

# Report of a Complaint Handling Review in relation to Strathclyde Police

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

## Summary and Key Findings

**The six complaints reviewed in this report relate to a road traffic incident involving the applicant which occurred on 11 December 2006.**

**Of the six complaints reviewed, the Commissioner has decided that two (complaints 1 and 2) were not handled in a reasonable manner and that consequently further action is required by Strathclyde Police.**

The Commissioner has therefore recommended that, in relation to complaints 1 and 2, Strathclyde Police provides the applicant with sufficient reasons to properly inform him why no misconduct proceedings were taken against the officers subject to complaint.

Furthermore, the Commissioner has identified an important learning point which arises from Strathclyde Police's handling of complaint 6. Where a policing body substantiates an applicant's complaint it is good practice to inform the applicant of what actions have been taken to prevent a similar occurrence in the future. This action could be, for example, a change in policy or the counselling of the officers involved. Such an approach is necessary as it assures applicants that their complaint has been taken seriously and, when found to be substantiated, has been acted upon.

## 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 applicant (the person who has made the complaint). 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 applicant. 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 applicant in a reasonable manner.

## Background

On 11 December 2006 at around 10 pm the applicant was stopped in his car by Constable A and Special Constable B, from Strathclyde Police, who were driving an unmarked police vehicle. The facts of the incident are disputed and as such the applicant's account of events and those of both officers are presented separately below.

### Applicant's account of events

(This account is taken from the applicant's statement to police, taken on 1 October 2007)

On 11 December 2006 the applicant was driving in Town X intending to walk his dogs. After accelerating from a set of traffic lights he noticed a vehicle beside him, on the wrong side of the road, which he identified as an unmarked police car because of its klaxon and the police sign in its rear windscreen. At this specific moment the applicant looked at his speedometer and noted that it was showing 42 mph. The police vehicle thereafter positioned itself in front of the applicant's car and directed the applicant to pull over.

Constable A then approached the applicant's car and said to him through the open driver's window: "Admit it, you were doing more than 50." Constable A at this time also instructed the applicant to turn off the ignition which the applicant was reluctant to do because it was a dark night. Constable A thereafter asked the applicant to leave his car, which he refused to do because of concern for his dogs. This prompted Constable A to say to the applicant: "If you don't leave the vehicle I'll drag you out and charge you with resisting arrest."

The applicant at this point did exit his car and was led by Constable A to a nearby doorway where they were joined by Special Constable B. The applicant immediately expressed his concern about where he was parked, in response to which Constable A replied: "If a traffic warden comes along I'll tell him I told you to park there."

In the doorway, Constable A continued to insist to the applicant that he was driving at 50 mph when he was stopped, eventually prompting the applicant to remark: "Prove it." In reply, Constable A explained that his vehicle was fitted with a calibrated speedometer and that he was an experienced traffic officer with 15 years of experience. Constable A proceeded to issue the applicant with a HO/RT 1 form explaining that he had to produce the relevant motoring documents at a police station within 7 days.

As both officers made their way to their vehicle, Constable A said to the applicant: "You're right, I can't do you for speeding but there are pedestrians about so I can do you for dangerous and get you for speeding." In response, the applicant asked if he was going to receive a form for dangerous driving, prompting Constable A to reply: "That's all you're getting." Both officers then drove from the scene of the incident.

The applicant maintains that at no point during his interactions with Constable A and Special Constable B was he formally cautioned and charged with dangerous driving.

### **Constable A's account of events**

(This account is taken from Constable A's undated operational statement, given at Police Station Y)

On 11 December 2006 at 10 pm Constable A, who was on a mobile police patrol accompanied by Special Constable B, noticed the applicant's vehicle to his near side when stopped at a set of traffic lights. When the lights turned to green Constable A observed the applicant's vehicle accelerating fiercely and could tell that it was travelling in excess of the 30 mph mandatory speed limit. Constable A was particularly concerned about the speed of the vehicle because pedestrians were present on the nearby pavements.

Constable A followed the applicant's vehicle and kept pace with it, noting that his speedometer was reading in excess of 50 mph. He made Special Constable B aware of this. After checking that it was safe to do so, Constable A then overtook the applicant's car and positioned his vehicle in front of it so that the applicant could see the illuminated police sign. The applicant immediately thereafter stopped his vehicle.

Constable A then approached the applicant's car, asked the applicant to wind down his window and explained to him that he had been stopped because of the way in which he had driven his vehicle. The applicant replied: "I wasn't in excess of 30 mph." Constable A then informed the applicant that, in fact, he had been driving in excess of 50 mph.

Constable A thereafter instructed the applicant to exit his vehicle because he considered it would be safer to speak on the pavement. The applicant refused, however, and became aggressive and obnoxious, stating that he could not leave his vehicle because his dogs were in season. In response, Constable A explained to the applicant that he could keep an eye on his dogs from the pavement and attend to them if the need arose.

When out of his vehicle the applicant continually interrupted Constable A who was attempting to explain why he had been stopped. The applicant was particularly concerned about getting a parking ticket because he was parked on a double yellow line. Constable A explained, however, that this was unlikely to happen given the time of day and also the fact that police officers were present.

Constable A proceeded to issue the applicant with a HO/RT 1 form, requiring him to produce his motoring documents at a police station within 7 days. Constable A also took a breath sample from the applicant, with the result being negative. The applicant maintained throughout, in an aggressive manner, that he was not driving more than 30 mph. However, Constable A explained that he was being reported for dangerous driving and not speeding. The applicant was consequently cautioned and charged at the roadside by Constable A for dangerous driving, with the applicant replying: "Prove it". Constable A also gave the applicant a warning in terms of Section 1 of the Road Traffic Offenders Act 1988 (a notice of intended prosecution).

### **Special Constable B's account of events**

(This account is taken from Special Constable B's undated operational statement, given at Police Station Y)

On 11 December 2006 at approximately 10 pm Special Constable B noticed the applicant's vehicle while sitting stationary at traffic lights in an unmarked police vehicle. When the traffic lights changed to green Special Constable B observed the applicant's car accelerating harshly and could hear the engine revving loudly.

According to Special Constable B, Constable A pursued the applicant's vehicle, drew alongside it and stopped in front of it. Special Constable B was adamant that the applicant's vehicle was stopped in a safe manner. Both officers thereafter approached the driver's window and Constable A told the applicant why he had been stopped. In reply the applicant stated: "I wasn't in excess of 30 mph."

Constable A proceeded to explain to the driver that the reason he had been stopped was for dangerous driving and not speeding, since the area was built up and pedestrians were present. The applicant subsequently became argumentative with Constable A. According to Special Constable B the applicant was then formally cautioned and charged by Constable A for dangerous driving, with the applicant responding: "Prove it". Special Constable B was also present when Constable A gave the applicant a warning terms of section 1 of the Road Traffic Offenders Act 1988.

### **The Complaints**

Based on the contents of the application form, and the information obtained from Strathclyde Police, the Commissioner has identified the following complaints:

- (1) Constable A drove in a dangerous manner;
- (2) Constable A and Special Constable B lied in their operational statements about the incident;
- (3) Constable A failed to formally caution and charge the applicant;
- (4) Constable A was uncivil towards the applicant;
- (5) Constable A was aggressive in his dealings with the applicant; and
- (6) Strathclyde Police failed to provide access to a police vehicle for an authorised inspection.

## The Commissioner's Review

The applicant first contacted the Commissioner's office by letter on 30 July 2008. He thereafter submitted an application form on 18 September 2008.

This section sets out the Commissioner's views on the manner in which the complaints were handled by Strathclyde Police. Each complaint is set out in turn and is followed by details of Strathclyde Police's handling of it and the Commissioner's views on this.

### Complaints 1 and 2: alleged misconduct

The applicant raised two complaints with Strathclyde Police which were categorised and investigated as criminal allegations, namely:

- (1) Constable A drove in a dangerous manner when stopping the applicant on 11 December 2006; and
- (2) Constable A and Special Constable B lied in their statements when they maintained that the applicant was formally cautioned and charged with dangerous driving at the roadside on 11 December 2006.

#### *Internal Handling*

These two complaints were initially raised by the applicant in a letter he sent to Strathclyde Police on 12 September 2007 and recorded officially as Complaints about the Police on 13 September 2007. An initial report into the complaints was prepared by Inspector C on 8 October 2007 and subsequently transmitted to the Area Procurator Fiscal, on 16 October 2007, for his direction. On 22 October 2007 the Area Procurator replied and instructed Strathclyde Police to conduct a full investigation as he was satisfied that they inferred criminality on the part of the officers concerned. The Complaints and Discipline Branch of Strathclyde Police thereafter assumed control of the case and Inspector D was appointed to conduct the investigation.

On 1 November 2007 Inspector D took a statement from the applicant and clarified the two criminal allegations as described above as well as four non-criminal allegations (addressed later in this report). Inspector D thereafter conducted an investigation into all the complaints raised and prepared a report on 16 January 2008. On 22 January 2008 this report was sent to the Area Procurator Fiscal for direction in relation to complaints 1 and 2. On 15 April 2008 the Area Procurator Fiscal wrote to Strathclyde Police advising that there would be no criminal proceedings in respect of complaints 1 and 2.

On 2 May 2008 Chief Superintendent E addressed all six complaints in her final letter to the applicant. In relation specifically to complaints 1 and 2, Chief Superintendent E informed the applicant that the Area Procurator Fiscal had decided to take no criminal proceedings. Chief Superintendent E ended her letter by stating that no formal action was being taken against either officer:

*"I can also confirm that a review of the whole circumstances of your complaint at this time has taken place. It has been decided that it is not appropriate to take formal action against the Officers subject to complaint."*

### *Consideration*

In terms of section 34(3)(b) of the Act, the Commissioner's office has no power to deal with complaints about the police which consist of an allegation of an act which constitutes a crime. However, as stated in previously published complaint handling reviews, the Commissioner considers that the purpose of section 34(3)(b) is to preserve the role of the Crown in dealing with criminal complaints about the police. The existence of section 34(3)(b) also prevents any conflict arising between this function and that of the Commissioner.

In the present case, the Area Procurator Fiscal decided to take no proceedings against the officers concerned. According to Chief Superintendent E's letter of 2 May 2008, a review of the circumstances then took place and it was decided that it was "not appropriate to take formal action" against the officers. The Commissioner has assumed that by "formal action" Chief Superintendent E means misconduct proceedings under the Police (Conduct) (Scotland) Regulations 1996.

Given that the Area Procurator Fiscal considered the allegations and that they were thereafter treated as "non-criminal" for the purposes of potential misconduct proceedings, the Commissioner considers that he has the power to review the manner in which Strathclyde Police dealt with complaints 1 and 2. In the Commissioner's view, any other approach to the interpretation of section 34(3)(b) would mean that Strathclyde Police's decision in relation to misconduct proceedings would be free from independent scrutiny.

As noted above, Chief Superintendent E informed the applicant simply that it was "not appropriate to take formal action" (ie misconduct proceedings) against the officers concerned. In the Commissioner's view when decisions of this nature are communicated, complainers should be given as much information as is necessary to properly inform them of the reasons why misconduct proceedings are not considered justified. The conveying of such information is essential if complainers are to be fully informed of the outcome of their complaints and the reasons for this.

It is clear from her letter of 2 May 2008 that Chief Superintendent E did not provide sufficient information to properly inform the applicant as to the reasons why misconduct proceedings were considered not to be appropriate. In the Commissioner's view, Strathclyde Police should therefore provide the applicant with additional information so that he is properly informed of the reasons for this decision.

### **Complaint 3: Alleged failure to caution and charge**

The applicant maintains that he was never formally cautioned or charged with dangerous driving.

#### *Internal Handling*

Inspector D examined the applicant's statement, the operational statements of Constable A and Special Constable B and their respective police notebook entries. Inspector D noted the assertions of both officers that the applicant was formally cautioned and charged for dangerous driving at the roadside on 11 December 2006. Constables A and Special Constable B also recorded in their police notebooks that the applicant had been cautioned and charged for dangerous driving. Based on this evidence Inspector D concluded that the complaint was unsubstantiated.

This finding was repeated by Chief Superintendent E in her letter to the applicant of 2 May 2008:

*"As you will appreciate, it is very difficult in these circumstances to establish with complete certainty the whole truth of the matter, but I must advise you that based upon the evidence that is available, your allegation is not substantiated."*

### *Consideration*

As noted above, Inspector D examined all the available evidence relating to this complaint. Aside from the applicant's statement, all the evidence supports the conclusion that the applicant was cautioned and charged with dangerous driving. Therefore, on the basis of the evidence, Inspector D, and subsequently Chief Superintendent E, reached a reasonable conclusion that this complaint was unsubstantiated. Accordingly, no further action is required on the part of Strathclyde Police in relation to this complaint.

### **Complaint 4: Alleged aggressive and uncivil behaviour**

The applicant maintains that Constable A was aggressive and uncivil towards him at the roadside on 11 December 2006.

### *Internal Handling*

Inspector D examined the applicant's statement as well as the operational statements of Constable A and Special Constable B in which they denied this allegation. Inspector D consequently viewed this complaint as unsubstantiated.

This finding was repeated by Chief Superintendent E in her letter to the applicant of 2 May 2008.

### *Consideration*

Inspector D examined all the available evidence in relation to this complaint. As noted above, both officers denied the allegation. Again, therefore, on the basis of the evidence, Inspector D and subsequently Chief Superintendent E reached the reasonable conclusion that the complaint was unsubstantiated. Accordingly, no further action is required on the part of Strathclyde Police in relation to this complaint.

### **Complaint 5: Alleged threat to drag the applicant from the car**

The applicant alleges that Constable A threatened to drag him out of his car and charge him with resisting arrest.

### *Internal Handling*

Inspector D examined the applicant's statement and the operational statements of Constable A and Special Constable B in which they denied this allegation. Inspector D consequently viewed this complaint as unsubstantiated.

This finding was repeated by Chief Superintendent E in her letter to the applicant of 2 May 2008.

### *Consideration*

Again, Inspector D examined all the available evidence in relation to this complaint. As noted above, both officers denied the allegation. Therefore, on the basis of the evidence, Inspector D and subsequently Chief Superintendent E reached the reasonable conclusion that the complaint was unsubstantiated. Accordingly, no further action is required on the part of Strathclyde Police in relation to this complaint.

## Complaint 6: Alleged failure to provide access to a police vehicle

The applicant maintains that a crash investigator, engaged by him to compile a report, was not given access to a police vehicle despite permission being given to do so by the Procurator Fiscal.

### *Internal Handling*

Inspector D recorded a statement from the crash investigator, Witness K, and sought operational statements from the police officers and police staff involved in handling the vehicle access request. These statements are summarised below.

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### Witness K's account

The crash investigator, Witness K, explained in his statement that he was contacted on 16 July 2007 by Strathclyde Police and told the location of the police vehicle. He was also informed that if he wished to inspect it he should contact the Transport Department of Strathclyde Police. On 7 August 2007 Witness K was contacted by Police Employee F who advised that the vehicle was available for inspection that day. However, as Witness K had other responsibilities in England, he could not inspect the vehicle at that time. Police Employee F said that he would make alternative arrangements.

On 15 August 2007 Witness K called Police Employee F because he had not been contacted. Police Employee F advised Witness K at this time that the police vehicle was in Location Z and that Sergeant G was dealing with the access request and would contact him directly. On 23 August 2007, having heard nothing, Witness K contacted Police Employee F again who provided him with the direct line number of Sergeant G. On 29 August 2007 Witness K spoke to Sergeant G who referred him to Chief Inspector H. At this point Witness had no further dealings in the matter.

### Police Employee F's account

Police Employee F recalled receiving a written request to examine the police vehicle. He contacted Legal Services (presumably of Strathclyde Police) to establish if it was in order for him to allow the examination. He was informed by Legal Services that the examination would be in order. He then spoke to Witness K and offered him a couple of dates when the vehicle could be examined. One of the dates was not suitable as Witness K was to be down south; however, Witness K said that he would try to examine the vehicle on the other date offered. This was the last of the dealings Police Employee F had with Witness K, and he had assumed that the vehicle was examined.

### Constable I's account

Constable I explained that he had received a call from Witness K and told him he could not arrange access to the vehicle as he had no prior knowledge of the matter. Constable I also informed Witness K that the permission of the Procurator Fiscal would be required to inspect the vehicle.

### Sergeant G's Account

Sergeant G explained that he had forwarded the paperwork relevant to the access request to Chief Inspector H and advised Witness K of this on 29 August 2007.

### Chief Inspector H's Account

Chief Inspector H explained that he passed the request to Inspector J, commenting that he was happy to allow access to the police vehicle on the condition that the Procurator Fiscal and Legal Services had no objections.

### Inspector J's Account

Inspector J explained that he passed the paperwork to Constable A in accordance with Chief Inspector H's memorandum and thereafter took no part in the matter.

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Based on this evidence, Inspector D concluded that this complaint was substantiated. In Inspector D's opinion the situation arose as a result of too many people becoming involved in the request, and not from any deliberate attempt to prevent Witness K from accessing the police vehicle for inspection.

This finding was repeated by Chief Superintendent E in her final letter to the applicant on 2 May 2008 who wrote:

*"I can only apologise that this situation occurred. I am satisfied however that this situation occurred due to a breakdown in communication as opposed to any deliberate attempt to delay or refuse access to the vehicle."*

### *Consideration*

In the Commissioner's view, Chief Superintendent E and Inspector D were correct to view this complaint as substantiated. By conducting a thorough investigation into the circumstances surrounding the vehicle access request, Inspector D discovered that Witness K had been passed from one police officer to another, with no one apparently taking ownership of the request. The inevitable result of this was that access to the police vehicle was never obtained by Witness K. It was therefore entirely appropriate for an apology to be made to the applicant.

## **Conclusions, Recommendations and Learning**

### **Complaints 1 and 2: alleged misconduct**

For the reasons given, the manner in which these complaints were handled by Strathclyde Police, in the context of potential misconduct, was not reasonable. The Commissioner therefore recommends that Strathclyde Police sends a further letter to the applicant providing him with sufficient information to properly inform him as to why misconduct proceedings were not considered appropriate. Strathclyde Police should send a copy of this correspondence to the Commissioner's Office.

The Commissioner wishes to make clear that this recommendation is made with the sole aim of keeping complainers fully informed of the outcome of their complaints. The Commissioner has no view on whether misconduct proceedings were justified in the present case.

### **Complaint 3: Alleged failure to caution and charge**

For the reasons given, the manner in which this complaint was dealt with by Strathclyde Police was reasonable. Accordingly, no further action is required in relation to this complaint.

#### **Complaint 4: Alleged aggressive and uncivil behaviour**

For the reasons given, the manner in which this complaint was dealt with by Strathclyde Police was reasonable. Accordingly, no further action is required in relation to this complaint.

#### **Complaint 5: Alleged threat to drag the applicant from the car**

For the reasons given, the manner in which this complaint was dealt with by Strathclyde Police, was reasonable. Accordingly, no further action is required in relation to this complaint.

#### **Complaint 6: Alleged failure to provide access to a police vehicle**

The manner in which this complaint was dealt with by Strathclyde Police was reasonable. A thorough investigation by Inspector D confirmed that Witness K had been passed from one police officer to another which resulted ultimately in him not being granted access to the police vehicle for inspection. Given that Chief Superintendent E has apologised for this failing, the Commissioner requires no further action on the part of Strathclyde Police in relation to this complaint.

#### **Learning Point**

Where, as in complaint 6, a policing body substantiates an applicant's complaint it is good practice to inform the applicant of what actions have been taken to prevent a similar occurrence in the future. This action could be, for example, a change in policy or the counselling of the officers involved. Such an approach is necessary as it assures applicants that their complaint has been taken seriously and, when found to be substantiated, has been acted upon.

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