

Report of a Complaint Handling Review in relation to Central Scotland Police

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

Summary and Key Findings

On 12 April 2008 the applicant's car was removed by a recovery truck on the instructions of officers from Central Scotland Police. All the complaints raised by the applicant relate directly to this event.

Of the five complaints reviewed, the Commissioner has decided that three were reasonably handled by Central Scotland Police, but that two (complaints 4 and 5) were not handled reasonably. A further complaint is yet to be responded to by Central Scotland Police.

In relation to complaint 4, the Commissioner has recommended that Central Scotland Police re-interview a police witness on a specific point. In respect of complaint 5, the Commissioner has recommended that Central Scotland Police apologise for a significant error contained in a letter it sent to the applicant.

The Commissioner also commends Central Scotland Police for the practice of keeping a "Learning Outcomes" form when investigating complaints about the police, and recording therein lessons which have been learned from complaints investigations. Such an approach helps to ensure that action is taken in appropriate cases to improve standards in light of complaints.

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 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

The following accounts are derived from the statement of the applicant which was taken on 14 April 2008, and those of Constables A and B, provided on 14 and 15 April 2008 respectively.

The applicant's account

At about 8.20 am on 12 April 2008 the applicant visited her friend, Witness C, at her home. Although the applicant does not normally drink much, Witness C gave her "a vodka" which the applicant felt had affected her because she had been feeling unwell.

At around 10.30 am Witness G (Witness C's brother) informed the applicant that her car was about to be removed by the police. The applicant immediately went outside and spoke to Constable A who, while looking away, told her he did not wish to speak to her and that she should go away. The applicant asked Constable A if he could drive her car to another location but Constable A refused, stating that he was not insured to drive the vehicle. Instead, Constable A advised the applicant to get a friend to move her car. However, the applicant explained that her car was a Motability car which meant that only she was insured to drive it.

The applicant then attempted to explain to Constable A that the car was essential to her as she was disabled, but perceived that Constable A was not interested in listening. The applicant also expressed her dissatisfaction that such drastic action was being taken and that no attempt had been made to contact her. Constable A, however, told the applicant to go away.

The applicant then asked Constable A to put in writing his name and number, the reason the car was being removed, where it was being taken and how much it was going to cost to recover it. Constable A replied: "I'm telling you nothing, phone the police."

Realising that she had left personal property in the car, the applicant asked if she could retrieve this but was warned by Constable A that she would be arrested if she tried. Constable A did, however, permit the applicant's friend, Witness G, to enter the car to retrieve the property. Because she is disabled, the applicant felt humiliated by Constable A as he told her to run to fetch Witness G.

The applicant maintains that at no point during her interactions with Constable A did she raise her voice or was in any way disrespectful.

The officers' accounts

On 12 April 2008, at around 9.05 am, Constables A and B attended at Location X following a call reporting that the applicant's car was causing an obstruction. On their arrival both officers found the applicant's car blocking the street as well as a private drive. Constables A and B established that the car had been recently parked because the bonnet was still warm. A van was parked directly opposite the applicant's car.

Constable A discovered from a vehicle check that the owner of the van lived at number 9 on the street and attended at this address in order to ask him to move his vehicle. However, Constable A received no reply at the door. Constable A thereafter carried out a vehicle check on the applicant's car and, with Constable B, attended at the applicant's address which was nearby. Again, however, he received no reply at the door. Constable A then requested the police control centre to call the applicant on the registered phone number, only to be told that the number listed was incorrect.

At around 9.30 am both officers made the decision to have the applicant's vehicle removed by a recovery truck. While awaiting the recovery truck Constable A attempted to drive between the applicant's car and the van but was unable to do so and had to perform a u-turn. Around this time two unidentified pedestrians approached both officers and commented that the applicant's vehicle and the van were causing an obstruction.

The recovery truck arrived at 10.30 am and it was around this time that the applicant appeared and stated that the car belonged to her. Constable A explained to the applicant that her car was causing an obstruction and asked her to move it. The applicant stated, however, that she did not feel comfortable driving because she had been drinking. A friend of the applicant was also unable to move the car because he was a disqualified driver. Both officers left the scene once the applicant's vehicle was loaded onto the recovery truck.

The Complaints

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

- (1) Constables A and B could have made a greater effort to trace the applicant before arranging for the removal of her car;
- (2) Constable A refused to drive the applicant's vehicle to a safe place;
- (3) Constable A refused the applicant access to her car;
- (4) Constable A humiliated the applicant by telling her to run;

(5) Central Scotland Police made no attempt to trace an important witness during the complaints investigation; and

(6) Constable A refused to provide the applicant with his badge number as well as details about why her car was being removed and where it was being taken.

The Commissioner's Review

The applicant first contacted the Commissioner's office by letter, through her legal representatives, on 18 September 2008. She thereafter submitted an application form on 14 October 2008.

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

Complaint 1: Constables A and B should have done more to trace the applicant

The applicant maintains that Constables A and B should have done more to trace her before arranging for the removal of her car. This, she states, would have given her time to arrange for its removal.

Internal Handling

This complaint was initially raised by the applicant in a statement she gave to Inspector D on 14 April 2008. It was recorded officially in a Complaint about the Police (CAP) form the same day.

An investigation was thereafter carried out by Inspector E with a report being produced on 29 May 2008.

In respect of complaint 1, Inspector E examined the operational statements of Constables A and B as well as the applicant's statement of 14 April 2008. Inspector E noted from the officers' statements that, having called at the applicant's home address and received no response, they had their dispatch centre call her only to find that an incorrect number was held on file. Constable B also detailed in her statement that two local residents spoken to did not know who owned the applicant's car.

Based on this information, Inspector E concluded that the complaint was unsubstantiated since, in his view, it was not reasonable "... to expect the officers to visit every house in the street...."

This finding was repeated by Superintendent F who, in his letter to the applicant of 6 June 2008, wrote:

"In relation to [complaint 1] I am satisfied that your vehicle was indeed parked in such a manner that it was causing an obstruction and having made unsuccessful efforts to trace you, the owner or the driver, the police officers properly used powers available to them to order or arrange for its removal."

Consideration

In the Commissioner's view, Inspector E conducted a satisfactory investigation into this complaint and drew conclusions which were reasonable based upon the available evidence. Although it is the applicant's contention that not enough was done to trace her, Constables A and B maintain that they attended at the applicant's address and arranged for her to be called (albeit the number listed was incorrect). In these circumstances, the Commissioner is satisfied that Inspector E, and

subsequently Superintendent F, reached a reasonable conclusion when they decided that Constables A and B did all that could be expected to trace the applicant. Accordingly, no further action is required by Central Scotland Police in relation to this complaint.

Complaint 2: Constable A refused to drive the applicant's vehicle to a safe place

The applicant maintains that Constable A could, and should, have driven her car to a safe place, thus avoiding the need to have it removed by the recovery truck.

Internal Handling

Inspector E examined the statements of Constables A and B as well as that given by the applicant. Inspector E also asked Constable A additional questions on 13 May 2008. One of these additional questions was:

"Is it the case that you refused to move [the applicant's] car?"

In reply, Constable A stated: "I informed her that I believed I was not insured to move her car..."

While acknowledging that Constables A and B were wrong in their belief that they had no authority to drive the applicant's car, Inspector E emphasised in his report that the decision to drive a non-police vehicle is entirely at the discretion of the officers on the scene.

In his letter to the applicant of 6 June 2008, Superintendent F concluded that this complaint was partially substantiated because Constables A and B were unaware of the discretion they had to drive a non-police vehicle. Superintendent F apologised for this lack of awareness of internal procedures on the part of his officers:

"I apologise that the officer was not aware of the discretion that he had and accept if he had known of it and used it, this situation could have been resolved."

Consideration

In the Commissioner's view, Inspector E conducted a satisfactory investigation into this complaint which brought to light a lack of awareness on the part of Constables A and B of the discretion they had to drive a non-police vehicle. According to a memo dated 16 July 2008 from Inspector D to Superintendent F, Constable A was given advice and was now "well aware of his powers and the need to exercise discretion when appropriate." Furthermore, Central Scotland Police's file contains a "Learning Outcomes" form which identifies the need for officers who are in doubt about their powers to seek clarification from their line manager.

It would have been preferable if Superintendent F in his letter of 6 June 2008 had explained that Constable A was to receive this advice. However, overall the Commissioner considers that this complaint was handled well by Central Scotland Police. Accordingly, no further action is required in relation to this complaint.

Complaint 3: Constable A refused the applicant access to her car

The applicant maintains that Constable A refused her access to her car to retrieve personal property.

Internal Handling

Inspector E examined the applicant's statement as well as that given by Constable A. Inspector E also asked Constable A some additional questions on 13 May 2008. One of these additional questions was:

“Did you refuse [the applicant] access to the car at any time?”

Constable A replied that he did refuse the applicant access to her car because she had been drinking and his concern was that she may attempt to drive away. Constable A explained, however, that he gave permission for Witness G to retrieve the applicant’s property from the car. Based on this evidence, Inspector E held this complaint to be unsubstantiated.

This finding was approved by Superintendent F in his letter to the applicant of 6 June 2008. Superintendent F stated in this letter that he was satisfied that Constable A had a legitimate reason for refusing the applicant access to her vehicle (the fact she had been drinking).

Consideration

In the Commissioner’s view, Inspector E conducted a satisfactory investigation into this complaint and drew conclusions which were reasonable based upon the available evidence. The applicant admitted to Constable A that she had been drinking and said that as a result she did not feel comfortable driving her car. Furthermore, the recovery truck driver, Witness H, in his statement of 6 May 2008, stated that the applicant had clearly been drinking. In these circumstances, the Commissioner considers that Constable A was justified in refusing the applicant access to her vehicle. Accordingly, Inspector E and Superintendent F came to a reasonable conclusion in holding that this complaint was unsubstantiated. Furthermore, the Commissioner notes that the applicant’s property was in the end retrieved by Witness G.

Accordingly, no further action is required of Central Scotland Police in respect of this complaint.

Complaint 4: Constable A allegedly humiliated the applicant

The applicant maintains that Constable A, by telling her to run, humiliated her because she is clearly disabled.

Internal Handling

Inspector E examined the statements of the applicant and those of Constables A and B. Inspector E also directly questioned Constable A on this allegation and asked him the following question:

“Did you tell [the applicant] she would need to be quick and should run?”

In reply, Constable A denied that he had told the applicant to run. Inspector E also asked Constable A if he had perceived the applicant to be disabled and he replied that he had not. Constable B in her statement also stated that it was not apparent that the applicant was disabled. In addition, Witness H in his statement of 6 May 2008 stated that he was unaware of the applicant’s disability.

Inspector E also examined the statement provided by Witness C on 23 May 2008 who stated that she knew of the applicant’s disability and that this prevented her from walking long distances.

Based on all of this information, Inspector E found this complaint to be unsubstantiated.

This finding was repeated by Superintendent F in his letter to the applicant of 6 June 2008:

“... [Constable A] refutes your suggestion that he told you to run or did anything to humiliate you. Neither he nor his colleague was aware that you had any disabilities and I can find no evidence that [Constable A] did anything to humiliate you.”

Consideration

In his statement of 15 April 2008, Constable A described the applicant as having walked in a “normal manner” and said that she appeared physically fit. According to Constable A, at no time did the applicant inform him that she was disabled. Constable B in her statement supported Constable A’s position, stating that she had no prior knowledge that the applicant had a disability and that there were no modifications to her car that would suggest this. Further support in this connection was given by Witness H who said that there was “no way” the applicant was disabled. Indeed, according to Witness H the applicant informed him that she needed the car for “getting her mother about.”

A statement was also taken from Witness C who stated that the applicant’s left leg is “paralysed from the knee down”. She stated that she and the applicant had been for a walk the previous day and that the applicant’s leg was sore as a result. She added that the applicant is “not meant to run” and that she takes painkillers. Witness C does not appear to have been asked specifically whether the applicant’s disability was noticeable.

It is also important to note that in an internal memo dated 15 April 2008, Inspector E stated that during his visit to the applicant he noticed that she walked with a “noticeable limp” and that she wore shoes with what appeared to be callipers.

As noted above, on 13 May 2008 Inspector E asked Constable A some further questions regarding the complaint. Specifically, he asked Constable A whether, when he saw the applicant, there was anything to indicate that she had a disability. Constable A replied that there was nothing to indicate this and that the applicant had been wearing stiletto heels. Constable A maintained that there was nothing to indicate that the applicant had any physical disability. Constable A was also asked whether the applicant had told him her car was essential to her because she had a disability and could not walk without pain. In reply to this Constable A replied “No”.

Constable B was never asked whether Constable A had told the applicant to run.

There are a number of different aspects to this complaint. Clearly, any comment by Constable A telling the applicant to run could only be perceived as offensive if Constable A was aware that the applicant was disabled. Constable A denies that he told the applicant to run, but as noted above Constable B appears not to have been asked about this. In the event that Constable B was to have stated that Constable A did in fact tell the applicant to run, then there are still a number of witnesses (Constables A and B and Witness H) who maintain that the applicant displayed no sign of disability. In those circumstances, the alleged comment by Constable A could not be classed as offensive.

However, as noted above, Witness C does not appear to have been asked specifically whether the applicant’s disability was noticeable. In addition, Witness G, who could also have given his position on this, was never traced by Central Scotland Police (see complaint 5 below). Depending on the accounts given by Witnesses C and G, there could be three witnesses who state that the applicant’s disability was not apparent and another three (the applicant and Witnesses C and G) who state that it was clearly visible.

In the Commissioner’s view, the allegation made by the applicant is a serious one and requires to be fully investigated before it can be determined. This is particularly so given that Inspector E, although not a witness to the incident, provides clear support for the applicant’s position that her disability is noticeable. The Commissioner therefore recommends that, in the first instance, Central Scotland Police obtains Constable B’s recollection of whether Constable A told the applicant to run.

Complaint 5: Central Scotland Police made no attempt to trace an important witness

The applicant claims in her application to the Commissioner's office that no attempt was made during the investigation of her complaints to trace Witness G. Contrary to what Superintendent F said in his letter to the applicant's solicitor of 14 July 2008, the applicant claims not to have told police officers to refrain from speaking to Witness G.

Internal Handling

This complaint was raised separately from the four preceding complaints.

Following receipt of Superintendent F's letter of 6 June 2008 the applicant wrote to Central Scotland Police, through her legal representatives, on 7 July 2008. In this letter the applicant expressed dissatisfaction about how complaints 1, 3 and 4 above had been handled and asked whether there was an appeals procedure.

In response to this letter, Superintendent F wrote to the applicant on 15 July 2008 and stated that he stood by his findings. Superintendent F also directly addressed the issue of Witness G. Specifically, he stated that it was the applicant herself who did not wish his officers to speak to Witness G:

"Your client requested that we did not approach this man, therefore, I am unable to consider what evidence, if any, he could offer to the enquiry."

On 18 September 2008 the applicant, again through her legal representatives, wrote to the Commissioner's Office and stated, among other things, that it was not true that she had advised Central Scotland Police against approaching Witness G.

Consideration

It is clear that Superintendent F was mistaken when he wrote that the applicant had advised Central Scotland Police against approaching Witness G. As noted above, it was in fact Witness C who asked Inspector E not to interview Witness G because of a concern she had about upsetting Witness G's wife.

In the Commissioner's view, all relevant witnesses in complaints investigations should be interviewed unless there are compelling reasons for not doing so. The Commissioner does not consider that compelling reasons exist to justify Central Scotland Police not attempting to interview Witness G in the present case. Even though Witness C refused to provide Witness G's telephone number, Central Scotland Police might well have been able to obtain contact details through other enquiries. In the event that providing a statement posed problems for Witness G, measures could have been taken to reduce the scope for these.

In the Commissioner's view, however, Witness G's account is only relevant to complaint 4, in which the facts are disputed. The Commissioner does not consider that Witness G's account is relevant to complaint 3. This is because Witness G remained indoors throughout the majority of the applicant's interactions with Constables A and B, appearing only to remove items from the applicant's car.

The Commissioner also wishes to highlight the wording of Superintendent F's letter to the applicant of 6 June 2008, in which he wrote:

"I am advised that [Inspector E] was unable to trace a potential witness, [Witness G]..."

In fact, as noted above, no attempt was made to trace and interview Witness G. This much should have been disclosed to the applicant because the original wording, in the Commissioner's view, is misleading.

In conclusion, as Superintendent F's letter of 15 July 2008 contains a significant error, the Commissioner considers that the manner in which complaint 5 was dealt with was not reasonable.

Complaint 6: Constable A refused to provide the applicant with relevant information

The applicant, in her statement of 14 April 2008, states that she asked Constable A for his name and badge number as well as details about why her car was being removed, where it was being taken and how much it would cost to get it back. She maintains that Constable A refused to give her this information and told her instead to phone the police.

Internal Handling

It does not appear that Central Scotland Police has responded to this complaint.

Consideration

The Commissioner recommends that Central Scotland Police issue the applicant with a response to this complaint.

Conclusions, Recommendations and Learning

Complaint 1: Constables A and B should have done more to trace the applicant

In the Commissioner's view, for the reasons described above, the manner in which this complaint was dealt with by Central Scotland Police was reasonable. Accordingly, no further action is required in relation this complaint.

Complaint 2: Constable A refused to drive the applicant's vehicle to a safe place

In the Commissioner's view, for the reasons described above, the manner in which this complaint was dealt with by Central Scotland Police was reasonable. Accordingly, no further action is required in relation this complaint.

Complaint 3: Constable A refused the applicant access to her car

In the Commissioner's view, for the reasons described above, the manner in which this complaint was dealt with by Central Scotland Police was reasonable. Accordingly, no further action is required in relation this complaint.

Complaint 4: Constable A allegedly humiliated the applicant

In the Commissioner's view, the manner in which this complaint was dealt with by Central Scotland Police was not reasonable. The Commissioner therefore recommends that Central Scotland Police obtains Constable B's recollection of whether Constable A told the applicant to run. In the event that she does not support Constable A's account, it will be necessary to obtain Witness C and Witness G's accounts of whether the applicant's disability was noticeable that day. A further response should thereafter be sent to the applicant taking into account the additional information obtained.

Complaint 5: Central Scotland Police made no attempt to trace an important witness

In the Commissioner's view, the handling of this complaint by Central Scotland Police was not reasonable. The Commissioner recommends that Central Scotland Police apologise for the significant error contained in Superintendent F's letter of 15 July 2008.

Complaint 6: Constable A refused to provide the applicant with relevant information

The Commissioner recommends that Central Scotland Police investigate this complaint and report to the applicant with its findings.

Other Matters

The Commissioner also commends Central Scotland Police for the practice of keeping a "Learning Outcomes" form when investigating complaints about the police, and recording therein lessons which have been learned from complaints investigations. Such an approach helps to ensure that action is taken in appropriate cases to improve standards in light of complaints.

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