



Police Investigations &
Review Commissioner

Report of a Complaint Handling Review in relation to Police Scotland

PIRC/00095/19
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 following an altercation between the applicant and his neighbour.

The Complaints

We have reviewed the handling of two complaints, namely:

1. that since 17 April 2018, Police Scotland has taken no action regarding the applicant's report of assault by his neighbour, specifically, they failed to charge and report him to the Procurator Fiscal; and
2. that since 17 April 2018, Police Scotland has not charged and reported the applicant's neighbour and his wife for perverting the course of justice;

Police Scotland's Decision

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

Our Findings

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

We have however made a recommendation that Police Scotland records Complaints 1 and 2 as separate complaints.

Our recommendation should be implemented by Police Scotland within two months of the date of this report.



Background

On 17 April 2018, the applicant was involved in a physical altercation with his neighbour, Mr A. Following a report to police by Mr A's wife, Mrs B, the applicant was charged with common law assault and a report was submitted to the Procurator Fiscal ("SPR").

The applicant subsequently provided police with video footage and a statement on 25 May 2018, to support that he was in fact assaulted by Mr A and this resulted in an injury to his knee. The applicant was thereafter advised by Constables C and D that the evidence he provided would be passed to the Procurator Fiscal to make a determination. Following the applicant's enquiry with the Procurator Fiscal, the applicant received a letter dated 26 February 2019 informing him that no report had been submitted by Police Scotland in connection with any other party. The Procurator Fiscal also confirmed that no further proceedings would be taken in respect of the assault allegation made by Mr A.

The applicant submitted his complaints online on 10 March 2019 followed by a letter dated 1 April 2019. Inspector E was appointed as the enquiry officer.

The applicant received a response to his complaints by way of a letter from Chief Inspector F dated 8 April 2019.

Complaint 1

The applicant complained that officers did not take any action in respect of his allegation of assault against Mr A. In particular, the applicant was unhappy that Mr A was not charged and no report was submitted to the Procurator Fiscal in that respect.

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

In her response, Chief Inspector F considered both of the applicant's complaints together. Chief Inspector F explained that following a review of the statements provided by Mr A and Mrs B, she was satisfied that there was a sufficiency of evidence to have reported the applicant to the Procurator Fiscal for assault.

Chief Inspector F explained that a sufficiency of evidence in two forms of supporting evidence is required and in the circumstances, the corroborating statements from Mr A and Mrs B had met that threshold. Chief Inspector F explained that having spent considerable time viewing the video footage and images provided by the applicant, she could not find any "*definite corroborative evidence*" to support the applicant's allegation of assault by Mr A.

Chief Inspector F clarified that the applicant's footage was submitted to the Crown Office and Procurator Fiscal ("COPFS") however, this was in the form of a 'subject report' which provided additional information in connection with the assault charge against the applicant, as opposed to an SPR in respect of a criminal charge of assault against Mr A.



By way of conclusion, Chief Inspector F stated that having reviewed all of the evidence provided, she could not establish a sufficiency of evidence to support the applicant's allegation of assault against Mr A. Chief Inspector F stated that the video footage and images were inconclusive in her view and did not prove or disprove the testimonies provided by Mr A and Mrs B, or the applicant's version of events. Chief Inspector F stated that an SPR would not be instructed in this instance and she was content that the officers involved had "*acted appropriately and delivered a level of service that could be reasonably expected in such circumstances*". Accordingly, the complaint was not upheld.

Our Review of Complaint 1

As part of our review, we have considered the incident log, crime file, the SPR comprising the statements from Mr A and Mrs B, the applicant's statement, together with video footage and stills of the incident, and the subject report submitting the footage to COPFS.

As reflected in the response, a sufficiency of evidence is required to warrant a report to be submitted to the COPFS and this sufficiency would generally be met by corroborated evidence from at least two sources. We can confirm that Chief Inspector F has accurately reflected that corroborating accounts were provided by Mr A and Mrs B. Specifically, both witnesses speak to the applicant striking Mr A's chest, as Mr A attempted to stop the applicant from recording with his phone. In this respect we are therefore in agreement with Chief Inspector F's view that there was sufficient corroborated evidence to charge the applicant with an offence.

In his statement to inform the complaint enquiry, the applicant provided that he had acted in self-defence when Mr A had swiped at him with a clenched fist, assaulted him on his face, and further caused a visible injury to his left knee. On reviewing the mobile phone, the applicant can be heard shouting "*get your hands off me*" and "*don't you ever touch me again*" at various points during the recording. However, the specific allegations made by the applicant are not clearly identifiable from the footage.

The subject report dated 25 May 2018 evidences that Police Scotland submitted the footage supplied by the applicant as a production to the COPFS. The report included the following comments:

"The accused also stated that he believed that he was in fact the one who been assaulted in this matter...the reporting officer has viewed the recording and although he does not believe it shows the accused being assaulted neither does it show the accused assaulting the complainer...The reporting officer respectfully requests that the Procurator Fiscal views this recording prior to proceeding to any further court action as in the opinion of the reporting officer the video merely shows one angry male filming and another irate male not wanting to be filmed.."

In the case of a counter allegation the Scottish Crime Recording Standard outlines that officers are not required to raise a crime record on every occasion but rather, they should apply the balance of probability test and judge a case on its own merits. In view of this and the above, Chief Inspector F's response has provided an explanation as to why a) the applicant was charged; b) Mr A was



not charged with assault; and c) a report was not submitted in the form of an SPR to the COPFS. The response could have been further strengthened by making reference to the relevant guidance and adding that although Mr A was not reported as a perpetrator, the subject report furnished the COPFS with supporting information which could potentially be considered as mitigating or exculpatory evidence on the applicant's part. Notwithstanding, the response is supported by the material evidence and is adequately reasoned. Accordingly, we consider that the complaint was handled 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 in this connection.

Complaint 2

The applicant complained that police did not take any action or submit a report to the Procurator Fiscal in respect of his allegation that Mr A and Mrs B had perverted the course of justice by lying in their statements.

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

Chief Inspector F considered this complaint under the general heading of quality of service and the police's failure to take appropriate action in respect of the applicant's allegation of assault.

As outlined under Complaint 1, Chief Inspector F stated that the video footage and stills provided by the applicant were inconclusive and did not prove or disprove either the applicant's testimony, or that of Mr A and Mrs B. Chief Inspector F stated that there would need to be evidence that Mr A and Mrs B had deliberately lied in order to support a charge of attempting to pervert the course of justice and that this was not established in the circumstances. Chief Inspector F stated that there was insufficient evidence to corroborate this charge.

An independent determination to this aspect of the complaint was not provided by Chief Inspector F as it was not recorded as a separate complaint however, Chief Inspector F concluded that the applicant's overall complaint regarding the police's lack of action was not upheld.

Our Review of Complaint 2

Perverting the course of justice - or defeating the ends of justice - covers a number of crimes under common law, the essence of which is to obstruct, hinder or interfere with the ordinary course of justice. The SCRS however identifies the making of malicious false statements to the police "*with the intention and effect of causing police investigation*" as wasting police time.



As stated previously in this report, the assault allegation against Mr A was corroborated by Mrs B's statement and this established a sufficiency of evidence to charge the applicant. In his statement, the applicant asserted that Mrs B was not present during the altercation and therefore could not speak to the assault taking place. While it is true that Mrs B is not visible in the footage captured by the applicant, this, in our view on its own does not prove that she was not present and had not witnessed the altercation from out-with the angle of the footage. Mrs B not being visible in the footage was highlighted in the subject report submitted with the footage to COPFS.

Thus, with the exception of the applicant's statement, there is no further evidence that would conclusively support or provide the necessary corroboration to the allegation made by the applicant that Mrs B was not present during this incident, and that Mr A and Mrs B provided false statements to the officers. Accordingly, we do not consider that any further action was required by the officers in this instance.

We consider that Chief Inspector F could have provided more detail in explaining the foregoing points in the final response. Further, given this complaint was capable of being upheld/not upheld independently of Complaint 1, these complaints should have been recorded as separate allegations. Despite these shortcomings, as the response reflects the material evidence available, we are satisfied that the complaint was handled to a reasonable standard.

Our Conclusion on Complaint 2

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

We recommend that Police Scotland now records Complaint 1 and 2 as separate complaints.

What happens next

We have made a recommendation. This should be implemented within two months of the date of this report. We will continue to liaise with Police Scotland until we consider that the recommendation has been implemented.

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