

**PE1197/E**

To Public Petitions committee

Further to the recent public petition by Bill Alexander PE1197 .

As an active campaigner for change to Scotlands criminally corrupt civil legal system who is in contact with MANY MANY victims of the crooked lawyers and judges operating in Scottish courts. We are utterly disgusted at the failure once again of the petition committee to take the correct steps when dealing with complaints against that legal system.

It is NOT sufficient for the committee to propose asking all the parties that are interested in protecting the illegal monopoly they have been working under for so long while completely ignoring the victims of that system.

When PE1197 was heard the committee have followed a well trodden path that in effect suggests action when in fact it merely passes to QUOTE "Perhaps we could write to the Scottish Government, the Faculty of Advocates, the Law Society of Scotland, the Scottish Law Commission and the Scottish Legal Complaints Commission. That would be one way of proceeding." for their comment.

This is simply NOT good enough as the victims despite having provided written evidence at a number of inquiries at the Scottish Parliament see

<http://www.scottish.parliament.uk/business/committees/historic/justice1/inquiries-02/just1-lps-index.htm>

<http://www.scottish.parliament.uk/business/committees/justice2/inquiries/lpla/2-lpla-evid.htm>

<http://www.scottish.parliament.uk/business/committees/justice2/reports-06/j2r06-11-Vol01-00.htm>

<http://www.scottish.parliament.uk/business/committees/justice2/reports-06/j2r06-11-Vol02-00.htm>

<http://www.scottish.parliament.uk/business/committees/justice2/or-06/j206-1502.htm#Col2430>

Seldom if EVER are considered by a petitions committee that have failed time and again to resolve the serious failures of Scotlands legal system. At no time did the committee suggest contacting ANY of the victims but ONLY contacting the very people charged with continuing the tyranny that to this day is STILL destroying the many lives touched by the evil manner it operates. For PROOF, reading those many submissions would be a starting point.

I personally forward some submissions that shows I and my child were forcibly evicted illegally by this system. I have findings which I forward from the Police commissioner showing clearly senior police conspiring with sheriff officers to STEAL my home without proper due process and with court hearing that failed on lack of representation, NO JURY as required under Magna Carta despite repeated requests . I also catalogue the long term harrassment and persecution my family faced in my submissions to the Scottish Parliament at

**PE1197/E**

[http://www.scottish.parliament.uk/business/committees/justice2/reports-06/j2r-06-11-vol2\\_DuncanShields1.pdf](http://www.scottish.parliament.uk/business/committees/justice2/reports-06/j2r-06-11-vol2_DuncanShields1.pdf)

<http://www.scottish.parliament.uk/business/committees/justice2/reports-06/j2r06-11-Vol02-05.htm>

Oral evidence at

<http://www.scottish.parliament.uk/business/committees/justice2/or-06/j206-1502.htm#Col2482>

Written evidence for the Regulation of the Legal professions inquiry way back in 2001.

<http://www.scottish.parliament.uk/business/committees/historic/justice1/inquiries-02/j1-lps-pdfs/lps-022.pdf>

I also provide as attachment to the committee the most recent correspondence with the Office of Fair Trading on this matter .

It is an utter disgrace that despite MANY victims coming forward and placing their circumstances before the Petitions committee that Scotlands legal system continues to fail time and again those dragged into its vortex.I personally have claims against ALL parties that have failed me but due to the closed shop will find it nigh impossible to get representation to take my claims forward. Also the utter failure to ensure juries are available to decide on these most serious of matters NOT the hand picked lackeys for the Crown and Scottish Government that we are presently faced with.

This email puts on notice those committee members who continue to allow the human right abuses to continue in Scottish courts .

Yours in disgust

Duncan Shields  
6 January 2009

# PCCS



Police Complaints Commissioner  
for Scotland

**Request for complaint handling review of a complaint about**

**Strathclyde Police**

**under the provisions of  
the Police, Public Order and Criminal Justice (Scotland) Act 2006**

**June 2008**

Case reference: PCCS/0806/00033/PF-SP

# **CONTENTS**

## **Introduction**

- 1. Request for review**
- 2. Power to conduct a complaint handling review**
- 3. Background**
- 4. Force internal handling**
- 5. PCCS review**
- 6. Consideration**
- 7. Conclusion**

## **Introduction**

The role of the Police Complaints Commissioner for Scotland was established by the Police, Public Order and Criminal Justice (Scotland) Act 2006 (“the Act”) to consider and review the way police authorities, police forces and policing agencies handle complaints from the public. I was appointed by the Scottish Ministers as the first Police Complaints Commissioner for Scotland, taking up my powers from 1 April 2007. My office provides a free and independent service, reviewing the handling of complaints fairly, looking at both sides of what has happened and looking at the facts.

I aim to review complaints in an independent, open and fair manner. In line with this aim I will publish the reports of my complaint handling reviews, whilst bearing in mind individuals’ rights to confidentiality. The following report therefore details my consideration, but does not include individual names of complainers, police officers or others affected by the events detailed therein.

## 1. Request for review

The complainer has requested that I review the handling of his complaints about Strathclyde Police. The complainer has detailed a number of complaints that he wishes me to consider, all originating from the police action taken in response to attempts by Sheriff Officers to eject him from his home. The complaints are listed as follows:

**Complaint 1** – That Strathclyde Police failed to take due account of his dependant and protect her rights;

**Complaint 2** – That Strathclyde Police allowed the theft of his home;

**Complaint 3** – That Strathclyde Police failed to allow the complainer time to protect his and his dependant's personal belongings;

**Complaint 4** – That officers of Strathclyde Police threatened the complainer's dependant;

**Complaint 5** – That Strathclyde Police did not honour an agreement with the complainer that his belongings would be held securely until he could arrange removal;

**Complaint 6** – That Inspector L failed to take a statement from the complainer; and

**Complaint 7** – That Strathclyde Police has been biased in its involvement with the complainer's ejection.

## 2. Power to conduct a complaint handling review

Section 35 of the Act provides me with the authority to examine the manner in which an appropriate authority has handled a complaint about a police officer, member of police staff or the service provided by a relevant authority.

In order to carry out such a complaint handling review I request the complaint case papers from the force in question. I examine the facts of the complaint case, looking at information provided to me by both the complainer and the police force. I consider whether the information available does, or does not, support the complaint, and whether or not the force has responded to the complaint in a reasonable manner. I also consider whether the force communicated with the complainer in a reasonable manner, including whether the police force handled the complaint within a reasonable timescale. I then come to a view whether the conclusions drawn by the force in handling the complaint were reasonable in all the circumstances.

Once I have reached my conclusions I prepare a report which details the findings of my case handling review. This is then forwarded the relevant authority in

accordance with section 35(3) of the Act. The complainer will be advised of the conclusions of this review and of what action, if any, I propose to take in consequence of those conclusions. Where the complaint is in respect of an act or omission by an individual police officer that person will also be informed of the conclusions of this review.

## **2.1 Relevant complaint**

Section 34 of the Act provides that I may review the handling of a complaint where the complaint is “a relevant complaint”, defined as

*(1) ... a complaint which is given or sent ... to the appropriate authority in relation to the complaint.*

*(2) .... “complaint” means a written statement expressing dissatisfaction about an act or omission...*

*(3) But “complaint” does not include*

*(a) any statement made by a person serving with, or who has served with, the police, about the terms and conditions of that person's service with the police; or*

*(b) a statement which consists of or includes an allegation of an act or omission which constitutes a crime.*

The complainer has supplied a written statement expressing dissatisfaction about an act or omission by a force. The complaint is therefore a relevant complaint.

## **2.2 Relevant complainer**

The Act further provides that I may review the handling of a complaint where the complainer falls within one of the following categories (section 34(6)):

*(a) a member of the public who claims to be the person in relation to whom the act or omission took place;*

*(b) a member of the public not falling within paragraph (a) who claims to have been adversely affected by the act or omission;*

*(c) a member of the public who claims to have witnessed the act or omission;*

*(d) a person acting on behalf of a person falling within any of paragraphs (a) to (c)*

The complainer is a member of the public who claims to have been adversely affected by an act or omission by the police. The complainer is therefore a relevant complainer under the terms of section 34(6)(a).

### **3. Background**

The complainer's complaints about Strathclyde Police originate from the actions of the force following a court order being granted to eject the complainer from his home.

On 17 May 2004, an exclusion order was granted by the local Sheriff Court to eject the complainer from the home that he lived in with his dependant. On 13 May 2005, a firm of Sheriff Officers wrote to the complainer informing him of its plans to eject him from his home on 18 May 2005. On 17 May 2005, the complainer called police station Z to inform the force that he intended to carry out a peaceful demonstration when the Sheriff Officers were due to eject him from his home the following day. He was advised by an officer that the force would monitor the situation and attend if required.

On 18 May 2005, Sheriff Officers A and B attended the complainer's home to implement the court order. Both Sheriff Officers' statements show that upon arriving at the complainer's home they were met by the complainer and approximately 15 other people. The proceedings were being recorded by video camera set up in the complainer's hallway. Both Sheriff Officers state that after explaining the purpose of their visit, the complainer refused to leave his home because he believed their actions were in breach of the Human Rights Act 1998 (the "HRA") and the Children (Scotland) Act 1995 (the "C(S)A"). The complainer maintained that he tried to explain his position to the Sheriff Officers but they would not listen. It appears that at this point both the complainer and the Sheriff Officers contacted the police for assistance.

Inspector C's statement shows that at about 12.30pm he was advised to attend the scene to offer supervisory guidance regarding the ejection. Inspector C's statement shows that he noted that the complainer's dependant was at home and that the terms of the order were 'weak'. Inspector C asserts that he suggested to the Sheriff Officers that a 'tactical option' was to return at a later date unannounced with a stronger order. Inspector C's statement concludes by stating that the complainer was not told of this decision as it would 'remove the element of surprise for a subsequent return visit by the Sheriff Officers'. Both Sheriff Officers' statements show that, following discussions with Inspector C, they agreed that the best course of action was to leave the scene and return, unannounced, at a later date.

On 29 August 2005 Sheriff Officer A and B went to Police Station Z to advise Constables D and E that they had been again instructed to enforce the terms of the court order. Thereafter, the police officers, Sheriff Officers and a locksmith attended at the complainer's home. After entry to the house was forced, a Sheriff Officer advised the complainer that he had until the locksmith changed the locks to gather his belongings and leave the property. The complainer protested to the police and Sheriff Officers that the action being carried out was a breach of his dependant's human rights and contrary to the C(S)A. The complainer also stated to Constable D that by removing him from his property, a crime was taking place. Constable D advised the complainer that the presence of the police was to ensure that there was no disorder and to prevent a crime taking place. The complainer then called Police



Station Z at around 11.30am to speak to a more senior officer. Sergeant F states that, during this telephone call, he arranged to attend the complainer's home and speak to him in person.

On arrival at the complainer's home, Sergeant F examined the court order before confirming to the complainer that it was lawful. Sergeant F's statement shows that, after much persuasion, the complainer agreed to leave the house. The complainer states that, although he explained to Sergeant F why he believed that the order was illegal, due to the fear that he may be arrested he felt that he had no option but to leave his home. After the complainer agreed to leave, Sergeant F states that he gave the complainer every opportunity to collect whatever items deemed necessary and he advised the complainer to arrange access at a later date with the solicitor who would be holding the keys to the property so that he could remove the remainder of his belongings. Sergeant F also states that the complainer refused his offer to give him assistance with his belongings. The complainer asserts that the Sheriff Officers refused to allow him to arrange a removal van and that Sergeant F confirmed to him that the property would remain lockfast until his personal belongings were removed. Sheriff Officer A and B's statements show that they did not hear Sergeant F give this assurance.

On 1 September 2005 the complainer, in consultation with the solicitors holding the keys to his home, arranged for a relative to remove the belongings that remained in the property. At about 2.45pm he received a phone call from the relative advising that his property had been 'dumped' in the front garden of his house. Shortly after, the complainer and his dependant arrived at the property.

Both the complainer and his dependant assert that Constable G threatened to arrest them when they asked who had deposited their possessions in the garden. On arrival at the complainer's house, Constable G states that he found that its contents had already been placed in the front garden by the complainer's ex-wife who had been given the keys by the solicitors holding the keys to the property. Constable G asserts that when the complainer and his dependant arrived at the property, both started shouting and that they were both warned that he would have no option but to arrest them for Breach of the Peace if they failed to stop. Constable G, supported by Constable H, states that at no time was he abusive, threatening or unpleasant to either the complainer or his dependant.

#### **4. Force internal handling**

The complainer wrote to the force on 15 September 2005, detailing Complaints 1-4 and 7. The force completed a Complaint Against the Police (CAP) form on the same date.

Inspector J was appointed the officer to investigate the complainer's concerns and during the course of his enquiries he noted a statement from the complainer. This statement, which is undated, detailed Complaints 5-6 and reiterated Complaint 4. Inspector J also obtained statements from the complainer's dependant, Sheriff Officers A and B, Sergeant F, Inspector C and Constables D, E, G and H.

On 6 March 2006, Inspector J completed his report into the complainer's complaints about the police. The report focused on Complaints 1, 3, 4, 5, 6 and 7. On 14 March 2006, Superintendent K sent a letter to the complainer detailing the force's conclusions on the complaints it had recorded. These conclusions are set out below:

**Complaint 1** – That Strathclyde Police failed to take due account of his dependant and protect her rights.

The complainer complained that the force failed to take account of the fact that his dependant was under 16 and failed to take into account her human rights and adhere to the C(S)A. Inspector J referred this matter to the force's Legal Services Department and the force solicitor replied on 7 February 2006 with her opinion on the legal merits of the complaint. Superintendent K's response to the complainer stated:

*'I have sought advice on these matters and, on the basis of information provided, I am not of the view that there has been any bias shown nor failure by police in terms of the Children (Scotland) Act 1995. I believe that my officers acted in good faith given all the circumstances and I see no grounds in which they have breached that act nor the HRA'.*

**Complaint 2** – That Strathclyde Police allowed the theft of his home.

The complainer complained in his letter of 15 September 2005 that officers of Strathclyde Police allowed the theft of his home. The force did not record this as a complaint and has not addressed this issue.

**Complaint 3** – That Strathclyde Police failed to allow the complainer time to protect his and his dependant's personal effects.

The complainer complained in his letter of 15 September 2005 that upon being ejected from his property on 29 August 2005, the force did not give him time to arrange removal of both his and his dependant's personal effects. Superintendent K's response to the complainer stated:

*'the role of the police during the execution of a civil warrant is to preserve public order and ensure that there is no Breach of the Peace. As such the police have no position in relation to the matters you raise, however, it is my understanding that officers concerned offered to assist you to transfer some of your belongings on the day and that you declined this offer'.*

**Complaint 4** – That officers of Strathclyde Police threatened the complainer's dependant.

The complainer complained in his letter of 15 September 2005 that, on 1 September 2005, Constable G threatened to arrest his dependant when she attended his home to collect her belongings. Superintendent K's response to the complainer notes:

*'It is the assertion of the officers concerned that your [dependant]...was obviously upset and proceeded to shout at them, apparently under the*

*impression that the police had somehow been involved in the removal of the property. She was spoken to by the officers concerned however, she continued to shout. Given the reason for the police presence, the officers advised her to modify her conduct and I am satisfied that she subsequently did so. It is my belief that the officers in question paid due attention to all the circumstances surrounding this incident and determined that the matter could best be resolved by a warning. Given all these circumstances mentioned, I believe that this action was appropriate'.*

**Complaint 5** – That Strathclyde Police did not honour an agreement with the complainer that his belongings would be held securely until he could arrange removal.

The complainer complained in his statement that upon his ejection on 29 August 2005, the force agreed with the complainer that his property would remain lock-fast until he had the opportunity to collect his belongings and that this agreement was subsequently not honoured. Superintendent K's response to the complainer stated:

*'With regard to the security of your belongings, it is the position of these officers that they assured you the property would be secured by the Sheriff Officers and that you should contact [the Sheriff Officers] regarding arrangements for the removal of your remaining property'.*

**Complaint 6** – That Inspector L failed to take a statement from the complainer.

The complainer complained in his statement that upon attending the local police station on 31 August 2005, Inspector L refused to take a statement from him regarding his ejection. Superintendent K notes in his response to the complainer that:

*'It is the position of Inspector [L], who was accompanied by another officer that you were in such an agitated state that he was unable to establish exactly what your complaint was. I understand that your frustration was such that you walked out of the police office without making a statement and it is obviously a matter of regret that you felt obliged to do so'.*

**Complaint 7** – That Strathclyde Police has been biased in its involvement with the complainer's ejection.

The complainer complained in his statement that the force showed bias throughout the proceedings which led to his ejection from his home. Superintendent K's response to the complainer explained:

*'I have sought advice on these matters and, on the basis of information provided, I am not of the view that there has been any bias shown'.*

## 5. PCCS review

An initial e-mail was received from the complainer on 17 May 2007. The complainer was asked to complete and sign an application for review form which was received on 15 October 2007 along with other relevant documentation. A number of e-mails between case officers and the complainer took place during the course of enquiries by my office.

My office asked Strathclyde Police on 16 October 2007 to provide the relevant complaint case papers by 30 October 2007. The case files were received by my office from the force on 15 November 2007.

On 26 October 2007, the complainer provided my office a copy of video footage which recorded parts of the events occurring on 18 May and 29 August 2005. This footage has also been considered as part of the review.

Following my request, the force supplied my office with a copy of the decree issued by the local Sheriff Court giving authority to the Sheriff Officers to eject the complainer from his home. The force also confirmed that it does not have a Standard Operating Procedure covering the situation where officers are requested to attend the execution of a court order and that the functions of an officer in such circumstances are detailed in the Police (Scotland) Act 1967.

The complainer also sent my office copies of correspondence he had in relation to ongoing disputes he has with various other agencies concerning, amongst other things, his ejection. I can confirm that these have been reviewed by my office. However, this correspondence did not include any information relevant to the complainer's complaint about Strathclyde Police. As noted in Section 2, I do not have the remit to consider such information in this review.

From the information supplied to my office by the complainer, he has stated that the force has failed to investigate an allegation that he was the victim of fraud. Whilst conducting this review, I can find no evidence that he has specifically complained to the force about this. I have written to the complainer on this matter.

## 6. Consideration

There are a number of distinct issues raised by the complainer. These are outlined below along with my consideration of the facts relating to these complaints.

**Complaint 1** – That Strathclyde Police failed to take due account of his dependant and protect her rights.

In his letter to the force dated 15 September 2005, the complainer complained that the force failed to take account of the fact that his dependant was under 16. The

complainer also complained that the force failed to take into account the rights that his dependant was entitled to under the C(S)A and HRA.

It is clear that this is the complainer's main concern from which his other complaints emanate. I note that whilst investigating the complainer's complaints, Inspector J referred this issue to the force's Legal Services Department on 10 October 2005 together with other documentation the complainer had provided him. On 7 February 2006, the force solicitor wrote back to Superintendent K, stating that she did not believe that the actions of Strathclyde Police breached either the C(S)A or HRA. This advice was the basis of Superintendent K's response to the complainer on 14 March 2006.

It is clear that Inspector J correctly identified this complaint as being central to the complainer's concerns. Inspector J also realised the importance and complexity of this complaint and referred it to the force's Legal Services Department. It is my view that Inspector J carried out a thorough investigation into this particular complaint and that the force provided the complainer with a reasoned explanation for its position.

**Complaint 2 – That Strathclyde Police allowed the theft of his home.**

In his letter of 15 September 2005, the complainer complained that officers of Strathclyde Police allowed the theft of his home.

As noted in my consideration of Complaint 1, the complainer believed that, because of the adverse effects his ejection would have on his dependant, the decree issued by the local Sheriff Court was illegal because his dependant was under 16. As a result, the complainer believes that as Strathclyde Police failed to stop his ejection, it allowed the Sheriff Officers to execute an illegal warrant. The complainer has not expressed an opinion that the decree was illegal for any other reason.

Notwithstanding Superintendent K's response of 14 March 2006 where he explained to the complainer that the role of the police in circumstances surrounding the execution of a civil warrant is to preserve public order and ensure that there is no Breach of the Peace, I can find no evidence that Inspector J recorded this particular head of complaint. As a result, it does not appear that the complainer has had a clear response from the force on this matter.

**Complaint 3 – That Strathclyde Police failed to allow the complainer time to protect his and his dependant's personal effects.**

In his letter of 15 September 2005 the complainer stated that when he was ejected from his property by Sheriff Officers on 29 August 2005 the force did not give him time to arrange removal of both his and his dependant's personal effects.

Throughout the course of his investigation, Inspector J correctly identified the complainer's complaint about the police, noted relevant statements and provided a report to Superintendent K with a balanced account of the circumstances. I note that Superintendent K provided an appropriate response to the complainer. It is my view that the force has handled this complaint appropriately.

**Complaint 4** – That officers of Strathclyde Police threatened his dependant.

The complainer complained in his letter of 15 September 2005 that, on 1 September 2005, Constable G threatened to arrest his dependant when she attended his home to collect her belongings. The complainer's letter also stated that officers behaved in a 'thuggish and bullying' manner towards his dependant.

In relation to the complaint that the complainer's dependant was threatened with arrest, it is not disputed by the force that Constable G advised the complainer's dependant that she would be charged with Breach of the Peace if she did not 'desist from shouting'. Inspector J identified this in his report and Superintendent K's response to the complainer shows that he felt that Constable G's actions were appropriate.

I note that both officer's statements maintain that at no time did they act in a bullying manner towards the complainer or his dependant. However, this area was not included in Inspector J's enquiry report. This area was also not referred to in Superintendent K's response to the complainer.

Although Inspector J identified the complaint that the complainer's dependant was threatened with arrest, he did not refer to the other related areas where the complainer expressed concern. It is my view that the force should now consider the complainer's further concerns and provide a response to him.

**Complaint 5** – That Strathclyde Police did not honour an agreement with the complainer that his belongings would be held securely until he could arrange removal.

In the statement the complainer gave to the force, he complained that, upon his ejection on 29 August 2005, Sergeant F agreed with the complainer that his property would remain lock-fast until he had the opportunity to collect his belongings and that this agreement was subsequently not honoured.

I note that during Inspector J's investigation, he obtained statements from Constables D and E, Sergeant F and the Sheriff Officers who ejected the complainer from his home. All of these statements confirm that the complainer was advised by Sergeant F to contact the solicitor who held the keys to the property so that he could arrange the removal of his remaining possessions. None of the statements taken support the complainer's suggestion that Sergeant F advised the complainer that the property would remain lock-fast until he could arrange the removal of his belongings. I also note that the complainer's dependant does not confirm that she heard Sergeant F give this assurance.

It is my view that Inspector J correctly identified this complaint and carried out a thorough investigation into it. It is also my view that the force provided the complainer with a reasoned explanation for its position.

**Complaint 6** – That Inspector L failed to take a statement from the complainer.

In the statement the complainer gave to the force, he complained that, on attending the local police station on 31 August 2005, Inspector L refused to take a statement from him regarding his ejection.

I note that whilst investigating this complaint, Inspector J noted a statement from Inspector L. His statement shows that he arranged for the complainer to attend at the local police station regarding his ejection on 29 August 2005. Inspector L's statement also shows that when the complainer attended the police station, he advised the complainer that his ejection was carried out under the authority of a civil court order and was therefore outwith his jurisdiction. Inspector L's statement also shows that upon explaining to the complainer that he would note down and investigate any concerns the complainer had regarding the actions of the officers who had witnessed his ejection, the complainer left the police station stating that he would take his complaint to the Chief Constable.

It is my view that Inspector J correctly identified and carried out a thorough investigation into this complaint. It is also my view that the force provided the complainer with a reasoned explanation for its position.

**Complaint 7** – That Strathclyde Police has been biased in its involvement with the complainer's ejection.

In the statement the complainer gave to the force, he complained that the force showed bias throughout the proceedings which led to his ejection.

I note that the complainer stated that when he attended his local police station on 31 August 2005 it was his intention to complain about the bias he perceived the force had shown 'throughout the proceedings'. The complainer was not clear as to why he felt the force showed bias during the events leading up to him being ejected from his home. Nor is it apparent that the force tried to clarify why the complainer felt it had shown bias against him.

It is clear from the statement taken from Inspector C, who attended the incident on 18 May 2005, that he had a discussion with both Sheriff Officers who had attempted to eject the complainer. I note that Inspector C appears to have given advice to the Sheriff Officers about the perceived weaknesses of the decree issued by the court. Inspector C's statement shows that he suggested to the Sheriff Officers that to do nothing at this time 'was a tactical option'. He also suggested that the Sheriff Officers return at a later date unannounced with a stronger warrant. This advice was acted upon by the Sheriff Officers. I note that Inspector C concluded his statement by stating '*[the complainer] was not communicated this decision as it would remove the element of surprise for a subsequent return visit by the Sheriff officers*'.

I note that during the first attempt to eject the complainer, both the complainer and Sheriff Officers called the police asking for its assistance. It is clear from all statements taken that the force did not approach the complainer to establish his position. I also note that the complainer believed that, because both Sheriff Officers left the scene following discussions with Inspector C, the attempted ejection must have been illegal. I note that Superintendent K's response to the complainer stated that:

*'Having called the police, I would have expected my officers who attended on the day to inform you of their actions. The fact that they did not was regrettable and I am sorry that the level of service provided to you on that date did not meet with your expectations'.*

Although the complainer has received an apology, it is unfortunate that the officers who attended the complainer's home did not attempt to engage with him following his request for assistance. It is my view that this could have given the complainer a reasonable doubt as to whether the force was being impartial. It is also unfortunate that Inspector C appears to have given advice to the Sheriff Officers regarding his view on the deficiencies of the decree and how it should be implemented as such advice appears to contradict the role of the police described by Superintendent K in Section 4 of this review, namely, that the role of the police in such cases is to preserve public order and ensure that there is no Breach of the Peace. As this information was contained in the files supplied to me by the force, I am surprised that Inspector J did not comment on the force's contradictory approach in his enquiry report. Notwithstanding this, it is my view that the force should now fully clarify with the complainer why he felt the force had shown bias and formally respond with its position on the matter.

## **7. Conclusion**

**Complaint 1** – That Strathclyde Police failed to take due account of his dependant and protect her rights.

It is my view that Inspector J carried out a thorough investigation into this particular complaint and provided the complainer with a reasoned explanation for the force's position. As such, **I do not uphold this complaint.**

**Complaint 2** – That Strathclyde Police allowed the theft of his home.

Despite the complainer making this complaint to the force I can find no evidence that the force recorded or responded clearly to this particular complaint. I now **recommend that the force record this complaint and respond to the complainer.**

**Complaint 3** – That Strathclyde Police failed to allow the complainer time to protect his and his dependant's personal effects.

It is my view that the force has handled this complaint appropriately and gave a reasoned response to the complainer. As such, **I do not uphold this complaint.**

**Complaint 4** – That officers of Strathclyde Police threatened his dependant.

Although the force identified and addressed the complaint that the complainer's dependant was threatened with arrest, it did not refer to the other related areas



where the complainer expressed concern. As such, **I recommend the force now consider the complainer's further concerns and provide a response to him.**

**Complaint 5** – That Strathclyde Police did not honour an agreement with the complainer that his belongings would be held securely until he could arrange removal.

It is my view that the force handled this complaint appropriately and provided the complainer with a reasoned response. As such, **I do not uphold this complaint.**

**Complaint 6** – That Inspector L failed to take a statement from the complainer.

It is my view that the force handled this complaint appropriately and provided the complainer with a reasoned response. As such, **I do not uphold this complaint.**

**Complaint 7** – That Strathclyde Police has been biased in its involvement with the complainer's ejection.

It does not appear that the force has fully clarified with the complainer where he felt it had shown bias. As such, **I recommend that the force clarify the issue with the complainer and formally respond to him.**

Jim Martin  
Police Complaints Commissioner for Scotland  
June 2008

advocacy services, though we did note that ACA rules might have to be clarified in order to ensure that entry to the profession was not restricted.<sup>1</sup>

At this time we have not been made aware of any decision that the Lord President has made in relation to the ACA application. We would like to make it clear that the OFT is generally in favour of relevant professional organisations, where appropriately qualified, gaining the right to grant their members expanded rights of audience and the rights to conduct litigation as a means of increasing competition in the provision of litigation and advocacy services.

### **Two tier system**

With regard to your suggestion that the OFT may be operating a “two tier system” we can assure you that we are fully committed to championing consumer rights and tackling anti-competitive behaviour throughout all of the United Kingdom. In respect of legal services alone, we have been involved in a number of projects in Scotland such as championing Alternative Business Structures and direct access rights. We are currently advocating that the LSS should become subject to some form of external oversight in relation to the regulation of the new alternative business structures system.

I hope this reply is helpful in explaining the OFT’s position regarding the various issues you raised in your emails. If you wish to discuss any issues arising out of this reply please contact me again.

Yours faithfully,

### **Markets & Projects – Services**

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<sup>1</sup> A copy of our advice to the Scottish Executive regarding this application can be found at <http://www.scotland.gov.uk/Resource/Doc/925/0054770.pdf>

To summarise: the OFT's position regarding the LSS and the SLAB is that we are neither investigating nor prosecuting either organisation or their members because we have no reason to believe that they are currently acting in a manner contrary to the provisions of the CA98 or the EA2002 and the SLAB is in any case not acting as an undertaking in this matter. If you have any evidence which suggests that the LSS is acting contrary to the provisions of the CA98 or the EA2002 we would request that you forward it to us so that we can consider the matter further.

### **Membership of the Scottish Legal Complaints Commission**

In your emails you also claim that the LSS have attempted to fill posts on the Scottish Legal Complaints Commission (SLCC) "with their own people in direct contradiction to the independence they should have had." As I am sure that you are aware SLCC is made up of both lawyer and non-lawyer members, statute requires that the SLCC must contain four lawyer members and five non-lawyer members (including the chair). At present the SLCC has nine members five of which (including the chair) are non-lawyers, as such the current composition of the board is in compliance with statutory requirements. As I am sure you are aware appointments to the SLCC are made by the Scottish Executive and as such the OFT has no role in relation to appointments to the SLCC.

### **Application of the Association of Commercial Attorneys**

In your email you also draw our attention to an application made by the Association of Commercial Attorneys (ACA) to be designated as a body authorised to grant its members rights of audience and rights to conduct litigation. In compliance with the statutory duty imposed by section 40 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 the Scottish Executive sent a copy of the ACA's application to the OFT and asked us to provide advice as to whether granting this application would have, or would be likely to have the effect of restricting, distorting or preventing competition to any significant extent. We responded stating that we believed that granting the application would increase competition in the provision of litigation and

We have recently searched the Law Society of Scotland's (LSS) website and can find no evidence that it is currently publishing a list of recommended fees nor do we currently have any other reason to suspect it of being involved in any such activity. If you have any evidence that the LSS is publishing a list of recommended fees we would request that you forward it to us so that we can further consider this matter.

With regard to your claim that the LSS and its executives were "let off the hook" in 2005, it may be helpful for us to clarify the events which lead to the LSS ceasing to publish its schedule of suggested fees in 2005. Prior to February 2005 the OFT was involved in a dialogue with the Law Society during which we stated our belief that in publishing a list of suggested fees they might be acting in a manner that was anti-competitive and constituted a violation of Chapter I of the CA98. As a result of this dialogue the LSS decided to cease publishing its schedule of recommended fees. We had not been formally investigating the LSS at the time they made this decision.

We are aware that the Scottish Legal Aid Board (SLAB) does publish information detailing the level of fees it is prepared to pay for legal aid work carried out by solicitors. However we believe it is perfectly acceptable for the SLAB acting as a purchaser of legal services to specify how much they are prepared to pay for these services.

Furthermore the CA98 and EA2002 only apply where the parties involved are acting as undertakings. The issue of when a body is an undertaking for the purpose of the CA98 must be considered by reference not to the legal form of the body in question but to the nature of the activity in which it is engaged. For a body to be considered an undertaking in this context, the activity in question must be economic in nature. When determining if an action is economic in nature consideration is generally given to what the final use of the product being acquired will be.

The products being acquired in this case are the services of solicitors (funded by the state) for use by eligible members of the general public, as such it would appear that the SLAB is helping to meet a social need. Thus the SLAB, in publishing information detailing how much it is prepared to pay for legal work is not engaging in an activity of an economic nature and as such the OFT does not believe it is acting as an undertaking in this matter.

RESPONSE TO THE OFT

Thank you for the LONG awaited response to our queries. We are giving our members an opportunity to read the response and will respond FULLY in due course.

We will say this that having a brief read over the OFT response you at NO TIME mention WHY you took steps to criminalise B.A. directors for price fixing having full knowledge that the Law Society in 2005 was doing identical price fixing for fees of solicitors?

It is a disgrace that despite repeated complaints to the OFT and the Scottish Parliament carrying out an inquiry which led to the Legal Profession and Legal Aid Bill, that many Scottish citizens still face persecution and abuse of the legal process by the continued ILLEGAL monopoly that the OFT has failed to break.

This costing MILLIONS of pounds in asset stripping, one of the main asset strippers being the Scottish Legal Aid Board who are repossessing homes to recover the outlays on extended legal cases lasting 10 years of more thanks to that monopoly the OFT allows to continue. With regards the appointments to the SLCC our members were involved in both the oral and written evidence that brought about LPLA bill and at no time have we been consulted on the lay members .

Those lay members are NOTHING of the kind as some are ex police officers previously part of the Law Societies own complaints process and the Scottish police are in fact implicated in the illegal evictions that see millions of pounds of properties being STOLEN due to a legal process that lacks almost every due process possible.

We have proof sheriff officers and police collude to evict victims illegally and without notice and using flawed court orders obtained without proper representation and NO JURIES as required under MAGNA CARTA. The failure to implement sections 25 to 29 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 for over 17 years has allowed that monopoly to continue and the OFT have failed to act to ensure that illegal monopoly position was removed and still breaches European competition laws. These are the initial concerns relating to our queries over and above any that transpire while we mull over the OFT response.

Your ref		Direct line
Our ref	CE/9030/08	Fax
Date	11 November 2008	Email

Dear Sir/Madam,

I am writing in response to your emails of 29 July, 05 September and 20 October 2008 regarding various issues relating to the Scottish legal market. I apologise for the delay in responding to your enquiry.

### **The Law Society of Scotland and Scotland's Legal Aid Board – Table of Fees**

The OFT's principal competition enforcement powers are under the Competition Act 1998 (CA98) which contains two prohibitions; the Chapter I prohibition addresses anti-competitive agreements between undertakings; the Chapter II prohibition addresses abusive conduct by an undertaking in a dominant position within a market. For either prohibition to apply, therefore, the behaviour at issue must be that of an undertaking or an association of undertakings. It should be noted that these are civil and not criminal powers, under the CA98 the OFT can fine undertakings who have breached either Chapter I or Chapter II, the CA98 does not allow the OFT to bring criminal prosecutions against individuals who have participated in activities prohibited by either Chapter I or Chapter II of the CA98.

Under the Enterprise Act 2002 (EA2002) the OFT is able to launch criminal investigations against and prosecute individuals that it believes have dishonestly participated in anti-competitive agreements between undertakings.



