

# Report of Complaint Handling Reviews in relation to Tayside Police

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

## Summary and Key Findings

The complaints considered in the three reviews which form part of this report arise from disputes between the applicant and several of his neighbours.

The Commissioner found that all but one of the complaints were dealt with by Tayside Police in a reasonable manner. In respect of the one complaint that was not dealt with in a reasonable manner, the Commissioner found that Tayside Police's investigation was not as full as it ought to have been. However, given that the incident which gave rise to the complaint occurred almost 5 years ago, he has not recommended any further action by Tayside Police.

The Commissioner also identified as a learning point the benefit of having and maintaining coherent plans for dealing with complainers who have a significant history of previous 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.

## Preamble

The applicant has requested a review of the handling of his complaints about Tayside Police. This report considers three separate sets of complaints as detailed by the applicant in his correspondence and statements.

In terms of the information which the applicant has supplied to the Commissioner and Tayside Police, he believes that an officer of Tayside Police, Constable H, who was once his next door neighbour, was engaged in a "malicious hate campaign" against him and his wife. It appears that Constable H moved next door to the applicant in September 2005. The applicant believes that the alleged campaign may have been triggered because of a telephone call made to the police by the applicant's wife in October 2005 reporting the level of noise coming from Constable H's home. The applicant alleges that, in pursuit of this campaign, Constable H has been assisted by other officers of Tayside Police.

The complaints which the applicant has made to Tayside Police concern various incidents over a number of years. The applicant is unhappy with both the performance of individual officers, including Constable H, and the service he has received from Tayside Police as a whole. The applicant has also made complaints about officers appointed to investigate his complaints. He believes that the responses he has received following the investigation, combined with the ongoing nature of his dispute, show that Tayside Police is attempting to protect the officers involved in his complaints.

The six complaints dealt with in this report were made to the police over 2005, 2006 and 2007. The complaints have been reviewed in chronological order.

## **The Commissioner's Review**

The Commissioner's office received an initial letter from the applicant on 6 March 2008. This letter enclosed a statement giving a background to the complaints. The statement contained 108 questions to which the applicant had asked Tayside Police to respond.

The applicant was asked to complete and sign an application form which was received on 20 March 2008.

The Commissioner's office asked Tayside Police to provide the case papers by 8 April 2008. On 28 March 2008, a telephone call was received from Tayside Police advising that alongside its ongoing enquiries into the complaints it had received the applicant's statement containing over 108 points. Tayside Police advised the Commissioner's office that it was trying to catalogue and respond to the points made in this statement. As such, the case files were not received by the Commissioner's office until 27 June 2008.

## Background

On 10 July 2005, Constables A and B attended the home of the applicant following a report to Tayside Police regarding the way in which the applicant had parked his car outside his home.

According to the applicant Constable A asked him if he was going to park his car somewhere else and he responded by asking Constable A why he needed to do so. The applicant states that Constable A would not answer this question and adopted an arrogant manner. The applicant believed that, although he never said it, there was an implied threat by Constable A that he would be charged if he continued to park his car in the same position. The applicant states that his wife became upset and that the situation was becoming confrontational. At this point the applicant asked both officers to leave, which they duly did.

The applicant concludes his statement by complaining that Constable A was arrogant, not “public friendly”, and biased toward the person whom the applicant believed had called the police.

Constable A stated that on 10 July 2005 he received a radio message regarding a complaint which had been made about the way the applicant had parked his car. Constables A and B attended the home of the person making the complaint and were advised that the residents found it difficult to access and exit their driveway. Constable A states that he was asked by the residents if he could speak to the applicant and request him to move his car “two or three feet in either direction”. According to Constable A’s statement he advised that he would speak to the applicant. However, it was Constable A’s view that the car was not causing an obstruction because access could be gained to the driveway, albeit with difficulty.

Constable A states that he thereafter attended the applicant’s home and asked if he could park his car in a different way. The applicant replied that he would not. According to Constable A the applicant believed that his neighbours were able to enter and exit their driveway and that, if they could not, it was because of their driving ability rather than the way in which his car was parked. Constables A and B both state that the applicant’s wife was becoming worked up over the incident. Constable A states that, after having been in the applicant’s home for approximately five minutes, the applicant refused to discuss the matter further. Constable B states that the applicant then asked them to leave.

According to Constable A’s statement he advised the applicant that if his neighbour had difficulty exiting the driveway the neighbour would be advised to contact the police “at which time any appropriate action would be taken”. According to Constable B’s statement Constable A informed the applicant that, if his vehicle prevented his neighbours from being able to exit their driveway the police would need to be called at which time he would have to move his vehicle.

## The Complaint

Based on the contents of the applicant’s correspondence, and the information obtained from Tayside Police, the Commissioner has identified a single complaint, namely that Constable A was unfriendly, arrogant and biased.

### *Internal Handling*

On 11 July 2005, the applicant attended a police station to complain about the manner in which Constable A had dealt with him the previous day. His complaint was noted by Sergeant C. The statement he obtained from the applicant contained the following passages:

*"[Constable A] told me about the complaint of obstruction, told me that I was not allowed to park there and informed me that I would be charged. I asked how that could happen as there was no double yellow lines... My wife got agitated and she couldn't understand why we couldn't park the car there as there was no double yellow lines and why come out on a Sunday for a minor thing like that. I noted that [Constable A] was getting confrontational with my wife... As the matter wasn't getting any better I asked [Constable A] to leave. I was never aggressive to [Constable A]. His attitude throughout the interview was aggressive and he kept insisting I had no right to park there despite there being no double yellow lines. [Constable B] was an onlooker only."*

On 13 August 2005, the applicant met with Inspector D and provided another statement. This statement gave the applicant's account of his dealings with Constable A and concluded:

*"In summary, I'm complaining about PC [A]'s arrogant manner, which wasn't public friendly. He was definitely biased towards [Neighbours E]."*

Statements were obtained from Constables B and A on 16 and 17 August 2005 respectively. Constable A's statement concluded by stating:

*"During my visit to [the applicant] I believe I conducted myself professional throughout and at no time said anything inappropriate."*

On 17 August 2005, Inspector D sent a memo to Superintendent F which provided a background to the complaint. According to the memo, during their meeting on 13 August 2005, Inspector D advised the applicant of the law relating to obstruction and that it would be legitimate for officers to charge him should a further complaint be received from his neighbour. The memo also stated that the applicant refused to accept this explanation, or Inspector D's attempts at conciliation. According to the memo, Inspector D's impression was that:

*"[the applicant's] complaint was less about Constable A's manner, than the fact that he disagreed with the manner in which [the applicant] was parking his vehicle."*

On 29 September 2005, Chief Superintendent G sent a letter to the applicant responding to his complaint. The letter stated:

*"It is regrettable that you felt one of the Officers who attended to deal with the complaint regarding where your vehicle was parked was aggressive in any way. However, your assertions in this regard do not align with the detailed statements provided by both of the officers... Regrettably, you continued to park your vehicle with the intention of obstructing the driveway... I regret the Officers were unable to resolve the matter to your satisfaction but I am bound to agree with them that parking a vehicle with the clear intention of blocking a neighbour's driveway can only be construed as an intention to obstruct that driveway... Nevertheless, as I have already stated, if Police assistance is requested then my Officers are duty bound to attend and take appropriate action. I do hope the foregoing information combined with your discussion with Inspector [D] will conclude this matter and wish you and your wife well for the future."*

### *Consideration*

In his statement of 13 August 2005, the applicant stated that Constable A never told him why the police had attended and advised him that the only reason he was there was to tell him about his car. The applicant also stated that Constable A would not give him a straight answer as to why he needed to move his car and had implied that he would be charged if he failed to do so.

However, in the account he gave to Sergeant C on 11 July 2005 the applicant provides a different version of events. There, he states that Constable A advised him of his neighbour's complaint that

his vehicle was causing an obstruction and put it to him that he would be charged if he did not move it. It appears from this statement that the applicant was given the reason for the officers' attendance on 10 July 2005.

Constable A and B's statements show that they responded to a call from a member of the public who was concerned about how the applicant's vehicle had been parked. Although neither officer felt that the applicant's vehicle was causing an obstruction on the occasion in question, they committed themselves to asking the applicant if he would move his car in order to ease the difficulties other residents had experienced when parking.

However, in the Commissioner's view there were a number of omissions in the investigation of this complaint. Given that the complaint was about Constable A's manner, it is difficult to understand why no statement was obtained from the applicant's wife who was present for at least part of the incident. In addition, although Constable A makes clear in his statement that he acted professionally throughout the incident, Constable B does not comment specifically on Constable A's manner.

Ordinarily, the Commissioner would have recommended that these deficiencies in the investigation be remedied. However, given the time which has elapsed since the incident (almost 5 years), the Commissioner does not consider that further enquiries are appropriate. The Commissioner also considers that his findings in respect of this complaint provide a sufficient remedy to the applicant.

### **Conclusions, Recommendations and Learning**

Because of the omissions in Tayside Police's investigation, the Commissioner considers that this complaint was not dealt with in a reasonable manner. However, for the reason given, the Commissioner makes no recommendation in this connection.

## Background

As noted in the preamble, the applicant was involved in a neighbour dispute with Constable H and his wife.

As a result of this the applicant instructed a solicitor in an attempt to stop what he perceived to be unacceptable behaviour on the part of these individuals.

On 26 October 2006 Constable H, in response to two letters which he had received from the applicant's solicitor, e-mailed the latter explaining his and his wife's position on various incidents which had occurred. Specifically, Constable H wrote:

*"...I must inform you that if [the applicant's] threatening and intimidating behaviour continues towards my wife we will have no option but to inform the Police of each incident. As for the threat of civil legal proceedings, we feel that we have no case to answer to and as such will not be seeking any legal advice at this time, however should any proceedings be initiated against us we feel we have a strong enough case against your clients to put forward to any court."*

The applicant states that on 28 October 2006 he received a letter from his solicitor conveying Constable H's response. The applicant also stated the following:

*"I felt threatened by the contents of the e-mail which include being reported to the Police by [Constable H]. I feel that [Constable H] is abusing his authority as a Police Officer and that he is threatening and intimidating my wife and I... I wish to make a formal complaint regarding the behaviour of [Constable H]."*

## The Complaint

Based on the contents of the correspondence received from the applicant and the information obtained from Tayside Police the Commissioner has identified a single complaint, namely that Constable H sent a threatening email to the applicant's solicitor.

### *Internal Handling*

On 3 November 2006, the applicant contacted a police station advising that he wished to make a complaint about Constable H. Sergeant J attended the applicant's home but the applicant informed him that he had an appointment with his solicitor on 7 November 2006 and did not wish to make a formal complaint until after this had been concluded.

Also on 3 November 2006, Constable H sent a memo to Inspector K explaining the background to his relationship with the applicant. The memo detailed what Constable H perceived to be unacceptable behaviour on the part of the applicant and his wife. Constable H commented that he was "growing increasingly concerned by the [applicant and his wife's behaviour] and felt that it may now escalate in such a way that [the applicant] will try to make problems for me at work." Constable H's memo also detailed the relevant part of the letter which he had received from the applicant's solicitor. Constable H explained that the letter asked for him to:

*"... cease immediately with anti social behaviour which effects [the applicant and his wife's] peaceful enjoyment of their property."*

On 14 November 2006, Sergeant J received a telephone call from the applicant who advised him that he wished to make a formal complaint. The following day, Sergeant J attended the applicant's home and noted his complaint.

On 24 November 2006, Sergeant J and Inspector K visited the applicant to discuss the complaint. A statement was obtained from the applicant at this time. The following is taken from Inspector K's statement:

*"I had a copy of the e-mail [the applicant] was complaining about and clearly the content was not in any way threatening or abusive, nor was there any suggestion of an abuse of authority. I attempted to progress an informal resolution of the complaint against the police. I suggested that though [Constable H] was a police officer, he was entitled to carry on aspects of life as any other member of the public would, including a response to correspondence received."*

On 6 December 2006, Inspector K sent an internal memo to Superintendent L regarding the applicant's complaint about Constable H. As well as providing the background to the complaint, Inspector K explained that Constable H had not sent the e-mail in his capacity as a police officer. Inspector K also explained that she had attempted unsuccessfully to resolve the complaint informally. Inspector K also noted that the e-mail in question was sent at 10.49 am on 26 October 2006 and that Constable H was not on duty until 6 pm that evening. Inspector K also provided Superintendent L with the following documentation:

- the applicant's statement of complaint dated 15 November 2006;
- Sergeant J's memo to Inspector K dated 15 November 2006;
- a copy of Constable H's e-mail to the applicant's solicitor; and
- Constable H's memo to Inspector K dated 3 November 2006.

On 8 December 2006, Superintendent L wrote to the applicant setting out Tayside Police's response to the complaint. The letter stated:

*"In relation to your suggestion that [Constable H] has abused his authority as a Police Officer I have to say from the outset that I see no evidence of this whatsoever."*

*As I understand it [Constable H] responded to a letter from your Solicitor as a member of the Public, in his own time with no reference to Tayside Police or his position within the organisation. As a consequence I can find no evidence of any wrongdoing or impropriety by [Constable H]."*

*I do not propose to take any further action in relation to your complaint but will forward all details to our Professional Standards Department."*

### *Consideration*

The Commissioner observes that at the time the applicant made his complaint, the definition of a complaint about the police was as follows:

*"A complaint made by or on behalf of any person against one or more on duty members of a police force and from which it may be reasonably inferred that any act or omission which was committed or made by any of the individuals concerned may amount to a criminal offence or professional misconduct."*

The Commissioner notes from Inspector K's memo to Superintendent L of 6 December 2006 that Constable H sent the e-mail in question at 10.49 am and was not scheduled to be on duty that day until 6 pm. It is clear from this that Constable H was not on duty at the time he sent the e-mail to

the applicant's solicitor. Accordingly, in the Commissioner's view the applicant's dissatisfaction with Constable H was not at that time a complaint about the police.

In any event, the Commissioner considers that Tayside Police has provided the applicant with an entirely reasonable response to this allegation. In the Commissioner's view, Constable H, as someone involved in a dispute, was as entitled as any other person to respond to the letters he had received from the applicant's solicitor. Given that the email was sent in the context of a neighbour dispute, the Commissioner does not consider its contents to be unduly threatening. Constable H merely pointed out that if the applicant and his wife continued with their allegedly threatening and intimidating behaviour, he would have no option to inform the police. In the Commissioner's view, simply because Constable H is a police officer does not imply that he cannot inform the police about such alleged behaviour towards him.

### **Conclusions, Recommendations and Learning**

Notwithstanding that Constable H was not on duty at the time of sending the e-mail to the applicant's solicitor, Tayside Police has made a reasonable attempt to look into the matter raised and communicated its position clearly and concisely to the applicant. Accordingly, the Commissioner considers that this complaint was dealt with in a reasonable manner.

## Introduction

On 11 May 2007, the applicant wrote to Tayside Police providing the background to his contact with Tayside Police over the previous 18 months and the problems he had been experiencing with his neighbours, Constable H and his wife. The applicant's letter asked various questions of Tayside Police and detailed a combination of criminal and non-criminal complaints.

Tayside Police acknowledged this letter on 23 May 2007 and appointed Inspector M to carry out an investigation into the matters raised by the applicant. As the applicant had alleged that officers had perverted the course of justice, Tayside Police wrote to the Area Procurator Fiscal on 7 August 2007 asking whether a full investigation was required.

On 16 August 2007, the Area Procurator Fiscal requested that a full investigation be conducted. Upon receipt of this information, Tayside Police wrote to the applicant on 28 August 2007 advising that Inspector M would be submitting a full report to the Area Procurator Fiscal.

Inspector M forwarded a report to the Deputy Chief Constable on 16 November 2007 and this was sent to the Area Procurator Fiscal on 19 November 2007. On 23 November 2007, the Area Procurator Fiscal decided to take no proceedings in respect of the allegations contained within the report.

On 3 December 2007, Inspector N was appointed to consider any misconduct issues arising from the applicant's complaints. On 27 February 2008, the applicant submitted a 50 page statement asking a total of 108 questions of Tayside Police.

On 2 June 2008, Inspector N submitted his report to the Deputy Chief Constable. On 10 June 2008, the then Head of Professional Standards wrote to the applicant with Tayside Police's response to his 50 page statement. On 13 June 2008, the Deputy Chief Constable wrote to the applicant regarding the issues contained within his original letter of 11 May 2007.

## The Complaints

Based on the contents of the applicant's letter of 11 May 2007 and the information obtained from Tayside Police, the Commissioner has identified the following complaints:

- (1) that Inspector K did not investigate the applicant's complaint about Constable H;
- (2) that Sergeant P acted in an intimidating and bullying manner towards the applicant's wife;
- (3) that Constable H told lies in order to have the applicant's wife charged; and
- (4) that Constable H colluded to have the applicant charged with vehicular obstruction.

### Complaint 1: Alleged failure to investigate

#### *Background*

As noted in the above report (PCCS/00310/PF-TP(B)), on 3 November 2006 the applicant contacted Tayside Police to complain about what he perceived was a threatening e-mail sent by Constable H to the applicant's solicitor.

The applicant states that following this call, Sergeant J and Inspector K visited him to discuss his complaint. According to the applicant, Inspector K told him that she had read Constable H's e-mail but would not be taking any action as she did not believe that it was threatening. In reply to this, the applicant told Inspector K that he had already been the "victim of a stitch up" and that he believed Constable H's email implied that he would do the same again.

The following is taken from the applicant's statement:

*"She [Inspector K] wasn't interested and told me she was there to discuss the incident about the letter only, and if I wanted [Constable H] to stop hassling us we would have to get a QC."*

The applicant concluded this complaint by stating the following:

*"In relation to this complaint I am complaining about [Constable H] sending me a threatening letter and about Inspector [K] taking no action in relation to that letter. Inspector [K] did thereafter send me a letter confirming her decision in writing."*

According to Inspector K's statement, on arrival at the applicant's home she informed him that her visit was to discuss his most recent complaint about the police and that the longer term issues regarding him and his neighbour were not the purpose of her visit. The following passage is taken from Inspector K's statement:

*"I had a copy of the e-mail [the applicant] was complaining about and clearly the content was not in any way threatening or abusive, nor was there any suggestion of an abuse of authority. I attempted to progress an informal resolution of the complaint against the police. I suggested that though [Constable H] was a police officer, he was entitled to carry on aspects of life as any other member of the public would, including a response to correspondence received..."*

*"I adopted a patient and understanding approach and communicated clearly and concisely with [the applicant]. At the time of my visit he accused me of 'being hard', though this perception appeared to have been formulated purely on the basis that I did not agree with what [the applicant] was saying. Because I did not agree he was not happy. Contrary to [the applicant's] letter where he states I would be taking no action, this is fabrication. The process of complaints against the police are clearly laid down and I am not in a position to 'take no action' under these circumstances. As a result of this visit, my report dated 6 December 2006 and accompanying documentation, clearly followed the requirements of me in relation to a complaint against the police and identifying that this matter had not been resolved."*

### *Internal Handling*

Inspector N, who was allocated the complaint, recorded it as follows:

*"It is alleged that...[Inspector K] did neglect her duty in that, having received a complaint from [the applicant]...regarding an allegedly threatening electronic mail message sent by [Constable H], she did fail to make full and diligent enquiry into the allegation."*

During his investigation, Inspector N made reference to Inspector K's earlier investigation and the statements obtained from the applicant, the applicant's wife, Inspector K and Sergeant J.

On 2 June 2008, Inspector N submitted a report to the Deputy Chief Constable containing the following passages:

*“Inspector [K] was aware of the history of issues between the [applicant] and [Constable H’s] families and did not consider the e-mail to be threatening or offensive. The investigating Officer is of a similar view.*

*Notwithstanding this, Inspector [K] reported the complaint and background circumstances to Superintendent [L] who formed a similar view.”*

Inspector N concluded:

*“Inspector [K] has ensured that [the applicant]’s complaint has been considered by both herself and the witness Sergeant [J]. In addition, she has reported the circumstances to Superintendent [L] and ensured that the matter has been properly recorded.”*

On 13 June 2008, the Deputy Chief Constable wrote to the applicant with the police response to this complaint. The Deputy Chief Constable stated:

*“In relation to the investigation carried out by Inspector [K]... she considered your complaint in conjunction with Sergeant [J] and formed the view that there were no clear threatening remarks contained in the e-mail to [the applicant’s solicitor]. Inspector [K] was aware of the ongoing difficulties between you and [Constable H and his wife] and in an attempt to try and find a solution referred the matter to [a mediation service]. Unfortunately that process failed to achieve her desired results.”*

### **Consideration**

It is clear from the correspondence received from the applicant that he is dissatisfied because of what he sees as Inspector K’s dismissal of his complaint about the e-mail which Constable H had sent the applicant’s solicitor.

As detailed above (see PCCS/00310/PF-TP(B)), Inspector K made herself aware of the content of the e-mail and met with the applicant to discuss the matter. When her attempts to resolve the complaint failed, Inspector K provided Superintendent L with the background to her contact with the applicant. In the Commissioner’s view, Inspector K’s report to Superintendent L was fair and objective. She also provided Superintendent L with all the relevant evidence. It is clear to the Commissioner that Inspector K did not dismiss or otherwise fail to deal with the applicant’s concern.

The Commissioner has already stated his own view on the nature of Constable H’s email to the applicant’s solicitor. In the Commissioner’s view, Tayside Police handled the subsequent complaint about Inspector K in a reasonable manner.

### **Complaint 2: Alleged bullying and intimidation**

The applicant’s letter of 11 May 2007 stated:

*“Sergeant [P’s] manner was threatening and intimidating and it was obvious that he had believed the story concocted by [Constable H and his wife].”*

### **Background**

#### **The applicant and his wife’s account**

The applicant states that on 14 April 2007 he and his wife were visited by Sergeant P and Constable Q. He was initially of the belief that both officers had attended because of the noise which their neighbours and their dogs had been making. The applicant’s wife states that she

invited both officers into the living room where she was informed that they were there to charge her for shouting and swearing and making derogatory comments to Constable H's wife.

The applicant stated that Sergeant P, who looked angry and "fired up", told him that he had attended to charge his wife with a breach of the peace for allegedly being abusive towards Constable H's wife. The applicant states that his wife then "broke down and went disconsolate" and insisted that she had never said or done such a thing nor never would. The applicant stated that he could confirm this as he had been with his wife all that morning.

The applicant's wife states that Sergeant P asked for her name and that she told him that she was not giving him any information and was going to call her solicitor. She also states that she continued to refuse to give Sergeant P her "particulars" and was very angry because she had done nothing wrong.

Following his wife's refusal to provide her name and date of birth, the applicant states that he provided these details to Sergeant P to prevent any further intimidation of his wife. The applicant's wife was then charged with a breach of the peace.

The applicant's wife states that the applicant tried to explain what had happened but Sergeant P kept saying that he was not interested and that he had attended only to charge her.

#### Police account

Following a complaint that the applicant's wife had shouted and swore at Constable H's wife, Sergeant P was asked by Inspector K to attend the incident. Before doing so he was given a history of the conflict between the applicant and his neighbours including the previous involvement of the police, anti-social behaviour officials and mediation services.

Both officers attended Constable H's home where Constable Q took a statement from him. This was considered to corroborate the evidence provided by Constable H's wife.

Sergeant P and Constable Q thereafter attended the applicant's home where the applicant's wife was informed of the reason for their visit. Sergeant P then noted a statement from the applicant refuting the allegations that Constable H and his wife had made.

Sergeant P states the following:

*"I informed [the applicant and his wife], having heard both sides I decided to charge [the applicant's wife] with a breach of the peace, which could be dealt with by a Fixed Penalty Notice which was hastily rejected by both [the applicant and his wife]. As such I informed them I would have to report the circumstances of the matter to the Procurator Fiscal, and that this would include [the applicant's] statement and their notification of barking dogs to the Noise Nuisance team shortly before my arrival."*

Sergeant P then asked the applicant's wife her name, address and date of birth. She refused to provide these details and left the room to call her solicitor. Sergeant P then explained to the applicant's wife the powers available to police to have a person provide their name and address. In the end, the applicant then provided this information.

Sergeant P then charged the applicant's wife but stated that it did not appear that she was listening to what he was saying. Both Sergeant P and Constable Q describe the applicant's wife's behaviour as erratic and unreasonable.

Sergeant P states that at no time was he angry, "fired up", threatening, bullying or intimidating and that he subsequently reported the case to the Procurator Fiscal in a fair and impartial manner.

Both officers state that they dealt with the matter with the highest standards of impartiality, were always courteous and fully explained the procedures involved.

### *Internal Handling*

Following his appointment as investigating officer, Inspector N recorded this complaint as follows:

*“It is alleged that on 14 April 2007...[Sergeant P] was threatening, arrogant and intimidating towards [the applicant and his wife] and did act towards, or treat, them in an oppressive or improper manner likely to bring discredit on the police force or service.”*

On 11 July 2007 a statement was obtained from the applicant which mirrored his letter of complaint. A statement was obtained from the applicant's wife on 17 July 2007. Statements were obtained from Sergeant P and Constable Q on 14 and 17 June 2007, respectively.

On 2 June 2008, Inspector N submitted a report to the Deputy Chief Constable. He noted that the applicant was upset due to the manner which Sergeant P adopted rather than any words that he used and that both officers refuted the allegation. Having considered the evidence gathered, Inspector N stated:

*“[Sergeant P] has attended the relevant incident with awareness that various possible solutions had been explored but been unsuccessful. With this in mind, he has decided to caution and charge [the applicant's wife] and report the matter to the Procurator Fiscal. This decision appears to have been made through frustration at a lack of resolution to the problems by other means... The reason to caution and charge has undoubtedly inflamed the situation and caused the circumstances for this complaint to be made.”*

Inspector N's conclusion was that there was no evidence to substantiate the allegation that Sergeant P had acted in an threatening and intimidating manner. On 13 June 2008, the Deputy Chief Constable wrote to the applicant responding to the complaint. The Deputy Chief Constable's letter contains the following passage:

*“In respect of [Sergeant P], both he and the officer who attended with him are of a contrary view to yourself in regards to their behaviour and attitude. Sergeant [P] considers that his behaviour was appropriate at all times. Sergeant [P] had the intention of dealing with the matter by means of giving [the applicant's wife] a Fixed Penalty Notice but because this was refused he considered that his only option was to charge [the applicant's wife] with a Breach of the Peace. I consider that this is an appropriate means by which this matter could have been dealt with but consider on reviewing the circumstances that this course of action did not help the situation and he could have used his discretion by means of an informal warning.”*

### *Consideration*

Although the Commissioner is aware of applicant's belief that the report made by Constable H's wife is part of a larger campaign of harassment against him by Constable H, his review is confined to the specific allegations made against Sergeant P.

The Commissioner notes that the statements obtained from all parties are broadly consistent as to what occurred and what was said within the applicant's home. However, these statements diverge when describing Sergeant P's manner when dealing with the applicant's wife. On the one hand, the applicant and his wife feel that from the outset Sergeant P was angry and “fired up”. On the other hand, both officers state that because they were aware of the ongoing issues and, in order to avoid further problems, set out to engage with the applicant and his wife in a tactful manner. Both

officers maintain that this approach was maintained throughout their dealings with the applicant and his wife.

The applicant claims that his wife became particularly upset and alarmed when asked to provide her name and that he had to eventually provide these details on her behalf. He claims that he did so as he “could not bear to see [his wife] being intimidated any further and pushed into breaking point.”

In the Commissioner’s view, Sergeant P was justified in asking the applicant’s wife for this information by section 13 of the Criminal Procedure (Scotland) Act 1995. In summary, this permits a constable to ask a suspect for his/her name and address where he has reasonable grounds for suspecting that a person has committed an offence.

In the absence of any independent evidence to support or contradict the respective positions adopted by the applicant and his wife and the officers involved, the Commissioner considers that the conclusions drawn by Inspector N and the Deputy Chief Constable to be reasonable. Inspector N clearly identified why the applicant was upset and gathered all available and relevant evidence to address the complaint. In addition, both Inspector N and the Deputy Chief Constable acknowledged that Sergeant P could have dealt with the matter in an alternative manner.

In these circumstances, the Commissioner considers that this complaint was handled by Tayside Police in a reasonable manner.

### **Complaints 3 and 4: Alleged lies and collusion**

As detailed above, the applicant complained that Constable H colluded with other officers and lied in order to have both him and his wife charged with offences they did not commit.

These complaints are allegations of acts which constitute crimes, namely perverting or attempting to pervert the course of justice and the Commissioner notes that the police submitted a full report to the Area Procurator Fiscal on 19 November 2007 in connection with these allegations and that the latter decided to take no proceedings.

The Deputy Chief Constable’s letter of 13 June 2008 also explained to the applicant that, given the lack of evidence, he did not believe there to have been any misconduct on the part of the officers involved.

## **Conclusions, Recommendations and Learning**

### **Complaint 1: Alleged failure to investigate**

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

### **Complaint 2: Alleged bullying and intimidation**

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

### **Complaints 3 and 4: Alleged lies and collusion**

As noted above, these complaints do not fall within the Commissioner’s statutory remit and therefore are not considered in this report.

## Learning point

The Commissioner acknowledges the difficulties faced by all parties when dealing with complaints which are of an ongoing or longstanding nature. The Commissioner is aware that the applicant remains dissatisfied with the performance of Tayside Police and has made further complaints to it.

Given that the personnel tasked with investigating such complaints will change over time, in such circumstances the Commissioner believes that there is benefit to having in place, and maintaining, a coherent plan. Frequently, officers dealing with individual complaints will be unaware of a complainer's history and, in particular, the number and nature of complaints he or she has made in the past. This can lead to officers, through no fault of their own, taking action which, with the benefit of further information, might not have been taken. A plan for handling these types of complaints might include a summary of previous complaints and advice on the handling of future issues. The importance of keeping clear and accurate records of previous contact with complainers is very much a part of such a plan.

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