

Scottish Parliament Region: West of Scotland

Case 200702044: Police Complaints Commissioner for Scotland

Summary of Investigation

Category

Scottish Government: Scottish Public Authority: Policy/administration

Overview

The complainant, Mr C, submitted a complaint about a report (the Report) issued by the Police Complaints Commissioner for Scotland (PCCS) concerning matters he raised with them. He said that, although he pointed to a number of inaccuracies in the Report, they were not amended. He further said that the Report included favourable comments about police involvement and that when it was published, despite it being anonymised, he was easily identifiable.

Specific complaints and conclusions

The complaints which have been investigated are that:

- (a) the PCCS did not amend inaccuracies in the Report which were brought to their attention by Mr C (*not upheld*);
- (b) the Report should not have included favourable comments about the police (*not upheld*); and
- (c) Mr C was easily identifiable from the Report (*not upheld*).

Redress and recommendations

The Ombudsman recommends that, notwithstanding that it is ultimately for the PCCS to determine their own internal procedures, the PCCS reconsider their decision not to issue draft reports, in order to allow any possible errors of fact to be amended prior to the publication of a final report.

Main Investigation Report

Introduction

1. On 19 December 2007, the Ombudsman received a complaint from Mr C. He said that earlier in the year he had raised a complaint with the Police Complaints Commissioner for Scotland (the PCCS) about the way in which two police forces dealt with his complaints against them but that the subsequent report (the Report), which was issued by the PCCS in October 2007, contained a number of inaccuracies. He said that this was despite the fact that he had brought the errors to the PCCS' attention. He also complained that the Report contained favourable comments about the two police forces involved and that, when the Report was published, it was easy to identify him because of the 'small sphere' it related to.

2. The complaints which have been investigated are that:

- (a) the PCCS did not amend inaccuracies in the Report which were brought to their attention by Mr C;
- (b) the Report should not have included favourable comments about the police; and
- (c) Mr C was easily identifiable from the Report.

Investigation

3. The investigation of this complaint involved obtaining and reading all the relevant documentation, including correspondence between Mr C and the PCCS and the PCCS's Report on Mr C's complaints about the Police. On 15 January 2008 a formal enquiry was made of the PCCS and the Commissioner responded on 23 January 2008.

4. While I have not included in this report every detail investigated, I am satisfied that no matter of significance has been overlooked. Mr C and the PCCS were given an opportunity to comment on drafts of this report.

(a) The PCCS did not amend inaccuracies in the Report which were brought to their attention by Mr C

5. Mr C passed his complaint to the PCCS in spring 2007 and, as part of the correspondence, on 19 September 2007 he received a letter from the case officer dealing with it, telling him that the Report would be issued shortly. He was advised that both he and police forces involved would receive the Report first and that it would then be published on the PCCS website 'suitably

anonymised'. The case officer said that her letter marked the end of her involvement in his case.

6. Mr C telephoned the PCCS on 3 October 2007 and asked when the Report would be issued. He was told that it had been sent to him the day before (on 2 October 2007). While it was anticipated that he would receive it later that day (on 3 October 2007), he was offered an e-mailed version. The Report on Mr C's case was made public on 4 October 2007.

7. Mr C is aggrieved because he considered that there were errors in the Report. However, he said that when he wrote to the PCCS on 19 November 2007 complaining and raising the issue, the response he received (dated 10 December 2007) advised him that the Report was final and that his complaint could not be considered further. Mr C then submitted a formal complaint to the Ombudsman, which was received on 19 December 2007.

8. The letter which Mr C sent to the PCCS on 19 November 2007 – after the Report on his complaint was issued – expressed dissatisfaction with the Report and included a statement that 'Deliberately publishing inaccurate information would in your case be wilful industrial misconduct' but did not specify what in the report he considered to be misleading. The PCCS have told me that on receipt of Mr C's letter they reviewed the whole of the Report against his complaint file to ensure that all information contained in the report was accurate. This involved a thorough review of both the internal papers held by the PCCS and the papers provided by the police in relation to Mr C's request. The review of the files did not reveal any factual inaccuracies. The PCCS have also told me that it is their policy that if any inaccuracies are found in a report they are corrected, the report checked to ensure that the Commissioner's conclusions are still appropriate and an apology issued to both complainer and the relevant police force.

9. When the Ombudsman's Complaints Investigator checked the PCCS website on 4 January 2008 she noted the electronic advice leaflet available said, 'When we have completed our review we will write to you with our initial findings and our reasons for making them, giving you the opportunity to make sure that we have included everything you consider important. When we have finished this process the Commissioner will let you know his final conclusions and reasons'. As it did not appear that this had happened in Mr C's case, the Complaints Investigator decided to make specific enquiry on this point. The

reply she received from the Commissioner (see paragraph 3) advised me that his appointment had been confirmed on 1 January 2007 with his office formally opening on 1 April 2007. He said that, in the meantime, internal policies concerning complaints handling had been agreed and a leaflet concerning these had been issued to all police forces and Citizens Advice Bureau. However, he also advised that, during the first few months of operation, procedures were updated regularly in the light of emerging experience. This included a decision to amend the initial policy to send out draft reports in advance of publication (see above). It was not until 4 October 2007 (the same day as Mr C's Report was formally issued) that the text on the PCCS website was updated to reflect the decision not to issue drafts, although it would appear that the electronic leaflet was not updated at the same time. It is not when paper leaflets were amended but the electronic version was amended after this Office's formal enquiry (see paragraph 3).

(a) Conclusion

10. Mr C's complaint to the Ombudsman was that the Report which was issued by the PCCS in October 2007 contained a number of inaccuracies despite the fact that he had brought what he considered to be errors to the PCCS' attention. My investigation has established that Mr C wrote to the PCCS referring to 'inaccurate information', without specifying what he considered that to be, after the Report was issued. I have been advised of the nature of Mr C's concerns and, while there was no opportunity to make changes prior to publication, if changes had been made, they would not appear to have been sufficiently material to have changed the findings of the Report. I am also satisfied that the factual accuracy of the report was checked following PCCS's receipt of Mr C's letter of 19 November 2007. Therefore, I do not uphold the complaint. However I am concerned that given the sequence of events described above, at the time Mr C made his complaint to the PCCS, he could reasonably have expected to have been given a draft report upon which to comment. This did not happen and Mr C did not have the opportunity to bring his concerns to the PCCS' attention before publication. I criticise the fact that he was not made aware of the change in the PCCS's policy in this respect and also of the fact that the related advice leaflet was only updated following this Office's enquiries in 2008.

(a) Recommendation

11. The Ombudsman recommends that notwithstanding that it is ultimately for the PCCS to determine their own internal procedures, the PCCS reconsider

their decision not to issue draft reports, in order to allow any possible errors of fact to be amended prior to the publication of a final report.

(b) The Report should not have included favourable comments about the police

12. The Report contained one sentence which referred to the considerable time and resources spent by the police forces involved in determining Mr C's complaints. Mr C implied that this showed partiality and the police were being congratulated for doing what is, in his opinion, their job. He said nothing was mentioned about the efforts he had expended. In replying to me on this point, the Commissioner said that his reports were based on the facts presented to him. Thereafter, he considered the facts and aimed to produce fair and balanced reports. He said that, 'Where, in my view, a police force has performed well I will comment accordingly. Where it has not performed well I will also comment on that. This is fundamental to my role as an independent Commissioner'.

(b) Conclusion

13. I have read the section which concerned Mr C in the context of the Report and, while I note his opinion, I agree with the Commissioner's view as expressed above (see paragraph 12). It is the Commissioner's Report, albeit one written on Mr C's complaint and, as such, he is entitled to comment upon anything he considers material. I do not uphold this part of the complaint.

(c) Mr C was easily identifiable from the Report

14. In his complaint to the Ombudsman Mr C said that while the Report was anonymised, '... due to the small sphere it related to it would be very easy to cross reference information to identify people'. In making his complaint to the PCCS he said that 'Publishing your reports online breaches people's rights to privacy'.

15. The letter Mr C received on 19 September 2007 from the case manager (see paragraph 5) advised him that:

'... in the spirit of openness all the Commissioner's reports will be published, suitably anonymised, on our website at www.pcc-scotland.org. This is in line with our statutory duties under the Freedom of Information (Scotland) Act 2002 to have regard to the public interest in providing information about the facts which form the basis of decisions which are of importance to the public. Equally, we are very conscious of every

individual's right for their personal information to be treated confidentially so I would like to assure you that any details that could identify you, or any other individual, will be removed from this report.'

16. In his specific comments to this Office the Commissioner added that, under his founding legislation, The Police, Public Order and Criminal Justice (Scotland) Act 2006, he is obliged to issue a report and send copies to the complainant and the police force(s) involved¹. He said that his decision to publicise those reports thereafter was in accordance with his firmly held belief that the PCCS should be as open and transparent as possible and was reached after discussion with the Scottish Information Commissioner. The PCCS website now advises complainants that reports will be posted there.

(c) Conclusion

17. I have read the Report concerned and while I note Mr C's concerns, I can confirm that it contains no identifying information. It is my view that the PCCS struck the proper balance, maintaining the privacy of all those involved, including Mr C, but at the same time having regard to the public interest. I, therefore, do not uphold this complaint.

¹ In clarification of this statement the PCCS have subsequently told me that in his founding legislation the Commissioner is obliged to send his full report to the relevant police body, and his recommendations and explanation for those recommendations to the complainer. However, having consulted the Information Commissioner it was quite clear that under the Freedom of Information Act if someone requested a copy of a report PCCS would be obliged to provide it. The Commissioner, therefore, chose to be proactive about publication, ensuring that all reports are written in such a way as to protect individuals' personal data.

Explanation of abbreviations used

Mr C	The complainant
The PCCS	Police Complaints Commissioner for Scotland
The Report	A report issued by PCCS in regard to issues Mr C's raised with them