

independent and effective investigations and reviews

pirc

Police Investigations &
Review Commissioner

PIRC/00170/18
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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 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 Police Scotland investigating whether transactions on an individual's bank account were to his knowledge and consent. We reviewed the handling of one complaint, namely that Police Scotland did not sufficiently seek to establish the individual's capacity in relation to his financial understandings.

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

Around the end of October 2017, the applicant contacted Police Scotland in relation to historical, unauthorised transactions on the bank account of his father, Mr A. Constables B and C were appointed to speak with the applicant regarding his concerns.

The applicant explained that he was concerned about historical transactions on Mr A's bank account as he found out that Mr A had purchased a car and bought other items for two women, a mother and daughter. The applicant believed that the women were posing as Mr A's friends when he was vulnerable. In addition, the applicant reported that he was concerned about a withdrawal of £6,000 as the whereabouts of this money was unknown.

Constables B and C were advised by the applicant that they were unable to speak with Mr A regarding the transactions as he no longer had capacity. However, they were informed that the applicant's brother, Mr D, held Power of Attorney and were therefore able to discuss the transactions with him.

After obtaining relevant information from the applicant and speaking with other family members about Mr A's capacity at the time of the transactions, Constables B and C were satisfied that there was no fraud or criminality. Given this, they did not find it necessary to speak with the mother and daughter or question further the transaction of £6,000.

The applicant made his complaint about the police by telephone on 29 November 2017 and he initially accepted frontline resolution. However, upon reflection, he contacted Police Scotland's Professional Standards Department and asked for the complaint to be investigated further. Inspector E visited the applicant to confirm his complaint and note his statement. The applicant received a response in writing from Chief Inspector F, dated 26 June 2018.

The Complaint

The applicant complained that Police Scotland did not sufficiently seek to establish Mr A's capacity in relation to his financial understandings.

In his statement of complaint, the applicant said that he believed Mr A was taken advantage of by a mother and daughter who posed as his friends, as Mr A purchased a car for the daughter in April 2015 and made other smaller transactions the same month. The applicant was also concerned about a withdrawal of £6,000 from March 2015 as the whereabouts of this was unknown. In addition, the applicant referred to a sum of money totalling £21,000 which was found in Mr A's home. The applicant stated that he had observed Mr D taking this.

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

In her response to the applicant, Chief Inspector F outlined the positions of Constables B and C. Chief Inspector F stated that both officers said: that they asked the applicant whether he sought legal advice in relation to the mother and daughter; that they enquired about Mr A's capacity at the time and asked whether he was able to make decisions or had been diagnosed with anything which may have

impacted his decision making; and that the applicant told them that Mr A had not been diagnosed however the applicant felt he was vulnerable.

Chief Inspector F described the complaint investigation carried out by Inspector E, explaining that he had obtained statements from civilian witnesses, received representations from social work and also contacted the Office of the Public Guardian.

Chief Inspector F highlighted that Mr A signed the Power of Attorney registration form on 1 October 2014 and that he appointed Mr D and Mr G, the applicant's brothers, to manage his estate. In addition, Chief Inspector F stated that the witness statements indicated that Mr A was admitted to a care home in July 2015 and, prior to this, had the capacity to make his own decisions. She explained that Inspector E had been told that Mr A knew the mother and daughter and these transactions were gifts to them.

Chief Inspector F continued by stating that the Office of the Public Guardian had previously conducted an investigation into Mr A's financial affairs due to a complaint raised by the applicant and had found nothing untoward in relation to this. She advised that Inspector E had viewed and assessed numerous documents which were collated by the Office of the Public Guardian.

Chief Inspector F then explained that Constables B and C stated that, after speaking with the applicant and taking the information he had provided into consideration, as well as speaking with other family members, the officers were satisfied that there was no evidence of criminality. Chief Inspector F concluded that she was unable to uphold the complaint.

Chief Inspector F's response is appended to this report.

Our Review of the Complaint

During his complaint investigation, Inspector E obtained: copies of Mr A's bank statements highlighting the disputed transactions; statements from the applicant, Constables B and C, Mr D, Mr G, representatives of social work and the Office of the Public Guardian; and documentation from the Office of the Public Guardian. We have been provided with copies of all the papers referred to.

In their statements, both Constables B and C said that they asked the applicant whether he had sought legal advice in relation to the mother and daughter, and also that they asked relevant questions regarding Mr A's capacity at the time of the disputed transactions, including whether he had been diagnosed with anything which may have impacted his decision making. Both Constables B and C stated that the applicant told them that Mr A had not been diagnosed with anything, although the applicant felt that Mr A was vulnerable. Constable C said that she explained to the applicant that a crime would have to be established before they would speak with the mother and daughter, and Constable B stated that he was present when Constable C explained this.

Constables B and C said also that they were advised by the applicant that they were unable to speak with Mr A regarding the transactions as he no longer held capacity, however they were able to speak with Mr D as he held Power of Attorney. In addition, the officers indicated that, having undertaken enquiries, they were satisfied that no crime had been committed and therefore did not speak with the mother and daughter.

The statements of Mr D, Mr G and the representatives of social work and the Office of the Public Guardian indicate that Mr A was admitted to a care home in July 2015 and that, prior to this, he had the capacity to make his own financial decisions. In addition, and in line with Chief Inspector F's response, the statements suggest that Mr A's family was aware of the circumstances surrounding the mother and daughter.

The documentation provided to Inspector E by the Office of the Public Guardian shows that the Power of Attorney registration form was completed on 1 October 2014, prior to Mr A losing capacity, as stated in Chief Inspector F's response. Alongside the registration form, a copy of Mr A's will was provided. This highlights that the Power of Attorney would not take effect unless and until a registered medical practitioner certified that Mr A had become incapable. Also included was a letter dated 11 June 2015 from Mr A's doctor confirming that the Power of Attorney could be used in relation to Mr A's financial and physical welfare.

The documentation shows also that the Office of the Public Guardian had previously carried out a comprehensive investigation into the matters that were later reported to the police by the applicant. The Office of the Public Guardian found that there was nothing that would raise concerns in relation to Mr A's finances and that the transactions the applicant was concerned about were prior to Mr A's deterioration in health.

In addition, the Office of the Public Guardian referred to a sum of money totalling £21,000 which was found within Mr A's home and believed by the applicant to have been taken by Mr D. However, the Office of the Public Guardian confirmed that Mr D had deposited this money into Mr A's bank account when they requested him to do so, and that there was nothing untoward in relation to this. The applicant also provided a bank statement to Inspector E highlighting the disputed transactions. As stated in Chief Inspector F's response, it appears that all disputed transactions were made between March and April 2015 when Mr A had the capacity to manage his own finances.

On the basis of the foregoing, we consider that Inspector E carried out a thorough investigation into the applicant's complaint, and we are satisfied that Chief Inspector F's response accurately reflected the material information available and adequately explained the enquiries undertaken by the officers in respect of Mr A's capacity and why they deemed no crime to have been committed. Consequently, we find 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 26 June 2018

(Redacted and paragraphs numbered)

1. I refer to your recent complaint against the police in which you express concerns regarding the actions of officers of the Police Service of Scotland on the 1 November 2017 in which you allege that Police Scotland could have went further in establishing [Mr A's] capacity in relation to his financial understandings.
2. Complaints about the police are treated seriously by the Police Service of Scotland as they provide a valuable opportunity for us to learn and improve our services to the public. It is equally important that we respond and address the matter quickly and fairly.
3. On receipt of your complaint after consideration the allegation has been assessed as Irregularity in Procedure. I am aware you were initially contacted by [Inspector E] of [named Police Office]. I am also aware after initially speaking with [Inspector E] at length, you initially agreed with advice that had been provided to you and accepted frontline resolution.
4. A letter was thereafter drafted by [Inspector E] in relation to this, however, you thereafter contacted Professional Standard Department stating you wished further investigation to be undertaken. You were thereafter visited by [Inspector E] at your home address, firstly confirming the allegations contained within your complaint, thereafter [Inspector E] noted your statement in this respect.
5. Your allegation relates to an incident whereby on the 1 November 2017 you contacted Police Scotland with concerns regarding [Mr A's] vulnerabilities in finances namely historical withdrawals from [Mr A's] bank account in 2015/2016. You informed the attending officers that you had concerns regarding transactions whereby [Mr A] had purchased a car for a mother and daughter and also purchased them a number of other clothing and cosmetic items. You further advised that you had significant concerns regarding the handling of [Mr A's] finances by [Mr D] and in failing [Mr G] whereby £6,000 had been taken from his account.
6. In terms of the allegation Irregularity in Procedure both officers refute this allegation. Both officers advise that initially they asked you if you sought legal advice in relation to the monies spent on the mother and daughter. The officers enquired regarding [Mr A's] mental state and if he had the capacity and ability to live alone, make his own decisions and if he had been diagnosed with anything that would affect the ability to make decisions. The officers allege that you stated that you had indicated that [Mr A] had not been diagnosed with anything, however, you believed that he was vulnerable.
7. As such [Inspector E] has conducted the following investigation with regards to [Mr A] and his finances.
8. It was established on the 1 October 2014 [Mr A] completed the Power of Attorney Registration Form and appointed [Mr D and Mr G] to manage his estate. As such statements have been obtained from civilian witnesses including Social Work representation which indicate that on 27 July 2015 [Mr A] was admitted to [a care home] after a fall within his home address where he was initially treated within [a hospital] where doctors advised him that he would benefit from 24 hour care. These civilian witness statements indicated that prior to this, [Mr A] had the capacity make his own decisions and go about his business.
9. [Inspector E] was further advised that these females knew [Mr A] and paid him attention which he enjoyed, that these were gifts made by him to the females. The transactions in which you initially raised concerns regarding being the following:
10. £350 – Debit Card on the 09.03.2015

11. £250 – Debit Card on the 18.03.2015
12. £49.55 – [Fragrance shop] on the 14.04.2015
13. £138.05 – [Clothing shop] on the 14.04.2015
14. £302.00 – [Clothing shop] on the 14.04.2015
15. £5,480 – [Car dealership] on the 20.03.2015
16. All these transactions were made by [Mr A] for these females when he had the mental capacity to make his own decisions and there is no evidence to suggest aspects of fraud or criminality, these being prior to the fall within his home address and the deterioration in his health.
17. In furtherance to this, the civilian statements also indicate that your family were aware that [Mr A] was spending monies on these females of his own will, however, they were not aware regarding the purchase of the vehicle.
18. In reference to the £6,000 that you noticed from [Mr A's] account, this transaction was made on the 4 March 2015 again prior to [Mr A's] deterioration in health which he had the capacity to make his own decisions. As such at these times [Mr A] was instructing his own financial affairs.
19. [Inspector E] has further made contact with the Office of Public Guardian. This public office operates under Adults with Capacity (Scotland) Act 2000. It gives the Public Guardian power to investigate concerns and take steps to safeguard finances for adults with capacity.
20. As such [Inspector E] has viewed and assessed numerous documents collated by this office in response to a complaint made by yourself. During the statement noted by the Inspector, you made reference to sums of money being £21,000 found within [Mr A's] address and a further sum used by [Mr G] for the purchase of property.
21. This investigation carried out by this official body shows a robust enquiry which shows nothing that would raise any concerns and the monies referred to in your statement have been recorded in evidence to show there is nothing untoward.
22. [Inspector E] has also observed a typed letter headed with your details and signed by yourself indicating that in July 2016 you appointed a qualified Psychiatrist who specialises in Section 24 of the Mental Health Act who carried out an assessment in [Mr A's] ability to make decisions for himself. You advise within this letter that the doctor deemed [Mr A] to have the mental capacity to make these decision, this letter being for the attention of the Office of Public Guardian.
23. Both officers state that at the time of speaking with you and with the information you provided to them with regards to [Mr A] having the capacity to make the decisions at the time of withdrawals and purchases coupled with the enquiry they undertook with further family members after speaking with you, that they were satisfied there was no evidence that criminality had occurred.
24. In respect of this allegation having considered all available information to me coupled with the lack of any supporting evidence relating to Irregularity in Procedure, I am therefore unable to uphold your complaint in this instance.
25. In conclusion I hope I have provided you with a comprehensive and fair review which addresses your allegation. Whilst I appreciate that you may be disappointed with the fact I was unable to uphold your allegation, I sincerely hope that you can accept the reasons for my conclusion.