

Report of Complaint Handling Reviews in relation to Strathclyde Police

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

Summary and Key Findings

This report consists of two complaint handling reviews concerning complaints made by the applicant about Strathclyde Police. The first review (reference PCCS/00369/PF-SP(A)) arose from complaints made about an officer of Strathclyde Police regarding alleged incidents which occurred while he was off-duty. The Commissioner found that all these complaints were dealt with in a reasonable manner. However, the Commissioner recommended that Strathclyde Police alter its standard operating procedures to incorporate a general rule that complainers making off-duty complaints about officers receive a written response to these.

In respect of the second review (reference PCCS/00369/PF-SP(B)), the Commissioner found that two out of the three complaints were dealt with in a reasonable manner. However, the third complaint was not addressed by Strathclyde Police and the Commissioner therefore recommended that this be considered and a response be issued to the applicant.

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 first contacted the Commissioner's office by telephone on 23 May 2008 regarding the complaints which are dealt with in this report under reference PCCS/00369/PF-SP(B). He also made reference to the complaints which are dealt with in this report under the reference PCCS/00369/PF-SP(A). The applicant submitted an application form on 6 June 2008, following which the complaints files were requested from Strathclyde Police. However, the Commissioner did not commence a review at that stage as Strathclyde Police was still considering one of the applicant's complaints.

On 19 August 2009, the applicant telephoned the Commissioner's office to advise that Strathclyde Police had completed its investigation of his complaints. The Commissioner's office thereafter requested the papers from Strathclyde Police. These were received by the Commissioner's office on 3 September 2009.

The applicant's complaints are in relation to two very different sets of circumstances and were dealt with by Strathclyde by way of a number of separate investigations. His complaints have been dealt with by the Commissioner in two separate complaint handling reviews.

Background

The complaints dealt with in this report arise from a neighbour dispute between the applicant and his family, and Constable A who lived in the flat above him.

According to a letter sent by the applicant's wife, Mrs X, to the Chief Constable dated 22 August 2006, the applicant had introduced himself to Constable A, who asked him about the parking situation around their building. The applicant advised him that although there was no formal arrangement, each resident had a space that they used, and common courtesy had always applied regarding this. However, according to Mrs X's letter Constable A proceeded to ignore any informal, courteous arrangement, and continually parked in the space which the applicant normally used. Mrs X stated in her letter that Constable A was "utilising his position as an employee of Strathclyde Police to persistently undermine existing arrangements".

According to her letter, Mrs X had been advised that Constable A was seen driving a vehicle while wearing a plaster cast on his arm. She added that she and the applicant had "chosen to ignore" several "karaoke/parties" which had lasted well into the early hours of the morning (she gave 5.30 am as an example). Mrs X and the applicant had chosen to ignore these parties as they regarded them as being held within a "settling-in period"

Mrs X also claimed that on 16 August 2006 the applicant had been confronted by Constable A in the presence of a witness. According to Mrs X, the applicant had been cleaning the communal bin area on behalf of all the residents, when Constable A approached him in an aggressive manner asking, "do you have a problem with us?" The applicant asked what he meant by this and Constable A then asked, "why have you not cleaned my wheelie bin?" According to Mrs X the applicant replied that he had yet finished cleaning the bins. Constable A then allegedly asked the applicant, "do you think I'm stupid?" and told the applicant not to talk to him as if he were an idiot. Mrs X added that this alleged verbal attack on the applicant by Constable A had left her family traumatised and amounted to anti-social behaviour.

According to Mrs X, since the applicant admitted his mental health problems to Constable A, the latter appeared to be exacerbating these problems.

On 14 September 2006 the applicant and Mrs X met with Inspector B and informed him of an additional complaint they had about Constable A. Specifically, they believed that Constable A had been misusing police vans by using them to transport his bike.

On 6 November 2006, the applicant telephoned his local police office and spoke with Inspector B regarding another alleged incident involving Constable A. According to the applicant Constable A "dunted" and sworn at him within the common close that day.

The applicant contacted Strathclyde Police again on 20 February 2007 to make a further complaint about Constable A. On this occasion he claimed that Constable A had a camera set up in his window which the applicant believed was being used to film him and his family.

In late 2007 Constable A and his partner, Ms D, sold their property and moved elsewhere. On 11 October 2007 they were in the process of moving from their flat with the help of Constable A's parents, Mr and Mrs E. According to the applicant, he noticed that day that the brake cable on his son's bike, which was kept outside the applicant's flat, had been cut. He claimed that because the bikes had been tampered with before, he checked them regularly, and knew that the bike had been fine at around 3.30 – 4 pm that day. The applicant believed that the brake cable had been cut by the applicant or one of those who were assisting him with the move. The applicant made this allegation first to Strathclyde Police and subsequently to the Procurator Fiscal.

The Complaints

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

- (1) that Constable A harassed the applicant with his anti-social behaviour, such as having loud parties until the early hours of the morning;
- (2) that Constable A abused his position as a police officer by, for example, obtaining information from the factor of the building and parking wherever he liked;
- (3) that while off-duty Constable A drove a car while wearing a plaster cast on his arm;
- (4) that Constable A misused a police van by transporting his bike in it;
- (5) that Constable A verbally abused the applicant;
- (6) that Constable A, being aware that the applicant suffered from mental health problems, tried to provoke him;
- (7) that Constable A banged into and swore at the applicant;
- (8) that Constable A used a camera to film the applicant and his family; and
- (9) that Constable A or his friends cut through the brake cable on the applicant's son's bike.

The Commissioner's Review

With the exception of complaint 9 which is a criminal allegation, all of the above complaints were dealt with by Strathclyde Police according to the previous definition of a complaint about the police. Essentially, that definition did not include complaints made about police officers in connection with alleged "off-duty" behaviour. The current definition includes both on and off-duty complaints. Accordingly, many of the allegations made by the applicant and his wife were not, technically speaking, complaints about the police in terms of the definition applicable at the time.

The Commissioner considered whether it was appropriate in light of this to conduct complaint handling reviews of those complaints. Given that the allegations made by the applicant and his wife were effectively treated as formal complaints, and in order to achieve a sense of completeness, the Commissioner decided that he should do so.

This remainder of this section sets out the Commissioner's views on the manner in which the complaints were handled by Strathclyde Police. Complaints 1-6 are dealt with together while complaints 7-9 are considered in turn.

Complaints 1 - 6

Internal Handling

Following the letter of complaint to the Chief Constable, Inspector B met with the applicant and Mrs X to discuss the matters which had been raised. On 25 September 2006, Inspector B completed a report on the complaints.

In respect of complaint 1 Inspector B confirmed with the applicant that the parties held by Constable A had taken place during a "settling in period". Inspector B established that the last one had been held in February 2006, five weeks after Constable A had moved into the property.

In respect of complaint 2, according to Inspector B's report the applicant had accepted that the parking issue was not a matter for the police. The applicant and his wife also accepted that the parking bays were not marked and that they had no letter from the factor allocating particular bays. According to Inspector B, the applicant and his wife also accepted that it was only their perception that Constable A parked where he liked because he was a police officer, and there was no evidence to support this view.

Inspector B reported that neither the applicant nor Mrs X could provide any evidence that Constable A was abusing his position as a police officer. According to the report, the applicant and his wife believed Constable A "only does what he does because he is a police officer and that he thinks he will get away with it". However, they could not be specific as to why they believed this to be the case.

Inspector B reported that on 21 October 2006 he had spoken to Constable A who denied attempting to gain information from the factor of the property by use of his position as a police officer.

Inspector B concluded that there was no evidence that the behaviour described was anything other than a perception on the part of the applicant and his wife. According to Inspector B, regardless of whether the behaviour was actual or perceived, such behaviour did fall within the police remit.

In respect of complaint 3, Inspector B established during the meeting with the applicant and his wife that no-one had actually witnessed Constable A driving a car while his arm was in plaster. Inspector B explained that, even if he had done so, there was no evidence that his driving ability was impaired at the time.

With regard to complaint 4, the applicant believed that he had witnessed Constable A arrive in a marked police van and pick up his cycle. A few days later he saw Constable A unload his cycle from an unmarked van which he believed to be a police vehicle.

Inspector B also provides details of Constable A's position on these allegations. According to Constable A, around that time he had cycled to work and felt unwell during his shift. He had therefore asked a colleague to help him take his cycle home in a marked police van. He returned to work some time later and at the end of his shift obtained a lift from a colleague in own vehicle. Constable A provided the details of the colleague who had assisted him.

Inspector B discussed with Constable A the personal use of police vehicles. However, given the health and safety implications, Inspector B believed Constable A's actions to be "no more than a supervisor might have suggested."

In respect of complaint 5, Inspector B discussed with the applicant his allegation that Constable A had verbally abused him while he was cleaning the communal bin area. According to Inspector B's report:

"[The applicant] states the phrases were as stated on their letter of complaint, but admitted during interview that in reply to [Constable A] allegedly saying 'don't talk to me like I'm a clown' he replied 'no one is making accusations, but if the cap fits wear it.'"

Inspector B notes that he contacted the applicant's uncle, Mr H, who had been a witness to the incident. Mr H could not recall the specifics of the conversation, but stated categorically that "the other guy" (Constable A) had not been aggressive and was in fact "calm and collected".

Inspector B's report states the following in relation to the positions adopted by Constable A and Ms D:

"Both Constable [A] and Ms [D] alluded to a number of issues with [the applicant] which they did not report and which are not detailed within this report. However they were sufficiently concerned after the incident on 16 August 2006 to have obtained information on anti social neighbours themselves and have started a log of incidents involving [the applicant]."

According to his report, Inspector B explained to the applicant that this incident did not amount to a breach of the peace.

In respect of complaint 6, Inspector B had found nothing to support the applicant's claim that Constable A was trying to "put him over the edge".

Inspector B's report also deals with other points raised by Mrs X in her letter. These included Mrs X alluding to her other neighbours being "appalled with regards to [Constable A]'s unfortunate and unprofessional conduct." Inspector B stated the following in relation to his discussion with the applicant and Mrs X on this point:

"[They] admitted there is no suggestion that [Constable A] has spoken to any other resident in the way they allege he has spoken to [the applicant]. [They] also admit that the other alleged witnesses speak to nothing more than [Constable A] moving his car into what [the applicant] considers 'his' parking space."

In concluding his report, Inspector B suggested that the applicant and his wife be furnished with a written response, although he had already explained to them that most of their complaints were non-criminal or else not matters for the police. He did not consider there to be any evidence of misconduct by Constable A.

No written response was issued to the applicant at that time. However, on 4 April 2008 Chief Superintendent K wrote to the applicant in relation to complaint 9 and stated the following in relation to his other complaints:

"I am also aware that you mentioned a number of historical non-criminal complaints involving the police officer subject to complaint, when you discussed with Inspector [L] of my Department that you are satisfied that these were addressed by Inspectors [B] and [C] of [the] division. I therefore do not intend re-visiting these previously resolved issues."

Furthermore, in a statement dated 12 February 2008 the applicant stated the following:

"I have also been made aware that as regards my other complaints regarding Constable [A]'s conduct off duty, contained within my letter, have also been investigated by Inspectors [B] and [C] and I have previously been updated regarding these."

Consideration

According to Strathclyde Police's complaint handling procedures in place at the time, "off-duty" complaints made about police officers were not recorded as formal complaints about the police. As noted above, this is because at that time the definition of a complaint about the police did not include complaints made about acts of omissions of officers while off-duty. Off-duty complaints would instead be investigated like any other involving members of the public. It was a matter of judgement for the division or department concerned whether a report was submitted to the Complaints and Discipline Branch. Key to this decision making process was whether the alleged behaviour might constitute misconduct under the Police (Conduct) (Scotland) Regulations 1996.

The overriding principle was whether the conduct had a bearing on the ability of the officer to perform their role or had the potential to affect the reputation of the force.

In the present case, the decision was taken to investigate the complaints.

It is clear from his report that Inspector B spent a great deal of time with the applicant and his wife, dealing in turn with each point they had raised. Inspector B also took time to explain to the applicant and his wife the difference between an off-duty complaint about a police officer and a formal “on-duty” complaint. However, he made clear to the applicant and his wife that off-duty officers were still subject to the “Misconduct Regulations”. In addition, Inspector B spoke with a number of other individuals including Constable A and the applicant’s uncle, Mr H.

Despite Inspector B’s suggestion, no written response was issued to the applicant and his wife until Chief Superintendent K’s letter of 4 April 2008. As noted above, however, the applicant acknowledged in his statement of 12 February 2008 that he was updated in relation to these complaints.

Strathclyde Police’s current procedures in relation to off-duty complaints provide only that Sub-divisional officers should “consider writing a final letter to the complainer if appropriate”. In the Commissioner’s view, although there may be cases in which a written response to an “off duty” complaint is not required, as a general rule such responses should be given. Such an approach is consistent with Strathclyde Police’s procedures in respect of “on duty” complaints which provide (both then and now):

“Good practice suggests that there are very few circumstances where it is not appropriate to write to a complainer detailing the outcome of the complaint, even when that complaint is resolved by an explanation delivered personally. Remember the reputation and service quality of the Force may be judged externally on the manner in which we deal with complaints. In the absence of a clear audit trail the Force is left open to allegations of covering up or suppressing complaints.”

In the Commissioner’s view, these considerations apply equally to off-duty complaints as those arising from acts or omissions occurring on-duty.

Overall, the Commissioner considers that these complaints were dealt with in a reasonable manner and in accordance with the procedures in place at the time, However, the Commissioner recommends that Strathclyde Police alters its current standard operating procedures regarding complaints about the police so that the above quoted passage is reflected in the provisions relating to off-duty complaints.

Complaint 7: Alleged aggressive behaviour

Internal handling

On 8 November 2006 Inspector B produced a second report which he described as a continuation of his previous report. According to Inspector B, the applicant had called him two days earlier on 6 November 2006 claiming that there had been another incident involving Constable A who the applicant claimed had “dunted” and sworn at him in the common close of their building.

According to his report, Inspector B visited the applicant along with Sergeant M. Inspector B found it difficult to establish with the applicant what had happened as he continually referred back to non-criminal complaints which had been dealt with. He blamed Constable A for his current mental health issues.

Inspector B established with the applicant that on the occasion in question he had been out “taking photographs of the bins, which had been put out for collection by Constable A but did not include

their bin [presumably that belonging to the applicant and his wife]." Inspector B commented in his report that Constable A's actions in this regard were in compliance with the advice Inspector B had given to both parties not to become involved in incidents with one another. The applicant claimed that he stepped through the outer close door, holding it open for Constable A who was returning to his own flat. He alleged that as he was entering his flat, Constable A "dunted" and swore at him. In particular, he claimed that Constable A had said to him, "is that cos you're in the shit?"

When questioned by Inspector B the applicant could not say that the "dunt" had been deliberate, as Constable A had been carrying a bag upstairs at the time. His perception was that it was not a criminal act. In relation to Constable A's alleged comment, Inspector B informed the applicant that, even if it had been said, he did not consider it to be a breach of the peace.

According to Inspector B's report, the applicant and his wife appeared to accept his advice and assistance.

Inspector B met with Constable A the following day regarding the complaint. Constable A accepted that he had entered the common close at the same time as the applicant but denied banging into or even speaking to him. Constable A stated that he and his partner Ms D were "so concerned about malicious complaints that they both use their mobile phones to record sound and vision whenever they enter or exit their flat."

Constable A then showed Inspector B a recording on his phone from a time consistent with that given by the applicant in his complaint. Inspector B noted that the recording did not disclose any verbal communication between Inspector B and the applicant. Inspector B did not seize the phone but asked Constable A to retain it. He advised Constable A that "partly due to no crime report being raised and partly due to difficulties proving the recording, it is unlikely that it could be used to charge [the applicant] with wasting the time of the police." According to his report, however, it was Inspector B's intention to re-interview the applicant in this connection.

Inspector B requested that his report be submitted to the Sub-Divisional officer for his attention.

Consideration

In the Commissioner's view, Inspector B carried out reasonable and prompt enquiries into this complaint. He discussed the matter fully with the applicant and his wife and established that the "dunt" might well have been accidental. He also obtained evidence from Constable A which did not support the applicant's allegation.

Although no written response was sent to the applicant at the time, it is clear from Inspector B's report and also the applicant's statement of 12 February 2008 that he was updated in respect of his complaints.

The Commissioner considers that this complaint was dealt with in a reasonable manner. Accordingly, aside from the recommendation made in respect of complaints 1-6 above, no further action is required of Strathclyde Police in this connection.

Complaint 8: Alleged filming of the applicant

Internal handling

This complaint was dealt with by Inspector C whose report on the matter is dated 26 February 2007. According to Inspector C, the applicant had contacted Strathclyde Police again on 20 February 2007. On this occasion he spoke with Inspector C and informed her that he believed his neighbour had a video camera set up in his window to record his actions and those of his family.

On the same date Inspector C, accompanied by Sergeant N, visited Constable A at his home to discuss the applicant's complaint. Constable A confirmed that he had a camera situated at his window but explained that it was a crime prevention measure and was positioned to cover his car. Constable A showed the recording to Inspector C which confirming that the camera was indeed positioned to cover his car.

Inspector C telephoned the applicant on 21 February 2007 and informed him of her findings.

Consideration

Again, the Commissioner considers that reasonable and prompt enquiries were carried out by Inspector C into this complaint. Although no written response was sent to the applicant at the time, it is clear from both his own statement and Inspector C's report that he was advised of the outcome and was reassured as a result.

In the Commissioner's view, this complaint was dealt with in a reasonable manner by Strathclyde Police. Accordingly, aside from the recommendation made in respect of complaints 1-6 above, no further action is required of Strathclyde Police in this connection.

Complaint 9: Alleged damage to a bicycle

Internal handling

The applicant contacted Strathclyde Police again on 11 October 2007 to make a further complaint about Constable A. After checking on two bikes he kept secured to a railing in the landing outside his flat, the applicant found that the brake cable on his son's bike had been severed. He claimed that Constable A, or one of his friends, was responsible for this.

Inspector C carried out enquiries in relation to this complaint and found that there was no evidence that the damage to the cable had been caused deliberately.

On 23 October 2007, the Area Procurator Fiscal wrote to Chief Superintendent K enclosing a letter he had received from the applicant. The applicant insinuated in the letter that Constable A or one of his friends had cut the brake cable on the bike. The Area Procurator Fiscal requested that enquiry be made into the applicant's allegation.

A further, extensive investigation was thereafter carried out, the results of which were communicated to the applicant by both the Area Procurator Fiscal (in a letter dated 16 January 2008) and Chief Superintendent K (in a letter dated 4 April 2008). Essentially, their conclusion was that there was no evidence that the damage to the cable was a deliberate act; even if it was, there was no evidence as to who was responsible.

Chief Superintendent K's letter of 4 April 2008 concludes with the following passage:

"I can confirm that a review of the whole circumstances of your complaint at this time has taken place. It has been decided that it is not appropriate to take formal action against the officer subject to complaint."

Consideration

This complaint is effectively an allegation of vandalism. In terms of section 34(3)(b) of the Act, the Commissioner has no power to deal with complaints about the police which consist of an allegation of an act which constitutes a crime. In the Commissioner's view, however, the purpose of section 34(3)(b) is to preserve the role of the Crown in considering criminal complaints about the police, and to prevent any conflict between its functions and those of the Commissioner. In the present

case, the Area Procurator Fiscal decided to take no proceedings against the officer concerned. The applicant's allegation was thereafter considered by Strathclyde Police as potential misconduct, the decision being taken that there was no basis for such proceedings against the officers. The Commissioner has assumed that the passage quoted immediately above amounts to intimation of that decision to the applicant.

Given that the Area Procurator Fiscal considered the allegation, and that it was thereafter treated by Strathclyde Police as a non-criminal allegation under the Police (Conduct) (Scotland) Regulations 1996, the Commissioner considers that he has the power to review the handling of this complaint, but only insofar as it concerns potential misconduct.

In previous reviews the Commissioner has identified the need for complainers to be given as much information as is necessary to properly inform them of the reasons why misconduct proceedings are not considered to be justified. In the Commissioner's view, the passage quoted from Chief Superintendent K's letter to the applicant does not satisfy this requirement. Ordinarily in these circumstances the Commissioner would recommend that further information be given to the applicant to explain why misconduct proceedings are not being pursued. However, Chief Superintendent K effectively advised the applicant that there was no evidence of a crime having been committed. In addition, the Area Procurator Fiscal advised the applicant that there was "no evidence at all to point to who may have caused the damage." In the Commissioner's view, this is sufficient to properly inform the applicant as to the reasons why no misconduct proceedings are being pursued.

Conclusions, Recommendations and Learning

Complaint 1 – 6:

In the Commissioner's view, these complaints were handled in a reasonable manner by Strathclyde Police. However, the Commissioner recommends that Strathclyde Police alters its standard operating procedures to incorporate a general rule that complainers making off-duty complaints about officers receive a written response to these. This recommendation also applies to complaints 7 and 8 below.

Complaint 7: Alleged banging into the applicant and swearing

In the Commissioner's view, this complaint was handled in a reasonable manner by Strathclyde Police.

Complaint 8: Alleged filming of the applicant

In the Commissioner's view, this complaint was handled in a reasonable manner by Strathclyde Police.

Complaint 9: Alleged damage to a bicycle

As noted above, the Commissioner may review the handling of this complaint only in so far as it raises issues relating to alleged misconduct. In the Commissioner's view, that aspect of the complaint was handled in a reasonable manner. Accordingly, no further action is required of Strathclyde Police in this connection.

Background

On 15 December 2007, the applicant attended a Christmas night out with fellow members of a local sports club. During a meal in a local restaurant, the applicant became involved in an altercation with another member of the club, Mr C.

The applicant's account

According to his statement of 16 June 2008, on the evening in question the applicant had “a couple of pints” to accompany his meal. Mr C was encouraging the applicant to drink wine, but he declined as he was planning an activity early the next day. Mr C told the applicant that he and others were planning to move on to another pub; however, the applicant declined saying that he was going home. Mr E said he would get the applicant a taxi. According to the applicant, Mr C then swore and referred to him in derogatory terms. The applicant repeated that he was going home and did not want to drink anymore. The applicant stated that as he was speaking with other members of the group, Mr C came up behind him, grabbed him around the neck and punched him in the kidneys. According to the applicant, Mr C then started punching and kicking the applicant.

The applicant claimed that Mr E had witnessed him being assaulted, as had everyone else including the bar and kitchen staff. Someone then took Mr C outside and Mr E went out to speak with him while the applicant sat down and took a glass of water and a Valium. The applicant then went outside as he wanted an apology from Mr C. However, on seeing the applicant Mr C shouted, “if you don't get back in there I will do you again.” A further fight then ensued outside the restaurant, during which the applicant got Mr C “on the deck” and gave him “a couple of skelps”.

A black “four by four” then pulled up and some males got out. The applicant heard Mr E shouting, “Get him off, he will kill him.” The applicant was then pulled off Mr C. The next thing he knew he was on the ground and Mr C was “punching into” him. Mr C also bit the applicant's hand. The applicant then put his thumb into Mr C's eye socket and threatened to take his eye out. Both the applicant and Mr C then let go of one another.

The applicant then walked down the street and waved down a police car. He told the police officers that he wanted to press charges as he had been assaulted. He told a police officer what had happened.

The applicant then made his way back to the restaurant and the police met him there. However, he started to become “really flustered” because Mr C was shouting at him. He was unable to say what he wanted and began swearing at the police officers. According to the applicant he was not swearing at the police, he was just swearing.

The police then tried to find witnesses but told him that nobody had seen anything and to go on his way. He then told the officers to telephone Constable K (as a character witness) but they informed him he was wasting police time and told him to get himself home. The applicant told the officers that he would make a complaint but the officer said “get yourself home.” The applicant added that he was told (presumably by the officers) that if he swore again he would be jailed.

The applicant began experiencing pain in his side and attended hospital where he was given morphine and kept in for five days. He claims that when he came out of hospital he was in bed for two months.

Constable A's account

It is important to make clear that Constable A is a different officer from that given the same designation in report reference PCCS/00369/PF-SP(A) above.

According to Constable A, he was on mobile patrol on the night in question when he saw the applicant in the street and noticed he had a small cut on his face. Constable A stopped to ask how he had been injured and to ask whether he needed medical attention. The applicant immediately became abusive towards Constable A, stating "I want him fucking charged with assault."

Constable A observed that the applicant was "extremely intoxicated". When Constable A attempted to obtain details from him the applicant began an "incoherent rant" about the police being useless and that he knew a "top Police Officer" and would have Constable A sacked. According to Constable A, the applicant continued to be uncooperative and abusive. He asked the applicant if he required an ambulance, which he refused.

Constable A eventually calmed the applicant enough to obtain his details and version of events in relation to the fight at the restaurant. Constable A eventually persuaded the applicant to remain at the police vehicle while he visited the restaurant and spoke to the manager, Mr B.

According to Constable A, Mr B informed him that the applicant appeared to have been the main aggressor and had been injured as a result of having to be restrained by the others in his party. Constable A then advised the applicant that he appeared to have been the main aggressor. The applicant again threatened to have him sacked.

The applicant then informed Constable A that Mr C had gone to a particular public house. Constable A requested that the applicant remain at the police vehicle while he made enquiries with Mr C. The applicant was initially reluctant to stay but eventually agreed to do so. Constable A then traced Mr C who informed him that the applicant had been drinking heavily and had become abusive towards Mr C before trying to punch him. He explained that it was as a result of being restrained that the applicant had sustained his injuries. Mr C did not wish the applicant to be charged.

When Constable A returned to his vehicle the applicant had gone. Constable A was informed that the applicant had entered a taxi while he was speaking with Mr C.

Constable D's account

Constable D was on patrol with Constable A when they saw the applicant and noted that he had a small cut on his face. Both she and Constable A went to check on his welfare, Constable A asking if he required medical treatment or if he wanted an ambulance. However, the applicant became abusive towards Constable A and shouted "I want him fucking charged with assault". The applicant appeared to Constable D to be heavily under the influence of alcohol.

Eventually the applicant provided his details, although he continued to be abusive and threatened that he would have Constable A sacked. He was again asked by Constable A if he required an ambulance, which he again refused. The applicant was uncooperative and stated that he would not

wait while the officers carried out their enquiries. He continually stated that the police were useless. He also stated that he had “got a CID officer fired”.

Constable D stated that she spoke with the staff at the restaurant who informed her that the applicant had instigated the incident, and had been injured while being restrained. Constable D then spoke with Mr C. Mr C claimed that the applicant had consumed a large amount of alcohol and had become aggressive and abusive before trying to punch him. Mr C also claimed that the applicant was injured while being restrained. Mr C did not wish any further police action to be taken.

When Constable D returned to the police vehicle, the applicant had gone.

The Complaints

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

- (1) that police officers did not offer medical assistance to the applicant;
- (2) that police officers were unprofessional and did not follow procedures when dealing with the incident; and
- (3) that an officer failed to deal with alleged threats that were being made to him by Mr C.

The Commissioner’s Review

This section sets out the Commissioner’s views on the manner in which the applicant’s complaints were handled by Strathclyde Police.

Complaints 1 and 2

Internal Handling

On 26 March 2008, Strathclyde Police received a letter from the applicant in relation to the incident involving him and Mr C. He provided his account of the incident and expressed dissatisfaction as to how the officers had dealt with it.

On 27 May 2008, Inspector J completed a report into the applicant’s complaints. He met with the applicant on 2 May 2008 to discuss his complaints but was unable to take a written statement as the applicant became extremely distressed when discussing the contents of his letter.

As noted above, On 7 May 2008 Constable A submitted a statement regarding the complaints. In his statement, Constable A claims that he continually asked the applicant if he required medical assistance, but this was refused. His statement concludes with the following passage.

“I dealt with [the applicant] in a totally professional manner throughout, offered medical assistance on a [n]umber of occasions and dealt with his complaint in an appropriate manner. I therefore totally refute the allegations made by [the applicant].”

Details of Constable D's statement have been set out above. Constable D refuted the allegations made by the applicant and stated the following:

"I adopted a professional manner throughout and carried out robust enquiries into the assault. I noted the cut on [the applicant's] face to be of a minor nature but nonetheless he was offered medical assistance on numerous occasions which he continually refused."

On 20 June 2008, Superintendent L wrote to the applicant in response to his complaints. He began by apologising for the time taken to provide a response and provided an explanation for this.

In relation to complaint 1, Superintendent L acknowledged that his injuries must have been fairly serious given that he was detained in hospital. However, he pointed out that the injuries to the applicant's ribs would not have been "very obvious" to the officers. Although the applicant's injury to his hand had been evident to the officers, it appeared to be of a minor nature. In support of this, Superintendent L referred to Dr I's statement in which he had described the injury to the applicant's thumb as "superficial". Superintendent L also highlighted that, according to both officers, the applicant was offered medical assistance on at least two separate occasions but had ignored the first and refused the second. Superintendent L stated that he was faced with two conflicting versions of events and that it was therefore difficult to establish "what exactly was or was not said..."

In respect of complaint 2, Superintendent L stated that while he understood that the applicant felt aggrieved and distressed because of the incident, both officers had found him very difficult to communicate with, verbally abusive, and uncooperative.

Superintendent L acknowledged that the applicant had told Constables A and D that he wished Mr C to be charged. He also acknowledged that in the circumstances the officers concerned ought to have made a follow up call to the applicant in order properly to explain the outcome of their enquiries. Superintendent L apologised for the fact that this was not done.

Superintendent L went on to state the following:

"Unfortunately the officers' initial enquiries failed to obtain any information or evidence to substantiate your complaint that you had been assaulted. Notwithstanding this the officers should have raised a crime report unless they could prove that a crime had not taken place, which they were not in a position to do."

Superintendent L's letter confirmed that both officers had been "reminded of their shortcomings in this instance and of the expectation that any similar complaint that they may attend in the future will be investigated in a much more thorough and professional manner."

Superintendent L also confirmed to the applicant that the officers were now in the process of carrying out the necessary enquiries which should have been done initially. However, he reminded the applicant of the possibility of "counter charges" being made against him. He assured the applicant that he would be informed fully and expeditiously of the outcome of these enquiries. Superintendent L concluded by apologising again for the delay in the alleged offence being appropriately addressed.

On 6 August 2008 Constable A reported the incident to the Procurator Fiscal. The report related the findings of his enquiries, and in summary, found no evidence to substantiate the applicant's allegation. Constable A spoke with all of the witnesses referred to by the applicant; however, they claimed not to remember witnessing the incident. Both the applicant and Mr C admitted that a fight took place, but, aside from their own accounts, there was nothing to suggest who the instigator was.

Inspector J wrote to Superintendent L and Chief Inspector N following Constable A's report. He stated that he had discussed the matter with the applicant's wife but that the applicant was in hospital and awaiting surgery, and neither his physical nor mental health was good at that time. It was agreed between Inspector J and the applicant's wife that the applicant would not be informed of the outcome of Constable A's investigation until he had recovered.

Inspector J produced a final report into the complaints on 8 October 2008. According to the report, on 28 September 2008 Constable A contacted the applicant to update him fully on the outcome of his enquiries. The applicant had not been pleased with the outcome and insisted that the witnesses be charged with perjury for failing to acknowledge that the assault took place. Inspector J noted that it had been explained in previous meetings that charging the witnesses was not a viable option. However the applicant remained single-minded in his expectations that Mr C should be charged and appear in court, even if it meant being charged himself. Inspector J concluded that the applicant would raise the matter again at some point in the future despite the fact that Constable A's enquiries "could not have been more thorough".

On receipt of the report, Superintendent L agreed that nothing more could have been done to resolve the complaint. In a handwritten note he stated the following:

"... there is insufficient evidence to bring charges per [the applicant's] requirement. [The applicant] has been fully apprised of the situation and therefore the matter can now be regarded as concluded."

Consideration

Inspector J's report was detailed and concise, and demonstrates that he dealt with the applicant in a dignified manner taking account of his mental health problems. Following a visit with the applicant, Inspector J noted that he had not obtained a statement at that time and fully explained his reasons for this. This assisted the Commissioner in understanding Inspector J's approach to this aspect of his handling of the complaints.

Superintendent L communicated the response to the complaints clearly and his letter fully reflected the enquiries that had been undertaken. He informed the applicant of the steps that would be taken in light of his complaint and that the officers concerned had received advice in connection with their duties in such situations.

Given the thorough investigation of his complaints and the clear and detailed response he received from Superintendent L, it is difficult to see what more could have been done by Strathclyde Police in this connection. In the Commissioner's view, these complaints were handled in an entirely reasonable manner. Accordingly no further action is required of Strathclyde Police in this connection.

Complaint 3: Alleged failure to deal with threats against the applicant

In his letter received by Strathclyde Police on 26 March 2008 the applicant complains about a failure to "deal with the threats directed towards him" by Mr C. However, he does not provide any further information in this connection, nor does he make any reference to the matter in his statement of 16 June 2008.

There is no explicit reference to this complaint in Inspector J's report of 27 May 2008, nor in Superintendent L's letter to the applicant of 20 June 2008. However, the Commissioner notes that none of the witnesses to the incident makes any mention of threats having been uttered by Mr C towards the applicant.

Conclusions, Recommendations and Learning

Complaints 1 and 2

In the Commissioner's view, Strathclyde Police handled these complaints in an entirely reasonable manner. Accordingly no further action is required of Strathclyde Police in this connection.

Complaint 3

In the Commissioner's view, given that this complaint was not addressed by Strathclyde Police, it was not dealt with in a reasonable manner. The Commissioner therefore recommends that Strathclyde Police provides the applicant with a response to this complaint.

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