

independent and effective investigations and reviews

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Police Investigations &
Review Commissioner

PIRC/00135/18
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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 consider appropriate we make recommendations, issue reconsideration directions 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 police attendance at the applicant's address to carry out a welfare check after they received a report that she was in possession of a knife and intended to harm herself. We have reviewed two complaints, namely that:

1. on 21 February 2018 at her home address, a male officer was angry and aggressive towards the applicant, and approached her in an intimidating manner;
 2. on the same date and at the same location, a male officer took out his baton and threatened to smash in the heads of the applicant's dogs.
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Police Scotland's Decision

Police Scotland dealt with the applicant's complaints as a single complaint. As a consequence, they made a single determination not to uphold the complaint.

Our Findings

We have found that Police Scotland handled complaint 2 to a reasonable standard, but not complaint 1.

Consequently, we have made one recommendation to address the shortcomings in Police Scotland's handling of complaint 1. In summary, we recommend that complaint 1 is recorded as a separate complaint. Further enquiries should then be carried out into this complaint and a further response sent to the applicant.

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

Background

On 21 February 2018, the applicant was in her home with her cousin, Mr A. Between 1800 and 1900 hours, Constables B and C attended at the applicant's address. This was in response to a report they had received that the applicant had a knife and intended to harm herself. Mr A allowed the officers entry to the applicant's home and asked if they were alright with dogs being on the premises. Constables B and C proceeded to enter the applicant's living room and a discussion ensued. The applicant contends that Constable B made a rude remark about her dogs. She said that she jokingly told Constable B that she would set her dogs on him, and that he responded by saying that he would smash her dogs skulls in with his baton if she did so.

During this incident, Constables D and E arrived at the applicant's address and waited outside. Both Constables D and E observed the interaction between the applicant and Constables B and C through the living room window. Constables B and C exited the applicant's property following the exchange detailed above and were met by Constables D and E. The applicant and Mr A are alleged to have followed Constables B and C outside, with the applicant shouting and pointing at Constable B before being led by Mr A back into her property. Constables B, C, D and E then left the locus.

Later that evening, the applicant called [named] police office to raise her complaints about the incident at her home that day. She spoke to Sergeant F as part of this process. Her statement of complaint was taken by Sergeant G on 28 March 2018, and the Heads of Complaint form was completed the same day.

A response letter from Superintendent H was sent to the applicant dated 7 June 2018.

Complaint 1

The applicant complained that, on 21 February 2018 at her home address, a male officer was angry and aggressive towards her, and had approached her in an intimidating manner.

In her statement of complaint, the applicant said that Constable B appeared angry from the moment that he arrived, having pushed past her cousin – Mr A – who had opened the door to him.

She said that Constable B stood right in front of her and that she felt intimidated by his presence and attitude.

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

In his response letter, Superintendent H summarised the applicant's statement regarding the incident at her home on 21 February 2018¹. He said that the applicant felt that Constable B had been angry from the moment he had entered her house; that the officers had barged past Mr A who had opened the door to them; and that Constable B made an unpleasant comment about her dogs to which she jokingly replied that she would set her dogs on him. He said that the applicant described Constable B as having stood directly in front of her, which she found intimidating due to his height and general attitude

Superintendent H said that Mr A had provided a statement in which he said that the officers had knocked on the applicant's door and told him that they were responding to an incident involving a knife. He said that he asked the officers if they were ok with dogs as the applicant had three bull dogs, and that he heard the applicant say that she would not be putting her dogs away for the officers. He said Mr A had said the officers had "*walked past him in a hurry*" but did not touch him or barge him at any point. He also said that Mr A had stated that "*he felt that the officer was unnecessarily hyped up*" during the incident.

Superintendent H advised the applicant that Constables B and C had also provided statements to inform the complaint enquiry. Constable B said that they had attended the applicant's address in response to information they had received that the applicant was in possession of a knife and was self-harming. He said that according to Constable B, the applicant had immediately become confrontational when he and Constable C entered the living room. Constable B also said that, despite his repeated attempts to explain to the applicant why they were at her address, she continued to shout and swear at him. Superintendent H said that Constable B stated that his actions were not aggressive and that he had remained the entire length of the room from the applicant at all times and did not approach her.

Superintendent H advised the applicant that Constable C stated that it was her opinion that the applicant had gained the impression that both officers had barged their way into her home, which was not the case. She said that she heard Constable B attempt to explain the reason for their attendance by explaining the nature of the call that had been received. Constable C also stated that she then heard the applicant threaten to set her dogs on Constable B.

Superintendent H provided a summary of the statements provided by Constables D and E. He advised the applicant that these officers remained outside and observed the interaction through her living room window. He said that both officers stated Constable B remained 10ft – 12ft from her at all times..

¹ The full response to the applicant's complaint can be found at paragraphs 8 – 17 of the appendix to this report.

Superintendent H said that he was satisfied that Constable B and his colleagues dealt with the incident in a professional and appropriate manner.

Our Review of Complaint 1

We have been provided with copies of the statements provided by the applicant, Mr A, and Constables B, C, D, and E. These statements have been assessed as part of our review.

Within her statement of complaint, the applicant alleged that Constable B appeared angry from the moment that he entered her house, that he had pushed past her cousin – Mr A – who had answered the door to him, and that he made a comment to the effect of “*fucking dogs*” as soon as he entered her living room. The applicant said that it was this comment that was the catalyst for her to jokingly say that she would set the dogs on him. She also said within her statement of complaint that she had stood in front of her fireplace and that Constable B had stood right in front of her. She said that he was very tall compared to her; that she felt intimidated by his presence and general attitude; and that she told him this.

We have reviewed the statement provided by Mr A and we can confirm that it has been accurately reflected in Superintendent H’s response. In his statement, Mr A said that he had opened the door to the officers, who explained that they were there “*...to do with something about a knife*”. He described both Constables B and C as having walked past him in a hurry, but that they did not barge past him or touch him. He said that he stood in the kitchen with the door open, and that he could see and hear everything. He said that he overheard Constable B tell the applicant “*I’ll crack the dogs fucking head in*”. He described Constable B as being “*totally hyped up*”.

In his statement, Constable B said that his actions and demeanour throughout his dealings with the applicant were a direct result of her hostility and abrasive manner. He stated that, while within the applicant’s property, the applicant was confrontational and behaved in a hostile manner towards him, shouting and swearing as he tried to explain the reason why he and Constable C were in attendance at the property. He said that the applicant had threatened to set her dogs on him and that, having previously been bitten by a dog, he perceived the threat to be genuine. He said that he responded by saying he would not hesitate to strike the dogs with his baton if they were set on him, despite which he did not “*...deem my actions or behaviour to have been excessively aggressive or threatening*”. Constable B also said that he did not approach the applicant, and remained the entire length of the room at all times.

In her statement, Constable C said that the applicant had formed the impression that she and Constable B had barged their way into her house without being asked and that this was not the case. She confirmed that Constable B made repeated attempts to explain the reason for their attendance, however the applicant was unwilling to listen and that she berated Constable B by commenting that there were clinics where he could go to get his head sorted. Of note is that Constable C makes no reference in her statement to the demeanour of Constable B, nor if he approached the applicant as she has alleged.

Constable E also stated that, on arrival at the applicant’s property, he could clearly hear her saying that she wanted Constables B and C to leave, which resulted in the decision of Constables D and E to remain outside to avoid aggravating the situation any further. Both Constables D and E say in their respective statements that at no time did Constable B move towards the applicant. Constable D said that Constable B stood approximately 10ft away from the applicant. He said that he was aware that Constable B was unhappy about having been threatened by the applicant, but was not angry or

behaving aggressively. Constable E said that Constable B stood approximately 12ft from the applicant, and did not see him act in a manner which he would consider to be aggressive or intimidating.

We consider that the statements provided by Constables B, D and E all support Constable B's position that he remained a distance away from the applicant; that he did not approach her at any time; and that he had not been aggressive towards the applicant as she has alleged. We also consider that the statements provided by Mr A and Constable C support that the officers – specifically Constable B and C - did not barge into the applicants home as she has alleged. Furthermore, we consider that cognisance has to be given to the fact that Constables B and C were attending a grade 1 call in which the applicant was alleged to have been in possession of knife and self-harming. It would therefore seem reasonable to infer that the officers attending an incident were facing an unknown risk. Accordingly, whilst it may well have been the applicant's perception that Constable B was aggressive and had barged into her home, it has to be acknowledged that Constable B's demeanour may have been a consequence of the nature of the call that he was attending. We consider that Superintendent H's response to the applicant would have been strengthened if he had reflected upon this.

However, notwithstanding the above, we note that neither Constable B or C in their respective statements have addressed the applicant's allegation that Constable B made an unpleasant comment along the lines of *"fucking dogs"* towards her. The significance of the applicant's allegation is that she has said that this was the catalyst for her having threatened to set her dogs on Constable B. Whilst Superintendent H's response acknowledges that the applicant had said in her statement that Constable B made an *"unpleasant comment"* about her dogs, it has not been addressed in the response. Indeed, we can see nothing within the complaint casefile to suggest that this issue was raised with Constables B and C by the complaint enquiry officer. We therefore consider that there has been insufficient enquiry carried out into this particular aspect of the applicant's allegation.

In addition, we note that Police Scotland have provided a single response and determination to the applicant's complaints. However, it is our view that both aspects of the applicant's complaints are capable of being upheld/not upheld independently of each other. This would have enabled Superintendent H to have provided a separate determination for each aspect of the applicant's complaint.

Accordingly, in light of the above, we conclude that that this complaint has not been handled to a reasonable standard.

Our Conclusion on Complaint 1

We conclude that Police Scotland have not handled this complaint to a reasonable standard.

We recommend that this is recorded as a separate complaint. Further enquiries should then be carried out into the applicant's complaint, taking account of the observations made in this report. A further response letter should then be sent to the applicant. This should make clear whether the complaint has been upheld, fully explaining its conclusions and providing an apology if appropriate to do so.

Complaint 2

The applicant complained that, on the same date and at the same location, a male officer threatened to smash in the heads of her dogs.

As we have mentioned, the applicant said in her statement that, although she could not remember how the conversation went, she recalls Constable B having said something to the effect of “*fucking dogs*”. She said that it was this comment that prompted her to jokingly say to Constable B that she would set her dogs on him. She said that, in response to this comment, Constable B immediately withdrew his baton and threatened to smash her dogs skulls in.

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

Within his response, Superintendent H said that the applicant’s position was that Constable B made an unpleasant comment about her dogs, to which she jokingly replied that she would set the dogs on him². The applicant said that Constable B responded to this by taking out his baton and threatening to smash her dogs’ skulls in. Superintendent H advised that Mr A’s statement confirmed that he heard Constable B state that he would crack the dogs’ heads in, and that he observed Constable B holding his baton in his left hand but it was not extended.

Superintendent H advised the applicant that Constable B and Constable C had both provided an account in response to her complaint. He said that Constable B stated that the applicant had threatened to set her dogs on him, so he had warned her that he would strike them with his baton if she did. Superintendent H said that Constable B had previously been bitten by a dog while on duty and that he deemed the threat made by the applicant to be a genuine one. He said that Constable B felt that he had no other option than to inform the applicant that he would strike her dogs with his baton if they were set on him. He also said that he pointed to his police issue baton on his utility belt however at no point did he physically touch or withdraw his baton.

He also advised that the statement provided by Constable C confirmed that the applicant had threatened to set her dogs on Constable B, to which he had responded that he would strike them with his baton if she did. He said that Constable C did not observe Constable B withdrawing or swinging his baton at any point.

Superintendent H then said that Constable D and Constable E also attended the incident and that they remained outside. However, on looking through the applicant’s living room window, they observed her speaking with Constable B. He said that both officers did not see Constable B draw his baton at any point

Superintendent H said that officers must risk assess any threat which is made towards them, and that the response of Constable B to the applicant’s threat to set her dogs on him was proportionate. For this reason, Superintendent H said that the applicant’s complaint was not upheld.

² The full response to the applicant’s complaint can be found at paragraphs 8 – 17 of the appendix to this report.

Our Review of Complaint 2

Having read the statements provided by the applicant, Mr A, and Constables B and C as part of our review, it is a point of concession that the applicant – jokingly or otherwise – threatened to set her dogs on Constable B. It is also a point of concession that Constable B told the applicant that he would strike her dogs with his baton if they were set on him.

However, there are conflicting accounts as to whether Constable B actually withdrew his baton. The applicant has said in her statement that *“After I had made the comment about setting my dogs on him, he took his baton out straight away and threatened to smash my dogs skulls in. He didn’t have his baton extended”*. The applicant is supported in her position by Mr A, who said in his statement that he saw Constable B *“...holding his baton in his left hand but it wasn’t extended”*.

In his statement, Constable B said that he drew the applicant’s attention to his baton on his utility belt when he was threatened with her dogs, but at no point did he physically place his hand around the handle or draw his baton during his entire time at the locus. Constable B is supported in his position by Constable C. In her statement, Constable C confirmed that Constable B told the applicant that he would strike her dogs with his baton if she was to set the dogs on him, but said that at no time did she see Constable B withdraw or swing his baton. Whilst it is acknowledged that both Constables D and E attended at the applicant’s address after Constables B and C had arrived, and that they did not enter the applicant’s home, their respective accounts lend some support to the position of Constables B and C. In their statements, Constables D and E said that at no point did they see Constable B draw his baton.

The standard of proof that is applied to non-criminal complaints about the police is the balance of probabilities. This is a test that is used to when there are conflicting accounts in order to assess the available information and reach a determination as to which version of events is more probable. In this case, the applicant and Mr A have said that Constable B withdrew his baton. This is in contrast to Constable B, who said that he did not take out his baton, with Constable B being supported in his position by Constable C, and to a degree by Constables D and E. Accordingly, in the absence of any further information to support the applicant’s position, we consider that, on balance, Superintendent H was justified in not upholding the applicant’s complaint and that the decision is supported by the material information available. We conclude that this complaint has been handled to a reasonable standard.

Our Conclusion on Complaint 2

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

However, in light of observations within this report, we recommend that Police Scotland record this as a separate complaint.

What happens next

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

Ann McGruer
Review Officer

Jacqui Jeffrey
Senior Review Officer

Appendix

Copy of Police Scotland's response letter dated 7 June 2018

(Redacted and paragraphs numbered)

1. *I write in reference to correspondence received on the 21st February 2018, in which you express your dissatisfaction at the actions of the Police Service of Scotland in relation to your dealings with police on that day. Further to this, I refer to your meeting with [Sergeant G] on the 28th March 2018 when he recorded your statement and agreed the nature of your complaint.*
2. *In my capacity as Superintendent (Support Service Delivery), I have functional responsibility for ensuring that the actions and conduct of officers under my command meet the needs and expectations of the community we serve.*
3. *Before addressing the salient points, I must first stress that the purpose of any complaints investigation is to examine the conduct of the officers complained about and assess whether their actions, in respect of the allegations, was lawful and proportionate and determine whether they undertook their duties fairly and professionally with due regard to the parameters of acceptable procedural practice. In doing so, I will try to provide detailed responses to the various issues that you have identified as being matters you wished specifically addressed.*
4. *It may be helpful for you to know that, where it has been deemed that the allegations are not upheld this does not necessarily mean that I have judged the allegations to be untrue. It simply means, that taking all of the available information into account, there is insufficient evidence to support the allegations.*
5. *In response to your complaint, I tasked [Sergeant G] to conduct an inquiry and report his findings to me. I have now had an opportunity to read his report and herein offer my comments and observations.*
6. *In relation to the allegation;*
7. *Complaint 1*
8. *I wish to complain that on 21/2/18 at [named location] a male officer was aggressive and angry. He threatened to smash all my dogs head in. He took his baton out and approached me in an intimidating way.*
9. *I note from your statement that a male and female officer police officer entered your house between 6pm and 7pm that evening and the male officer appeared angry from the moment he entered your house. Your cousin [Mr A] opened the door to the officer and the officers pushed past him. The male officer made an unpleasant comment about your dogs to which you jokingly replied by saying you would set your dogs on the officer, which made him even angrier. The officer then took out his baton and threatened to smash your dog's skulls in, however he did not touch your dogs at any point. Although the officer's baton was not extended you felt really scared, as he stood directly in front of you, which you found intimidating, as a result of his height and general attitude. The officers then left your house, followed by your cousin who obtained the officers shoulder number, however you think he provided a false number. You report that his colleagues who were standing outside your house were calling the officer 'Neil', which you believe was an attempt to protect his identity by calling him the wrong name. You report that the officer acted like a child whilst standing outside your house, as he was throwing fresh air punches whilst talking to his colleagues. You report that you spoke to the officers Sergeant that evening and he told you that the officer was scared of dogs, as he had previously been bitten by one. I also note that you have requested an explanation, as to why so many officers attended this incident.*

10. *I note from your cousin, [Mr A's] statement, that he opened your door for the officers. He reports that the officers had knocked your door and told him they were responding to an incident involving a knife. He asked if the officers were ok with dogs and informed them that you had three British Bull dogs. He then hears you say that you were not putting your dogs away for the officers. He reports that the officers walked past him in a hurry, however they did not touch or barge him at any point. Whilst standing in your kitchen, he heard the male officer saying that he would crack your dogs head in. He then observed the officer holding his baton in his left hand and reports that the baton was not extended at any point. He felt that the officer was unnecessarily hyped up during this incident and followed him outside where he obtained his shoulder number.*
11. *The male officer has been identified as [Constable B] and his colleague as [Constable C]. They have both provided an account in response to your complaint. [Constable B] reports that they attended at your address, as they had received information from the Department of Work and Pensions (DWP) that you had informed a member of their staff that you were in possession of a knife and cutting yourself. On entering your living room, [Constable B] observed you standing in the middle of the room with three English Bulldogs. He reports that you immediately became confrontational demanding to know why officers where there and despite his repeated attempts to provide an explanation you continued to swear at him. He reports that you were hostile as and continued to swear during which you threatened to set your dogs on him. He reports that he was previously bitten by a bull terrier whilst on duty, which required treatment by the Scottish Ambulance Service and further assessment at the Accident and Emergency department within [named hospital]. As a result of your actions and the presence of the dogs, [Constable B] deemed this to be a genuine threat and felt that he had no other option and replied by informing you that he would not hesitate to strike your dogs with his baton if they were set on him. He reports that he then pointed to his police issue baton, which was on his utility belt, however states that at no point did he physically touch or draw his baton. He reports that you then immediately said that you were joking and told him that there were places up town where he could get his head fixed. He reports that his actions were not aggressive and that he did not approach you at any point and remained almost the entire length of the room from you at all times.*
12. *During this incident, [Constable B] confirmed your safety by establishing that you were not injured or in possession of a knife and you confirmed that your comment to the DWP was a throw away comment. He was also aware that your cousin was present with you. [Constable b] reports that you and your cousin followed him outside during which time you continued to shout and swear whilst demanding his shoulder number, which he duly provided. Please note that many officers have two separate identifiable numbers, which may explain why you thought [Constable b] had provided the wrong shoulder number, however I can confirm that both numbers would identify the officer.*
13. *[Constable C] reports that she was of the opinion that you had formed the impression that both [Constables B and C] had barged their way into your house, which she reports was not the case. [Constable C] reports that [Constable B] attempted to explain the reason for their attendance by explaining the nature of the call they had received. She then heard you threaten to set the dogs on them, in response to which, she heard [Constable b] warn you that he would strike them with a baton if you did. [Constable C] also reports that she did not observe [Constable B] withdrawing or swinging his baton at any point.*
14. *[Constable D] and [Constable E] also attended this incident. They remained outside and on looking through your living room window, they observed you speaking with [Constable B]. They report that [Constable B] was approximately 10ft – 12ft away from you at all times and that they did not see him draw his baton at any point.*
15. *In response to your question regarding why so many officers attended this incident. I can confirm that four officers attended this incident, which includes [Constables B and C]. [Constables D and E] arrived a short time later and remained outside. This is a proportionate response, as the police had received information that you were in possession of a knife and cutting yourself. Any incidents, which potentially involves knives or weapons poses a serious risk to everyone*

- involved and the Police Service of Scotland ensures that they respond in a proportionate manner in order to reduce the threat, prevent injury and keep everyone safe.*
- 16. Having considered the information available to me I am satisfied that [Constable b] and his colleagues dealt with this incident in a professional and appropriate manner. Officers must risk assess any threat, which is made towards them and on this occasion [Constable B] warned you of the proportionate action he would take in order to prevent you from setting your dogs on him and for the purpose of avoiding injury.*
 - 17. I do not uphold the allegation made against the officers concerned.*
 - 18. Complaint 2*
 - 19. I wish to complain that the same officer on 21/2/18 at [named location] appeared to be under the influence of steroids or some other substance.*
 - 20. I note from your statement that you thought the same male officer was under the influence of steroids or some other substance whilst within your house, as a result of your following observations. His eyes were wide open and his pupils were tiny. He couldn't stand still and was continually bouncing. His cheeks appeared flushed and were glowing. He was wearing a t-shirt whilst his colleagues were all wearing jackets.*
 - 21. [Mr A] reports that the officer appeared hyped up but did not report that he appeared under the influence of steroids or some other substance.*
 - 22. The male officer has been identified as [Constable B] and he has provided an account in response to your complaint and reports that he was not under the influence of steroids or other substance.*
 - 23. [Constables C, D and E and Sergeant F] have also provided an account in response to your complaint and they all report that [Constable B] did not appear or [sic] display any signs that he was under the influence of steroids or other substances.*
 - 24. Having considered the information available to me I am not in possession of any information that would support your account that [Constable B] was under the influence of steroids or some other substance.*
 - 25. I do not uphold the allegation made against the officers concerned.*
 - 26. In conclusion, may I take this opportunity to reassure you that we take complaints about the police seriously and always seek to resolve them in a fair and proper manner, which I believe has been achieved on this occasion.*
 - 27. It is always disappointing when a member of the public is dissatisfied with the service provided by our officers or the procedures followed by our staff. I would like to thank you for bringing your concerns to our attention and affording us the opportunity to provide an explanation and some reassurance.*