

Report of a Complaint Handling Review in relation to Northern Constabulary

under section 35(1) of the Police Public Order and Criminal Justice (Scotland) Act 2006

Summary and Key Findings

The complaints dealt with in this report arise from an alleged assault for which the complainer was reported to the Procurator Fiscal. In general, the complaints concern alleged inadequacies in Northern Constabulary's investigation of the incident.

Of the 11 complaints dealt with in the report, the Commissioner found that four were dealt with reasonably by Northern Constabulary, while three were not dealt with reasonably. A further four complaints have not been responded to by Northern Constabulary.

The Commissioner has recommended that Northern Constabulary send a further written response to the complainer properly addressing those complaints which he considers have not been dealt with reasonably. The following learning points were also identified:

- the need to ensure a detailed statement is taken from complainers clarifying his/her concerns;
- the need for any report on the complaints to adequately address each concern, taking into account relevant policy, guidance or procedure; and
- that final responses to complainers should address complaints fully and convincingly.

The Commissioner's role

Section 35 of the Police Public Order and Criminal Justice (Scotland) Act ("the Act") gives the Commissioner the power to examine the manner in which a policing body has dealt with a "relevant" complaint, as defined in the Act.

The Commissioner is independent of the police service and performs his functions in a fair and impartial manner. Before considering a complaint, the Commissioner's office obtains all papers held by the policing body against which the complaint has been made. These papers are considered alongside information provided by the complainer. The Commissioner then assesses whether the policing body's handling of the complaint was reasonable in all the circumstances. The Commissioner will look at the entire handling process, from the initial investigation by the policing body to the final response issued to the complainer. Among the factors which the Commissioner takes into account are the following:

- whether the policing body's response to the complaint is supported by all material information available;
- whether in dealing with the complaint the policing body has adhered to all relevant policies, procedures and legal provisions;
- where the complaint has resulted in the policing body identifying measures necessary to improve its service, whether these measures are adequate and have been implemented;
- whether the policing body's response to the complaint is adequately reasoned; and
- whether the policing body has communicated with the complainer in a reasonable manner.

Background

In the early hours of the morning of 24 July 2007 the complainer, who owns a public house in his village, received a telephone call from Person A, also a publican in the village. Person A asked the complainer to move a group of youths from the front of the complainer's public house who Person A believed were being disruptive. Following this telephone call the complainer went outside and asked the group of youths to move on. He then walked to Person A's public house to speak with him. In terms of their statements, the complainer and Person A provide different accounts of the events that followed. However, both accept that a physical altercation took place between them outside Person A's public house. Following the altercation, at around 1.40 am, the complainer left the scene and telephoned 999 from his mobile telephone. The complainer informed a call handler at Northern Constabulary's Operations Centre that he had been assaulted by Person A.

Constable B was contacted by the Operations Centre and attended the scene. On his arrival there, Person A approached him stating that he had been assaulted by the complainer. A witness then approached Constable B and informed him that the complainer had left the scene and returned to his own public house. According to Constable B, he told Person A that the complainer had requested the assistance of the police and that he (Constable B) would therefore need to check on him. Constable B stated that Person A replied that he too had telephoned 999 and had been informed that police officers were already on the way. Constable B was unaware of Person A's call at the time. Constable B left the scene and informed Person A that he would return to speak to him and other witnesses as soon as possible.

Constable B stated that he found the complainer nearby with a heavily bleeding nose waiting for an ambulance. The complainer informed Constable B that he had been assaulted by Person A and wanted him locked up immediately. Constable B stated that he informed the complainer that he

would need to gather information before any arrests were made. The ambulance arrived and the complainer was conveyed to a local hospital where he was treated by Doctor C. The complainer stated that he was also examined by another doctor on 24 July 2007.

Constable B stated that after the complainer had been taken to hospital he was joined by Constable D and they returned to the scene of the incident. Constable B stated that on his return Person A told him that he wished to make a complaint of assault against the complainer. Constable B noted in his statement that he observed a pool of blood next to a stone bench and, approximately twelve feet away, another pool of blood. He noted personal details of four witnesses and told them that they would be spoken to shortly.

Constables B and D then attended at the hospital at 2.30 am in order to obtain a statement from the complainer. They were informed by Doctor C that the complainer was being treated and would not be fit for interview for some time. The complainer was kept in hospital overnight and an X-ray confirmed that he had sustained a fractured nose.

Constables B and D returned to the public house and informed Person A that statements would be taken from witnesses and that he would be informed on completion of this. At 3.10 am, Constables B and D noted statements from two of the witnesses whose details Constable B had taken earlier. Constable B stated that "it became apparent that both witnesses were speaking to [the complainer] having initiated an assault on [Person A]." Constable B then contacted Inspector E with this information and informed him that he intended to take a statement from Person A under caution. Due to the time (4 am), Constable B requested that officers from the day shift speak to the remaining witnesses.

At 4.25 am a statement was noted under caution from Person A. Constables B and D noted that there were no signs of bruising or reddening to his knuckles or hands and that there was a small scratch between the small and ring fingers of his right hand. According to Constable B, Person A's statement supported the accounts already provided by other witnesses. Constable B then contacted Inspector E and it was agreed that, as Constable B was due to take his days off, he would email the oncoming day-shift with details of the enquiry so far and request that they obtain statements from the remaining witnesses, including Person A's partner and the complainer. Constable B stated that at 6.39 am he emailed Constable F with details of the enquiry and faxed him the witness statements taken so far. Constable B then went off duty at 7.00 am.

On 25 July 2007 Detective Constable G and Constable H visited the complainer's home where his injuries were photographed and a statement noted from him under caution. Detective Constable G noted in his statement that he was content at the time that the injuries suffered by the complainer were consistent with the type of assault the complainer had described in his statement. He also noted that there was still no direct corroboration of an assault on the complainer having taken place.

Detective Constable G stated that the complainer had asked him questions about police procedure and told him that no scene of crime examination had taken place. Detective Constable G stated that he had not been called to undertake such an examination and that he was aware that witnesses had described the complainer and Person A as having been in direct contact with each other. Because of that, Detective Constable G had not deemed it necessary to trace and seize clothing worn by either party. According to Detective Constable G, where it is not disputed by either party that physical contact has occurred, cross transference of fibres or fluids, including blood, would be highly likely and therefore would not add anything evidentially.

After visiting the complainer, Detective Constable G and Constable H traced and noted a statement from a witness named by the complainer. On 27 July 2007 Detective Constable G obtained a statement from Doctor C. According to this statement, the complainer had been admitted overnight to exclude any progressive neurological injury and to allow the alcohol in his system to wear off. Detective Constable G also noted in his statement that:

“Doctor C informed [him] that the injuries could have been as the result of an assault but equally could have been caused by a fall.”

On 26 July 2007 the complainer was examined by his GP.

Constable B commenced duty again at 7.00 am on 27 July 2007. He stated that later that day he attended at Person A’s public house with Constable J and obtained a statement from Person A’s partner. This statement corroborated a number of witness statements already obtained. On 28 July 2007, Constable B obtained a statement from another individual named by the complainer whom the complainer said had overheard his telephone conversation with Person A before the incident occurred.

Constable B stated that having reviewed all the witness statements:

“...it is evident that the [complainer] has initially assaulted [Person A] by grabbing him to the chest with both hands and pushing him into the bar area of [Person A’s bar]. [Person A] has pulled the [complainer] off him, spun him round and led him out of the bar area. As the [complainer] was being led round the side of the building, both the [complainer] and [Person A] have lost their footing in a small gravel area causing the [complainer] to fall on a stone bench outside the premises and [Person A] to land on top of the [complainer].”

On 29 July 2007 Constable B cautioned and charged the complainer with assault.

On 20 December 2007 the Procurator Fiscal intimated his decision to take no proceedings against the complainer in respect of the incident.

The Complaints

Based on the contents of the application form, correspondence with the PCCS and the information obtained from Northern Constabulary, the Commissioner has identified the following complaints:

(1) Northern Constabulary failed to conduct a thorough investigation into the incident, specifically that:

- (a) it failed to interview key witnesses;
- (b) it failed to interview the complainer immediately after the incident;
- (c) it failed to obtain appropriate medical opinion in order to challenge other evidence obtained;
- (d) it failed to carry out a forensic examination of the scene or obtain DNA, clothing or possessions from the complainer and Person A;
- (e) it did not listen to the complainer’s 999 telephone call;
- (f) the investigation of the incident should have been conducted by the CID as opposed to a uniformed police constable;
- (g) Northern Constabulary did not take photographs of Person A’s injuries;
- (h) statements were not obtained from Person A and other witnesses in a timely manner;
- (i) Northern Constabulary has not taken seriously death threats made by Person A against the complainer; and

(j) Northern Constabulary did not challenge the complainer, Person A or other witnesses about their versions of events.

(2) Northern Constabulary did not investigate the complainer's allegation of assault against Person A.

The Commissioner's Review

A letter of complaint from the complainer was received by the Commissioner's office on 12 December 2007. The complainer was then asked to complete and sign an application form. On 13 December 2007 the Commissioner's office wrote to Northern Constabulary to ask if the complainer's complaints had been recorded as such, and whether its internal handling had been completed. Northern Constabulary wrote to the Commissioner's office on 17 December 2007 stating that it had not yet concluded the handling of the complaint. On 9 January 2008 the Commissioner's office wrote to the complainer confirming that the Commissioner could only review a police body's handling of a complaint once it had dealt with it through its internal procedures.

Following Northern Constabulary's completion of its handling of the complaints, on 4 March 2008 the complainer's application was received by the Commissioner's office together with other relevant information. On the same date, the Commissioner's office asked Northern Constabulary to provide its papers. These were supplied by Northern Constabulary on 20 March 2008. Further information was requested from Northern Constabulary on 16 February and 19 February 2009. This information was received promptly.

General information about the handling of the complaints by Northern Constabulary

The complainer wrote a letter of complaint to the Chief Constable of Northern Constabulary on 15 August 2007 detailing Complaints 1 (a), (b), (c), (d), (g), (h) and (j). The letter was acknowledged by Chief Inspector K on 20 August 2007 who informed the complainer that a senior officer would be appointed to carry out a preliminary enquiry into the matters raised. On the same date, Chief Inspector K completed a Complaint about the Police (CAP) form.

Inspector L completed a preliminary report into the complaints on 30 August 2007. He described the complaints as follows:

"...that the manner in which officers of Northern Constabulary investigated the incident, which resulted in him being cautioned and charged with assault, was systematically flawed, mismanaged and negligent."

On 27 August 2007, Inspector L obtained a statement from the complainer regarding his complaints. The complainer raised Complaint 1 (f) and reiterated a number of complaints contained in his letter of 15 August 2007. Inspector L stated that it was clearly the complainer's perception that he was the victim of an assault in which he sustained serious injuries. According to the complainer the investigating officers had pre-judged their investigation by interviewing Person A and other witnesses prior to speaking to the complainer. Inspector L stated:

"Furthermore [the complainer] maintains that the subsequent investigation was not progressed with sufficient vigour or robustness in order to fully ascertain the facts and glean forensic evidence... Clearly the charge against him has been libelled as a result of the corroborated evidence of others. He was isolated and did not have the benefit of corroboration although part of his complaint relates to the fact that Police did not attempt to gather such evidence that would have benefitted him."

The concluding part of Inspector L's report states:

“It is the investigating officer’s opinion that the complaint contained in this report is a tactical measure deployed by [the complainer] in order to bolster his defence against the criminal charge of assault which has been libelled against him.”

Inspector L’s report was forwarded to Chief Inspector K on 30 August 2007.

On 31 August 2007 Chief Inspector K wrote to the complainer stating that he had received a preliminary report from Inspector L and had decided to appoint an independent senior officer to carry out a review of the circumstances of the complaint. On 16 November 2007 the complainer wrote a further letter to Inspector M, the senior officer appointed, reiterating a number of complaints already made. The complainer also attached a revised version of his letter of 15 August 2007 raising Complaints 1 (e) and (i), which the complainer also sent to the Procurator Fiscal.

On 21 November 2007 Chief Inspector K wrote to the complainer acknowledging receipt of his letter of 16 November 2007. Chief Inspector K stated that he was in receipt of a report from Inspector M but had decided not to write to the complainer in detail at that time because the case against him was “sub-judice” (ie currently being considered by a court). Chief Inspector K explained that he did not wish to make any comment to the complainer that could interfere with the due process of law. He added that he would take note of all the complainer’s comments and would contact him once the decision of the Procurator Fiscal was known.

The Procurator Fiscal wrote to Northern Constabulary on 20 December 2007 advising that no proceedings were to be taken against the complainer. On 27 December 2007 the complainer wrote to Chief Inspector K raising questions over the police investigation into the incident for which he was charged. On 7 January 2008 Chief Inspector K wrote to the complainer stating that he understood that Inspector M had telephoned the complainer on 28 December 2007 informing him that as the Procurator Fiscal was taking no proceedings against him he would now be able to answer his complaints. On 28 January 2008 Chief Inspector K wrote to the complainer giving Northern Constabulary’s response to his complaints. He referred to the complaint lodged by the complainer on 15 August 2007 and said he took further note of the complainer’s subsequent correspondence as noted above.

Following receipt of this letter the complainer wrote to Chief Inspector K to express his disappointment with Northern Constabulary’s conclusions.

The remainder of this section sets out the Commissioner’s views on the manner in which the complaints were handled by Northern Constabulary. Each complaint is set out in turn and is followed by details of Northern Constabulary’s handling of it and the Commissioner’s views on this.

Complaint 1: Alleged inadequacy of Northern Constabulary’s investigation

(a) alleged failure to interview key witnesses

In his letter of 15 August 2007 the complainer raised his concern that Northern Constabulary did not take statements from any of the guests staying at the local youth hostel which overlooked where the alleged assault had taken place. The complainer advised that there were over 60 people staying at the hostel. The complainer also stated that Northern Constabulary did not interview two witnesses who were present in the complainer’s bar whilst he was on the telephone to Person A prior to the altercation. The complainer also stated that staff at Person A’s public house were not interviewed.

Internal Handling

Chief Inspector K’s letter of 28 January 2008 recorded this complaint as:

“No witness statements were taken from 60+ guests of the [the local youth hostel] in [the village]...”;

He responded to the complainer as follows:

“The enquiry officer had obtained evidence from people who were at the scene and this was deemed sufficient at the time. A statement was noted from a night duty supervisor at the [local youth hostel]. The decision was made not to extend the enquiry as far as interviewing further staff and guests at the [the local youth hostel] and no other person came forward with any information. It was, of course, always open to you and your solicitor to give details of any other potential witnesses who could assist your case.”

Consideration

The witnesses whom the complainer believes Northern Constabulary failed to interview appear to fall into the following categories:

- guests of the local youth hostel overlooking Person A's public house;
- two witnesses within the complainer's public house who may have heard his telephone conversation with Person A before the incident took place; and
- staff at Person A's public house.

The complainer believes that Northern Constabulary ought to have interviewed guests at the local youth hostel as he believed that someone there might have seen or heard something which could have corroborated his account. The complainer also believed that the two witnesses within his public house would have been able to confirm that he had a “relaxed, jovial and reasonable” manner following the telephone call with Person A. This, he said, was the opposite of Person A, whom the complainer believes was “aggressive, annoyed and tense” during the telephone call. The complainer further stated that staff at Person A's bar may have had evidence that Person A cleaned the scene of the incident or persuaded individuals to give evidence against the complainer. The complainer believes that because these other witnesses were not contacted his defence to the charge of assault was ultimately made more difficult and reduced the likelihood of proceedings being taken against Person A.

Aside from the complainer and Person A, there appears to have been four confirmed eye witnesses to the incident. The investigating officers took statements from these individuals, all of whom corroborated Person A's account that the complainer had attended Person A's public house and laid hands on him. In terms of the information supplied by Northern Constabulary, officers took statements from two witnesses who were present in the complainer's bar when the complainer spoke to Person A on the telephone. Both witnesses confirmed the complainer's account of his demeanour at that time and their statements were included in the report to the Procurator Fiscal. Unfortunately, Northern Constabulary has never communicated this to the complainer.

According to Chief Inspector K's response, Constable B's enquiries were deemed “sufficient at the time”. However, Chief Inspector K did not explain to the complainer *why* the enquiries were considered to be sufficient. Similarly, although Chief Inspector K informed the complainer that the decision had been taken not to interview guests and staff at the local youth hostel, he did not explain why this was the case. Chief Inspector K's response also failed to respond to the complainer's concerns that staff at Person A's bar were not asked for their account of events.

The Commissioner therefore recommends that Northern Constabulary issue the complainer with a further written response explaining why these decisions were taken. Northern Constabulary should also respond to the complainer's point about staff at Person A's bar not being interviewed.

Chief Inspector K also informed the complainer that a statement was taken from the night porter at the youth hostel. This carries the clear implication that the night porter was physically on the premises of the youth hostel when he witnessed the incident. However, it is clear from the night porter's statement that he was in fact in the complainer's bar during the incident and not at the youth hostel. There is nothing to suggest that the omission of this information was in any way deliberate, but the position ought to have been made clear to the complainer.

For the reasons given the Commissioner does not believe that Northern Constabulary's handling of this complaint was reasonable.

(b) alleged failure to interview the complainer immediately after the incident

The complainer stated that he was not interviewed in hospital and had to make several calls to the police to bring forward the interview from 27 July 2007 to 25 July 2007.

Internal Handling

Chief Inspector K's letter of 28 January 2008 summarised this complaint as:

"I was not interviewed in Hospital and I had to make several calls to the police...";

Chief Inspector K's response to the complaint was as follows:

"Just over an hour after the incident, two police officers attended at [the hospital] where they intended to note a statement from you. However, the officers were informed by the doctor that you were being treated for a suspected fractured nose and you would not be fit to be interviewed for some time. That was why you were not seen later that morning at the hospital...

Further arrangements were made and, on 25 July 2007, the morning after the incident, you were interviewed by a Detective Constable and a uniformed Constable at your home address, where you made a lengthy statement under caution...

As already mentioned, the officers were prompt in attempting to contact you at the hospital but they were not allowed to see you. In all circumstances, you were seen as soon as possible thereafter."

Consideration

The complainer believes that by failing to take a statement from him at an earlier stage his input into the investigation was essentially ignored. According to the complainer, Northern Constabulary based the scope of its subsequent investigation on other witnesses' accounts of events, which the complainer believed to be untrue.

According to the information supplied to the Commissioner's office, Constables B and D attended the hospital at 2.30 am on 24 July 2007 to take a statement from the complainer. At that time they were informed by Doctor C that the complainer would not be fit for interview for some time. Chief Inspector K concluded in his response that the officers were therefore prompt in attempting to contact the complainer and that he was seen as soon as possible thereafter.

In terms of the incident log provided to the Commissioner's office, at 11.18 pm on 24 July 2007 the complainer telephoned Northern Constabulary and was told that the reason a statement had not been taken from him during the day on 24 July 2007 was that counter allegations may have been made. The complainer was also told that further enquiries would therefore require to be carried out before he was interviewed. The information provided to the complainer during this telephone conversation is not mentioned by Chief Inspector K in his response to this complaint.

However, in the Commissioner's view the response provided to the complainer by Chief Inspector K is reasonable. It is clear that officers attended at the hospital shortly after the incident to obtain a statement from the complainer, but were not permitted to do so by Doctor C. The delay in obtaining a statement from the complainer immediately after the incident was therefore not within Northern Constabulary's control. Although Chief Inspector K did not address the complainer's assertion that he had to make several calls to Northern Constabulary to move the interview date forward, a statement was taken from the complainer on 25 July 2007. In the Commissioner's view, given that officers were unable to obtain a statement from the complainer while he was in hospital, the period which elapsed before he was interviewed was not unreasonable.

The complainer appears to believe that as a result of his statement not being obtained immediately witnesses had the opportunity to collude. The reasons why a statement was not obtained from the complainer while he was in hospital have already been explained. Even if it is true that witnesses colluded immediately after the incident, that is not a matter for which Northern Constabulary could be held responsible.

The Commissioner makes further comments on the sequence of the enquiries under Complaint 1(h) below.

(c) alleged failure to obtain medical opinion.

The complainer complains that Northern Constabulary should have sought appropriate medical evidence in relation to the incident. He believes that the injuries to both parties should have been assessed and that the statements of Person A, the complainer and other witnesses challenged in light of that assessment.

The complainer states in his letter of 15 August 2007 that he was not aware of any doctors being interviewed by the police even though he was examined by three in the three days following the incident. He was not aware of Northern Constabulary seeking any expert medical opinion.

The complainer added in his letter:

"The investigation was extremely limited and (as far as I am aware) involved no assessment of the injuries sustained by both parties to see if they matched the different version of events that the police were being told. There was no attempt to challenge the witness statements by seeking potential expert or even experienced medical opinion."

He further asserted:

"No member of the police force seems interested in comparing my injuries in detail to what has been stated by both sides. How are all my injuries so closely grouped? Why are there no grazes (from contact with the ground?) How do two minor contusions received to my left knee and arm (seen and noted by a doctor on July 25th) marry with a heavy fall within a struggle as claimed by [Person A]."

The complainer went on to detail the injuries he and Person A received during the incident and debated whether these injuries could have been sustained by what Person A and other witnesses claimed had occurred.

The complainer asked in his letter of 27 December 2007 why Doctor N, who examined him on 24 July 2007, was not interviewed.

Internal Handling

Chief Inspector K's letter of 28 January 2008 recorded this complaint as:

"I was not aware of any doctors being interviewed..."; and

"No member of the police force seems interested in comparing my injuries in detail to what had been said by both sides."

Chief Inspector K's response to the complainer was as follows:

"A statement was noted from a doctor who treated you at [Hospital X] and that statement was forwarded to the Procurator Fiscal. The doctor could only say that the injuries you had could be consistent with an assault or consistent with a fall..."

"The medical evidence and other evidence, including your own statement, was submitted in the police report to the Procurator Fiscal for consideration."

Consideration

As noted above, Doctor C in his statement of 24 July 2007 said the following:

"The injuries I noted could be consistent with this type of assault but they could also be consistent with a fall."

The complainer does not feel that this was sufficient medical opinion in order properly to investigate the circumstances behind his injuries. He raised the possibility of a forensic medical examiner looking at how the injuries sustained by the complainer and Person A during the incident could have happened. The complainer outlined that this medical assessment should have then been used to challenge the statements provided by the complainer, Person A and the witnesses about their version of events. The complainer put this point succinctly in his letter of 15 August 2007:

"If the medical evidence does not match the story of my assailant, then he must be lying as must his other witnesses. It was absolutely vital that his evidence be gathered especially with the lack of witness testimony."

As noted above Chief Inspector K's response informed the complainer that Doctor C's statement had been passed to the Procurator Fiscal. However, in the Commissioner's view, this response does not address the essence of the complainer's complaint - that independent expert medical opinion, over and above that of Doctor C, should have been obtained in order to challenge the evidence contained in the witness statements.

Northern Constabulary acknowledged the complainer's concern that the investigating officers had not compared the complainer's injuries in detail to what had been said by the complainer and Person A. Again, the Commissioner does not consider that Northern Constabulary's response – that the evidence was submitted to the Procurator Fiscal for consideration – answers this complaint.

In the Commissioner's view, however, this complaint stems from a misconception on the complainer's part as to the nature of a police investigation in a case such as the present one. There is a difference between, on the one hand, the enquiries the police can reasonably be expected to undertake in such a case and, on the other, those which an accused's legal advisers can reasonably be expected to undertake in preparing and presenting his defence in court. It seems to the Commissioner that the complainer expects the police to have performed the role of legal advisers in conducting a forensic examination of the accounts given by witnesses against him.

Northern Constabulary's handling of this complaint highlights the need to identify complaints and address them fully and convincingly. The Commissioner does not believe that Northern Constabulary met these standards in its response to this complaint. The Commissioner therefore recommends that Northern Constabulary issues a further response to the complainer fully addressing the complaint.

(d) alleged failure to conduct crime scene and forensic examinations.

In his letters of 15 August 2007 the complainer expressed his concern that no DNA samples had been taken from Person A or himself to determine whether there had been any cross-contact. He also stated that no forensic evidence was gathered from the scene and no attempt made to secure clothing from Person A or the complainer even though this might have proved significant in court. Furthermore, in his letter of 27 December 2007 the complainer asked why the crime scene had not been protected and examined by scenes of crime officers.

Internal Handling

Chief Inspector K's letter of 28 January 2008 summarised this complaint as follows:

"No DNA was taken of either my assailant or myself to see if there was any cross-contact...";

"No forensic evidence was gathered at the scene..."; and

"No attempt was made to secure clothing from either the assailant or myself..."

With reference to the complaint concerning the absence of DNA samples, Chief Inspector K responded as follows:

"Due to the other evidence gathered, it was not deemed relevant to obtain DNA for that purpose. As independent eye witnesses had placed you and the other party in contact with each other, it was deemed unnecessary to take DNA."

With regard to the complaint regarding the lack of forensic enquiries, Chief Inspector K said the following:

"... in line with the previous statement that, due to the other evidence gathered, and the circumstances of the case, a forensic examination of the locus did not take place."

With reference to the fact that clothing was not secured, Chief Inspector K's response stated:

"From the statements made by witnesses and other evidence obtained it was deemed unnecessary to secure clothing."

Consideration

Chief Inspector K's responses appear to be based on the information contained in Detective Constable G's statement. In that statement, Detective Constable G described his visit to the complainer's home and the questions he was asked by, and the answers he had given to, the complainer. The following passages are taken from the statement:

"...[the complainer] then quizzed me over police procedure and stated that no scene of crime examination had been done. I had certainly not been contacted to undertake a scene of crime examination at the time of the incident..."

I was aware that independent eye witnesses had placed [the complainer] and [Person A] together at the time of the incident and in contact with each other. In these circumstances I deemed it unnecessary to trace and seize clothing which had been worn by [Person A] and [the complainer]. Where it was not disputed by either man that there was physical contact between them cross transference of fibres or fluids, including blood would be highly likely but would not add anything evidentially to the matter.”

In the Commissioner’s view, although they could have been much fuller, Chief Inspector K’s responses to these complaints are essentially reasonable. The Commissioner is unclear as to what the complainer believes would have been achieved had forensic and other enquiries been undertaken. There was no dispute that the complainer came into close physical contact with Person A, or that the complainer was bleeding heavily from his nose following the incident. The real issue was not whether blows had been struck but who had struck them. It is not clear to the Commissioner how enquiries of the type suggested by the complainer would have assisted in clarifying this.

(e) the alleged failure to listen to the complainer’s 999 telephone call

In his revised letter of 15 August 2007, the complainer stated:

“My 999 call and the ambulance call to me two minutes later may contain evidence and these have not been heard by those undertaking the investigation. Did I make reference to being attacked in either call – given my condition I am hardly likely to be making up a story at this juncture. Have these calls been listened to by the investigation.”

The complainer also noted in his letter of 27 December 2007:

“When I was charged on Sunday 29th July, the investigating officer said he had not heard the tape of the 999 call or seen the admission notes from the doctor at hospital. Why was this?”

Internal Handling

According to the information supplied to the Commissioner, although Chief Inspector K responded to other matters relating to the 999 call, he did not address these specific concerns.

Consideration

Northern Constabulary should now write to the complainer in response to these complaints.

(f) The incident ought to have been investigated by CID

In his revised letter of 15 August 2007, the complainer asked:

“Why has this crime been investigated by a uniformed PC and not by CID?”

The complainer reiterated this point in his letter of 27 December 2007, where he asked:

“Why was the investigation into a complex matter left in the hands of a uniformed police constable.”

Internal Handling

Again, Northern Constabulary does not appear to have responded to these issues

Consideration

On a reasonable interpretation, the questions posed by the complainer were expressions of dissatisfaction about Northern Constabulary's investigation of the incident. The complainer appears to be implying that CID officers would have been better qualified to investigate the incident than uniformed officers. In the Commissioner's view, Northern Constabulary should now write to the complainer responding to this complaint.

(g) alleged failure to photograph Person A's injuries.

The complainer stated in his letter of 15 August 2007 that, as far as he was aware, no photographs had been taken of Person A's injuries. Such photographs, he claims, could have been examined by a forensic expert. The complainer also stated that he hoped the injuries were described in detail in the police report. The complainer reiterated this concern in his letter of 16 November 2007 in which he stated:

"It is extremely galling that even after I had made the statement which included extremely serious allegations of assault and threats against me... [it was not] deemed appropriate to photograph the injuries to [Person A] or assess both of our injuries in the light of statements given..."

The complainer raised the same issue in his letter of 27 December 2007.

Internal handling

Chief Inspector K's letter of 28 January 2008 summarised this complaint as follows:

"As far as I am aware, no photographs were taken of my assailant's injuries..."

Chief Inspector K responded to the complaint in the following terms:

"No photographs were taken of the other party, but details of a minor injury were included in the police report to the Procurator Fiscal."

Consideration

In the Commissioner's view, this complaint is effectively a request for an explanation as to why Northern Constabulary did not take photographs of Person A's injuries. Northern Constabulary's response to the complaint does not address this issue. There may well be good reasons why such photographs were not taken, but until Northern Constabulary explains its position, the complainer is no clearer on the matter.

In the Commissioner's view, Northern Constabulary should write to the complainer explaining why no photographs were taken of Person A's injuries.

(h) alleged failure to obtain statements from Person A and others in a timely manner

The complainer's letter of 15 August 2007 states that Constable B told him that the incident involving him and Person A had occurred when Constable B was due to finish his shift. The complainer made the following comments in his letter:

"Does that mean that [Person A] and his cohorts had several hours before they were interviewed to agree their story. There was an immediate opportunity to speak to all of them whilst I was taken to hospital – was this a missed opportunity? If so it shows that the investigation was flawed from the outset. The seriousness of my injuries were seen by

[Constable B] *twenty minutes after the incident, [Person A] was available for interview at the time – why was prompt action prevented by shift patterns? Surely immediate action was required.*”

The complainer further stated in his letter of 16 November 2007 that “good systemic structures” should dictate that all available leads are followed and all available evidence gathered as soon as possible. This was particularly so, the complainer said, where the versions of events were so “diametrically opposed as they were in this case”.

Internal Handling

In his letter of 28 January 2008 Chief Inspector K summarised this complaint as follows:

“[Constable B] told me the incident occurred after he was due to go off-shift. Does this mean that the assailant and his cohorts had several hours before they were interviewed to agree their story...”

Chief Inspector K confirmed in his response to the complainer that Constables B and D were due to finish their shifts soon after the complainer’s 999 call. Chief Inspector K explained, however, that both officers responded to the call and arrived at the scene of the incident approximately ten minutes later. Chief Inspector K noted that the complainer was seen briefly by officers before being conveyed by ambulance to a local hospital. He then stated:

“The officers commenced enquiries [at the scene] and noted statements from witnesses. Further enquiries were made and Constable [B] did not finish duty until 0700 hours that morning. Immediate action was therefore taken and investigations did take place at the earliest opportunity.”

Consideration

The essence of this complaint is that, as Constable B was due to go off shift shortly after the incident occurred, statements may not have been obtained from witnesses in a timely manner; in the complainer’s view this would have allowed time for the witnesses to agree their stories prior to having their statements taken. Indeed, the complainer specifically asked Northern Constabulary:

“Does this mean that the assailant and his cohorts had several hours before they were interviewed to agree their story.”

As discussed in connection with Complaint 1 (b), it is evident that Constables B and D commenced their enquiries into the incident promptly after the complainer’s 999 call at 1.40 am. They then visited the hospital at approximately 2.30 am to take a statement from the complainer. Unable to do so, Constables B and D took statements from three eye witnesses at 3.10 am, 3.11 am and 4.25 am. According to Constable B’s statement he then confirmed with his supervisor that the oncoming day shift would obtain statements from the remaining witnesses.

The Commissioner considers in light of this information that the response provided by Chief Inspector K is reasonable. According to Complaint 1(b), the complainer believes that Northern Constabulary should have obtained a statement from *him* immediately and that its failure to do so resulted in the investigating officers basing their enquiries on the statements provided by Person A and the other witnesses. In other words, the complainer believes, on the one hand, that the investigating officers should immediately have obtained a statement from him and, on the other, that they should immediately have obtained statements from Person A and other witnesses. In the Commissioner’s view it is unreasonable for the complainer to expect the investigating officers to have done both. As noted above, the officers attempted to obtain a statement from the complainer while he was in hospital but for reasons beyond their control were unable to do so. The officers

therefore obtained statements from other witnesses, a statement being taken from the complainer a short time later.

In the Commissioner's view, Northern Constabulary's handling of this complaint was reasonable.

(i) Northern Constabulary's reaction to death threats made to the complainer

The complainer stated in his revised letter of 15 August 2007 that Person A had:

"...made several shows of playing with his family outside my house – no restriction has been put on his movements whilst the investigation is ongoing – despite the very serious and mortal threat he made to me at the end of the incident...The police do not appear to have taken this threat seriously at all and would seem content to wait until something happens before taking action."

Internal Handling

It does not appear that Northern Constabulary has considered or responded to this complaint.

Consideration

The terms of the passage quoted above is clearly an expression of dissatisfaction about Northern Constabulary. Accordingly, Northern Constabulary should now write to the complainer responding to this complaint.

(j) alleged failure to challenge the complainer, Person A and other witnesses.

The complainer has raised this complaint in different forms throughout his correspondence with Northern Constabulary.

Internal Handling

Again, it does not appear that Northern Constabulary has responded to this complaint.

Consideration

Northern Constabulary should now write to the complainer responding to this complaint

Complaint 2: Alleged failure to investigate the complainer's allegation of assault

The complainer stated the following in his letter of 15 August 2007:

"It would appear to me that only my assailant's allegation of what I supposedly did to him has been investigated and no attempt has been made to seek witnesses or analyse the medical evidence to support my story."

Internal Handling

In his letter of 28 January 2008 Chief Inspector K summarised this complaint as follows:

"It would appear to me that only my assailant's allegation of what I supposedly did to him has been investigated..."

Chief Inspector K responded to the complaint as follows:

"I have answered this previously, but will again say that your version of events, and that of witnesses, was submitted for the information of the Procurator Fiscal."

Chief Inspector K added that it was clear that the complainer felt particularly aggrieved that he had been charged by the police with assault and that Person A had not. He stated:

"Without wishing to repeat myself on certain points, the police did note statements from eye witnesses and other witnesses. These, including medical evidence, photographs and your own version of events, were submitted to the Procurator Fiscal."

Consideration

In the Commissioner's view it is clear that Northern Constabulary initially set about investigating the complainer's allegation that he had been assaulted. However, as the investigation progressed, evidence was found to suggest that it was the complainer who had assaulted Person A. A report was therefore submitted to the Procurator Fiscal on that basis.

It follows that the reason Northern Constabulary did not submit a report to the Procurator Fiscal about Person A is that there was no evidence corroborating the complainer's account. The complainer believes that the absence of any such evidence is itself a failing on the part of Northern Constabulary and to that extent this complaint is very much connected to Complaint 1(a).

It does not appear to the Commissioner that Northern Constabulary investigated only Person A's allegation against the complainer. As explained above, statements were taken from various eyewitnesses, none of whom supported the account given by the complainer. The Commissioner has recommended that Northern Constabulary issue the complainer with a further response to the issues raised under Complaint 1(a). However, based on the information presently available, the Commissioner considers that Northern Constabulary's response to Complaint 2 is reasonable.

Conclusions, Recommendations and Learning

(1) Alleged inadequacy of Northern Constabulary's investigation

(a) alleged failure to interview key witnesses

In the Commissioner's view Northern Constabulary's handling of this complaint was not reasonable. Accordingly, Northern Constabulary should send a further response to the complainer explaining:

- (i) why Constable B's enquiries into the alleged offence were considered to be sufficient;
- (ii) why the decision was taken not to interview staff and guests at the local youth hostel; and
- (iii) why staff at Person A's bar were not asked for their accounts of events.

(b) the alleged failure to interview the complainer immediately after the incident

In the Commissioner's view, Northern Constabulary's handling of this complaint was reasonable. Accordingly, no further action is required.

(c) alleged failure to obtain medical opinion.

In the Commissioner's view, Northern Constabulary's handling of this complaint was not reasonable in that it did not adequately address the issue raised by the complainer. The handling

of this complaint highlights the need for Northern Constabulary to identify complaints and address them fully and convincingly.

The Commissioner recommends that Northern Constabulary writes to the complainer addressing this complaint.

(d) alleged failure to conduct crime scene and forensic examinations

In the Commissioner's view, although they could have been much fuller, Northern Constabulary's responses to this complaint is essentially reasonable. Accordingly, no further action is required in relation to this complaint.

(e) the alleged failure to listen to the complainer's 999 telephone call

It does not appear that Northern Constabulary has responded to this complaint. Accordingly, the Commissioner recommends that Northern Constabulary now issues the complainer with a response.

(f) the incident ought to have been investigated by CID

It does not appear that Northern Constabulary has responded to this complaint. Accordingly, the Commissioner recommends that Northern Constabulary now issues the complainer with a response.

(g) alleged absence of photographs of Person A's injuries.

In the Commissioner's view, Northern Constabulary's handling of this complaint was not reasonable in that it did not address the essence of the complainer's concern. Accordingly, the Commissioner recommends that Northern Constabulary write to the complainer explaining why no photographs were taken of Person A's injuries.

(h) alleged failure to obtain statements from Person A and others in a timely manner

In the Commissioner's view, Northern Constabulary's handling of this complaint was reasonable. Accordingly, no further action is required.

(i) Northern Constabulary's reaction to death threats made to the complainer

It does not appear that Northern Constabulary has responded to this complaint. Accordingly, the Commissioner recommends that Northern Constabulary now issues the complainer with a response.

(j) alleged failure to challenge the complainer, Person A and other witnesses.

It does not appear that Northern Constabulary has responded to this complaint. Accordingly, the Commissioner recommends that Northern Constabulary now issues the complainer with a response.

Complaint 2: Alleged failure to investigate the complainer's allegation of assault

In the Commissioner's view, Northern Constabulary's handling of this complaint was reasonable. Accordingly, no further action is required of Northern Constabulary in relation to this complaint.

Learning Points for Northern Constabulary

Overall, it is the Commissioner's view that the handling of these complaints was unfocused and lacked rigour and depth. Although the Complaint about the Police (CAP) form recorded the complaint as a neglect of duty the complainer's complaint was not specified on the CAP form. The statement obtained from the complainer during Northern Constabulary's complaint investigation did not attempt to develop his complaint further and simply refers to points raised in his letters. Additionally, Inspector L's preliminary report did not reflect the detail or number of issues contained in these letters. Finally, Chief Inspector K appears to have arbitrarily taken quotes from the complainer's letters as heads of complaint and provided answers which lacked detail and, in some cases, relevance.

The review of this complaint has highlighted the importance of obtaining a detailed statement from the complainer and clarifying the grounds of complaint at an early stage to ensure that complainers' concerns are fully understood. Any other approach creates difficulty in fully answering a complainer's concerns. In the present case, the handling of the complainer's concerns would have been better served had Northern Constabulary explained to the complainer the action taken to investigate the incident which occurred on 24 July 2007 providing detail on any policy, procedure or other relevant guidance.

These are learning points that I expect Northern Constabulary to embrace.

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