



Police Investigations &
Review Commissioner

Report of a Complaint Handling Review in relation to Police Scotland

PIRC/00019/19
January 2020



What we do

Under the terms of the Police, Public Order and Criminal Justice (Scotland) Act 2006, as amended (“the Act”), we examine the manner in which non-criminal complaints about the police have been dealt with.

How we do it

First, we obtain the relevant information from the police and the applicant. We then use this to review how the complaint was dealt with by the police and we reach a conclusion on whether the complaint was handled to a reasonable standard. In carrying out our review, we consider factors such as:

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

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



Executive Summary

The complaints in this case arose after the applicant was arrested at his home address on 29 January 2019 and held in police custody for a period of around seven and a half hours.

The Complaints

We have reviewed the handling of seven complaints, namely that:

1. officers failed to consider if the applicant needed medication when arresting him;
2. the applicant was not properly cared for while in custody as he was not offered food, water or a blanket;
3. the applicant was held in custody for longer than was necessary;
4. the applicant's welfare was not considered on his release from custody;
5. insufficient enquiry was carried out in relation to the incidents of 23 and 24 October 2017;
6. the applicant's interview of 9 December 2018 was inaccurately reported to the Procurator Fiscal; and
7. the report made by the applicant to the police on 30 January 2019 was not investigated.

Police Scotland's Decision

Police Scotland upheld complaint 5 but did not uphold complaints 1, 2, 3, 4, 6 and 7.

Our Findings

We have found that Police Scotland handled complaints 4, 5, 6, and 7 to a reasonable standard but not so complaints 1, 2 and 3.

Consequently, we have issued a reconsideration direction and made one recommendation to address the shortcomings in Police Scotland's handling of the complaints. In summary, we have issued a reconsideration direction in relation to complaint 2 and recommend that further enquiries are carried out in relation to complaint 3. A further response should then be sent to the applicant.

Our reconsideration direction and recommendation should be completed by Police Scotland within two months of the date of this report.



Background

The applicant was formerly in a relationship with Ms A. On 17 June 2018 Ms A attended at a police station to make allegations of a domestic nature against the applicant relating to incidents that took place on 23 and 24 October 2017. Ms A's report was taken and initially investigated by Constable B before being passed to Constable C in November 2018. On 9 December 2018 the applicant was arrested, cautioned and interviewed by Constables C and D in relation to the allegations made by Ms A, following which he was released due to insufficient evidence.

Constable C obtained a statement in relation to Ms A's allegations from her sister on 13 January 2019. The applicant was subsequently re-arrested at his home address at 1825 hrs on 29 January 2019 and taken to his local police station, where he was cautioned and charged in relation to these allegations. The applicant was released from custody at 0204 hrs on 30 January 2019 on the authorisation of Sergeant E, the custody supervisor. While in custody, the applicant stated that he attempted to speak with Constable C in order to make a counter allegation against Ms A but was told that this was not possible at that time. As a result, the applicant re-attended at the police station on 30 January 2019. Constable C was not available, therefore the applicant was seen by Constables F and G, who then passed the information provided by the applicant to Constable C. Constable C added this to the exculpatory information section of the Standard Prosecution Report (SPR) submitted to the Procurator Fiscal (PF), on the advice of Sergeant H.

The applicant made his complaints in relation to the above circumstances to Police Scotland via the online complaints form on 4 February 2019. The complaint enquiry was allocated to Inspector J, who completed the heads of complaint form and obtained the applicant's statement of complaint on 27 February 2019. A response letter was sent to the applicant from Chief Inspector K dated 21 March 2019.

Complaint 1

The applicant complained that officers failed to consider if he needed medication when arresting him on 29 January 2019. In his statement of complaint, the applicant stated that the officers did not ask him if he needed to take any medication with him and that he did not mention needing any as the officers said he "*would only be away a short time*". The applicant also stated that he did not specifically mention his inhalers when being booked into custody, again, because he thought he "*would get out soon*".

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

Chief Inspector K advised the applicant that statements had been provided by Constables C and D, which he summarised as follows. Constable C stated that she asked the applicant if he had everything that he needed and at no point did he tell her that he needed medication. Constable D supported the account of Constable C.

Chief Inspector K advised the applicant that Inspector J had reviewed the applicant's custody records and viewed the CCTV taken at the charge bar where the applicant was processed. Chief



Inspector K advised the applicant that his custody records show that he answered that he was not suffering from any ongoing medical conditions, allergies or infectious diseases, and that he disclosed that he was taking three types of medication, "*none of which are the inhalers*". Chief Inspector K advised the applicant that he had ample opportunity to ask for inhalers and had chosen not to do so.

Chief Inspector K advised the applicant that the officers had fulfilled their obligation in giving him the opportunity to mention his inhalers while at his home and that the applicant had not mentioned them while in custody. Chief Inspector K took the view that the applicant had "*actively failed to take best care of [himself] and placed the police in a precarious position*" due to not declaring his illness. On this basis, the applicant's complaint was not upheld.

Our Review

We have been provided with copies of the statements obtained from the applicant and Constables C and D during the complaint enquiry. We have also reviewed the CCTV of the applicant being booked into custody.

Chief Inspector K's response accurately reflected the content of the statements obtained in relation to this complaint.

The CCTV of the applicant being booked into custody shows that he was in possession of a number of blister packs of medication at that time. The applicant was also asked whether he needed to take any more of his medication that day, to which the applicant responded that he did not. At no point did the applicant refer to having asthma or requiring inhalers in relation to this.

However, the crux of this complaint is that officers failed to consider if the applicant required his medication when he was arrested. In this regard, the applicant's failure to disclose to custody staff at the charge bar, or whilst he was placed in the cell, that he suffered from asthma and required his inhalers is largely irrelevant.

We note that neither Constables C or D have addressed whether the applicant was advised that he would only be away from his address "*for a short time*" in their statements and there is no indication within the complaint file that this was raised with them by the enquiry officer, which we consider to be a shortcoming in the complaint enquiry. Furthermore, neither officer provided a definitive answer to whether consideration was given to prescribed medication during the applicant's arrest. However, both officers are consistent in their statements that the applicant was asked "*if he had everything he needed with him*". We consider that such enquiry with the applicant by the arresting officers arguably was sufficient in these circumstances. This is because the applicant was in police custody a few weeks prior to this incident, on 9 December 2018, in relation to the same allegation, dealing with the same officers, whereby he was processed as an arrested person, and had been subject to the full custody process and risk assessment. We note from the paperwork available to us, that on that occasion the applicant had his inhaler with him. Thus, we consider that the applicant had recent experience of being in police custody and at least had some indication of what he may or may not require to take with him.



However, we acknowledge that many members of the public who have no previous experience of police custody may not be aware of what they may or may not need during their time in custody. In this regard, asking a detainee whether they have “*everything they need*” may not be sufficient. The Care and Welfare of Persons in Police Custody Standard Operating Procedure (the “Custody SOP”) clearly states that where a custody is apprehended at his/her home address, the arresting officers should, when practicable, ask if the custody has any prescribed medication. If so, it should be included with the custody’s property and brought to the attention of the custody supervisor when presenting the custody¹. The final response to the applicant did not consider the relevant provisions of the Custody SOP and it is not possible to ascertain from Constables C and D’s responses whether they were aware of the provisions of the Custody SOP.

In conclusion, we consider that in the particular circumstances of this case, Chief Inspector L was justified in not upholding this complaint. However, the final response to the applicant focused on the applicant’s actions whilst in police custody rather than the crux of the complaint which was whether consideration was given by the arresting officers to the applicant’s medication upon his arrest at his home address. The final response also did not consider the relevant protocol and did not assess officers’ actions in line with the established procedures. We consider that the enquiry in relation to this complaint was insufficient as the officers’ responses are minimal and additional concerns raised by the applicant were not communicated to the subject officers. Accordingly, for the above reasons, we conclude that this complaint was not reasonably handled.

Our Conclusion on Complaint 1

We conclude that Police Scotland did not handle 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 he was not properly cared for while in custody as he was not offered food, water or a blanket. The applicant said in his statement of complaint that Constable C “*said she would get [him] a blanket*” shortly after placing him in his cell and that he did not ask for one at any other time because he “*thought [he] was getting out soon*”.

In respect of the provision of food and water, the applicant stated in his statement of complaint that he was not offered any food and water while in custody and that he did not ask for any as it was his understanding that the “*Police have to provide food and water so [he] shouldn’t have to ask*” for it.

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

Chief Inspector L advised the applicant that the Letter of Rights referred to by the applicant states that “*water will be provided if you ask for it. You will be offered food if you are at the police station*”

¹ Paragraph 18.3.4



for more than four hours". Chief Inspector L advised the applicant that Constable C had provided a statement, which he summarised as follows. Constable C said that she did not recall the applicant asking for a blanket and that she would not deliberately deny him access to one.

Chief Inspector L advised the applicant that Sergeant E had also provided a statement, which he summarised as follows. Sergeant E said that he visited the applicant's cell and asked the applicant if he needed anything, which included the offer of food, to which the applicant said no. Sergeant E also said that 3 further hourly welfare checks were carried out during the applicant's time in custody and no issues were identified or requests made by the applicant.

Chief Inspector L advised the applicant that he had "*ample opportunity to request food, water and blankets at any time*" while in custody and that he had chosen not to. On this basis, the applicant's complaint was not upheld.

Our Review

We have been provided with copies of the statements obtained from the applicant, Constable C and Sergeant E in relation to this complaint, as well as the applicant's custody records and a copy of the letter of rights provided to the applicant. We have also reviewed the CCTV of the applicant's time in custody.

Chief Inspector L's response accurately reflected the content of the statements obtained in relation to this complaint.

In relation to the applicant's request for a blanket, Constable C has not addressed whether she told the applicant that she would get him one in her statement to the complaint enquiry and this issue does not appear to have been raised or clarified with her by the enquiry officer, which we consider to be a shortcoming in the complaint enquiry. The sound quality on the CCTV in the cell corridor is very poor therefore it is not possible to tell if Constable C did tell the applicant this. We consider that the fact that Constable C does not remember the applicant asking for a blanket does not necessarily indicate that the applicant did not ask for a blanket. The final response concluded that the applicant did not ask for a blanket however offered no explanation how such a conclusion was reached or why Chief Inspector L preferred Constable C's position over the applicant's.

With regards to the applicant being provided with water, the letter of rights states that an individual in custody will be provided with water if they ask for it. However, the Custody SOP states that "*custody staff are to ensure that custodies receive sufficient water*" and that if a "*custody continually declines fluids, consideration should be given to consulting an HCP*". The final response letter to the applicant did not consider these provisions.

In relation to the applicant being provided with food, the applicant's custody records show that he was visited 8 times while in custody, none of which were recorded as meal visits. The CCTV shows that he was visited 6 times and, while the audio within the cell corridor is very poor, the applicant appears to be asked simply either "*you ok?*" or "*alright?*" during these visits. The CCTV footage does not show the applicant being offered food or asked if he needed anything, contrary



to the statement provided to the complaint enquiry by Sergeant E. Rather, at 2133 hrs, Sergeant E is seen to approach the applicant's cell, open the hatch and ask "okay?". The applicant's response is inaudible, however Sergeant E is heard to respond "*Cheers [applicant's name]*". On this basis, we consider that Chief Inspector L's response is not supported by the material information in relation to this aspect of the applicant's complaint.

The Custody SOP states that individuals must be offered food if they are held in custody for more than 4 hrs. In addition, paragraph 19.4.4 states: "*In the event that a custody refuses the meal provided, this should be recorded on the custody computer system, with the reason of refusal. If more than two consecutive meals are refused, ... consideration should be given to consulting an HCP*". The final response letter to the applicant did not consider these provisions. Within the custody records provided to us for review, the offer of food and the reasons for refusal are not recorded.

We consider, therefore, that Chief Inspector L's response is not supported by the material information available, did not consider the relevant provisions of the Custody SOP, did not provide sufficient explanation to enable the applicant to understand how the available evidence was assessed and is not adequately reasoned. Overall, therefore, we conclude that this complaint was not dealt with reasonably.

Our Conclusion on Complaint 2

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

Under section 35(7) of the 2006 Act, a reconsideration direction is issued to Police Scotland in respect of this complaint.

The reconsideration direction is not subject of the PIRC's supervision. In terms of section 37(1) of the Act, Police Scotland must now appoint a person to reconsider this complaint. The person appointed must not have had any previous involvement in the consideration of the complaint. Police Scotland must adhere to the obligations set out in sections 38 and 40 of the Act, as appropriate.

To address the shortcomings identified in the handling of this complaint, Police Scotland should:

- (a) obtain further accounts from Constables C and D, and Sergeant E, which specifically address the issues raised in the applicant's complaint;
- (b) the applicant's complaint should be reassessed in light of the further information obtained and the observations made in this report; and
- (c) a further response should be sent to the applicant which makes clear whether his complaint has been upheld, fully sets out the reasons for the decision reached and details the evidence examined in reaching that decision.



Complaints 3 and 4

Complaint 3

The applicant complained that he was held in custody longer than was necessary.

Complaint 4

The applicant complained that no consideration was given to his welfare on his release from custody on 30 January 2019. The applicant said in his statement of complaint that he was released at 0200 hrs, it was -2 degrees outside and he was only wearing a thin shirt and jacket. The applicant also stated that he had “*walked for a mile and was freezing*” by the time he was able to get a taxi to take him home.

Police Scotland’s Handling of Complaints 3 and 4 (not upheld by the police)

Chief Inspector L dealt with both complaints under a single head of complaint that the applicant was held in custody for too long, making a single determination that they were not upheld. For ease of reference within our report, we have detailed Chief Inspector L’s response to the complaints below, followed by our consideration.

Chief Inspector L advised the applicant that he had been arrested at 1825 hrs on 29 January 2019, arrived at the police station holding area at 1845 hrs, was processed at the charge bar at 1953 hrs and released from custody at 0204 hrs on 30 January 2019. Chief Inspector L advised the applicant that Sergeant E had provided a statement, which he summarised as follows. Sergeant E said that there were 15 other individuals being held in custody at the same time as the applicant. Sergeant E also said that, while in custody, the applicant was processed, criminal justice samples were taken, he had a consultation with his solicitor and authorisation was obtained for his release on undertaking. Sergeant E further stated that it was the applicant that had requested to be released at 0200 hrs and that Sergeant E assessed the applicant’s suitability for release, noting that he was “*fit and well, sober had the ability and funds to facilitate [his] own transport home*” and that there was no further reason to keep him in custody. Chief Inspector L advised the applicant that the decision taken by Sergeant E to release him was in line with the Custody SOP. On this basis, the applicant’s complaint was not upheld.

Our Review of Complaint 3

We have been provided with a copy of the statements obtained from the applicant and Sergeant E in relation to this complaint. We have also been provided with the applicant’s custody record and reviewed the CCTV of the applicant’s time in, and release from, custody.

Chief Inspector L’s response accurately reflected the content of the statements obtained in relation to this complaint.

The applicant’s custody records show that the decision to release him on an undertaking was provisionally made at 2019 hrs, with further entries confirming the applicant’s suitability for release



at 2022 hrs and 2029 hrs. Contact was made with the applicant's solicitor at 2040 hrs, the outcome of which was that no attendance by his solicitor was required.

The evidence available suggests that the applicant was held in custody for a total of 7 hrs and 39 mins. The records indicate that the applicant was deemed suitable for release less than 2 hours after his detention commenced and over an hour before Sergeant E commenced his tour of duty. It does not appear that any enquiry was made with the custody Sergeant on duty at the time the initial decision on the applicant's suitability for release was made as to why the applicant was not released at that time. We also observe that the applicant was released by Sergeant E upon the applicant's request. It is not clear from the available evidence when the applicant would have been released if he did not make such request. Crucially, the complaint enquiry did not attempt to establish whether there was an opportunity for the applicant to be released earlier during the 5 hours after the decision was made about his suitability for release on bail undertaking.

Furthermore, Sergeant E stated that he only had one officer and one member of staff assisting him to care for 15 individuals in custody. The complaint enquiry did not consider whether lack of officers assisting Sergeant E in the custody suite contributed to any delay in processing the applicant for release.

In light of the above, we consider that the basis for Chief Inspector L's conclusion is unclear and that insufficient enquiry has been undertaken to address this complaint. We conclude, therefore, that this complaint was not dealt with reasonably.

Our Conclusion on Complaint 3

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

We recommend that further enquiries are carried out into the applicant's complaint. Specifically, further accounts should be obtained from Constables C and D, and Sergeant E which address the following points:

- (a) was there an opportunity to release the applicant earlier than 0204 hrs on 30 January 2019?;
- (b) when was the applicant likely to have been released if he had not asked to be released at 0204 hrs?; and
- (c) was the delay in releasing the applicant reasonable in the circumstances?

A further response should then be sent to the applicant which makes clear whether his complaint has been upheld, fully setting out the reasons for the decision reached and detailing the evidence examined in reaching that decision.

Our Review of Complaint 4

The final response letter accurately summarised Sergeant E's statement and in particular his position that he considered all of the factors as required by the Custody SOP. In addition, the



response letter referred the applicant to the relevant Custody SOP provisions in respect of Pre-Release Risk Assessments.

The CCTV of the applicant being released from custody shows that he was asked if he had any thoughts of suicide or self-harm. The CCTV also shows that the applicant was in possession of £15 cash with which to facilitate his journey home and that he raised no concerns regarding the time of day, the weather conditions, or the means by which he would return to his home address during the process of being released from custody.

The standard of proof applied to non-criminal complaints about the police is the balance of probabilities. Where conflicting accounts of an incident are provided, this test is used to assess which version of events is more probable. In line with the CAP SOP, where the evidence is equally weighted, the complaint will not be upheld. In this case, the applicant stated that his welfare was not considered on his release from custody, however Sergeant E stated that it was and that he was satisfied that the applicant could be safely released and there is nothing to suggest that this decision was unreasonable or unjustified. In light of this, we consider that it is not possible to determine which version of events is more probable. On this basis, and in line with the CAP SOP, we consider that Chief Inspector L was justified in not upholding the applicant's complaint. We conclude, therefore, that this complaint was dealt with reasonably.

Our Conclusion on Complaint 4

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 5

The applicant complained that insufficient enquiry was carried out in relation to the incidents of 23 and 24 October 2017. The applicant said in his statement of complaint that officers did not speak with his neighbour, who he believed "*would have been able to tell them that [he] was not shouting and swearing*".

Police Scotland's Handling of the Complaint (upheld by the police)

Chief Inspector L advised the applicant that statements had been provided by Constables B and C, which he summarised as follows. Constable B stated that he received the enquiry approximately 8 months after the incident and that he did not consider door to door enquiries applicable, due to the passage of time. Constable C stated that the enquiry was allocated to her 13 months after the incident and that she considered there to be "*sufficient witnesses to the incident*" and did not consider door to door enquiries were "*necessary due to the lapsed time*".

Chief Inspector L acknowledged that the applicant had obtained a statement from his neighbour, "*which contains information that is of potential importance to the case reported to the Procurator Fiscal*" which "*shows that it would have been prudent for the officers to have carried out enquiry*".



with his neighbours. On this basis, the applicant's complaint was upheld. The applicant was advised that Constables B and C were provided with corrective advice.

Our Review

We have been provided with copies of the statements obtained from the applicant and Constables B and C in relation to this complaint.

Chief Inspector L's response accurately reflected the content of the statements provided in relation to this complaint.

We consider that, as the applicant's complaint has been upheld and Constables B and C have been provided with corrective advice in relation to the insufficient enquiries carried out, Police Scotland have taken reasonable steps to deal with the applicant's complaint. We conclude, therefore, that this complaint was dealt with reasonably.

Our Conclusion on Complaint 5

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 6

The applicant complained that his interview of 9 December 2018 was inaccurately reported to the Procurator Fiscal. The applicant stated in his statement of complaint that Constable C had recorded the date incorrectly in relation to question 11, which the applicant said had been stated as "22nd to 24th" during the interview but was recorded as "23rd". The applicant also stated that in relation to question 23, Constable C asked him "*what is your pin number to your phone*", to which the applicant responded "*no comment*". However, Constable C recorded the question as "*do you have a pin code on your phone*", to which the applicant responded "*yeah*".

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

Chief Inspector L advised the applicant that Constables C and D had provided statements, which he summarised as follows. Constable C stated that she recorded the interview with the applicant in her notebook and refuted the allegation that it was recorded inaccurately. Constable D stated that he was present when the interview with the applicant took place and that Constable C noted the full interview in her notebook.

Chief Inspector L advised the applicant that the content of Constable C's notebook supported the content of the SPR. Chief Inspector L advised the applicant that he had been presented with two different versions of events and that, based on the balance of probability test, the applicant's complaint was not upheld.



Our Review

We have been provided with copies of the statements obtained from the applicant and Constables C and D in relation to this complaint. We have also been provided with a copy of Constables C and D's notebooks as they relate to the applicant's interview of 9 December 2018.

Chief Inspector L's response accurately reflected the content of the statements provided in relation to this complaint.

Constable C's notebook shows that the questions are recorded as stated in the SPR. In light of this, we consider that Chief Inspector L's response is supported by the material information available. We conclude, therefore, that this complaint was dealt with reasonably.

Our Conclusion on Complaint 6

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 7

The applicant complained that the report made by him to police on 30 January 2019 had not been investigated. The applicant said in his statement of complaint that the information he had provided to the officers had been added to "*the exculpatory information in the case against [him]*", however no investigation had been carried out into his allegations.

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

Chief Inspector L advised the applicant that Constables G and H had passed the information that he provided to them to Constable C, who then sought advice from Sergeant J. Sergeant J stated that she "*directed*" Constable C to "*incorporate all information received in the exculpatory information section*" of the report to the PF and that this decision was informed by the Police Scotland and PF Joint Protocol, "In Partnership, challenging domestic abuse" (the "Joint Protocol"). Chief Inspector L advised the applicant that this Joint Protocol states that it is not always necessary to submit a full report where counter allegations are raised. Rather, the process is to provide details of counter allegations to the PF in the exculpatory information section of the SPR, which allows the PF to make an informed decision on whether any further information or investigation is required. On this basis, the applicant's complaint was not upheld.

Our Review

We have been provided with copies of the statements provided by the applicant, Constable C and Sergeant J in relation to this complaint. We have also reviewed the provisions of the Joint Protocol and the SPR submitted to the PF in the applicant's case.



Chief Inspector L's response accurately reflected the content of the statements provided in relation to this complaint.

Chief Inspector L's response is supported by the content of both the Joint Protocol and the SPR and is therefore supported by the material information available. We conclude, therefore, that this complaint was dealt with reasonably.

Our Conclusion on Complaint 7

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.

What happens next

We have issued one reconsideration direction and made one recommendation. These should be completed within two months of the date of this report. We will continue to liaise with Police Scotland until we consider that the reconsideration direction and recommendation have been completed.

Ann McGruer
Review Officer

Ilya Zharov
Head of Reviews & Policy

