

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

In October 2006 the applicant's son, Relative A, stood trial on charges following an investigation by Central Scotland Police. At trial the sheriff decided that Relative A had no case to answer. All complaints raised by the applicant relate directly to the Central Scotland Police investigation which resulted in the charges brought against Relative A.

Of the 16 complaints reviewed, the Commissioner decided that fourteen were handled reasonably while two (complaints 1 and 14) were not handled reasonably.

In respect of complaint 1, the Commissioner has recommended that Central Scotland Police provides a further written response to the applicant explaining precisely how common law search powers justified the seizure of a computer and disks.

In respect of complaint 14, the Commissioner has recommended that Central Scotland Police apologises to the applicant for the actions of its officers in carrying out curfew checks which Central Scotland Police itself considered to be "over-zealous".

The Commissioner has also recommended that Central Scotland Police reviews its Appropriate Adult Policy in light of guidance produced by the Scottish Appropriate Adult Network in 2007.

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

In October 2006 the applicant's son, Relative A, was tried on charges following an investigation conducted by Central Scotland Police. Some of the charges were of a sexual nature. At the trial the sheriff found that Relative A had no case to answer. Following his release Relative A, through a letter from his solicitor dated 16 January 2007, made a number of complaints about the way in which Central Scotland Police had conducted its investigation into the offences. Relative A clarified his complaints in statements he provided to the police on 6 and 8 March 2007.

In a statement provided on 19 March 2007, the applicant himself raised a number of complaints about Central Scotland Police regarding the way in which its investigation was handled.

Central Scotland Police responded to the complaints made by Relative A and the applicant by initiating a misconduct review (conducted by Inspector B) and an operational review of the charges brought against Relative A (conducted by Detective Inspector C).

In all, 18 complaints have been identified, of which the Commissioner has reviewed the handling of 16. The Commissioner has not reviewed the handling of complaint 4 (see below) as Central Scotland Police does not appear to have dealt with this. The Commissioner has also not reviewed the handling of complaint 8 which concerns the actions of a police surgeon: complaints about such individuals fall outside the scope of the Commissioner's statutory remit.

The background to each complaint is laid out under the relevant complaint heading.

The Complaints

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

- (1) Central Scotland Police seized items which were not covered by the terms of a search warrant;
- (2) Central Scotland Police misrepresented evidence in order to obtain a search warrant;
- (3) an officer from Central Scotland Police “assaulted” Relative A by handcuffing him;
- (4) Relative A was verbally abused by officers from Central Scotland Police;
- (5) the video identification parade used by Central Scotland Police failed to depict Relative A’s height, general build and voice;
- (6) Central Scotland Police failed to return items of Relative A’s property;
- (7) Central Scotland Police damaged Relative A’s computer and altered files held on it;
- (8) a Police Surgeon failed to act on a disclosure made to him by Relative A;
- (9) Central Scotland Police failed to treat Relative A as a vulnerable adult;
- (10) Central Scotland Police’s Vulnerable Adult Policy is inadequate;
- (11) Central Scotland Police was influenced by a prior rape allegation made against Relative A which was later withdrawn;
- (12) Central Scotland Police acted on the presumption that Relative A was guilty;
- (13) Central Scotland Police failed adequately to review witness statements and act on the information contained therein;
- (14) officers from Central Scotland Police harassed the applicant and his family;
- (15) an officer from Central Scotland Police was dishonest;
- (16) Central Scotland Police disregarded witness testimony;
- (17) officers from Central Scotland Police refused to show their warrant cards on request and threatened the applicant with arrest for making such a request; and
- (18) Central Scotland Police failed to acknowledge or respond to a complaint within a reasonable time frame.

The Commissioner's Review

The applicant first contacted the Commissioner's office by letter on 18 February 2008. He thereafter submitted an application form on 5 March 2008.

This section sets out the Commissioner's views on the manner in which the 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: Unlawful seizure of the applicant's property

On 2 December 2005 officers from Central Scotland Police, acting on a warrant granted on 29 November 2005, searched the applicant's house and seized items of clothing belonging to Relative A. The officers also seized a computer and some disks.

In his statement of 19 March 2007, the applicant maintains that the computer and disks were seized unlawfully because, unlike the clothing seized, they were not stipulated in the search warrant. The same complaint was made by Relative A in a letter to Central Scotland Police dated 14 December 2006.

Internal Handling

During his investigation into this complaint Inspector B examined the search warrant application, dated 25 November 2005, which was submitted to the Procurator Fiscal by Detective Constable D. Inspector B noted from this that Detective Constable D had included a specific request to seize evidence "which may be held on computer". Inspector B also examined copies of the search warrant granted by the sheriff on 29 November 2005 and noted that "seizure of evidence which may be contained on computer is not stipulated".

Inspector B thereafter examined the statement provided by Detective Sergeant E provided on 27 June 2007. In this statement Detective Sergeant E explained that, following consultation with his supervisor, Detective Inspector F, he had taken the "operational decision" to seize the computer and disks using common law powers. According to Detective Sergeant E, the reason for seizing the computer and disks was the belief that Relative A kept a diary of his movements on the computer.

Having reviewed the evidence, Inspector B concluded that this complaint was unsubstantiated. In Inspector B's view the fact that the decision to seize the computer was made "openly and was subject to scrutiny" meant that its seizure "did not constitute corrupt practice". On 23 August 2007 Inspector B transmitted his report to Deputy Chief Constable G for his consideration.

On 5 November 2007 Deputy Chief Constable G wrote to Relative A in response to his complaints. On the same date Deputy Chief Constable G wrote to the applicant referring him to the letter which had been sent to Relative A

Deputy Chief Constable G also found the complaint to be unsubstantiated. His letter contains the following passage:

"... on the day of the search, after consultation with senior investigators, a decision was made to seize the computer and disks using common law powers. This was done openly, properly recorded and declared to the Procurator Fiscal. In considering this course of action it was decided that the admissibility of any evidence which may have been found would be a matter for the Procurator Fiscal or the Court... this is a matter which could have been challenged at any stage by the defence not least during the subsequent trial."

Consideration

The search for and seizure of private property by police officers must be exercised within the confines of the law in order to protect citizens from unwarranted state intrusion in their private lives. Consequently, there is the need for police officers to justify their actions in this connection; in many cases this is achieved through the application for, and production of, a valid search warrant.

In the present case the officers who seized the computer and disks relied, not on contents of a search warrant, but on common law powers of search and seizure. The precise limits of those powers have been laid down by the High Court of Justiciary over many years.

It is clear that Detective Constable D requested that the computer be included in the petition for the search warrant. For whatever reason, the Procurator Fiscal did not do so, with the result that the warrant did not include any reference to the computer.

Deputy Chief Constable G's response to this complaint merely informed the applicant that the computer and disks were seized using common law powers. In the Commissioner's view, given that the warrant made no mention of the computer, this was perhaps an obvious stance to adopt. However, merely informing the applicant that the computer was seized using common law powers was not sufficient. In the Commissioner's view, it is incumbent upon Central Scotland Police to explain precisely *how* common law powers of search justified the seizure of the computer and disks. Such an explanation is all the more necessary given that, for whatever reason, the Procurator Fiscal did not include the computer and disks in the petition for the search warrant.

In the Commissioner's view, a precise and detailed explanation would benefit not only the applicant and Relative A but also officers within Central Scotland Police who might find themselves in a similar situation in future. Examining the matter fully will allow Central Scotland Police to know whether the seizure of the computer and disks was truly justified by common law powers and, if so, the reasons for this.

Accordingly, the Commissioner does not consider that Central Scotland Police handled this complaint in a reasonable manner. The Commissioner recommends that Central Scotland Police sends a further letter to the applicant dealing with the points described above.

Complaint 2: Misrepresentation of evidence

The applicant maintains that Central Scotland Police misrepresented evidence in order to obtain a search warrant.

Internal Handling

Inspector B did not address this complaint specifically during his investigation. However, in his letter to Relative A of 5 November 2007, Deputy Chief Constable G commented:

"Investigation into this matter revealed that search warrants had been properly applied for and granted."

Consideration

The Commissioner has examined the search warrant request submitted by Detective Constable D on 25 November 2005 and is satisfied that the evidence detailed therein is consistent with the facts as were known at the time. In the Commissioner's view, Deputy Chief Constable G was therefore justified in stating that the search warrant had been properly applied for and, by implication, that evidence had not been misrepresented.

The Commissioner therefore considers that Central Scotland Police handled this complaint in a reasonable manner. Accordingly, no further action is required in respect of this complaint.

Complaint 3: The handcuffing of Relative A

The applicant maintains that on 10 February 2005 Detective Constable D “assaulted” Relative A by handcuffing him. The same complaint was made by Relative A in his letter to Central Scotland Police dated 14 December 2006.

Internal Handling

Inspector B was satisfied that this complaint concerned the fact that Relative A was handcuffed and not “the manner of the handcuffing or the technique used”. In light of this, it was decided not to ask Detective Constable D for a response to the complaint. Instead, Inspector B sought a statement from Constable H, the Officer Safety Coordinator.

Constable H, in his statement dated 12 June 2007, explained the following:

“Central Scotland Police have no Force Policy with regards to who officers should handcuff and in what circumstances. It is therefore down to each and every officer to justify their reasons as to why they handcuffed a particular person... It is therefore safe to say that an officer can use handcuffs on anyone if it is justified as there are only two levels of risk, ‘unknown risk’ and ‘high risk’. Prisoners are not treated as ‘low risk’.”

Given that Relative A was suspected of committing serious crime and was “basically an unknown quantity”, Inspector B concluded that there was “ample justification” for handcuffing him on 10 February 2005. Accordingly, Inspector B held this complaint to be unsubstantiated.

This finding was repeated by Deputy Chief Constable G in his final letter to Relative dated 5 November 2007:

“In the circumstances of your detention where you were suspected of being responsible for a number of serious crimes and you were, in effect, an unknown risk, I am satisfied that the officer concerned had ample justification for use of handcuffs.”

Consideration

In the Commissioner’s view, Inspector B carried out a satisfactory investigation into this complaint and, along with Deputy Chief Constable G who adopted his findings, was justified in concluding that it was unsubstantiated. At the time of Relative A’s detention he was suspected of having committed a number of serious crimes including sexual assault which, in the Commissioner’s view, provided sufficient justification for the application of handcuffs because the risk to the officers and public was potentially high.

The Commissioner therefore considers that Central Scotland Police handled this complaint in a reasonable manner. Accordingly, no further action is required of Central Scotland Police in respect of this complaint.

However, the Commissioner wishes to emphasise that proper consideration must always be given by officers when deciding whether to handcuff suspects. The Commissioner would remind policing bodies that in terms of the Scottish Police Service Officer Safety Training Manual the relevant considerations when deciding to handcuff are the safety of the officer, the suspect and the public.

The Commissioner would also remind policing bodies, again in line with the Safety Training Manual, that officers should record in their notebooks their reasons for deciding to handcuff suspects. The use of handcuffs is clearly invasive and requires to be justified in each case. The recording of the reasons for taking such action assists in achieving this.

In the Commissioner's view, the adherence to these practices and procedures could have a significant impact upon complaints levels arising from handcuffing.

Complaint 4: Relative A was verbally abused by officers

The applicant maintains that Relative A was verbally abused during a police interview on 10 February 2005. The same complaint was made by Relative A in his letter to Central Scotland Police dated 14 December 2006.

It does not appear that Central Scotland Police has responded to this complaint. Deputy Chief Constable G appears only to address this complaint so far as it relates to a police interview which took place on 2 December 2005.

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

Complaint 5: Inadequacies in the video identification parade

The applicant maintains that the video identification parade used by Central Scotland Police failed to depict Relative A's height, general build and voice and so, by implication, was unfair. The same complaint was made by Relative A in his letter to Central Scotland Police dated 14 December 2006.

Internal Handling

In his report Inspector B reached the conclusion that "the type of identification parade is a matter for the Investigating Officer and the Procurator Fiscal". Inspector B also suggested that "this is a matter which could have been dealt with [Relative A's] lawyer when preparing his defence". Accordingly, Inspector B held this complaint to be unsubstantiated.

These findings were adopted by Deputy Chief Constable G in his letter of 5 November 2007.

Consideration

Deputy Chief Constable G explained that the choice of which type identification parade to use is a matter for the investigating officer and Procurator Fiscal. The Commissioner notes that that explanation is in accordance with Central Scotland Police's Conduct of Investigation Procedures. In any event, the Commissioner considers that the appropriate fora in which to challenge the fairness of any identification procedure are the courts.

The Commissioner therefore considers that this complaint was handled in a reasonable manner. Accordingly, no further action is required of Central Scotland Police in respect of this complaint.

Complaint 6: Failure to return items of Relative A's property

The applicant maintains that computer disks, belonging to Relative A and seized by Central Scotland Police, were not returned to him.

Internal Handling

Inspector B made enquiries with Detective Constable I who had responsibility for returning Relative A's property. In his statement of 20 August 2007, Detective Constable I explained that he had returned the computer and 6 floppy disks to Relative A's solicitor on 29 March 2006 and had obtained a signed receipt for this. Detective Constable I also explained that the following day he dropped off a further two CDs belonging to Relative A to his solicitor. However, according to Detective Constable I he did not obtain an additional receipt for these two CDs but merely amended the receipt pertaining to the computer and six floppy disks.

Inspector B also spoke with Witness J, then employed by Relative A's solicitor, who remembered signing for the computer and floppy discs. Witness J did not, however, remember the visit which Detective Constable I claims to have made the following day. Enquiry was also made with an unnamed former employee of Relative A's solicitor, but this proved negative (presumably in relation to the return visit said to have been made by Detective Constable I).

Inspector B also contacted Relative A in relation to what items of property he had received from his solicitor. Relative A was adamant that only his computer was returned to him, which corresponded with the receipt that Relative A had signed.

Inspector B reached the conclusion that the computer was returned to Relative A's solicitor on 29 March 2006. In relation to the floppy disks and CDs Inspector B concluded that "there [was] no way to definitively prove" what had happened to them. He further stated that there had been "administrative faults on the part of [Relative A's solicitor] and the police" and that "an apology may be appropriate".

In his letter dated 5 November 2007 Deputy Chief Constable G explained that, on the basis of the evidence, Central Scotland Police could not prove the return of all of Relative A's property. This, he explained, was due "due to a lack of a proper audit trail". Deputy Chief Constable G apologised "for the shortcomings in the service" received by Relative A and assured him that Detective Constable I had been given advice "regarding proper procedures".

Consideration

Inspector B conducted a thorough investigation into this complaint which uncovered a failing by Detective Constable I in respect of proper receipting procedures. A full explanation of the facts was given to Relative A by Deputy Chief Constable G and an apology offered.

The Commissioner therefore finds that this complaint was handled by Central Scotland Police in a reasonable manner. Accordingly, no further action is required in respect of this complaint.

Complaint 7: Damage to a computer and alteration of files

The applicant maintains that his computer was altered while in the custody of Central Scotland Police and that personal files held on it were removed. Furthermore, the applicant believes that his computer was outsourced to a private company for forensic examination.

Internal Handling

On 25 July 2007 Inspector B obtained a statement from Witness K, a former Forensic Examiner within Central Scotland Police's Computer Crime Unit. Witness K was categorical that the applicant's data could not have been altered or lost because the forensic software used in investigations does not allow data to be altered in any way. Witness K also explained that under no circumstances would a computer held in police custody be outsourced to a private company. Detective Sergeant L, head of Central Scotland Police's Computer Crime Unit, also provided a statement on 25 June 2007 and confirmed that the computer would not have been outsourced to a private company.

Inspector B concluded in his report that there was no evidence to suggest that any damage was caused by anyone within Central Scotland Police. In relation to the alleged outsourcing of the computer to a private company, Inspector B considered this claim to be “absurd”.

In his letter of 5 November 2007 Deputy Chief Constable G found this complaint to be unsubstantiated. In relation to the damage and alterations alleged to have been made to the computer, Deputy Chief Constable G stated that the software used for forensic examinations would not allow this to occur. In relation to the allegation that the computer had been outsourced, Deputy Chief Constable G stated that this would not have happened on account of confidentiality considerations and because Central Scotland Police itself has the necessary expertise and equipment for such examinations.

Consideration

Witness K (who conducted the forensic examination of the computer in the present case) explained that the software used would not allow any alteration of data because, if it did, the evidence could be tainted. Witness K further explained that in no circumstances would the computer have been outsourced. He is supported in this by Detective Sergeant L.

In the Commissioner’s view, Central Scotland Police, having conducted a satisfactory investigation, was justified in finding this complaint to be unsubstantiated. The Commissioner therefore considers that this complaint was handled in a reasonable manner. Accordingly, no further action is required of Central Scotland Police in respect of this complaint.

Complaint 8: Failures on the part of a Police Surgeon

The applicant maintains that Dr M failed to act on a disclosure made to him by Relative A. Specifically, the applicant alleges that Relative A told Dr M that he had made false confessions during his interviews with police and that Dr M failed to act on this.

As noted above, the Commissioner has not reviewed the handling of this complaint as it falls outside his statutory remit.

Complaint 9: Failure to treat Relative A as a vulnerable adult

The applicant maintains that Central Scotland Police failed to treat Relative A as a vulnerable adult. This applicant states that Relative A should have been treated in this way because he suffers from a psychological condition and is susceptible to bullying. The applicant also believes that the police surgeon, Dr M, did not have the requisite medical expertise to recognise Relative A’s psychological condition.

Relative A himself alleges that he “was mistreated as a vulnerable adult”.

Internal handling

As part of his enquiries into this complaint, Inspector B examined the statements provided by Relative A on 6 and 8 March 2007. In his statements Relative A explained that he had been diagnosed with depression, had seen a psychiatrist and psychologist in relation to this and had also been prescribed medication. Relative A explained that he had scratched his wrists with plastic cutlery while in police custody on 10 February 2005 because he felt under pressure.

Inspector B also examined the custody record for 10/11 February 2005 and noted a reference there to Relative A’s depression. The custody record also showed that Dr M had visited Relative A twice during that period of detention in relation to anxiety and depression.

The custody record for 2 December 2005 was also examined by Inspector B. This showed Relative A's vulnerability level to be "high" as he was suffering from depression and on medication. The custody record on this date also showed that Relative A had been visited by Dr N and prescribed medication for his depression. Furthermore, the custody record showed that Relative A was assessed by Dr M on 3 December 2005 and considered to be fit for interview. In his statement of 31 July 2007 Dr M confirmed that he had found Relative A fit to be interviewed.

Inspector B quoted the definition of "vulnerable adult" in Central Scotland Police's Appropriate Adult Policy:

“[A vulnerable adult is] *someone who is aged 16 years or over and is mentally incapable of understanding the significance of Police questions or of their replies / statements.*”

Inspector B subsequently concluded that Relative A "showed no indication of falling into this category of person".

In his letter of 5 November 2007 Deputy Chief Constable G stated that he had "every confidence" in the abilities of Dr M who had considered Relative A fit for interview. In addition, Deputy Chief Constable G explained that Relative A was not considered to have been a "vulnerable adult" in terms of Central Scotland Police's Appropriate Adult Policy.

Consideration

It is not in doubt that Relative A suffers from depression and takes medication for this condition. The essential question is whether Relative A should have been categorised as a vulnerable adult in terms of Central Scotland Police's Appropriate Adult Policy.

Based on an analysis of portions of the transcript of the police interview which took place on 2 December 2005, it appears that Relative A understood the questions which were put to him by the interviewing officers. Furthermore, there is no indication that Relative A did not understand his own replies to these questions. It is also notable that Dr M examined Relative A and found him fit for interview.

Based on these factors, the Commissioner considers that Central Scotland Police were correct to conclude that the applicant did not fall within the terms of its Appropriate Adult Policy. Accordingly, the Commissioner considers that this complaint was handled in a reasonable manner. No further action is required of Central Scotland Police in respect of this complaint.

Complaint 10: Inadequacy of Central Scotland Police's Vulnerable Adult Policy

The applicant maintains that Central Scotland Police's "Vulnerable Adult Policy" (Appropriate Adult Policy) is inadequate because it fails to "acknowledge those with a psychological condition".

Internal Handling

Inspector B considered this complaint and concluded that Central Scotland Police's Appropriate Adult Policy was "tried, tested and fit for purpose".

This finding was repeated by Deputy Chief Constable G in his final letter dated 5 November 2007.

Consideration

In the Commissioner's view, Central Scotland Police's definition of a "vulnerable adult" encompasses those with a psychological condition, albeit it sets a fairly high threshold in terms of the severity of any condition. As noted above, the policy contains the following definition:

“[A vulnerable adult is] *someone who is aged 16 years or over and is mentally incapable of understanding the significance of Police questions or of their replies / statements.*”

Accordingly, only if the mental condition is such that the individual does not understand the significance of the questions asked or the replies given would he be treated as a “vulnerable adult”. Relative A, who at the time of interview had a well documented history of depression and self harm, would therefore not fit within Central Scotland Police’s definition of “vulnerable adult” as long as he appeared to understand the significance of the questions asked and responses given.

In November 2007, the Scottish Appropriate Adult Network, a body made up of representatives of the Scottish Government, local authorities and ACPOS, issued a document entitled “Guidance on Appropriate Adult Services in Scotland” (“the guidance”). The purpose of the guidance, which was published by the Scottish Government, is to provide a framework in which each appropriate adult service across the country can operate, without dictating systems or procedures at a local level.

The guidance suggests that appropriate adult services should cater for all persons over the age of 16 years who have a mental disorder. The term “mental disorder” is defined in terms of the Mental Health (Care and Treatment) (Scotland) Act 2003 as:

“...any mental illness, personality disorder or learning disability however caused or manifested.”

The guidance also sets out a list of indicators to assist police officers in identifying individuals for whom an appropriate adult may be required. These include excessive anxiety, unusual mood level, incoherence and other signs of mental disorder. The guidance provides that an investigating officer may wish to consider a medical examination of the interviewee. Significantly, however, the guidance states that a declaration that an individual is medically fit to be interviewed does not remove the need for an appropriate adult to be present.

It does not appear that the guidance was available at the time when Deputy Chief Constable G responded to this complaint on 5 November 2007. In the Commissioner’s view, the complaint was handled reasonably based on the information that was then available. However the Commissioner recommends that Central Scotland Police reviews its Appropriate Adult Policy in light of the guidance. One issue Central Scotland Police should consider as part of its review is whether its current definition of vulnerable adult remains suitable in light of the guidance. By modelling their Appropriate Adult Policies on this guidance, policing bodies across the country will ensure consistency in the way vulnerable adults are recognised and treated across Scotland.

Complaint 11: The influence of a prior rape allegation against Relative A

The applicant questioned what bearing a prior rape allegation made against Relative A had on Central Scotland Police’s subsequent treatment of him. In a letter sent to the Commissioner’s office on 25 March 2008 the applicant clearly expressed this question in terms of a complaint. As Central Scotland Police has also responded to the applicant’s concern, the Commissioner considers it appropriate to class this as a relevant complaint. He has therefore examined the manner in which it was dealt with by Central Scotland Police.

Internal Handling

In his letter to Relative A of 14 March 2008, Temporary Assistant Chief Constable O wrote the following:

“There was no crime report recorded for this incident [the alleged rape] and no report was submitted to the Procurator Fiscal. In view of this, the officers who dealt with your son during the later enquiries were unaware of this previous incident as none of them were involved in the Spring enquiry therefore I am satisfied that this incident had no bearing on the latter investigations.”

Consideration

Temporary Assistant Chief Constable O provided Relative A with a full response to this complaint and assured him that the prior rape allegation had no bearing on the subsequent action taken against Relative A.

In the absence of any evidence to contradict this position, the Commissioner considers that Central Scotland Police handled this complaint in a reasonable manner. Accordingly, no further action is required of Central Scotland Police in respect of this complaint.

Complaint 12: Central Scotland Police acted on the presumption that Relative A was guilty

The applicant maintains that during its investigation Central Scotland Police acted on the presumption that Relative A was guilty. The same complaint was made by Relative A in his letter to Central Scotland Police dated 14 December 2006.

Related to this complaint is the assertion the applicant makes that Central Scotland Police did not provide evidence to justify the action it took against Relative A on 2 December 2005.

Internal handling

This complaint was addressed directly by Temporary Assistant Chief Constable O in a letter he sent to Relative A on 14 March 2008, in which he stated:

“Having reviewed these investigations I am satisfied that there was no presumption of guilt regarding [Relative A], however, he featured during the enquiry due to the descriptions provided by witnesses and the area where the crimes had been committed. The identification of potential suspects is normal practice during such investigations and wholly appropriate.”

Temporary Assistant Chief Constable O also explained that he had been advised by the Procurator Fiscal that he had no concerns regarding “the appropriateness of the reports or allegations contained therein and [was] content that they had been properly submitted for consideration”.

Presumption of guilt was also a matter addressed by Inspector B as part of his misconduct investigation, specifically in relation to the use of handcuffs. Adopting the findings of Inspector B, Deputy Chief Constable G wrote the following in his letter of 5 November 2007:

“I note that although you have no concern about the manner of the handcuffing or the techniques used, you feel that the mere fact of this course of action indicated an assumption of guilt on the part of the police... I am satisfied that the handcuffs were applied properly and refute the suggestion that the use of this basic officer safety technique indicated an assumption of guilt on the part of the detaining officer.”

Consideration

Temporary Assistant Chief Constable O’s explanation as to why Relative A was subject to investigation was that he fitted the description provided by witnesses. Having reviewed the contents of the police files, the Commissioner has no reason to doubt that conclusion.

In respect of Deputy Chief Constable G’s explanation as to why handcuffs were applied to Relative A, the Commissioner is also satisfied that this explanation was justified (see complaint 3 above).

The Commissioner therefore considers that this complaint was handled in a reasonable manner. Accordingly, no further action is required of Central Scotland Police in respect of this complaint.

Complaint 13: Failure adequately to act on information

The applicant maintains that Central Scotland Police failed to check statements provided by himself, Relative A and Relative P and that this, in turn, led to failures to:

- (1) interview Relative Q - the applicant maintains that Relative Q would have provided an alibi for Relative A in respect of his movements on 31 January 2005;
- (2) examine CCTV evidence - the applicant maintains that CCTV footage captured on 31 January 2005 should have been shown to a witness because Relative A's appearance had changed "radically";
- (3) interview the proprietor of a local public house - the applicant maintains that a local public house proprietor should have been interviewed to ascertain whether he could provide an alibi for Relative A; and
- (4) interview Mr R - the applicant maintains that Mr R should have been interviewed to ascertain whether he could provide an alibi for Relative A in respect of his movements on 31 January 2005.

Internal Handling

Following Inspector B's investigation Deputy Chief Constable G responded to this complaint in his letter of 5 November 2007.

In relation to point (1), Deputy Chief Constable G wrote:

"With regard to interviewing [Relative Q], I note that [the applicant] informed the police that he was out of the country and would be returning about September 2005. He did not inform the police when he in fact returned in June or July 2005 and in the circumstances, I do not think it was reasonable to expect the police to have followed up on this. I understand that your solicitor was informed and it would have been routine practice for him to inform the Procurator Fiscal of the relevant details of any potential defence witnesses."

In relation to point (2), Deputy Chief Constable G wrote:

"It is [Relative A's] position, supported by [Relative Q and the applicant], that investigating officers were informed of the existence of this [CCTV] tape on 15 February 2005, and that they failed to show it to the relevant witnesses. Investigation into this matter revealed that the tape existed and a member of staff at the shop recalls [Relative P] making enquiry about it. The officers concerned categorically deny having been told about the tape. Enquiry reveals that officers called at your home address on 15 February 2005, in order to inform you about an identification parade. At that time an officer has made notes in his police notebook which include details of your lawyer as well as notes about your alleged movements. Significantly there is no record of the CCTV tape being mentioned."

It may be useful to explore the value of any evidence which may have been contained on the tape in question.

On 10 February 2005, you were questioned about the crime of 31 January 2005 and it is my understanding that you did not inform officers that you had been in the [local shop] on that day therefore they could not have known that you were apparently there. Having been subsequently charged and reported in connection with that crime (31.01.05), the only identification procedure which could be employed after that time was by means of an identification parade. As such the footage contained on that CCTV tape was rendered useless as it would not have been proper or indeed lawful to show it to any witness as a means of identification."

In relation to point (3), Deputy Chief Constable G wrote:

“In relation to the allegation that investigating officers did not follow up on potential alibi information given to them in relation to the crime of 31 January 2005, enquiry reveals that relevant enquiry was undertaken at both [Public House 1] and [Public House 2].”

In relation to point (4), Deputy Chief Constable G wrote:

“With regard to [Mr R], examination of the relevant officer’s notebook shows that during the visit to your house of 15 February 2005, he noted ‘[Mr C, Public House 1] between 4pm-5pm thereafter to [Public House 2] with [Relative B] (due back in 7 months)’. Despite apparent initial attempts to trace [Mr C] the officer has made an assessment of any alibi he may have been able to provide. His reasoning was that as the crime in question happened after 1730 hours and probably nearer to 1745 hours any alibi covering the period from 4pm-5pm would have been of little value. Whilst I can accept this reasoning and action, I also acknowledge that it would have been appropriate if this information had been investigated to a conclusion...”

I understand that your solicitor was informed [of Relative B’s potential alibi] and it would have been routine practice for him to inform the Procurator Fiscal of the relevant details of any potential defence witnesses. Equally, this applies to the potential evidence of [Mr C].”

Consideration

In the Commissioner’s view, Deputy Chief Constable G has responded fully to this complaint and justified his conclusions by reference to the available evidence. Furthermore, a learning point was identified in relation to point 4 which arose from the operational review conducted by Detective Inspector C.

The Commissioner therefore considers that this complaint was handled in a reasonable manner. Accordingly, no further action is required of Central Scotland Police in respect of this complaint.

Complaint 14: Alleged harassment by officers

The applicant maintains that he and his family were harassed by police conducting curfew checks at his home between January and May 2006. In particular, the applicant makes mention of visits that took place between 11 pm and 7 am. The same complaint was made by Relative A in his letter to Central Scotland Police dated 14 December 2006.

Internal Handling

As part of his enquiries into this complaint, Inspector B examined the “STORM Incident Report” which had been created to manage the curfew checks carried out in respect of Relative A. Inspector B noted from this report that the Procurator Fiscal had requested that checks take place on Relative A to ensure that he was adhering to his bail conditions.

In relation to the number and time of the visits carried out, Inspector B noted from the incident report that police visits were carried out in respect of Relative A between 18 January and 3 May 2006. The vast majority of these visits were found to have occurred before midnight. Inspector B noted, however, that several visits took place after midnight and that on three dates two visits were made on the same evening. Inspector B also commented that on certain occasions it was decided not to visit the applicant “due to the lateness of the hour”.

The complaint was subsequently viewed as unsubstantiated by Inspector B because, in his view:

“...[given] *the seriousness of the crimes and the potential risk posed by Relative A the police were duty bound to carry out regular checks in order to check that curfew conditions were being complied with*”.

Inspector B also expressed the view that it was important to vary the times of these visits “to prevent a regular routine being identified”.

However, in relation to a police visit which took place at 2.38 am, Inspector B considered that this was “somewhat overzealous”.

In his letter of 5 November 2007 Deputy Chief Constable G explained that it was:

“... *the clear duty of police, in light of the seriousness of the charges, to rigorously check on the curfew conditions*”.

However, in relation to the visits which took place in the early hours of the morning, Deputy Chief Constable G stated that officers “may have been somewhat overzealous on these occasions”. Deputy Constable G assured Relative A that learning outcomes had been identified.

Consideration

The investigation carried out by Inspector B revealed that police officers checked on Relative A at the family home several times after midnight, which in Deputy Chief Constable G’s opinion, was overzealous. Deputy Chief Constable G assured Relative A that learning points had been identified which would “form part of future considerations when dealing with situations of this nature”.

However, in the Commissioner’s view, what is missing from Deputy Chief Constable G’s response is an apology for the actions of the officers involved. Accordingly, the Commissioner recommends that Central Scotland Police apologises to the applicant in this connection.

Complaint 15: Alleged dishonesty

According to the applicant, Detective Sergeant E commented to him that Relative A could not have been responsible for the crime under investigation, on account of his appearance. Despite this, Relative A was subsequently charged with the offence. The applicant feels that this suggests dishonesty on the part of Detective Sergeant E. The same complaint was made by Relative A in his letter to Central Scotland Police dated 14 December 2006.

Internal Handling

As part of his enquiries into this complaint, Inspector B examined the “Response to Investigation Form” provided by Detective Sergeant E on 27 June 2007. In this document Detective Sergeant E admitted to having made the comment to the applicant which he explained was based on the appearance and known movements of Relative A on the day in question.

Inspector B also examined the “Crime File Report” completed by Detective Sergeant E in which he recorded that, because of his appearance, Relative A could not be responsible for the crime under investigation.

Inspector B concluded that the declaration made by Detective Sergeant E was not dishonest but “somewhat naïve”. He therefore viewed the complaint to be unsubstantiated. Inspector B also commented that the victim in the case did not “get a clear view of her attacker’s face” and that victims in such circumstances “often miss out or do not see significant details”.

In his letter of 5 November 2007 Deputy Chief Constable G agreed that Detective Sergeant E had made the comment and that he was “somewhat naïve” for doing so given that “victims in such circumstances often miss out or do not see significant details”. Deputy Chief Constable G concluded his response by stating that he was satisfied there was “no malice or deceitful intent in [Detective Sergeant E’s actions]” and that there had been “no misconduct on his part in this regard”.

Consideration

Inspector B’s investigations established that Detective Sergeant E made the comment in question. The Commissioner is satisfied, however, that the comment was an honest opinion expressed by Detective Sergeant E and not a deliberate attempt to mislead.

The Commissioner therefore considers the handling of this complaint by Central Scotland Police to have been reasonable. Accordingly, no further action is required in respect of this complaint.

Complaint 16: Central Scotland Police disregarded witness testimony

The applicant maintains that Central Scotland Police took action against Relative A despite the fact that he did not match the descriptions provided by the victims.

Internal Handling

Deputy Chief Constable G addressed this complaint in his letter of 5 November 2007. In relation to the evidence gathered by Central Scotland Police and transmitted to the Procurator Fiscal, Deputy Chief Constable G wrote:

“I understand that at no point did the Procurator Fiscal adversely criticise or question the evidence provided by the police or the actions taken by them, nor was any negative comment made about the police investigation or competence of the evidence led by the presiding Sheriff at the subsequent trial.”

Temporary Assistant Chief Constable O addressed the same point in his letter to Relative A dated 14 March 2008:

“...the [Crown Office and Procurator Fiscal Service] had been informed of the concerns raised by you and a view sought as to whether they, as the independent prosecuting authority, had any concerns regarding the investigations and/or the reports and allegations which had been submitted by the reporting officers. The outcome of this enquiry is that COPFS have advised me that they have no concerns regarding the appropriateness of the reports or allegations contained therein and were content that they had been properly submitted for consideration.”

Consideration

The Commissioner notes that although reference is made to the views of the Crown Office and Procurator Fiscal Service (COPFS), there is no evidence in the police files of those views having been obtained. In the Commissioner’s view, it is essential that all final responses to complaints are supported by written evidence.

In the present case, however, the fact that the Procurator Fiscal took proceedings against Relative A implies that he considered there to be sufficient evidence to convict, and also that prosecution was in the public interest. In the Commissioner’s view, that in itself tends to undermine the applicant’s contention that Relative A ought not to have been reported in respect of the alleged offences. If the Procurator Fiscal had entertained any significant concerns about the police investigation or the fact that Relative A was reported for the alleged offences, it is unlikely that proceedings would have been taken.

Although Central Scotland Police's handling of this complaint would have been better if details of its contact with the COPFS had been recorded on file, the Commissioner believes that Deputy Chief Constable G's letter of 5 November 2007 represents a reasonable response to the applicant's allegation. As noted above, the fact that the COPFS took proceedings against Relative A provides support for Deputy Chief Constable G's position.

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

Complaint 17: Alleged refusal to show warrant cards and threats of arrest

The applicant maintains that on 25 September 2006 two officers from Central Scotland Police refused to show their warrant cards to him and threatened him with arrest for making such a request. According to the applicant the initial response he received to this complaint on 27 October 2006 was not satisfactory as it did not cover all the points raised.

Internal Handling

As part of his enquiries Inspector B obtained statements from the officers subject to this complaint, Special Constable S and Constable T.

In his statement dated 19 June 2007, Special Constable S explained that he and Constable T had decided to stop Relative A in the street because it was nearing his curfew time. Special Constable S explained that during his questioning of Relative A, the applicant and Relative P arrived and both spoke "with an aggressive manner". The applicant, Special Constable S recalled, demanded his name which he refused to give him, instead providing his badge number.

In his statement dated 19 June 2007, Constable T explained that he and Special Constable S had decided to stop and question Relative P because it was "near his curfew time". Constable T explained that as they were speaking to Relative A the applicant and Relative P appeared. Constable T recalled that the applicant was angry that Relative A had been stopped, and demanded to know the officers' names. Constable T provided the applicant with his name and number but did not remember the applicant asking for identification.

Inspector B explained in his report that he could find no guidance on whether police officers in full uniform are required to present their warrant cards on request. On contacting the Scottish Police College he was informed that the matter was not covered during police training. Ultimately Inspector B reached the conclusion that as the officers were in a marked police vehicle and wearing full uniform, which included their badge numbers, "there was no requirement on their part to produce warrant cards or, in fact, to give their names."

Inspector B also commented that that the issue of warrant card production should have been covered in the initial response to this complaint sent on 27 September 2006.

The same conclusion was reached by Deputy Chief Constable G in his letter of 5 November 2007. As both officers were in full uniform and in a marked police car, Deputy Chief Constable G considered that there was no requirement upon them to show their identity cards or supply their names. Deputy Chief Constable G also agreed that the issue of warrant card production should have been covered in the letter the applicant received on 27 September 2006.

Consideration

The Commissioner has dealt with the issue of uniformed police refusing to produce their warrant cards on request in a previous complaint handling review (PCCS/0902/00288/PF-LB). There is no national guidance on the issue and the decision on whether or not to produce a warrant card on request is one for the discretion of each officer.

Given the lack of guidance, the Commissioner considers that Central Scotland Police's handling of this complaint was reasonable. Accordingly, no further action is required of Central Scotland Police in respect of this complaint.

In the Commissioner's view, however, unless there are compelling reasons for not doing so (for example, personal or public safety considerations) uniformed officers ought to produce their warrant cards following any reasonable request to do so.

Complaint 18: Failure to respond within a reasonable time

The applicant maintains that a letter of complaint he sent to Central Scotland Police on 1 November 2006 was not responded to within a satisfactory time scale.

Internal Handling

Deputy Chief Constable G responded to this complaint in his letter of 27 November 2007 and referred the applicant to a letter which was sent to his solicitor by Chief Superintendent U on 26 January 2007. In this letter Chief Superintendent U (then Superintendent) apologised for not responding earlier, whilst indicating that he had not received the applicant's letter dated 15 December 2006.

Consideration

In the Commissioner's view, there appears to be some confusion on the part of Deputy Chief Constable G in respect of which letter Chief Superintendent U was referring to in his letter of 26 January 2007. In this letter Chief Superintendent U apologised for not responding to the applicant's letter dated 15 December 2006, not 1 November 2006 as stated by Deputy Chief Constable G.

However, it is clear that Central Scotland Police has responded to the issues raised within the applicant's letter dated 1 November 2006 letter and so the Commissioner recommends no further action in respect of this complaint.

Conclusions, Recommendations and Learning

Complaint 1: Unlawful seizure of the applicant's property

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 provides a further written response to the applicant explaining precisely how common law search powers justified the seizure of the computer and disks.

Complaint 2: Misrepresentation of evidence

In the Commissioner's view, the manner in which this complaint was dealt with by Central Scotland Police was reasonable. Accordingly, no further action is required in respect of this complaint.

Complaint 3: The handcuffing of Relative A

In the Commissioner's view, the manner in which this complaint was dealt with by Central Scotland Police was reasonable. Accordingly, no further action is required in respect of this complaint.

Complaint 4: Relative A was verbally abused by officers

It appears that this complaint has not been considered by Central Scotland Police. Accordingly, the Commissioner recommends that Central Scotland Police consider the complaint and issue the applicant with a response.

Complaint 5: Inadequacies in the video identification parade

In the Commissioner's view, the manner in which this complaint was dealt with by Central Scotland Police was reasonable. Accordingly, no further action is required in respect of this complaint.

Complaint 6: Failure to return items of Relative A's property

In the Commissioner's view, the manner in which this complaint was dealt with by Central Scotland Police was reasonable. Accordingly, no further action is required in respect of this complaint.

Complaint 7: Damage to a computer and alteration of files

In the Commissioner's view, the manner in which this complaint was dealt with by Central Scotland Police was reasonable. Accordingly, no further action is required in respect of this complaint.

Complaint 8: Failures on the part of a Police Surgeon

The Commissioner does not have the remit to consider this complaint given that it concerns the actions of a police surgeon.

Complaint 9: Failure to treat Relative A as a vulnerable adult

In the Commissioner's view, the manner in which this complaint was dealt with by Central Scotland Police was reasonable. Accordingly, no further action is required in respect of this complaint.

Complaint 10: Inadequacy of Central Scotland Police's Vulnerable Adult Policy

In the Commissioner's view, the manner in which this complaint was dealt with by Central Scotland Police was reasonable. However the Commissioner recommends that Central Scotland Police reviews its Appropriate Adult Policy in light of the Guidance on Appropriate Adult Services in Scotland. One issue Central Scotland Police should consider as part of its review is whether its current definition of vulnerable adult remains suitable in light of the guidance.

Complaint 11: The influence of a prior rape allegation against Relative A

In the Commissioner's view, the manner in which this complaint was dealt with by Central Scotland Police was reasonable. Accordingly, no further action is required in respect of this complaint.

Complaint 12: Central Scotland Police acted on the presumption that Relative A was guilty

In the Commissioner's view, the manner in which this complaint was dealt with by Central Scotland Police was reasonable. Accordingly, no further action is required in respect of this complaint.

Complaint 13: Failure adequately to act on information

In the Commissioner's view, the manner in which this complaint was dealt with by Central Scotland Police was reasonable. Accordingly, no further action is required in respect of this complaint.

Complaint 14: Alleged harassment by officers

In the Commissioner's view, the manner in which this complaint was dealt with by Central Scotland Police was not reasonable. The Commissioner recommends that Central Scotland Police apologises to the applicant for the actions of its officers in carrying out curfew checks which Central Scotland Police considered to be "over-zealous".

Complaint 15: Alleged dishonesty

In the Commissioner's view, the manner in which this complaint was dealt with by Central Scotland Police was reasonable. Accordingly, no further action is required in respect of this complaint.

Complaint 16: Central Scotland Police disregarded witness testimony

In the Commissioner's view, the manner in which this complaint was dealt with by Central Scotland Police was reasonable. Accordingly, no further action is required in respect of this complaint.

Complaint 17: Alleged refusal to show warrant cards and threats of arrest

In the Commissioner's view, the manner in which this complaint was dealt with by Central Scotland Police was reasonable. Accordingly, no further action is required in respect of this complaint.

Complaint 18: Failure to respond within a reasonable time

In the Commissioner's view, the manner in which this complaint was dealt with by Central Scotland Police was reasonable. Accordingly, no further action is required in respect of this complaint.

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