

Report of a Complaint Handling Review in relation to Northern Constabulary

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

Summary and Key Findings

The applicant made six complaints about Northern Constabulary that relate to separate incidents over the period 1999 to 2005. Of those 6 complaints, the Commissioner found in respect of 3 he there was insufficient information available for him to reach a decision on whether the complaints were handled reasonably. In respect of one complaint (complaint 1) the Commissioner found that this was not handled in a reasonable manner and recommended that Northern Constabulary apologise to the applicant. The Commissioner found that a further complaint was handled reasonably but was not recorded by Northern Constabulary as a formal complaint about the police.

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 complaints relate to several, separate incidents that allegedly occurred over the period 1999-2005. The background to each complaint is detailed below.

Complaint 1

On 3 January 1999, the applicant was detained in custody at a police station for allegedly being drunk and incapable. The applicant states that on several occasions while in custody he called for an officer as he required to urinate. The applicant claims that these calls were ignored. According to the applicant, because of this he was forced to urinate on the floor of the cell.

Complaint 2

The applicant states that on another occasion he was arrested for shouting and swearing and held at a police station. According to the applicant, during this time he rang the bell in his cell to request a drink of water but no one answered.

Complaint 3

During September 1999, Deputy Chief Constable A wrote to the applicant's MP in response to complaint 1, which the MP had made to Northern Constabulary on the applicant's behalf. In his letter Deputy Chief Constable A stated that Chief Inspector B and Inspector C visited the applicant at his home address to discuss complaint 1. According to the letter, upon attending at the applicant's home the officers found the applicant to be "extremely drunk" and unable to enter into any sensible dialogue. The applicant disputes that he was drunk.

Complaint 4

In a letter to the Chief Constable dated 20 November 2003, the applicant made a number of allegations about Mr D's conduct as a bus driver. The allegations included:

- non criminal conduct involving the use of a bus;
- that Mr D defrauded his employer; and
- that Mr D stole diesel from his employer.

In his letter the applicant named several individuals whom he believed should be interviewed by Northern Constabulary in relation to these allegations. The applicant claims that Northern Constabulary did not investigate his claims.

Complaint 5

According to the applicant, he appeared in court in relation to a charge of breach of the peace. The applicant alleges that while giving evidence against him Constable F stated that the applicant threw his grandmother to the floor. The applicant maintains that this did not happen.

Complaint 6

According to the applicant Constable F visited him at his home address on one occasion, during which he (Constable F) placed a pair of handcuffs on the sideboard. In the applicant's view, this was an act of "institutional aggression".

The Complaints

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

- (1) that the applicant's calls for assistance from his cell received no response;
- (2) that, on a separate occasion, the applicant's calls for assistance from his cell received no response;
- (3) that the applicant's MP received a letter from Northern Constabulary stating that the applicant was "extremely drunk";
- (4) that Northern Constabulary did not interview the applicant or any other witnesses regarding an allegation he made about Mr D;
- (5) that Constable F provided inaccurate evidence in court; and
- (6) that Constable F demonstrated "institutional aggression" towards the applicant.

The Commissioner's Review

General

Based on the papers supplied by Northern Constabulary, the applicant raised complaints 2, 3, 4 and 5 in a letter to Northern Constabulary dated 13 May 2005. In response to this letter Inspector H sent a memo dated 18 May 2005 to Deputy Chief Constable G. In his memo Inspector H stated

that, having checked the files relating to the applicant, it appeared that his letter of 13 May 2005 “referred to matters raised in previous correspondence.” According to Inspector H, these matters had been dealt with by Chief Inspector E and “found to be unfounded.” Inspector H therefore recommended to Deputy Chief Constable G that no further action was necessary in respect of the applicant’s letter.

Having reviewed the files provided by Northern Constabulary the Commissioner found no correspondence from Chief Inspector E to the applicant which refers in any way to complaints 2, 3 and 5. There is one piece of correspondence from Chief Inspector E to the applicant, a letter dated 5 February 2004, but this relates purely to allegations made by the applicant about Mr D (complaint 4). Moreover, the applicant’s letter to Northern Constabulary dated 13 May 2005 was provided to the Commissioner by the applicant himself and is not contained within the papers provided by Northern Constabulary.

On 1 April 2009, the then Commissioner wrote to Northern Constabulary requesting that it review the applicant’s file in order to ensure that all correspondence had been sent to his office. Following further correspondence, on 9 June 2009 Northern Constabulary wrote to the Commissioner’s office confirming that all files had been checked and enclosing two additional letters which had not been sent previously. Northern Constabulary stated that its policy for the retention of documents was six years plus the current year and that this may have had a bearing on the availability of further correspondence.

In the Commissioner’s view, although Northern Constabulary’s retention policy means that certain documents relating to the applicant’s complaints will not now be available, as at the date of the former Commissioner’s letter it ought to have had no bearing on the availability of documentation produced over the six preceding years (i.e. from 2003 onwards). As explained, however, the applicant’s letter of 13 May 2005 was not included in the papers submitted to the Commissioner’s office by Northern Constabulary. In addition, if complaints 2, 3 and 5 were initially dealt with by Northern Constabulary in 2003 or later, the Commissioner would also have expected to receive additional paperwork relating to these.

The remainder of this section sets out the Commissioner’s views on the manner in which the applicant’s complaints were handled by Northern Constabulary. Each complaint is set out in turn and is followed by details of Northern Constabulary’s handling of it (so far as this can be established) and the Commissioner’s views on this.

Complaint 1: Alleged failure to respond to calls for assistance

Complaint 1 was communicated to Northern Constabulary in a letter dated 24 June 1999 from the applicant’s MP. The MP stated that the applicant had spent an evening in the cells and that he called for an officer on several occasions as he required to use the toilet. According to the letter, the applicant’s calls were ignored as a result of which he had to urinate on the cell floor.

Internal Handling

Following receipt of the letter from the applicant’s MP, Deputy Chief Constable A requested a report on the matter. Inspector C discussed the complaint with Chief Inspector E and on 6 July 1999 he sent a memo to Deputy Chief Constable A providing details of the applicant’s arrest and detention.

In the memo, Inspector C stated that Chief Inspector E had examined the custody records relating to the applicant’s arrest and detention. These confirmed that the applicant was apprehended on 3 January 1999 on a charge of being drunk and incapable. The memo states:

[The applicant] was incarcerated at [a police station] between 01.43 and 09.30... the records confirmed that he was kept in a detention cell during his period of arrest... the

detention cell is not equipped with toilet facilities, which may give some credence to what the applicant is suggesting.”

Inspector C also states in the memo:

“It would appear that this individual is developing into a vexatious applicant who uses his local MP to pursue his complaints which are often minor or trivial in nature.”

Deputy Chief Constable A provided Northern Constabulary’s response to this complaint in a letter issued in September 1999 (the precise date of the letter is not clear from the copy provided to the Commissioner’s office). Deputy Chief Constable A explained in the letter that due to the other cells being full the applicant was held in a detention cell with no toilet facilities. However, Deputy Chief Constable A concluded that “nothing has been found to substantiate such a complaint.” Deputy Chief Constable A added that it would have been preferable if the applicant had made this complaint at the time of his release on 3 January 1999.

Consideration

This complaint raises similar issues to those dealt with by the Commissioner in a recent complaint handling review report (reference PCCS/00437/PF-CSP, published on 30 November 2009). There, the applicant complained that while in police custody his calls for assistance, through use of a cell buzzer, had been ignored, with the result that he was required to urinate on the cell floor. The Commissioner’s report in that case contains the following passages:

“It is clear that this specific complaint has wider implications if it were the case that the complainer’s calls for assistance were ignored. It is not hard to imagine a scenario where a person held in police custody uses the cell buzzer to make a request for urgent medical assistance. Any failure to respond to such a call could obviously have serious consequences for the individual concerned. The Commissioner recognises the pressures upon officers dealing with large numbers of individuals in custody, and also that the buzzer system is open to abuse by prisoners. However, there are clearly good reasons for the buzzer system, which would be undermined if calls made by prisoners are routinely ignored.

For these reasons, the Commissioner considers that all complaints of this nature from those held in police custody must be investigated in a thorough manner with all relevant witnesses interviewed. Only then can it be decided whether the complaint is substantiated or otherwise.”

Northern Constabulary did not interview any of witnesses who might have assisted in shedding light on the circumstances which led to the complaint. In particular, there were no statements taken from any of the custody officers who were on duty during the period of the applicant’s detention. In respect of complaint 1, aside from the unsuccessful attempt to interview the applicant, the enquiries consisted simply of an examination of the custody records and a discussion with Chief Inspector E, an officer based at the police station where the applicant was held. In the Commissioner’s view, those enquiries were unlikely to have established whether or not the applicant’s calls for assistance went unanswered.

As noted above, Deputy Chief Constable A in his letter to the applicant’s MP reported that “nothing has been found to substantiate” the applicant’s complaint. In the Commissioner’s view, that conclusion must be seen in the context of the limited enquiries that were undertaken in connection with the complaint.

For the reasons given, the Commissioner does not consider that this complaint was handled in a reasonable manner. In any other circumstances, the Commissioner would have recommended that Northern Constabulary obtain statements from the custody officers who were on duty at the

time of the applicant's detention. However, given the passage of time the Commissioner does not consider that such enquiries would be likely to yield reliable evidence. Accordingly, the Commissioner recommends that Northern Constabulary apologises to the applicant for the inadequacies in its investigation of this complaint.

Complaint 2: Further alleged failure to respond to calls for assistance

In his letter of 13 May 2005 the applicant states that one night he was arrested for shouting and swearing and was held at a local police station. He then states the following:

"... I perpetually rang the bell for a drink of water, as I was dying of thirst. As no-one would answer the bell, I had to resort to drink (sic) the water that was in a filthy toilet bowl."

Internal Handling

As noted above Inspector H's memo concludes that the matters raised by the applicant in his letter of 13 May 2005 were dealt with previously by Chief Inspector E.

Consideration

The Commissioner considers that the same principles apply to this complaint as to complaint 1. In order properly to investigate it, Northern Constabulary ought to have obtained statements from all custody officers who were on duty during the period of the applicant's detention. It does not appear that this occurred in the present case, but the position is not sufficiently clear for the Commissioner to reach a view on the initial handling of this complaint.

Complaint 3: The contents of Deputy Chief Constable A's letter of response

The applicant raised this complaint in his letter of 13 May 2005. In the letter, he stated that, having submitted a complaint to Northern Constabulary, two police officers came to interview him. He accepted that he had been drinking alcohol but took exception to the terms of Deputy Chief Constable A's letter of September 1999 in which he described the applicant as having been "extremely drunk" when the officers visited him.

Internal Handling

As noted above Inspector H's memo concludes that the matters raised by the applicant in his letter of 13 May 2005 were dealt with previously by Chief Inspector E.

Consideration

There is insufficient information within Northern Constabulary's files to establish whether Chief Inspector E dealt with this complaint and, if so, whether it was dealt with reasonably at that time. Accordingly, the Commissioner cannot reach a view on the initial handling of this complaint.

Complaint 4: Alleged failure to interview witnesses

The applicant made allegations against Mr D to Northern Constabulary in his letter of 20 November 2003. However, it is clear from that letter that he had communicated them on several previous occasions. Generally, the applicant makes a number of criminal and non-criminal allegations against Mr D. The applicant claimed that the alleged conduct which gave rise to his allegations had been ongoing for over 10 years. In his letter he gave details of various witnesses whom he claimed could support his allegations. In his letter to Northern Constabulary of 13 May 2005 the applicant complains that none of these witnesses has been interviewed.

Internal Handling

Upon receipt of the applicant's letter of 20 November 2003 the matter was passed to Chief Inspector E who wrote to the applicant on 5 February 2004, stating that the allegation had previously been investigated by the police and that the situation was being monitored by Mr D's employer. Chief Inspector E's letter also stated:

"It is of some concern to myself that for some time now we have received periodic correspondence from yourself detailing malpractice by several local figures in the community which in the frankest of terms have been spurious."

As discussed above upon receipt of the applicant's letter of 13 May 2005 Inspector H corresponded with Deputy Chief Constable G stating that the applicant's letter referred to matters raised in previous correspondence which had been dealt with by Chief Inspector E.

No other correspondence provided to the Commissioner's office by Northern Constabulary relates to this complaint. However, the applicant states that he received a letter from Deputy Chief Constable G stating that no further action would be taken in relation to the applicant's complaint.

Consideration

From the information available to the Commissioner it appears that Northern Constabulary found no evidence to support the applicant's allegations and that Chief Inspector E informed the applicant of this. The Commissioner also notes that Her Majesty's Inspectorate of Constabulary Scotland (HMICS) reviewed Northern Constabulary's handling of this complaint and found that it had acted reasonably. In particular, HMICS informed the applicant of the following:

"It is not feasible for officers to take action unless allegations are supported by evidence and it appears to HMIC that, after careful consideration, Northern Constabulary has reasonably concluded the allegations you have made are not."

It appears that the matters raised by the applicant have been investigated and, according to Chief Inspector E, Mr D's employers had no concerns about his conduct. In that respect, the Commissioner considers that matters were handled reasonably by Northern Constabulary. However, it does not appear that these concerns were recorded by Northern Constabulary as a formal complaint. The Commissioner therefore recommends that Northern Constabulary now takes steps to ensure that the applicant's concerns are recorded as a complaint about the police.

Complaint 5: that Constable F provided inaccurate evidence in court

In his letter dated 13 May 2005 the applicant alleges that during court proceedings Constable F gave evidence against him to the effect that he assaulted his grandmother. The applicant believes this allegation to be untrue.

From the information available to the Commissioner it appears that the applicant appeared in court in 1998 in relation to a charge of breach of the peace. It was apparently during these proceedings that Constable F stated that he threw his grandmother to the floor.

Internal Handling

As noted above Inspector H's memo concludes that the matters raised by the applicant in his letter of 13 May 2005 were dealt with previously by Chief Inspector E.

Consideration

Again, there is insufficient information available to the Commissioner to allow him to determine that Chief Inspector E dealt with this complaint and, if so, whether it was dealt with reasonably.

Complaint 6: Alleged “institutional aggression”

This complaint has been made only to the Commissioner’s office. If the applicant wishes to pursue the matter he should do it with Northern Constabulary.

Conclusions, Recommendations and Learning

Complaint 1: Alleged failure to respond to calls for assistance

For the reasons given the Commissioner does not consider that this complaint was handled in a reasonable manner. In any other circumstances, the Commissioner would have recommended that Northern Constabulary obtain statements from the custody officers who were on duty at the time of the applicant’s detention. However, given the passage of time the Commissioner does not consider that such enquiries would be likely to yield reliable evidence. Accordingly, the Commissioner recommends that Northern Constabulary apologise to the applicant for the inadequacies in its investigation of this complaint.

Complaint 2: Further alleged failure to respond to calls for assistance

In the Commissioner’s view, there is insufficient information available to him to reach a conclusion in respect of the handling of this complaint.

Complaint 3: The contents of Deputy Chief Constable A’s letter of response

In the Commissioner’s view, there is insufficient information available to him to reach a conclusion in respect of the handling of this complaint.

Complaint 4: Alleged failure to interview witnesses

It appears to the Commissioner that the applicant’s concerns were handled in a reasonable manner. However, it does not appear that these concerns were recorded as a complaint about the police and the Commissioner therefore recommends that Northern Constabulary now takes steps to do so.

Complaint 5: that Constable F provided inaccurate evidence in court

In the Commissioner’s view, there is insufficient information available to him to reach a conclusion in respect of the handling of this complaint.

Complaint 6: Alleged “institutional aggression”

This complaint has been made only to the Commissioner’s office. If the applicant wishes to pursue the matter he should do it with Northern Constabulary.

John McNeill
Police Complaints Commissioner for Scotland

Hamilton House
Caird Park
Hamilton
ML3 0QA