said that Mr D told him that the footage would remain on the hard drive for fourteen days before it would be overwritten and that he would be happy to provide a copy to the police.

Constable B said in his statement that Constable C told him that he had viewed the footage and that it was of poor quality but showed Mr A, Mr D and the applicant together in the shop. Constable B said that Constable C told him that he had asked Mr D to copy the footage to disc and that Mr D was unable to do so at the time but said he would do so later and the police could collect it. Constable B stated that, when he had attended the shop to collect the footage on 11 January 2018, Mr D informed him that it had not been burnt to disc and had been overwritten. Constable B added that he had been under the impression that the footage had already been copied to disc and he was attending simply to collect it. Constable B also explained the operational reasons as to why he had been unable to attend earlier.

The prosecution report advised that the footage had been viewed by Constable C but not yet retrieved. The report stated that the footage was of very poor quality but showed the applicant in the shop with Mr A and Mr D at the relevant time. On 23 January 2018, Constable B submitted a memo to the Procurator Fiscal explaining that he had attended the locus to retrieve the footage but it had been overwritten.

Accordingly, the information available supports that the police tried to recover the footage, albeit unsuccessfully. Notwithstanding, the accusation made against the applicant was that he had been verbally abusive towards Mr A by calling him certain derogatory names. As the allegation was about what specifically was said, we agree with Superintendent G's view that there would ultimately have been little gained by seizing the footage as it had no sound and could not confirm what was said. As stated in Superintendent G's response, only those who were present in the shop could address what was said. On the basis of the information available, the footage appears to have been of little evidential value.

As noted above, the applicant was found not guilty when he appeared in court. In respect of the applicant's contention that he did not receive a fair trial at court as a result of the footage not having been seized, Superintendent G was in our view justified in his position that this was a matter for the applicant's solicitor to pursue.

For the reasons given, we consider that Superintendent G was warranted in not upholding the complaint, and that his response was adequately reasoned and in the main supported by the material information available. Consequently, we are satisfied that this complaint was dealt with to a reasonable standard.

Our Conclusion on the Complaint

We conclude that Police Scotland handled this complaint to a reasonable standard.

No further action is required of Police Scotland in relation to this complaint.

Emma Reid
Review Officer

Peter Innes
Senior Review Officer

Appendix

Copy of Police Scotland's response letter dated 5 April 2018

(Redacted and paragraphs numbered)

1. *I refer to your recent complaint about the police in which you expressed concerns about the actions of [Constables B and C] of this Force on 31 December 2017, which [sic] you allege that CCTV was not recovered from [shop address] which prevented you from receiving a fair trial at court.*
2. *I am aware that you have met with [Inspector E and Sergeant F], when a witness statement was noted outlining your complaint as:*
3. ***'I am not happy that the CCTV was not recovered in this case, stopping me from getting a fair trial'.***
4. *I am now in a position to advise you that this allegation has been investigated, with the following results.*
5. *On 31/12/2017, it was reported to Police Scotland that an incident had occurred within the [shop address] whereby it was alleged that you contravened Section 38 of the Criminal Justice and Licensing (Scotland) Act 2010 by acting in a Threatening and Abusive manner. This is recorded under [police incident number provided].*
6. *This resulted in [Constables B and C] undertaking an investigation which involved witness statements being noted from two eye-witnesses and the CCTV at the shop premises being viewed. This was viewed on 31/12/2017 by [Constable C] and another independent witness. During police investigations, any identified CCTV footage is considered as source of potential evidence and on occasion can be seized as a production.*
7. *I have considered Police Scotland's Productions – Standard Operating Procedure document which provides the following relevant information:*
8. ***Section 1.3.1 states a production is defined as an article, document or anything (including animals) which is connected with a crime or offence or other matter under review.***
9. ***Section 1.4.1 states it is essential that only necessary items are seized.***
10. ***Section 2.1 states productions should only be seized when they are evidentially necessary to assist the investigation or required for forensic examination.***
11. *I have also considered Police Scotland's Disclosure of Evidence in Criminal Proceedings – Standard Operating Procedure document which provides the following relevant information:*
12. ***Section 2.1.1 states that the disclosure of evidence is crucial and integral component of the criminal justice system in Scotland.***

- 13. The case of *Smith v HMA 1952* provides that it is the duty of the Police to put before the Procurator Fiscal everything which may be relevant and material to the issue of whether the suspected party is innocent or guilty.**
14. On 02 March 2018 when you met with [Inspector E and Sergeant F], you alleged that this footage was not recovered and presented as evidence because:
15. "I believe that this CCTV would have freed me from blame for this incident. I am really suspicious about this, that the police didn't get the CCTV, was because it wouldn't look good on the Police, this case even getting to court".
16. [Constables B and C] state the relevant CCTV was viewed and showed you enter the shop premises. At this time, two independent witnesses were already within the shop premises and in conversation. It showed that you purchased items at the till and as you left the shop you turned in the direction of one of the witnesses and appeared to speak towards them. However the CCTV does not record sound and nothing could be heard.
17. Furthermore, the attending officer, namely [Constable C] states that he was advised by shop staff that the CCTV footage would remain on the hard drive for 14 days before it would be overwritten and they would be happy to provide a copy to Police if required. [Constable B] states that he returned to the shop premises on 10 January 2018, some 11 days after the incident to retrieve the CCTV, to be advised the CCTV footage had not been burnt to the disc and the footage had been overwritten.
18. It is recorded under [police incident number provided] dated 31/12/2017 that CCTV was available and having been viewed confirms that you were at the locus at the material time.
19. On 03/01/2018 a custody report was submitted to the Procurator Fiscal detailing the incident, charge against you and all available evidence. This includes the fact CCTV had been viewed but not yet retrieved.
20. On 10/01/2018 a memorandum was submitted to the Procurator Fiscal advising that the CCTV was no longer available having been overwritten.
21. In effect all available evidence was revealed to the Procurator Fiscal by the means of a custody report and memorandum. Furthermore, your Solicitor was advised by the Procurator Fiscal that the CCTV had not been retrieved. Whilst unfortunate it appears to me that there would be little to be gained from seizing same as no sound was recorded and it could not be considered best evidence as from CCTV viewed Police officers were able to confirm you were in the shop but could not speak to what was said. The two other individuals within the shop were the only people able to speak to what was said by you. I would suggest it was for your Solicitor to challenge whether best evidence was led or not.
22. I feel that there is nothing to suggest that the actions of [Constables B and C] prevented you from receiving a fair trial at court. Taking the above into consideration I am therefore unable to uphold this allegation and in considering all the circumstances as revealed to me I do not propose to take the matter further.