

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 complaints in this report arose from an incident in 2006 involving the applicant and his nephew. Generally, the complaints concern allegations of subsequent harassment by a particular officer.

Of the six complaints contained within this report, the Commissioner decided that one was dealt with by Strathclyde Police in a reasonable manner, while three were not. The Commissioner also found in respect of an alleged incident between an officer and a third party that the applicant was not in a legitimate position to pursue a complaint arising from this. The Commissioner found another complaint to be criminal in nature and therefore beyond his statutory remit.

The Commissioner recommended that Strathclyde Police apologise to the applicant for the lack of rigour in its investigation of one of the complaints. The Commissioner also recommended that Strathclyde Police apologise to the applicant for an unsubstantiated comment made in the response to one of the complaints.

The Commissioner has identified as a learning point the fact that the statements of Constable A, Ms H and Mr J are not dated and do not state by whom they were obtained. In the Commissioner's view, all statements taken as part of a complaints investigation ought to be dated. This is particularly important in cases, such as this one, where witnesses seek to describe the timing of an incident by reference to the date on which they were interviewed.

The Commissioner notes that on 8 January 2010 the Head of Professional Standards at Strathclyde Police issued to all divisional commanders a memorandum summarising the Commissioner's previous recommendation that all statements in complaints investigations be dated. The Commissioner will monitor whether the memorandum improves practice in this area.

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 applicant's account

According to his statement of 21 August 2007, the applicant was involved in an incident on 6 September 2006 which resulted in court proceedings. The applicant states that since the incident he has suffered harassment by Constable A. This included incidents such as Constable A blocking the road in front of him while the applicant was driving his car. According to the applicant, on this occasion Constable A had been driving in front of him for a short time. The applicant believed that Constable A had seen the applicant driving behind him and blocked the road because he thought this would annoy the applicant. The applicant claimed that there were three witnesses in his car at the time and that he had to drive around another way to avoid Constable A's car.

The applicant also claimed that on a number of occasions while he was in his garden Constable A drove by. According to the applicant, Constable A slowed down as he passed, waved and blew kisses. The applicant added that his children had also seen the police car slowing down.

According to the applicant, "two or three times" Constable A has raced up behind him in his car when the applicant was driving his taxi. The applicant alleges that Constable A has also harassed the applicant's nephew, Mr K, by, for example, asking if he wanted "a square go".

The applicant alleges that on another occasion, while he was waiting in the corridor of the court building in relation to the incident on September 2006, Constable A walked past to hand in

statements. An acquaintance of the applicant (Ms Z) informed him that Constable A had pointed at him on this occasion. The applicant's son, Mr J, heard Constable A say to another officer, "him in the middle".

Ms G's account (the applicant's former partner)

According to Ms G's statement dated 5 September 2007, "a couple of months ago" she was in the applicant's car driving home after a visit to a family member. As the applicant went to drive in to a particular street a police car appeared and blocked the road so that no other cars could pass. Nothing was said between the police and the applicant and the latter drove on, taking a different route. Ms G did not see the police officer in the car. The applicant did not say anything to Ms G at the time about what he thought was going on. However, Ms G thought it very strange that the police had blocked the road as nothing appeared to be happening.

Ms G also stated that there were "several occasions, maybe as many as 3" when a police car slowed down while passing her house. She did not pay attention to this and could not identify any officers. She did, however, think it was strange that it was happening.

Ms H's account (the applicant's daughter)

According to Ms H's undated statement, "about 2 months or so ago" at about 9.30 pm on a Saturday night, she was in the applicant's taxi when a police car parked across the road not allowing any other cars through. The applicant took a different route and had no contact with the police car.

The applicant did not say anything about the incident at the time, but Ms H was puzzled as to why the police car was there.

Mr J's account (the applicant's son)

In his undated statement, Mr J claimed that "a good few months ago" on a Saturday at around 9 pm he was in the applicant's car when a police car blocked the road. Mr J saw that Constable A was driving the car and was smiling and laughing at the applicant.

Mr J also stated that while waiting outside court with the applicant, Constable A walked past with another officer, "nodded his head and said the words, 'the wan in grey'". Mr J stated that the applicant had been wearing a grey shirt.

Mr K's account (the applicant's nephew)

According to Mr K, on 6 September 2006 he was arrested by Constable A. The applicant was also there that day. When Mr K was released he told the applicant that Constable A had stated that he (the applicant) was lucky not to be arrested too. The applicant then went back to speak with Constable A, who called him a "smart arse" and told him he would see him around. Mr K took from this that Constable A was threatening the applicant. The applicant then asked Constable A if he was "getting [the applicant] a sergeant" to which Constable A replied, "get him yourself."

Mr K claimed that two or three nights later he met Constable A and another, female officer in a field in the locality. Constable A took off his "belt and vest" and said, "Do you want a square go now smart arse cause you were offering one in the back of the car when you were arrested". According

to Mr K he told Constable A, “You can hit me if you want but I’m no’ getting arrested for hitting you first.”

Constable A’s account

According to Constable A’s undated statement, he arrested Mr K on 6 September 2006. Later that day, he witnessed the applicant commit alleged driving offences and a breach of the peace. Constable A planned to warn the applicant about his conduct. However, the applicant “displayed contempt” for him and/or the police as a whole and became aggressive towards him and Constable B. According to Constable A, after discussing the matter with his supervisor he decided to report the matter to the Procurator Fiscal. Constable A learned that the applicant had made a complaint about him but was told later that this had been withdrawn. He then learned that the applicant had made a further complaint about him.

In response to the complaints, Constable A regarded the allegation that he had blocked the path of the applicant’s car as a “complete fabrication”. He stated that he may have required to perform a manoeuvre such as a three point turn which would temporarily have blocked the road. However, he did not recall such an event taking place.

In response to the complaint that he “raced up behind” the applicant when the latter was driving his taxi, Constable A stated that he is required to drive a marked police car, sometimes when responding to emergency calls, and that it would not be unreasonable for the paths of a police car and a taxi to cross from time to time in such situations. He denied that he had deliberately pursued the applicant and regarded this as a malicious allegation, or one based on paranoia on the applicant’s part.

With reference to the complaint that he drove along the applicant’s street, Constable A agreed that he had done this, although not more so than any other street in the area. As an officer responsible for a particular area he made it his business to patrol the streets there. Constable A added that he was unaware of where the applicant lived.

Regarding the complaint about an alleged comment in the corridor of the court, Constable A stated that when he walked in the entrance to the court he saw the applicant sitting outside with several other people. As he walked past he heard a male voice say, “prick”. Constable A did not know who had made the remark but as the voice was an adult one and the applicant was in the company of a much younger male, he believed it was probably the applicant. When he returned from handing in the statements Constable A informed Constable C of the incident and asked if he would accompany him while at court in case corroboration of further incidents was required.

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) that Constable A blocked the road in front of the applicant and laughed;
- (2) while the applicant was driving his taxi, Constable A drove right up behind him on more than one occasion;
- (3) that on more than one occasion when the applicant was in garden Constable A drove past and waved or blew kisses;

(4) while sitting outside the courtroom, Constable A pointed at the applicant saying “him in the middle”;

(5) that Constable A harassed Mr K and asked him to fight; and

(6) that Constable A lied about the incident on 6 September 2006 involving the applicant and Mr K.

The Commissioner’s Review

The applicant first contacted the Commissioner’s office by telephone on 9 July 2008. He thereafter submitted an application form on 13 August 2008. The Commissioner’s office then requested the case files which were received from Strathclyde Police on 28 August 2008.

The applicant called the Commissioner’s office on 29 September 2008 to make a second complaint about the police. He submitted a further application form on 17 October 2008. The Commissioner’s office requested information about this complaint from Strathclyde Police on 22 October 2008. Further correspondence from Strathclyde Police explained that elements of these complaints were of a criminal nature and had therefore been referred to the Procurator Fiscal on 1 October 2008. The Commissioner’s office was informed on 11 February 2010 that the matter had in fact been concluded by the Area Procurator Fiscal in August 2009. Strathclyde Police issued a response to the complaints on 3 February 2010. The Commissioner will issue a separate report in relation to these complaints in due course.

The remainder of 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 the police handling of it and the Commissioner’s views on this.

Complaint 1: Alleged blocking of the road by Constable A

Internal Handling

On 21 August 2007, the applicant provided a statement to Inspector D regarding his complaints. The complaints were then recorded by Inspector E on a Complaint about the Police (CAP) form. Inspector E completed a report about the complaints on 6 December 2007. Chief Inspector F informed the applicant of the outcome of the complaints in a letter dated 15 January 2008.

As part of his investigations, Inspector E obtained statements from Ms G, Mr J and Ms H who were in the car at the time the alleged incident giving rise to complaint 1 occurred. He also obtained a statement from Constable A regarding this and the other complaints.

In his report Inspector E commented that the applicant was:

“... unable or unwilling to be more specific in his allegations relating to time, date and location of his allegations. The witnesses are also very vague about this and in some cases are not even aware there has been an issue with [Constable A]... The fact that [Constable A] has had no dealings at all with the [applicant] since September 06 leads the reporting officer to believe there are no grounds to substantiate this allegation of harassment.”

In the letter of response, Chief Inspector F wrote the following:

“...a number of your family members have been interviewed during the course of which they cannot recall when the incident took place, nor can they identify the Police Officers within the

Police vehicle and cannot suggest that the road was blocked for the purposes of inconveniencing or harassing yourself. Constable [A] has no knowledge of this incident and in the absence of a specific date and time I cannot comment further upon this.”

Consideration

As noted above, Inspector E’s conclusion in respect of all the applicant’s complaints was that as Constable A had had “no dealings at all” with the applicant since September 2006, there were no grounds to substantiate his allegation of harassment.

The Commissioner has difficulty understanding this conclusion. Firstly, Inspector E’s finding that Constable A has had no dealings at all with the applicant since September 2006 appears to be based wholly upon Constable A’s account. It ignores the applicant’s claims that he has encountered Constable A on several occasions since September 2006. It also ignores the account given by the applicant’s son, Mr J, in which he identified Constable A as driving the car which allegedly blocked the road on which the applicant was driving. Furthermore, it ignores the account given by Constable A himself in which he accepts having encountered the applicant within a court building in August 2007. In the Commissioner’s view, Inspector E’s comment does not reflect a balanced assessment of the evidence.

Chief Inspector F’s position in his letter of response was that the applicant’s relatives could not recall when the incident took place. Although the applicant’s son, Mr J, and his daughter, Ms H, were relatively vague as to when the incident occurred, Mr J recalled that it was a “good few months” before the date on which he gave his statement. He also said that it occurred on a Saturday night at around 9 pm. Ms H recalled the incident as having occurred on a Saturday at around 9.30 pm and believed it was “about two months or so ago”.

As neither Mr J nor Ms H’s statements is dated, it is not possible for the Commissioner to be more specific about when the incident may have taken place. However, in the Commissioner’s view both witnesses provided sufficient information for further enquiries to be undertaken by Inspector E. For example, it ought to have been possible to establish from Constable A’s shift rota the number of Saturday evenings he had worked during the relevant period and which officers worked alongside him on those occasions. Statements could have been obtained from those officers, which might have shed further light on whether the incident had occurred. The results of such enquiries might have supported the applicant’s account of events, or that of Constable A. In other words, the conducting of reasonable enquiries into complaints is as much for the benefit of the police officers who are the subject of complaints as for complainers themselves

Chief Inspector F also refers in his letter to the applicant’s relatives being unable to identify the police officers within the vehicle. Again, this is incorrect. Although Ms G and Ms H were unable to identify the officers within the car, Mr J clearly identified Constable A as one of them.

For the reasons given, the Commissioner does not consider that this complaint was handled in a reasonable manner. Given the passage of time, it seems unlikely that any additional enquiries will produce anything of value and the Commissioner therefore makes no recommendation to that effect. However, it is recommended that Strathclyde Police apologises to the applicant for what the Commissioner believes are inadequacies both in the investigation of this complaint and the final response.

Complaint 2: Constable A drove up behind the applicant unnecessarily

Internal Handling

Inspector E noted in his report that the applicant did not provide specific dates, times and locations in relation to the incidents. He also noted that according to Constable A’s statement, there was a possibility that while driving a marked police car, sometimes in an emergency situation, he might

cross paths with a taxi driver working in the same area. However, according to Constable A he would not have deliberately pursued the applicant.

Chief Inspector F informed the applicant in his letter of response that Constable A refuted the allegations. Chief Inspector F explained that “[t]he possibility of cars accelerating quickly and then slowing could be entirely legitimate and in the absence of a specific time and date cannot progress the matter further.”

Consideration

As there were no independent witnesses to the alleged incident, the only action available to the enquiry officer was to obtain a statement from Constable A, who refuted the allegations. It does not appear that Strathclyde Police could reasonably have made any further enquiries into this complaint.

The Commissioner therefore believes that Strathclyde Police dealt reasonably with this complaint. Accordingly, no further action is required of Strathclyde Police in this connection.

Complaint 3: Constable A drove slowly past the applicant’s home

Internal Handling

On 5 September 2007, Inspector E obtained a statement from the applicant's former partner, Ms G, who recalled a police car driving past her house on a few occasions and slowing down. Inspector E noted that according to Ms G she was in her house at the time and paid little attention to it. Ms E stated she did not know or recognise any officer in the car, and was unsure if it was the same officer on each occasion.

Constable A admitted driving up and down in this street as part of his ordinary patrol duties. Inspector E noted that Constable A was unaware of the exact address of the applicant. Inspector E also noted that according to Constable A he had direct contact with the applicant only once, in September 2006.

Although Chief Inspector F makes reference to this complaint in his letter to the applicant, it appears not to have been specifically addressed. Generally, Chief Inspector F informed the applicant that since Constable A at no time spoke directly with him, and the information provided by the applicant was largely uncorroborated, he was satisfied that any perceived behaviour did not amount to harassment.

Consideration

Chief Inspector F’s letter to the applicant does not provide a specific response to this complaint. Accordingly, the Commissioner recommends that Strathclyde Police now issue the applicant with such a response.

Complaint 4: Alleged incident at court

Internal Handling

Inspector E obtained statements from the applicant’s son, Mr J, and from Constable A regarding this complaint. Inspector E noted that Mr J had no idea why the officer pointed out the applicant to another officer. Inspector E also noted Constable A’s denial of the accusation and his claim that the applicant made a derogatory remark about him as he walked past.

In his response to this complaint, Chief Inspector F informed the applicant of Constable A's account that while in the court building someone had made a derogatory remark about him. He also informed the applicant that Constable A had denied the allegations of harassment.

Chief Inspector F's overall conclusion in respect of the applicant's complaints was that Constable A had "behaved in a professional manner throughout and given the foregoing [Chief Inspector F was] unable to substantiate [the applicant's] allegations of harassment."

Consideration

In the Commissioner's view, it is difficult to establish the facts relating to this complaint. Constable A accepts that he encountered the applicant in the court building and believes that the applicant made a derogatory remark about him. Constable A makes no reference to having pointed at the applicant, or saying words to the effect that he was the one in the middle. However, it also does not appear that the applicant saw Constable A pointing at him or heard him uttering these words. It was in fact the applicant's son, Mr J, who claims to have seen Constable A pointing at the applicant, and another witness, Ms Z, who told the applicant that Constable A had identified him as the one in the middle.

Even if one accepts the evidence of the applicant, Mr J and Ms Z, there is nothing in their accounts to suggest that Constable A's actions amounted to harassment, particularly if one accepts that the applicant made a derogatory remark about him. The Commissioner notes that Chief Inspector F took a similar view in his letter of response, although he appears to adopt this in relation to all of the applicant's complaints.

What concerns the Commissioner is Chief Inspector F's general comment in his letter that he was "fully satisfied that Constable A has behaved in a professional manner throughout." It appears that this is Chief Inspector F's overall conclusion in respect of the applicant's complaints. In order to reach that conclusion, Chief Inspector F would require to have accepted the account given by Constable A and rejected all those given by the applicant and his relatives. In the Commissioner's view, there is no proper basis for accepting one side's account over the other's. The most that could reasonably be said of some of the applicant's complaints is that there is no support for them. However, that does not mean that one should necessarily accept Constable A's version of events. In the Commissioner's view, Chief Inspector F's assessment of Constable A's behaviour was unjustified by the available evidence.

The Commissioner finds that, in this respect, the manner in which this complaint was dealt by Strathclyde Police was not reasonable. The Commissioner recommends that Strathclyde Police issues a further apology to the applicant for making the unsubstantiated comment in the letter.

Complaint 5: Alleged harassment of the applicant's nephew, Mr K

Internal Handling

Inspector E noted in his report the contents of the statement given by Mr K in which the latter alleged that Constable A had asked him if he wanted a "square go". Inspector K also noted Mr K's allegation that Constable A had arrested him on a few occasions and tried to provoke him by staring and sniggering when he saw him in the street. Inspector E's report also contains the following passage:

"The witness [Mr K] wishes his statement to be used in support of the [applicant]. He is not, at this stage, wishing to progress a complaint on his own behalf."

Chief Inspector F's letter to the applicant of 15 January 2008 makes no reference to Mr K's allegation.

Consideration

The Commissioner does not consider that he has any remit to deal with this complaint, insofar as it is made by the applicant rather than Mr K. Sections 34(1) and (6) of the Act provide that a "relevant complaint (ie a complaint that the Commissioner can deal with) is one which is given or sent to a police body by:

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

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

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

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

It does not appear to the Commissioner that the applicant falls into any of these categories in relation to this complaint. The applicant is clearly not the person in relation to whom Constable A's alleged actions took place. It would also be difficult to say that the applicant was adversely affected by the alleged incident. The applicant was not present during the alleged accident and therefore cannot be said to have witnessed it. In addition, given Mr K's apparent unwillingness to progress the complaint, it cannot be said that the applicant is acting on his behalf in this connection.

In these circumstances, the Commissioner does not consider complaint 5 to be a relevant one insofar as it is made by the applicant. Accordingly, the Commissioner has no power to consider it.

Complaint 6 : Constable A lied about an incident involving the applicant and Mr K

Given that Constable A gave evidence in relation to the incident, this complaint is essentially criminal in nature and is therefore beyond the Commissioner's statutory remit.

Conclusions, Recommendations and Learning

Complaint 1: Alleged blocking of the road by Constable A

For the reasons given, the Commissioner does not consider that this complaint was handled in a reasonable manner. Given the passage of time, it seems unlikely that any additional enquiries will produce anything of value and the Commissioner therefore makes no recommendation to that effect. However, it is recommended that Strathclyde Police apologises to the applicant for what the Commissioner believes are inadequacies both in the investigation of this complaint and the final response.

Complaint 2: Constable A drove up behind the applicant unnecessarily

For the reasons given, the Commissioner considers that this complaint was handled in a reasonable manner. Accordingly no further action is required of Strathclyde Police in this connection.

Complaint 3: Constable A drove slowly past the applicant's home

In the Commissioner's view, given that the applicant received no specific response to this complaint, Strathclyde Police did not handle this complaint in a reasonable manner. The Commissioner recommends that a response to this complaint now be given.

Complaint 4: Alleged incident at court

For the reasons given, the Commissioner considers that in one respect (namely the unwarranted comment made in Chief Inspector F's letter of response) this complaint was not handled reasonably. The Commissioner recommends that Strathclyde Police apologises to the applicant for making the unsubstantiated comment in the letter.

Complaint 5: Alleged harassment of the applicant's nephew, Mr K

In the Commissioner's view, insofar as this complaint is being made by the applicant, it is beyond his statutory remit. The Commissioner has therefore not considered this complaint.

Complaint 6 : Constable A lied about an incident involving the applicant and Mr K

Given that Constable A gave evidence in relation to the incident, this complaint is essentially criminal in nature and therefore outside of the Commissioner's statutory remit.

Learning point

The Commissioner has identified as a learning point the fact that the statements of Constable A, Ms H and Mr J are not dated and do not state by whom they were obtained. In the Commissioner's view, all statements taken as part of a complaints investigation ought to be dated. This is particularly important in cases, such as this one, where witnesses seek to describe the timing of an incident by reference to the date on which they were interviewed.

The Commissioner notes that on 8 January 2010 the Head of Professional Standards at Strathclyde Police issued to all divisional commanders a memorandum summarising the Commissioner's previous recommendation that all statements in complaints investigations be dated. The Commissioner will monitor whether the memorandum improves practice in this area.

John McNeill
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