

independent and effective investigations and reviews

pirc

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 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 an investigation into historic sexual offences. We have reviewed three complaints, namely that:

1. on or after 2 March 2015, the officers who interviewed the applicant did not investigate claims that the four females had colluded to make false allegations;
 2. on or after 2 March 2015, during an interview, the applicant was not questioned regarding the allegations made by one of the females and therefore could not provide his version of events; and
 3. on or after 28 November 2014, the officers did not speak with all of the applicant's children and their families with whom he had either lived with or had access to.
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Police Scotland's Decision

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

Our Findings

We have found that Police Scotland handled all of the applicant's complaints to a reasonable standard.

No further action is required of Police Scotland in relation to the complaints considered in this review.

We have identified a learning point in relation to Police Scotland's use of the Frontline Resolution (FLR) process in respect of these complaints.

Background

In 1993 the applicant was interviewed, and subsequently cautioned and charged with sexual offences against his daughter, Ms A, and her friend, Ms B. The matter was reported to the Procurator Fiscal's Office, who decided at that time to take no proceedings against him.

In November 2014 a further investigation into historic sexual offences was opened and the applicant was interviewed under caution on 2 March 2015 in relation to allegations made by Ms A, her friends, Ms C and Ms D and Ms D's mother, Ms E. The investigation was overseen by Detective Inspector F and the interview with the applicant was carried out by Detective Sergeant G and Detective Constable H. During this interview, the applicant states that he made a counter allegation that all four women had colluded to fabricate false allegations against him. At the conclusion of that interview, the applicant was cautioned and charged with the historic sexual offences against Ms A, Ms C, Ms D and Ms E. The Procurator Fiscal then made the decision to include the charges from the investigation in 1993 relating to Ms B to the ongoing court proceedings against the applicant. The applicant was thereafter convicted and sentenced to a term of 15 years in prison.

The applicant submitted his first letter of complaint to Police Scotland, which was received on 11 August 2017. On 5 September 2017, Constable J and Sergeant K attended at a prison where the applicant was incarcerated, in order to attempt to deal with his complaints via the Front Line Resolution (FLR) procedure.

The applicant's second letter of complaint was received on 10 October 2017, followed by a further letter requesting an update on his complaints dated 14 January 2018. A Heads of Complaint form was then completed by Constable J on 24 January 2018 following a second visit to the applicant in prison. No statement of complaint was taken from the applicant. A response letter was sent to the applicant by Chief Inspector L dated 5 March 2018.

Complaint 1

The applicant complained that, on or after 2 March 2015, the officers who interviewed him did not investigate claims that the four females had colluded to make false allegations against him.

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

In his response letter, Chief Inspector L summarised the applicant's complaint¹. He said that the applicant had raised concerns that the officers conducting the interview in March 2015 in relation to allegations of historic sexual offences did not investigate his counter allegation that the four females had colluded to fabricate false allegations against him.

Chief Inspector L advised the applicant that the interviewing officers and the Detective Inspector in charge of the enquiry had provided their version of events and that a review of the circumstances had been carried out. Chief Inspector L advised the applicant that it was his understanding that the applicant could provide no evidence that the females had colluded other than that he had 'heard' that they had met up with each other and communicated via text message and social media. Chief Inspector L also advised the applicant that this information was contained within their statements and that it was the responsibility of his defence agent to question the credibility of the witnesses at trial.

Chief Inspector L advised the applicant that evidence had been obtained during the investigation into the allegations against him to show that the females had previously disclosed the abuse perpetrated by him independently to a variety of people and organisations over a number of years. Chief Inspector L said that this, coupled with the applicant's admission of several of the offences libelled against him during the interview, supported the position of the women making the allegations.

Chief Inspector L advised the applicant that it was for his defence agent to pursue his claim that the females had colluded against him at trial and that this was not a matter for the police to investigate. On this basis, the applicant's complaint was not upheld.

Our Review of Complaint 1

We have been provided with a copy of the recording of the applicant's interview carried out by Detective Sergeant G and Detective Constable H on 2 March 2015. We have also been provided with correspondence from Constable J to Detective Sergeant G, Detective Inspector F and Detective Constable H making enquiries into their involvement in the original investigation, with specific reference to the applicant's complaints and their responses to him. In addition, a copy of the Standard Prosecution Report (SPR) submitted to COPFS following the investigation has also been provided.

We have reviewed police interview with the applicant which took place on 2 March 2015. We note that the applicant does not make the allegation described within his complaint during the course of this interview. While he makes frequent references to some of the allegations made by Ms A, Ms C, Ms D and Ms E as being false, he does not refer to any of the women colluding in order to make these allegedly false allegations. No reference is made to them meeting up or communicating via text message or social media. It is unclear, therefore, precisely when the applicant made this allegation

¹ The full response to this complaint can be found at paragraphs 6 – 14 of the appendix to this report.

against the women concerned. The crux of the applicant's complaint, however, is that this allegation was not investigated when it was made.

In her response to Constable J, Detective Inspector F stated that the statements provided by Ms A, Ms C and Ms D contained information that they had communicated with each other prior to making their disclosures to the police. We consider therefore, that Chief Inspector L is correct in his assessment that this information would have been available to the applicant's defence agent, and could have been tested during the trial.

Detective Inspector F also provided details to Constable J of the documented disclosures made by Ms A, Ms B and Ms C independently of each other over a number of years prior to disclosing this information to police. When this is taken with the applicant's own admission of a number of the offences during the interview on 2 March 2015, we consider that Chief Inspector L is correct in his assessment that these factors lend weight to the accounts provided by the women concerned. Accordingly, we consider that even if the applicant made an allegation of collusion, there was sufficient credible evidence that would justify police officers dealing with this case not to investigate such allegation.

In light of the above, we consider that Chief Inspector L's response is well reasoned and is supported by the material information available. We conclude, therefore, that Police Scotland handled this complaint to a reasonable standard.

Our Conclusion on Complaint 1

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.

Complaint 2

The applicant complained that, on or after 2 March 2015, he is dissatisfied that he was not questioned regarding the allegations of one of the females and therefore could not provide his version of events.

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

Chief Inspector L summarised the applicant's complaint². He said that the applicant was dissatisfied that he had not been asked any questions in relation to the allegations against him relating to Ms B during the interview conducted on 2 March 2015.

Chief Inspector L advised the applicant that he had been questioned regarding these allegations in 1993, at which point he had been cautioned and charged with the relevant offences. He advised the

² The full response to this complaint can be found at paragraphs 16 – 21 of the appendix to this report.

applicant that the matter had been reported to the Crown Office and Procurator Fiscal Service (COPFS), who decided to take no action at that time. Chief Inspector L advised the applicant that, as he had been interviewed and charged in relation to these allegations in 1993, there was no requirement to interview him about them in 2015. He advised the applicant that the decision to include these earlier charges in his trial was made by COPFS.

Chief Inspector L advised the applicant that, as he had been interviewed in relation to the allegations regarding Ms B, his complaint was not upheld.

Our Review of Complaint 2

The applicant's complaint was that he had not been interviewed in relation to the allegations regarding Ms B during the interview on 2 March 2015. Chief Inspector L advised the applicant that there was no requirement to do so as he had already been interviewed and charged in relation to these allegations in 1993 and on this basis the applicant's complaint was not upheld.

We agree with this position. The available paperwork provides that the applicant was interviewed in relation to these allegations in 1993 and was afforded an opportunity to provide his version of events or state his defence. At the conclusion of the interview the applicant was cautioned and charged with a number of offences, as it was considered that there was sufficient evidence to support the charges. The fact that the COPFS made a decision not to prosecute the applicant at that time is not a relevant factor to this complaint. We can see no necessity or good reason for police officers who interviewed the applicant in 2015 to question him again about allegations that were investigated in 1993.

We also note that in terms of the Police Scotland Crime Investigation Standard Operating Procedure 2013 (the "Crime Investigation SOP"), paragraph 6.6.1, that "*any questions and answers provided by an accused after caution and charge will be inadmissible*". Consequently, as the applicant had already been interviewed, cautioned and charged with the offences in relation to Ms B in 1993, any further questioning of the applicant by the police is likely to be deemed inadmissible during any subsequent court proceedings.

We consider that Chief Inspector L's response would have been strengthened had he more fully explained the provisions of the Crime Investigation SOP to the applicant. However, we conclude that Police Scotland handled this complaint to a reasonable standard.

Our Conclusion on Complaint 2

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.

Complaint 3

The applicant complained that, on or after 28 November 2014, he is dissatisfied that officers did not speak with all of his children and their families who he had either lived with or had access to.

Police Scotland's Handling of Complaint 3 (not upheld by the police)

Chief Inspector L summarised the applicant's complaint³. He said that the applicant had raised concerns that officers investigating the allegations against him had not spoken to all members of his family. He said that the applicant felt that this would have provided support for his version of events, or confirmation that he had not abused some members of his family.

Chief Inspector L advised the applicant that it was standard practice in an investigation of this nature to speak to members of a suspect's family and that this had been done in respect of the applicant's family. He also advised the applicant that members of his family who were contacted had engaged with officers to varying degrees and said that he was unwilling to provide the applicant with any further details in relation to this.

Chief Inspector L advised the applicant that, if he felt specific members of his family could have offered evidence in support of his defence, his defence agent could have requested, via COPFS, that statements were taken from them. He also advised the applicant that it was the responsibility of his defence agent to call defence witnesses at his trial.

Chief Inspector L advised the applicant that, as efforts were made to speak with members of his family in line with standard practice, his complaint was not upheld.

Our Review of Complaint 3

In her response to Constable J, Detective Constable H provided a detailed summary of all tasks from the Crime File which related to attempts to trace and interview family members of the applicant during the original investigation. These tasks detailed the applicant's family members, the contact made with them and the outcome of these enquiries. Accordingly we are satisfied that investigating officers made concerted efforts to contact numerous members of the applicant's family.

This is considered to be a routine line of enquiry in cases of historic sexual abuse as other members of a suspect's family could be either potential witnesses, victims, or both. We were also advised that, in enquiries of this nature, it was also important to establish what access a suspect had to children to assess any potential safeguarding issues. The purpose of these enquiries is not, however, to seek exculpatory evidence to assist the accused. On this basis we agree, that if the applicant considered that some members of his family could provide evidence that would have assisted him during his trial, then his defence team could have made the necessary enquiries.

We consider that Chief Inspector L's response is based on the material information available, is well reasoned and provides the applicant with the necessary information to understand why his complaint is not upheld. We conclude, therefore, that Police Scotland handled this complaint to a reasonable standard.

³ The full response to this complaint can be found at paragraphs 23 – 27 of the appendix to this report.

Our Conclusion on Complaint 3

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.

Learning Point

We note that the Complaint About the Police (CAP) record states that Constable J and Sergeant K attended the prison where the applicant is incarcerated on 5 September 2017 in order to attempt to resolve his complaints via Frontline Resolution (FLR).

Police Scotland's Complaints About the Police Standard Operating Procedure (the "Complaints SOP") makes clear that early or frontline resolution should only be attempted in non-serious complaints that appear to be "*minor or trivial in nature*". The complaints in this case focus on the investigation carried out by Police Scotland into the allegations of historic sexual abuse made against the applicant. It should have been clear from the outset that these complaints were not suitable for FLR due to their nature and that they required a thorough complaint enquiry.

We expect Police Scotland to remind all officers and staff involved in the handling of complaints about the police that early or frontline resolution is not appropriate when the substance of the complaint is serious or complex.

What happens next

No further action is required of Police Scotland in relation to these complaints.

Ann McGruer
Review Officer

Ilya Zharov
Head of Reviews & Policy

Appendix

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

(Redacted and paragraphs numbered)

1. *I write to you in my capacity as Detective Chief Inspector within the Public Protection Unit, [named division], Police Service of Scotland, and in response to your complaint regarding the investigation of sexual offences you perpetrated.*
2. *Your allegation has been recorded as a Complaint About the Police and was allocated to our Complaint Unit to investigate. They have completed the enquiry and I now have the circumstances to hand.*
3. *I am aware that you are currently serving a prison sentence, having been convicted of various sexual offences against four juvenile females during the 1980s and early 1990s. You are dissatisfied with several aspects of the Police investigation into these matters.*
4. *I understand you discussed the substance of your complaints with [Constable J] and [Sergeant K] and identified your concerns. I will address these in turn.*
5. *Allegation 1*
6. *On or after 2 March 2015, you are dissatisfied Officers who interviewed you did not investigate claims you made that the four females had colluded to make false allegations against you.*
7. *The first element of your complaint relates to claims you made in your interview that the four females had colluded to make false allegations against you. You believe the interviewing Officers should have investigated these claims and the fact you were charged at the conclusion of your interview proves the investigation was biased and the Officers had no interest in your version of events. You also feel if Police had checked their Facebook and text messages it would show they had colluded.*
8. *The Officers who interviewed you and the Detective Inspector leading the enquiry have independently provided their version of events. A review of the circumstances has also be conducted.*
9. *My understanding is you could offer no evidence that the females had colluded other than you had 'heard' they met up with each other and you believed Facebook and text messages were how they communicated.*
10. *Information was contained in their statements, which would have been available to your defence agent and brought out through witness testimony in court, that the females had communicated with each other both electronically and in person prior to disclosing the sexual offences to the Police. There was no evidence to suggest they had colluded to fabricate allegations against you, only that they had discussed being victims of sexual abuse and whether they would report this to the Police.*
11. *Evidence obtained during the enquiry revealed several of the victims had made disclosures to various persons or agencies many years ago which supports the position they had not recently colluded to make false allegations against you. I also note during interview you admitted several of the offences libelled against you, adding further weight to the victims account.*
12. *It was for your defence agent to challenge the credibility of these witnesses' versions of events in court and for the jury to decide whether they accepted their position or your own.*
13. *Your view that you being charged on the conclusion of your interview indicated the investigation was biased, is not accurate. A sufficiency of evidence had already been gleaned prior to your interview for you to be charged with the offences libelled. Your interview was an opportunity for you to provide your version of events due to the serious nature of the allegation against you.*

- Nothing you said in your interview diminished the weight of the evidence against you and you were rightly charged and arrested at the end of your interview.*
- 14. Having fully considered the circumstances outlined above, I am satisfied there was sufficient evidence to charge you whilst you were in Police custody and your assertion the victims had colluded was for your defence agent to bring out during your trial and not a matter for Officers to investigate. I therefore find this element of your complaint not upheld.*
 - 15. Allegation 2*
 - 16. On 2 March 2015 at [named police office] you are dissatisfied you were not questioned regarding [Ms B] and therefore could not provide your version of events.*
 - 17. The second element of your complaint relates to the same interview discussed previously. You are dissatisfied you were not asked any questions about allegations made by [Ms B] as you feel you were not given the opportunity to provide your version of events.*
 - 18. The allegations made by [Ms B] were previously investigated by Officers in 1993 at which time you were interviewed and charged and the circumstances were reported to the Crown Office and Procurator Fiscal Service (COPFS). At the time COPFS took 'no proceedings' against you.*
 - 19. As these allegations had been investigated previously and you had already been interviewed and charged, there was no requirement for these matters to be presented in your interview on 2 March 2015.*
 - 20. After consultation with the Crown Office and Procurator Fiscal Service, they instructed the historic charges relating to [Ms B] be included along with those of the other victims and they pursued these during your trial.*
 - 21. As you had already been interviewed regarding the allegations made by [Ms B], I find this element of your complaint not upheld.*
 - 22. Allegation 3*
 - 23. On or after 28 November 2014, you are dissatisfied Officers did not speak with all of your children and their families who you have either lived with or have had access to.*
 - 24. The final element of your complaint relates to the investigation of the allegations against you. You believe Officers did not speak with your other children and grandchildren, some of whom lived with you at the time the allegations against you were said to have taken place. You feel they would have supported your version of events or at least confirmed they had not been the victims of abuse themselves and thus cast doubt on the allegations against you.*
 - 25. It is standard practice for members of a suspect's family to be spoken to during an enquiry of this nature. While I am unwilling to go into details of the members of your family who were spoken to and what was said, I can confirm efforts were made to speak with your family which were met with varying degrees of engagement.*
 - 26. If you felt any of your family members could have offered evidence in support of your position, you could have discussed this with your defence, who may have requested Officers note statements from them via the Crown Office and Procurator Fiscal Service to be called as defence witnesses at your trial.*
 - 27. As efforts were made to speak with members of your family in line with standard practice and the onus is on your defence to call defence witnesses on your behalf, I find this element of your complaint not upheld.*
 - 28. I appreciate this is unlikely to be the result you hope for, but I trust you will take some comfort from knowing your allegations have been given full and careful consideration.*
 - 29. I would like to take this opportunity to thank you for bringing these matters to our attention, as complaints from members of the public are an important source of feedback in terms of the quality of service provided and as an indicator of problems that require to be addressed.*