

Report of a Complaint Handling Review in relation to Strathclyde Police

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

Summary and Key Findings

The complaints reviewed within this report arise from the way in which Strathclyde Police dealt with a road traffic incident which resulted in the death of a 14 year old boy.

Of the complaints reviewed within this report, the Commissioner found that 14 were dealt with reasonably by Strathclyde Police, while six were not dealt with reasonably. One remaining complaint was referred back to the police for further work to be carried out. A recommendation was also made that Strathclyde Police explain to the applicants why the vehicle involved in the incident was not placed under cover for a number of hours before examination.

The Commissioner also found that, whilst Strathclyde Police has clearly acknowledged failings in how the incident was handled, its responses to the applicants were sometimes characterised with partial justifications for the action taken. As such, the Commissioner has recommended that Strathclyde Police issue a final, unreserved, apology to the applicants for these failings.

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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 complainer in a reasonable manner.

Preamble

The applicants have requested that the PCCS review the manner in which Strathclyde Police handled their complaints about the police. These complaints arose from the way Strathclyde Police dealt with a road traffic incident that resulted in the death of their son on 29 July 2003. From 25 November 2004 onwards, the applicants have raised questions and complaints about the police handling of the incident and the subsequent investigation into their complaints about the police.

Following the applicants' contact of November 2004, Strathclyde Police investigated the incident and responded on 21 February 2005. The applicants wrote to Her Majesty's Inspectorate of Constabulary for Scotland (HMICS) on 30 April 2005 expressing their dissatisfaction at the handling of their complaints. After establishing with Strathclyde Police that it had not previously recorded their contact as a formal complaint about the police, HMICS referred the matter back to the police to investigate. In mid June 2005, Strathclyde Police formally recorded the applicants' concerns as a complaint about the police.

An investigation was then carried out under the Police (Conduct) (Scotland) Regulations 1996. Two criminal complaints and sixteen non criminal complaints were identified and recorded. The criminal complaints were referred to the Crown Office and Procurator Fiscal Service (COPFS).

The applicants remained dissatisfied with the outcome of this investigation and wrote again to HMICS which then carried out a review of the manner in which the applicants' complaints had been dealt with. HMICS' report, completed in November 2006, made five recommendations but noted that some questions posed by the applicants remained unanswered by Strathclyde Police.

The Commissioner is aware that it has been over six years since the incident in which the applicants' son was killed, and that they still have questions which they believe remain unanswered. However, he is also aware that many of the issues raised by the applicants have been looked at by various bodies over the years, the results of which he must take into consideration.

As such, it is the Commissioner's intention during this review to identify and address any issues which he believes remain outstanding and which fall within his remit under the Police, Public Order and Criminal Justice (Scotland) Act 2006. The Commissioner will look at how the applicants' complaints about the police have been dealt with based on the information provided to his office by Strathclyde Police, the applicants and HMICS, having regard to any changes in relevant legislation and police procedures and to complaint handling within Strathclyde Police over the last six years. The Commissioner will also look at the outcome of HMICS' recommendations and attempt to address the questions which the applicants believe remain unanswered to date.

General Background

At around 3.30pm on 29 July 2003, the applicants' 14 year old son was cycling home from work when he and the vehicle travelling behind him were involved in a road traffic incident ("the incident"). The report of sudden death (a report compiled by the police and submitted to the Procurator Fiscal within 24 hours of a sudden death), notes that the applicants' son was travelling on his bike and that a car, driven by Person A, was closely following behind him. Person A's husband (Mr B) and daughter (Ms C) were within this vehicle. At the time of the incident, a second car was travelling in the opposite direction with five people inside. A wheelie bin was situated at the left hand side of the road where the incident took place.

In her statement, Ms C spoke of the applicants' son beginning "to wobble" and that he toppled from his bike. She states that Person A swerved out to avoid the cyclist but felt the car go over either the bike or the cyclist and that their vehicle then stopped on the other side of the road and that she called for an ambulance. Ms C states that there was a wheelie bin at the incident but she did not see the cyclist hit it. Approximately 10 minutes later the ambulance arrived at the scene carrying two paramedics and an ambulance technician. Ms C states the ambulance was leaving as the police arrived.

The driver of the on-coming car, Mr D, states that following the incident he stopped and helped a man move the bike and that he picked up the wheelie bin. He also states that he had not seen the bin prior to the incident, that he then assisted with controlling the traffic, and that he moved his car after the police arrived and the ambulance had left.

One of the paramedics who attended at the scene, Mr E, states that when he examined the cyclist, he believed the injuries sustained were serious and took the decision to transport him quickly to hospital. The attending ambulance technician, Mrs F, states that she informed a police officer that the cyclist had:

"serious injuries and that we were concerned regarding him."

At around 4.00pm the ambulance arrived at a local hospital and, despite the efforts of medical staff, the applicants' son was pronounced dead at 16.37pm.

According to his initial statement, Constable G received a call at around 3.40pm to attend the incident and that, having arrived at the scene with Constable H, Mrs F informed him that a cyclist had sustained "potentially serious injuries to his head and chest area". He states that Person A identified herself to him and that the occupants in the on-coming vehicle advised him that they had witnessed the incident. He maintains that he then set about preserving the scene whilst Constable H obtained witness details and that he arranged for the local patrol sergeant, Sergeant J, to attend to assist. Constable G states that he also arranged for Sergeant J to bring breathalysing equipment to the scene.

Having been notified at approximately 4.30pm that a serious road accident had taken place, two road policing officers, Constables K and L, were dispatched to the scene. Both officers arrived to examine the scene of the incident at around 7.06pm and obtained statements from the five witnesses in the oncoming car later in the evening.

Sergeant J states that at approximately 10pm he contacted the policing department to arrange for a Family Liaison Officer for the applicants and was told that it would not be practical to send a Family Liaison Officer on a daily basis to the location where the applicants reside and that he was then asked if he would be prepared to act in this role. Sergeant J states that he visited the applicants the following day to "explain to them the procedure and that I would keep in contact with them". Sergeant J states that his last visit as Family Liaison Officer was recorded on 22 August 2003.

On 30 July 2003, two Strathclyde Police crash investigators, Constables M and N, were instructed to attend the scene with both officers arriving at the location at approximately 11 am. Having spoken to Constables K and L, they examined the scene of the incident, the vehicle driven by Person A and the applicants' son's bike. The sudden death report was completed by Constable K and initially contained a list of witnesses which included the doctor who received the applicants' son at hospital. The report informed the Procurator Fiscal that:

“the exact cause of the collision is unclear at present and enquiries continue regarding this.”

At a later date additional witnesses were added, including a nurse and a fire fighter (Mrs X and Mr Y) who had stopped to assist the applicants' son at the scene. The report also contained a list of productions which included photographs and a scale plan drawing of the scene.

A further report, was sent to the Procurator Fiscal by Constable M. Within this report it was noted that the vehicle had been driven shortly after the incident to Police Office Y and had been moved to a nearby garage premises for storage and examination. The report acknowledged the presence of the wheelie bin, the fact that it may have been partially on the road and its possible involvement in the incident. The report noted that two tyre scuff marks, 2 scratches and two cleaning marks had been found on the vehicle along with contact damage on the bumper in the form of a black tyre scuff mark. The report also noted that Ms C had been in the passenger seat and Mr B in the back seat of the vehicle driven by Person A.

Person A was subsequently charged under Section 3 of the Road Traffic Act 1988. On 17 March 2004, the applicants state they met with Inspector P of the road traffic division, who had offered to run through the formalities of court proceedings. Later in March 2004, the applicants wrote to the Lord Advocate to highlight their concerns about the Procurator Fiscal Service' investigation into the death of their son.

In October 2004, Person A was convicted of careless driving under Section 3 of the Road Traffic Act 1988. The charge of careless driving focuses on the quality of the driving which led to the incident, rather than the consequences of the carelessness.

The Complaints

Based on the contents of the applicants' correspondence with the PCCS and the information obtained from Strathclyde Police, the Commissioner has identified the following areas of complaint:

Complaint 1 - failure to preserve the scene of the incident

- (a) not fully closing the road after the incident
- (b) allowing the driver and her car to leave the scene
- (c) leaving the bicycle involved in the incident exposed
- (d) leaving a wheelie bin at the scene exposed
- (e) not maintaining a police presence at the scene
- (f) failure to place the vehicle involved under cover
- (g) delay in requesting/providing a Crash Investigating Team
- (h) releasing the vehicle involved back to its owner prematurely

Complaint 2 - failure to gather relevant evidence

- (a) failure to interview the driver involved
- (b) failure to breathalyse the driver at the scene
- (c) failure to interview witnesses at the scene
- (d) failure to forensically examine evidence
- (e) failure to trace other witnesses
- (f) failure to ask Mr B specific questions
- (g) failure to ask Mr D specific questions
- (h) failure to use appeal boards
- (i) failure to establish seating arrangements in the vehicle involved
- (j) failure to seize 999 call(s) as evidence
- (k) failure to carry out eye test on the driver

Complaint 3 - time taken for officers to arrive at the scene

Complaint 4 - that false information was provided to the applicants

The Commissioner's Review

General

The applicants first wrote to Strathclyde Police on 25 November 2004 asking questions regarding the way in which the police handled the incident involving their son and seeking clarification on a number of issues. These questions related to the issues underlying Complaints 1a, b, h and Complaint 3. Strathclyde Police enquired into the applicants' letter at local level, treating it as a quality of service issue, and Inspector Q was appointed to look into the circumstances behind the incident.

During his enquiries, Inspector Q met with the applicants on 22 December 2004 and reviewed the sudden death report and the statements on which the report was based. On completion of his enquiries, Inspector Q submitted a report to Chief Inspector R on 10 January 2005. On 21 February 2005, Assistant Chief Constable S responded to the points the applicants had raised.

On 24 February 2005, the applicants wrote to Assistant Chief Constable S asserting that the explanations he had given were not consistent with information they had knowledge of. This letter also asked further questions of the police relating to the issues underlying Complaints 1a-g, Complaints 2c,d,e,h,l and Complaint 3. The letter concluded by stating that they did not believe their son's death had been investigated thoroughly or effectively and that Strathclyde Police:

"discriminated against a young male cyclist by not securing and preserving the evidence at the earliest opportunity and that what followed was gross negligence."

Upon receipt of this letter, Assistant Chief Constable S wrote to the applicants advising that he had arranged for a meeting to take place between them and Chief Superintendent T. This meeting took place on 3 April 2005. According to the police minutes of the meeting, the issues surrounding Complaints 1a,b,c,f, Complaints 2c and h and Complaint 3 were discussed. These minutes also confirm that no resolution was achieved, with the applicants maintaining that the actions of Sergeant J and Constables G and H had been grossly negligent.

In mid June, Strathclyde Police formally recorded the applicants' concerns as a complaint about the police and Chief Inspector U was appointed to carry out an investigation under the Police (Conduct) (Scotland) Regulations 1996. During his investigation, Chief Inspector U met with the applicants on 1 August 2005 where they provided a typed statement referring to Complaints 1b-g, Complaints 2a-l and Complaint 4. The applicants also raised two criminal complaints detailing their belief that Constable G "lied under oath" whilst giving evidence in court and that all of the officers involved appeared to have:

"deliberately ignored, omitted and falsified evidence to mislead the Fiscal in order that no charge would be brought against [Person A]."

A total of 16 non-criminal complaints were recorded by Chief Inspector U, 11 of which were noted as neglect of duty and five as wilful falsehood.

Given that criminal complaints were alleged by the applicants, Strathclyde Police submitted a preliminary report to the Area Procurator Fiscal on 4 August 2005. On 29 August 2005, the Area Procurator Fiscal requested that a full report be submitted to him by 2 November 2005.

During the course of his investigation, from August till November 2005, Chief Inspector U obtained statements from 23 police officers of varying rank and 28 other witnesses (including people who stopped at the scene of the incident, bus drivers who had passed the scene, the pronouncing doctor, a procurator fiscal and a forensic scientist). He also met again with the applicants in October 2005.

On 11 November 2005, Chief Inspector U submitted a report to Superintendent V detailing the findings of his investigation. This report was forwarded to the Area Procurator Fiscal on 7 December 2005.

On 24 May 2006, the Area Procurator Fiscal wrote to Strathclyde Police advising that he had forwarded the applicants' criminal complaints to the Crown Office so that a decision could be made on whether proceedings were to be taken against any officer. On 30 June 2006, the Area Procurator Fiscal wrote to Strathclyde Police advising of Crown Counsel's instruction that no proceedings were to be taken in respect of the complaint.

On 11 July 2006, the Area Procurator Fiscal and Chief Superintendent W met with the applicants where aspects of the police investigation and the decision of Crown Counsel were discussed. On 24 July 2006, Chief Superintendent W wrote to the applicants detailing the conclusions reached by Strathclyde Police in relation to their non-criminal complaints.

The applicants remained dissatisfied with the outcome of the investigation by Strathclyde Police and wrote to HMICS which then carried out a review of the manner in which their complaints had been handled. HMICS' report concluded that Strathclyde Police had made genuine attempts to address the applicants' main concerns but listed five areas where further work was required. This further work related to the issues surrounding Complaints 1f and g and Complaints 2a,h and j.

Complaint 1 – Failure to preserve the scene of the incident

As noted above, the applicants have listed a number of areas where they believe Strathclyde Police failed to preserve the scene of the incident. They believe that this failure led to the potential destruction of important evidence and that, had this evidence been collected, the person driving the motor vehicle directly behind their son may have been charged with the more serious offence of dangerous driving. The applicants' letter of 25 November 2004 specifically stated:

“The actions of the Police caused our family great distress at a time of intense grief as we were aware that in previous road death cases the removal of evidence has had a bearing on whether a prosecution is brought or not and the level of charge brought. This was borne out by the length of time it took to bring a charge against the driver and also during the trial because [Person A] and her defence clearly realised that the case had been seriously weakened by the failure to preserve the evidence.”

The remainder of this section sets out the Commissioner's views on the manner in which the applicants' specific complaints were handled by Strathclyde Police. Each complaint is set out in turn and is followed by details of Strathclyde Police's handling of them and the Commissioner's views on this.

(a) Not fully closing the road following the incident

The applicants' letter of 25 November 2004 asked:

“Given that [our son] died within minutes of being in the ambulance making this a fatal crash, we would like to know why two constables with fifteen years experience between them failed to follow the Lord Advocate's guidelines – that all road deaths should be investigated as unlawful killings until the contrary is proved – by not closing the road and preserving the scene despite there being blood in the carriageway which indicated that a serious injury had occurred.”

Background

Constable G states that, after arriving at the scene with Constable H, the ambulance was just leaving and that he spoke to the driver, Mrs F, who informed him that a male cyclist had suffered potentially serious head and chest injuries and was being taken to hospital. Constable G states that he:

“took from that conversation that this may be a serious accident but had no indication or belief at that time that this would result in a fatality.”

According to Constable G, he requested that Sergeant J attend to assist at the scene and that, following an examination of where he believed the incident had occurred, he thereafter undertook to preserve the relevant part of the scene whilst Constable H obtained witness details. Constable G's statement continued that he then coned approximately 50 yards of the roadway to the middle of the road and secured police tape from the wing mirror of his police vehicle, winding the tape round each cone to create a barrier.

Constable G continues that, upon his arrival at the scene, Sergeant J indicated that he was satisfied with the course of action taken thus far. At that point, Constable G states that he was also satisfied that he had taken the right course of action.

Sergeant J states that, having received the request for attendance (at approx 3.50pm), he left for the scene. Sergeant J states that upon arrival at approximately 4.15pm, he was informed that the

applicants' son had been taken to hospital with a serious head injury and that the roadway at that time was:

“protected on the northbound carriageway by a police vehicle, accident signs and police barrier tape. The cyclist’s pedal cycle and the vehicle involved were not in their resultant positions and had been moved off the roadway into a paring area. Constable [H] had noted details of the vehicle involved and occupants. I thereafter commenced traffic duty regulating flow of traffic at the accident scene.”

According to Constable H's initial statement, having arrived at the scene she obtained details from Person A and the passengers in her vehicle and from the occupants within the oncoming car who had witnessed the incident. She noted where the incident had occurred and that there was a grey wheelie bin at the side of the road which was standing upright at the time. She stated:

“I was also informed that the vehicle involved ... [was] not in the original accident position, having been moved to a nearby car park prior to my arrival to assist with traffic flow.”

Internal Handling

As noted on page 7, the initial police enquiry into this complaint was conducted by Inspector Q, whose investigation was largely based upon the witness statements given shortly after the incident and which were included in the sudden death report sent to the Area Procurator Fiscal. Inspector Q's investigation was also influenced by observations given by Strathclyde Police Road Policing Unit.

In his report, Inspector Q commented that the preservation of the scene and actions to be taken are contained within the Association of Chief Police Officers in Scotland (ACPOS) Road Death Investigation Manual and that this was published in October 2003. Inspector Q also reported that, as far as he could establish, the Lord Advocates Guidelines and protocols had been followed.

In relation to the closing of the road, Inspector Q commented:

“Sergeant [J] formed the opinion, at the time, that there was nothing to be served by blocking off the road completely to traffic. His considerations were traffic flow and road safety.”

Inspector Q concluded:

“Taking into account all the circumstances ... I believe that the road should, in retrospect, have been closed, and all traffic diverted until the initial examination of the accident scene had been carried out at 19.05 hours. I can fully understand the decision [and] the difficulty in making that decision. The decision was made at a time prior to the guidance offered by the ACPOS Road Death Policing Manual. The decision whether or not to close the main arterial road serving [the north of the location] during the height of the summer season, together with the limited resources that were available at the time, was a factor and consideration, in the decision.”

Assistant Chief Constable S's response to the applicants gave a brief background to the police attendance at the scene of the incident and explained:

“One of [the police officers] early challenges therefore, was to identify the exact site of the collision. That having been achieved, they took steps to secure the site, using police barrier tape and the police vehicle. It was the officers' firmly held belief that the physical evidence at the crash site was restricted to one side of the carriageway and this, together with the impact of total closure of [the road], prompted the decision not to close the road completely. This was an error of judgment, albeit that the officers concerned did take steps

to preserve the evidence that was visible to them on the roadway ... In summary, it is clear that there were errors of judgement in the initial police response to the collision that led to [the applicants' son's] death and for those errors I sincerely apologise."

Following a further letter of complaint referred to her by HMICS, Chief Superintendent W recorded the matter as a complaint about the police and Chief Inspector U was appointed to investigate the matter. In relation to this complaint, Chief Inspector U noted:

"There is a distinct lack of detail contained within Constable [G]'s notebook ... It is clear if Constable [G] as the Senior Officer in attendance, had taken the time to record at least mentally the details of the reported actions of the offending vehicle he would have known the accident involved the full carriageway. He may still have taken the decision in the initial stages of this accident only to preserve the nearside carriageway ... He however would have been in a position of knowledge to quickly extend the preservation area when he discovered it was a fatal road crash."

His report concluded that the assessment of the scene by the officers involved was "flawed" in that the incident was not contained to one side of the road. Chief Inspector U concluded that:

"The officers implemented a partial closure of the roadway as a direct result of this flawed assessment. Now armed with the full details the roadway should have been fully closed. The officers whilst clearly under-performing did not act in a negligent manner. On balance the allegation is unsubstantiated."

Chief Superintendent W's response to the applicant stated:

"From Chief Inspector [U]'s report it is clear that, in hindsight, it would have been best practice to close the full carriageway. On the basis of their initial assessment shortly after their arrival, and on being advised by Ambulance staff of the injuries to [the applicants' son], the Officers took the view that they would protect what they took to be the main locus of the crash, essentially it would appear a section of one half of the carriageway to protect the apparent visible evidence. Officers more experienced in such matters might have taken a different view, but the fact remains that this is what happened. Police Officers are often faced with making difficult decisions and frankly, do not always get it right. The issue here is whether they were acting in good faith or were deliberately negligent. In all the circumstances, I do think they were acting in good faith. It also has to be said that despite the failure to close the full carriageway, specialist officers were nonetheless able to retrieve evidence from the carriageway. It appears debatable if closure of the full carriageway would have yielded further forensic evidence. That said, there is no doubt that it would have been more prudent to close the road and it is a matter of some regret to me that the Officers' failure in this particular regard has led you to doubt the overall bona fides of the Police investigation."

Chief Superintendent W's letter concluded by stating:

"I also apologise for the lapses in best practice which have been highlighted by Chief Inspector [U] and would advise you that your sentiments in this regard will be brought to the attention of the officers concerned. As a first measure, some of the officers involved will be both counselled and receive training. Also, in general terms the issue of appropriate training for all officers in rural posts will be considered as a matter of policy."

Consideration

The Commissioner notes that each officer involved in the investigation or response to this complaint has acknowledged that the decision not to close the road fully was an error of judgement. The applicants have also been provided with an apology from Assistant Chief

Constable S and Chief Superintendent W for this error. In this regard, it is clear the applicants' complaint has substance.

However, Chief Superintendent W's response letter advises that the issue was whether the officers concerned had been:

"acting in good faith or were deliberately negligent."

The Commissioner disagrees with this assessment. Strathclyde Police appears to have used an intention based argument in deciding whether this complaint should be substantiated. It could be argued that, had the officer's acted in bad faith, their conduct would have been criminal. Put simply, it is hard to understand why the complaint was unsubstantiated as the applicants do not appear to allege that the road was not fully closed for any malevolent purpose. Additionally, the Commissioner is not aware of any requirement that intent has to be established before a complaint of neglect of duty can be substantiated. This matter arises again during the consideration of Complaint 1b below.

For the above reasons, it is the Commissioner's view that this complaint was not handled reasonably. However, given the passage of time since its investigation, the explanations outlined in this report, and the changes in police policy and procedure since the time of the incident, the Commissioner does not believe anything would be gained from Strathclyde police revisiting this complaint.

Inspector Q made reference to the opinion (or reasoning) of Sergeant J during his report. However, it is unclear from what source he obtained this information. The statement from the Sergeant was vague and did not provide any real detail as to the events that unfolded at the scene. Additionally, no further statement was taken from him until later in the complaint handling investigation, which provided little more detail than his original statement.

Inspector Q mentioned in his operational statement that he *"made informal enquiries with Sergeant [J] and Constable [G] to seek clarification."* The Commissioner believes, given the nature of the complaints, and that the sergeant was the alleged source of much of the conflicting information provided to the applicants, it may have been beneficial at this stage in the investigation to make further *formal* enquiries of Sergeant J in attempt to resolve some of the applicants' issues.

(b) Allowing the driver and her car to leave the scene

Background

According to Constable G's statement, Person A asked if she could leave the scene of the incident after being breathalysed. Constable G stated that:

"this was a decision I was unsure of and I consulted with the supervisor, Sgt [J], who stated that would be in order, I do not recall his exact words. [Person A] was thereafter informed she could leave."

Subsequent to Person A leaving the scene, a radio message was received which indicated that the applicants' son had died. Constable G stated that he:

"immediately became aware that the offending vehicle had just left the locus. I stated to Sgt [J] that we should seize the vehicle and he agreed. He thereafter instructed myself and PC [H] to leave the locus."

Having been dispatched to recover the vehicle, both Constables G and H state that they caught sight of the vehicle being driven by Person A. Constable G states that, as Person A had passengers in her car and that there was only one police vehicle available for transportation, he

thought it best to allow her to continue to her destination. During this journey, Constable H was dropped off at Police Office Y to contact the traffic department. After dropping her off, Constable G stated that he observed the vehicle driven by Person A arrive at its destination. He then informed Person A that her vehicle needed to be seized. Constable G then followed behind Person A as she drove the car to Police Office Y.

Sergeant J's statement confirmed that at approximately 4.25 pm he was notified that the applicant's son had died. As Person A and her passengers had left the scene, he instructed Constable G to attend Person A's address to seize the car and convey it to Police Office Y.

Internal handling

The applicants' letter of 25 November 2004 asked:

"Given that [our son] died within minutes of being in the ambulance making this a fatal crash, we would like to know why two constables with fifteen years experience between them failed to follow the Lord Advocate's guidelines – that all road deaths should be investigated as unlawful killings until the contrary is proved – ... and by instructing the driver to drive the car away from the scene before uplifting the vehicle much later?"

In his report, Inspector Q provided a background to Sergeant J's decision to allow Person A to leave the scene in the vehicle. Inspector Q noted:

"Sergeant [J]'s recollection of the event of the accident are that he informed [Person A] that she could remove the car from the car park where it was located. The information he had at the time was that the injured party was conscious and talking to members of the public at the scene of the accident, prior to being removed by the ambulance ... As she drove off, information was received by Sergeant [J] that [the applicants' son] was conscious, but, 'didn't look too good', a radio message was received that the accident was likely to prove to be a fatal road accident. Sergeant [J] immediately dispatched Constable [G] to follow the [vehicle] being driven by [Person A] and seize it as a production. Constable [G] seized the vehicle ... and had it removed to [Police Office Y]".

In conclusion to this complaint, Inspector Q concluded:

"The decision to allow the [vehicle] to be driven from the locus was, with hindsight, unfortunate...The [vehicle] should have been removed from the locus to a covered and secure compound. The decision would be consistent with the fact, that on the basis of the information that would appear to have been available at the time, the injuries appeared to be serious."

Assistant Chief Constable S's response to the applicants stated:

"The decision to allow the driver to remove her vehicle was taken by Sergeant [J] and was based on his understanding of the seriousness of [the applicants' son's] injuries at the time. However he was shortly thereafter informed by radio of a deterioration in [the applicants' son's] condition and reversed that decision, despatching Constable [G] to pursue the driver and take possession of the car ... Given the potentially serious nature of your son's injuries, I agree that the vehicle should not have been released, but should have been preserved under cover for examination. While it was out of police control for a short period, I am sure that offers little consolation to you."

Chief Inspector U's report stated that:

"The evidence of Constables [G] and [H] is clear that their supervisor Sergeant [J] authorised the release of the offending vehicle and consequently he acted in neglect of his duty to ensure the vehicle was retained for examination".

As such, Chief Inspector U concluded that the applicants' allegation was substantiated.

Chief Superintendent W's response to the applicant stated:

"again there is no doubt that the vehicle was allowed to leave. In this respect I would advise you that such decisions can be difficult to assess. However, in this case Chief Inspector [U's] report is fairly clear that there was sufficient concerning information regarding [the applicants' son's] condition to have made it prudent to delay the vehicle's departure from the scene until a full medical update had become available. In hindsight, I believe that an error of judgement was made in releasing the vehicle when it was. However, prompt steps were taken to retrieve the vehicle thereafter. Whether or not this resulted in any significant loss of evidence will have to remain a matter of conjecture."

Following the involvement of HMICS, the Deputy Chief Constable wrote to the applicants on 23 February 2007. The Deputy Chief Constable stated:

"In relation to your specific question regarding your allegation of neglect of duty in respect of Sergeant [J], I can comment that following investigation by Chief Inspector [U], there was no doubt that the vehicle was allowed to leave the crash scene. As such, your assertion that this happened was substantiated. The issue was then to determine whether that action amounted to an act which might constitute a deliberate neglect of duty on the part of a police officer. I am of the view that given all of the circumstances there was no act within this, which could be considered as deliberately neglectful and was more a misjudgement which was retrieved as soon as possible. As such this allegation was considered partially substantiated and an officer was counselled. That said, although he did not apply best practice, it is the position of this Force that he was acting in good faith and there is nothing further which I can add."

Consideration

The Commissioner notes that each officer involved in the investigation or response to this complaint has acknowledged that the decision to let Person A drive away from the scene of the incident was a mistake.

In his report Chief Inspector U found that Sergeant J was "in neglect of his duty to ensure the vehicle was retained for examination." The Commissioner notes that Chief Superintendent W's response letter is silent on whether the applicants' complaint had been substantiated or not. However, Chief Superintendent W did apologise for the lapses in best practice and stated that the applicants' "sentiments would be brought to the attention of the officers concerned". She also informed the applicants that some of the officers involved would be counselled and receive training and that appropriate training for all officers in rural posts would be considered as a matter of policy.

The Commissioner believes that this approach was appropriate in ensuring such lapses in best practice did not arise again and it is noted that internal police memos confirm that a robust training plan was put in place for officers in rural posts.

However, whilst conceding that the vehicle should not have been allowed to leave the scene, the Deputy Chief Constable's response of 23 February 2007 states that, as Sergeant J's decision was more of a misjudgement rather than deliberately neglectful, the allegation was considered "partially substantiated". The Commissioner notes that, as in its consideration of Complaint 1a, the same

intention based argument is used by Strathclyde Police. However, a different outcome has been reached. The Commissioner finds it difficult to reconcile the outcome reached by the Deputy Chief Constable in this instance with that of Chief Superintendent W in her response to Complaint 1a above.

For this reason, it is the Commissioner's view that this complaint was not handled reasonably. However, given the passage of time since its investigation, the explanations outlined in this report, and the changes in police policy and procedure since the time of the incident, the Commissioner does not believe anything would be gained from Strathclyde police revisiting this complaint.

The Commissioner is also aware that the applicants have questioned whether the Procurator Fiscal has been advised that the vehicle involved in the incident was allowed to leave the scene. The applicants believe that the Procurator Fiscal was not advised of this and that this omission is part of a larger pattern of ignoring, omitting and falsifying evidence. As discussed in the Commissioner's review, this omission was investigated by Chief Inspector U as part of a criminal allegation with his report being submitted to the Area Procurator Fiscal on 7 December 2005.

(c) Leaving the bicycle involved in the incident exposed

During their meeting with Inspector Q on 22 December 2004, the applicants informed him that they had information which suggested that their son's bicycle had been left unattended overnight close to the scene of the incident. The applicants maintain that the bicycle should have been uplifted and secured as evidence. Although not recorded as a complaint about the police at that time, Inspector Q's report notes that the bicycle was removed to Police Office Y on the evening of 29 July 2003.

Internal Handling

Following receipt of the applicants' letter of 24 February 2005, Chief Inspector U assessed the complaint as:

"The complainers allege that the police assertion on 3 April 2005 as read from the Police Incident Report by Chief Superintendent [T] that their [son's] pedal cycle ... involved in the road crash on 29 July 2003 had been secured and removed to [Police Office Y] is false."

During his investigation, Chief Inspector U obtained statements from the two road policing officers and the two crash investigating officers who had attended the scene on 29 July and 30 July 2003 respectively. These officers confirmed that the bicycle had been removed to Police Office Y and that it had not been left outside overnight. Based upon these statements, Chief Inspector U's conclusion was that the allegation was unsubstantiated.

In response to this complaint, Chief Superintendent W's informed the applicants:

"You also complained that you were given false information to the effect that [the applicants' son's] pedal cycle and the wheelie bin had been removed to [Police Office Y]. In this regard I have to advise you there appears to be some confusion. Chief Superintendent [T] and Inspector [Q] recall advising you that [the applicants' son's] pedal cycle had been removed to [Police Office Y] but that the wheelie bin had been left at the scene. In support of this, the Officers at the scene confirm taking the cycle to [Police Office Y] on the evening of 29 July 2003. Further to this Officers from the Crash Investigation Team confirm examining the cycle the following day at a local contractors yard where it was brought to them by a Police vehicle, on their understanding, from [Police Office Y]. There is nothing therefore to indicate that after removal from the scene the cycle was anywhere other than [Police Office Y] overnight on 29/30 July 2003."

Consideration

During Inspector Q's involvement, he established from the statements supplied to the Area Procurator Fiscal that the bike involved in the incident had remained close to the scene of the incident until the road traffic officers arrived at 7pm where it was examined and subsequently removed to Police Office Y. He also established that the bicycle was lodged in the production book at Police Office Y. Unfortunately, there is no confirmation that this information was supplied to the applicants during Inspector Q's meeting with them and it was not confirmed within Assistant Chief Constable S's response.

However, from the statements taken from the road traffic officers who attended the scene at just after 7pm, the Commissioner notes that both confirm that an initial examination of the bike was carried out at the scene and that it was then taken to Police Office Y and lodged as a production. The following day a further examination took place and both crash investigation officers state that the bike, having been brought back to the scene from Police Office Y, was examined by them on 30 July 2003.

Additionally, Constable G maintained he had been informed that the bike had been removed to Police Office Y on the evening of 29 July 2003 and that he lodged the vehicle and keys as productions and that he later noticed the bicycle had been entered in the production book by Sergeant J. Chief Inspector U also noted that both Inspector Q and Chief Superintendent T were both clear that during a meeting they confirmed to the applicants the bike had been removed to Police Office Y.

The Commissioner also notes that the police incident report confirms that the bike was removed to the police office and had been lodged as a production.

From the information provided, it is the Commissioner's view that Chief Inspector U has come to a reasoned conclusion based upon the evidence gathered with Chief Superintendent W accurately communicating this to the applicants. As such, this complaint has been handled reasonably.

(d) Leaving a wheelie bin at the scene exposed

The applicants' letter of 24 February 2005 details their dissatisfaction that, as it had played a significant part in what had taken place, the wheelie bin at the side of the road was not "uplifted and secured as evidence". It is the applicants' point of view that, in terms of piecing together the chain of events, the wheelie bin could potentially have been an important piece of evidence and that attending officers failed in their duty to "secure" it or preserve it under cover.

Internal handling

In relation to this complaint, Chief Inspector U's report assessed the complaint as:

"The complainers allege that the police assertion on 3 April 2005 as read from the Police Incident Report by Chief Superintendent [T] that ... a wheelie bin involved in the road crash on 29 July 2003 had been secured and removed to [Police Office Y] is false."

During his investigation, Chief Inspector U obtained statements from six officers who confirmed that the wheelie bin was not removed from the scene for examination. Two of these statements were from Inspector Q and Chief Superintendent T, who was adamant that he informed the applicants during the meeting of 3 April 2005 that the bin had not been secured as evidence.

In response to this complaint, Chief Superintendent W's stated:

“You also complained that you were given false information to the effect that [the applicants’ son’s] pedal cycle and the wheelie bin had been removed to [Police Office Y]. In this regard I have to advise you there appears to be some confusion. Chief Superintendent [T] and Inspector [Q] recall advising you that [the applicants’ son’s] pedal cycle had been removed to [Police Office Y] but that the wheelie bin had been left at the scene.”

Consideration

The Commissioner notes that this complaint is not dissimilar to the concerns which the applicants have raised in Complaints 1c above and 1f, the failure to place the vehicle driven by Person A under cover (see below). However, unlike his handling of these complaints, Chief Inspector U limited his investigation into ascertaining what was discussed between the applicants and Chief Superintendent T and Inspector Q during their visit to the applicants’ home on 3 April 2005.

Had the applicants’ complaint been that which was noted by Chief Inspector U, the handling would have been reasonable given that relevant statements had been taken with reasoned conclusions having been arrived at based on the evidence available. However, Chief Inspector U has not captured the essence of the applicants’ complaint. As the fundamental aspect of this complaint is whether the wheelie bin should have been uplifted and secured as evidence, what the applicant’s were advised of on 3 April 2005 is largely irrelevant. As such, this complaint has not been handled reasonably.

Although the applicants have never received a response in relation to the complaint which they made, it is noted that the road traffic officers had fully examined the bin that day and found no marks indicating that it had been struck by the bicycle. Given this, it appears that there may have been no need to remove the bin from the scene. It is unfortunate that this information was not provided to the applicants.

(e) Not maintaining a police presence at the scene of the incident

During their meeting with Inspector Q on 22 December 2004, Inspector Q states that the applicants raised the issue of the scene of the incident being left unattended between the initial incident and the arrival of the road policing officers. In support of this complaint, one of the applicants state that Sergeant J and Constable G visited her home “almost three hours” after the incident to inform her of the death of her son and that, whilst driving to the hospital at around 6.40pm to identify her son, she passed by the spot where the incident had occurred and at that time there were no signs that three hours earlier a fatal road accident had occurred.

The applicants statement also points out that information provided by Assistant Chief Constable S in response to this complaint was “false”.

Internal Handling

Having looked at the statements provided to the Area Procurator Fiscal, Inspector Q concluded:

“It has been established that on being informed that [the applicants’ son’s] had succumbed to his injuries, both Constables [G] and [H] attended at [the hospital]. Sergeant [J] remained at the accident scene. Some time later, Constable [H] returned to the accident scene and relieved Sergeant [J] who thereafter attended at [the hospital]. Constable [H] was at the accident scene when [road policing officers] attended at 1906 hours that evening.”

Assistant Chief Constable S’s response to the applicants stated:

*“Inspector [Q] advises that you are concerned that the scene of the collision may have been left unattended at some time before the arrival of the Road Patrol officers at about 19.00 that evening. This is not the case. It had been confirmed that, from their initial attendance at the crash scene until the arrival of the **crash investigators**, there was always at least one officer present at the site.”* (emphasis added)

In relation to his involvement, Chief Inspector U’s report assessed the complaint as:

“The complainers allege that the Police position that there was always a Police presence at the road crash site on 29 July 2003 from their initial attendance documented in police correspondence until the arrival at the scene of the crash investigators is false.”

Of the statements obtained by Chief Inspector U, nine have relevance to this complaint. Having reviewed these statements, he noted that a number of them lent support to the complaint whilst others did not. In conclusion he noted:

“The complainers’ position in this is correct and the statement contained within the correspondence of 21 February from former [Assistant Chief Constable S] is incorrect. Police evidence is that the scene was cleared of Police Officers by approximately 10pm on 29 July 2003. The allegation however is unsubstantiated.”

Chief Superintendent W’s response of 24 July 2006 stated:

“I believe you also complained that you were given false information regarding a Police presence being maintained at the scene of the crash until the arrival of the Crash Investigation Team the following day. I believe there is some support for this view from members of your own family and others who during the intervening period had not noticed any Police presence. I am unable to comment in any great detail on this allegation other than to say that the position of the Police Officers with responsibility for the scene was that a Police presence was maintained until the Traffic Officers had completed their initial examination at approximately 2200 hours on 29 July 2003. Chief Inspector [U] has traced witnesses who can speak to seeing a Police presence at the scene at different times. Therefore, on balance there is nothing in Chief Inspector [U]’s report to indicate to me that a presence was not maintained until that time when the carriageway was re-opened. I am aware that in previous correspondence to you in this regard from [Assistant Chief Constable S], former Assistant Chief Constable, you were erroneously advised that the road remained closed until the Crash Investigation Team arrived. Having had the benefit of Chief Inspector [U]’s enquiry, it is clear that this information was inaccurate and I apologise for the misleading impression which was given”.

Consideration

During the initial enquiry, Inspector Q noted from the statements given by Sergeant J and Constables G and H that there had been a continuous police presence at the scene until the arrival of the road policing officers at approximately 7pm. The Commissioner notes that these statements were given in the normal course of their duties and were included in the sudden death report supplied to the Area Procurator Fiscal. Given that the purpose of the police investigation at that point was to answer questions which the applicants had raised, it was reasonable for Inspector Q to have based his enquiry on the information contained within the sudden death report.

During Chief Inspector U’s subsequent investigation, further civilian witnesses were identified and statements obtained. Having considered these statements, he correctly identified that some lent support to the complaint whilst others did not. Given the contradictory content of these statements, it is not possible to come to a conclusion either way. In this regard, Chief Superintendent W’s assertion that there was nothing to indicate that a police presence was *not* maintained until the

road was re-opened was not helpful and the Commissioner believes that the work carried out by the investigating officer is undermined by the seemingly grudging nature of the response provided to the applicants.

Given that the provision of misleading or incorrect information is a theme which underpins a number of the applicants' complaints, it is unfortunate that the information contained within Assistant Chief Constable S's response of 21 February 2005 made reference to the attendance of the crash investigation team rather than the road policing officers. This position is clearly incorrect. However, it is noted that Chief Inspector U made himself aware of this and that the applicants received an appropriate apology from Chief Superintendent W.

Notwithstanding that the manner in which Strathclyde Police communicated with the applicant was poor, it is the Commissioner's view that the conclusions reached by the police were reasonable.

(f) Failure to place the vehicle involved under cover

The applicants' letter of 24 February 2005 and statement details their belief that, following the vehicle being seized by Strathclyde Police, vital evidence may have been lost by not placing the vehicle under cover at Police Office Y.

Internal handling

This particular complaint was not recorded as a complaint about the police. However, when dealing with the issues included in Complaint 1b, Inspector Q reported:

"The [vehicle] should have been removed from the locus to a covered and secure compound. This decision would be consistent with the fact, that on the basis of the information that would appear to have been available at the time, the injuries appeared to be serious."

Assistant Chief Constable S's response stated:

"The decision to allow the driver to remove her vehicle was taken by Sergeant [J] and was based on his understanding of the seriousness of [the applicants' son's] injuries at the time. However he was shortly thereafter informed by radio of a deterioration in [the applicants' son's] condition and reversed that decision, despatching Constable [G] to pursue the driver and take possession of the car. This he did ... storing the vehicle at [Police office Y] until it was removed to a covered location ... later that night. Given the potentially serious nature of your son's injuries, I agree that the vehicle should not have been released, but should have been preserved under cover for examination. While it was out of police control for a short period, I am sure that offers little consolation to you."

Consideration

In his report Inspector Q referred to the vehicle being uplifted at 10.47pm that evening by a local vehicle recovery contractor, and removed to a yard where it was kept undercover. As the applicants' concern regarding this matter had not been raised at this time, it appears this information was gathered in order to provide a response to the vehicle being released to Person A.

The applicants maintain that Sergeant J informed them during a visit shortly after the incident that the vehicle had been sitting outside Police Office Y overnight. However, the Commissioner notes that Sergeant J's notebook makes it clear that on the evening of the incident he requested the vehicle be removed to the contractor's yard and secured under cover. This information is confirmed in a tape recording of a conversation between Police Office Y and force control.

Although this issue was raised by the applicants during a meeting with Chief Inspector U, he does not address this issue in his report. Subsequently, the issue was not referred to in Chief Superintendent W's response. However, it is noted that he obtained a statement from the vehicle recovery contractor in September 2005 within which it was confirmed that he received a call at around 10.30pm from police headquarters to uplift the vehicle. His statement also confirms that the vehicle was removed that night to his yard where it was placed undercover.

From this, it is reasonable to conclude that the vehicle in question was removed at approximately 10.50pm and placed under cover within the contractors yard. However, Strathclyde Police has not addressed the thrust of the applicants' complaint that, given the importance of preserving all potential evidence, the vehicle should not have been left exposed **at all**. The Commissioner notes that both Inspector Q and Assistant Chief Constable S's position tends to suggest the vehicle should have been preserved under cover for the period of time it was in the possession of Strathclyde Police.

Given the above, it is the Commissioner's view that this complaint was not handled reasonably and recommends that Strathclyde Police now provide the applicants with a full explanation as to why the vehicle was not placed under cover from the time it arrived at Police Station Y to the time it was uplifted by the contractor.

(g) Delay in requesting/providing a Crash Investigation Team (CIT)

In their letter of 24 February 2005 and statement of 1 August 2005 the applicants expressed their concern over the delay in notifying the CIT. The applicants feel that by the time the CIT arrived, potential evidence had been lost.

Internal Handling

During his investigation, Chief Inspector U classified the complaint as:

"The complainers allege that the decision taken on 29 July 2003, to delay the attendance of the road crash investigators at the scene of the road crash ... until 30 July 2003, potentially allowed significant evidence to be lost and the Police acted in neglect of their duty."

During Chief Inspector U's investigation into this complaint, he obtained operational statements from Chief Inspector X and Sergeant Y who were responsible for despatching the CIT. He also obtained statements from both crash investigators and both road traffic officers who attended at the scene. Having reviewed the evidence, Chief Inspector U noted:

"Superintendent [X] (then Chief Inspector [X]) states on 29 July 2003, he was apprised of the road crash ... and that a pedal cyclist had succumbed to his injuries. He states he was aware that [two road policing officers] were attending... and that he had been informed that the locus of the road accident was being preserved by local officers. He states that due to the diminishing availability of light, the description of events given to him by Sergeant [Y], the fact that [both road policing officers] were attending to measure, plot and photograph the scene, and given that the pedal cycle and the vehicle involved had been secured for examination, he decided that the attendance of the Crash Investigation Team was not essential at that time. He states he instructed that the Crash Investigation Team should attend the following morning."

Chief Inspector U concluded:

"The complainers' account is offered some support by the delay in attendance, however the decision to delay the attendance was reasoned and made on the available evidence and consequently, on balance, this allegation is unsubstantiated."

Chief Superintendent W's response of 24 July 2006 stated:

"It is clear that the Officer with responsibility for making that decision having considered the circumstances decided not to send the Crash Investigation Team until the following day. However, as an interim measure two experienced Traffic Officers were despatched as soon as possible and carried out a scene examination followed by detailed interviewing of witnesses. Therefore, these officers were then able to carry out a great deal of work much of which I understand was presented in Court. The Crash Investigation Team followed up that work the next day with a more detailed examination in support of the findings already documented by their colleagues. This included preparation of a detailed plan of the crash scene and examination of the vehicles. Based on their experience, the Crash Investigation Team are of the opinion that no evidence was lost. Notwithstanding that opinion, in hindsight, they should have been sent on the day of the crash to protect the integrity of the investigation. I am not, however, persuaded that there was any significant loss of evidence and I am of the view that the Officer who made the decision acted in good faith and reasonably in the circumstances. It is a matter of some regret to me that you should believe otherwise."

Consideration

The Commissioner notes from their statements that Chief Inspector X and Sergeant Y assessed the situation based on the information they had, the time of day and travel time involved in getting to the scene. It was agreed that visibility would be poor within a few hours of the CIT arriving. It would also have meant that the officers would have to stay overnight and the specialist equipment that they use would not be available elsewhere. Chief Inspector X also stated that he had assessed the situation and found that: *"future mathematical calculations would be limited, and the scene would be plotted and photographed by [the road traffic officers] on their arrival ..."*

Chief Inspector U also listened to recordings of radio contact and telephone calls which took place on the day of the incident between Sergeant Y and force control and concluded that an influencing factor in delaying the CIT was the incorrect assessment of the scene provided by Constable G.

However, the Commissioner notes that crash investigator N's operational statement shows that he did not think any evidence would have been lost due to the delay of the CIT arriving and in answer to a specific question from Chief Inspector U as to whether anything else would have been missed crash investigator N stated that, generally, on examining a locus there would be debris such as: *"plastic trim, glass, light lens, dirt, pedestrian's belongings etc"* but there was no damage to the car or the bike that would have resulted in debris.

Given the experience, training and expertise of the officers which Chief Inspector U consulted with in respect of this complaint, the conclusion that the delay had not impacted on the investigation was understandable. However, it is noted that Chief Superintendent W opined that best practice would, in fact, have been to send the CIT on the day of the incident.

It is encouraging that following this conclusion, Chief Superintendent W requested that a senior officer discuss the matter with Constable G and that training be carried out in all of the learning points. It is clear from a memo sent to Chief Superintendent W in September 2006 that this was acted on. It is noted that the training plan included crash investigation call out procedures, and a presentation by the CIT on its roles and responsibilities.

For the above reasons, it is the Commissioner's view that this complaint has been handled reasonably.

(h) Releasing the vehicle involved in the incident back to its owner prematurely

The applicants' letter of 25 November 2004 questioned why the vehicle was returned to its owner only a few days after the incident.

Internal Handling

In relation to this issue, Inspector Q commented:

“Both the [vehicle] and the bicycle that were seized as productions were released by the Procurator Fiscal ... Whilst I fully respect the sentiments and sensitivities of the situation expressed by [the applicants], I submit the decision to release the productions in this instance and the timing of same rests with the Procurator Fiscal.”

Assistant Chief Constable S's response to the applicants stated:

“The decision to release the car involved in the crash was taken, not by the police, but by the Procurator Fiscal, and I am sure you will understand my inability to comment on the thought processes that underlie that decision.”

Consideration

This complaint was answered by Inspector Q during his first meeting with the applicants on 22 December 2004 during which he advised that the decision was out-with the control of Strathclyde Police, and that the Procurator Fiscal would have released the car. The Assistant Chief Constable reiterated this position in his letter to the applicants in February 2005. The Commissioner understands that the decision to release the vehicle rested with the Procurator Fiscal. As such, this complaint has been handled reasonably by Strathclyde Police.

(a) Failure to interview the driver involved

The applicants' statement of 1 August 2005 comments that a statement was never taken from Person A. The applicants also asked during their meeting with Chief Superintendent W on 11 July 2006 why the driver was never cautioned.

Internal Handling

Although this specific point was never addressed during Chief Inspector U's investigation, Chief Superintendent W's letter of 24 July 2006 responded to the point raised during her meeting with the applicants on 11 July 2006. Chief Superintendent W stated:

"You asked me when the status of the driver changed and whether she had been interviewed under caution. You will recall that at the time I might have been under the impression that a statement had been taken from her. I have now had the chance to review the papers and in fact I believe I have confused this with an account of her evidence in Court provided by yourselves. I can confirm that she was not interviewed under caution. This would not normally happen other than in circumstances where there was a complete lack of information about the incident. As such, her status did not change."

Consideration

It is unfortunate that this point was not considered during Chief Inspector U's investigation. However, the Commissioner is aware that during its review of these complaints, HMICS noted that a statement was not taken from Person A at any stage of the investigation. HMICS specifically commented:

"No explanation is provided for this apparently obvious omission and it is not examined during the complaint investigation."

At the conclusion of its review, HMICS requested Strathclyde Police to:

"consider the failure to interview [Person A] and respond to [the applicants] in this regard."

In response to this request, Superintendent Z of the Complaints and Discipline Branch sought advice from the Operational Support Division. Inspector AA responded stating:

"At the time of a Road Death the on duty PF should be made aware and briefed of the circumstances, commencing liaison at the earliest opportunity. Lord Advocate guidelines specifically instruct that drivers are not to be [Cautioned/Charged], until instructed to do so by PF. Guidelines are silent in respect of interviews."

The Commissioner notes that the Lord Advocate's Guidelines into the investigation of road traffic deaths state "Police officers must not charge an accused in a fatal road accident until they are instructed to do so by the Procurator Fiscal". However, the guidelines go on to state that "Police officers should continue to use their common law powers to interview a suspect under caution".

Strathclyde Police responded to HMICS and the applicants advising that "it is not force policy to routinely interview suspect drivers" and both HMICS and Strathclyde Police referred the matter to ACPOS and the Crown Office for discussion and clarity.

During his review, the Commissioner contacted Strathclyde Police to establish the outcome of its referral to the Crown Office and was informed that, whilst a referral had been made, a final response had not been received.

Given the clear divergence of opinion between HMICS and Strathclyde Police, and in order to draw a line under this particular area of dissatisfaction, the Commissioner recommends that Strathclyde police reach a final position on its policy regarding the interview of drivers in such circumstances, clarifying with its respective partner agencies if necessary.

(b) Failure to breathalyse the driver

The applicants' statement of 1 August 2005 raised the point that, according to the information they had gathered and from what Sergeant J had informed them after the incident, it would not have been possible for Person A to have been breathalysed at the scene of the incident.

Internal Handling

Chief Inspector U recorded this complaint as:

"The complainer's allege that the Police assertion via their Police Reports to the Procurator Fiscal that the driver of the offending motor vehicle involved in the road crash on 29 July 2003, [Person A], was breathalysed at the scene of the road crash is false."

During his investigation, Chief Inspector U took note of the information contained within the statements of Sergeant J and Constables G and H. He also referred to a statement taken from an independent witness (Mr D) who was at the scene at the relevant time. Having reviewed this information alongside the incident report, he concluded that the complaint was unsubstantiated.

Chief Superintendent W's response of 24 July 2006 stated:

"In this regard I have to advise you that having considered the evidence obtained by Chief Inspector [U] which includes the evidence of the driver, Police Officers themselves, an independent witness whose precognition statement you provided to Chief Inspector [U], and supported by Police logs, on balance I am satisfied that the driver was breathalysed at the scene. I am at a loss to know why you have arrived at a different conclusion but I would ask you to believe me when I tell you that I have been presented with a convincing amount of information to indicate that this was the case."

Consideration

The applicants believe that it was not possible for Person A to have been breathalysed at the scene because of the information given to them by Strathclyde Police. On one hand, they assert that shortly after the incident Sergeant J attended their home and stated that Person A had been breathalysed in the **evening** of 29 July 2003 and that he informed them that, when he had arrived at the scene, all vehicles had gone and that everybody had left. Additionally, the applicants state that the timings of attendance provided to them by Chief Superintendent T and Inspector Q on 3 April 2005 point towards Person A not being breathalysed as they believed Sergeant J could not have arrived at the scene, assessed the incident, spoken with witnesses, breathalysed the driver, and allowed the driver to leave the scene in this time.

During his investigation, Chief Inspector U looked at the evidence that the applicants stated was given during the trial, the contents of the precognition of Mr D (which was taken by the applicants' solicitor) the contents of the attending officers' statements and the information given by Person A. The Commissioner notes that all of this evidence points towards Person A having been breathalysed at the scene by Constable G (with Constable H present).

From this, the Commissioner is of the opinion that Chief Inspector U carried out a reasonable investigation into this complaint and that his findings were accurately communicated to the applicants by Chief Superintendent W. As such, this complaint has been handled reasonably.

However, given that the applicants made clear their reasons for believing that Person A had not been breathalysed (the information allegedly provided by Sergeant [J]), it is difficult to understand why Chief Superintendent W was at a loss to comprehend this.

(c) Failure to interview witnesses at the scene

In their letter of 24 February 2005 and statement of 1 August 2005, the applicants expressed their concern that witnesses had not been spoken to at the scene and suggested that, had they been, officers would have gained a greater knowledge of the area that had to be secured and preserved.

Internal Handling

Chief Inspector U recorded this complaint as:

“The complainers allege that in failing to obtain witness statements from the witnesses to the road crash on 29 July 2003 until later the same night, Police officers failed to establish the full parameters of the locus and consequently the Police officers were in neglect of their duty.”

During Chief Inspector U’s investigation into this complaint, he obtained statements from Constables G and H. Having reviewed the evidence, Chief Inspector U concluded:

“The complainers’ allegation is offered some support by the failure of the Police to secure the full carriageway for examination, the requirement for which being contained within witness statements, which were not taken till the attendance of additional traffic officers [at the area]. The initial officers obtained an initial verbal outline of the circumstances which led to a flawed assessment that the accident scene was contained within one carriageway. This flawed assessment was perpetuated through a lack of police resources [in the area] to fully document the witnesses’ position till later the same day. On balance this allegation is unsubstantiated.”

Chief Superintendent W’s response stated:

“I can only comment that although this crash occurred in an area where Police resources are of necessity fairly limited, the question of taking statements I do not think would have been very much different in any other area of Strathclyde. In an ideal world every witness present at the time would have been interviewed comprehensively and at length prior to leaving the locus. With only two Police Constables and a Sergeant on duty and with many other issues to attend to, this was never going to be a practical option.

In the event, the two Traffic Officers who attended that day set about taking statements from the witnesses known at that time, a task which they commenced that night and completed by the afternoon of the following day. Some of these witnesses have commented about the detailed nature of the interview and the time taken. In short, within 24 hours of the crash occurring, detailed statements had been obtained from all the principal witnesses. I would assure you that it is quite unusual for an exercise of this nature to be completed in such a short time. There was also the added benefit of having these statements taken by highly experienced Traffic Officers with an intimate knowledge of the questions and issues requiring to be addressed in the witness statements. Based on the information obtained, they were able to give a full briefing to their colleagues in the Crash Investigation Team the following day. As I have already mentioned, their opinion is that no evidence had been lost. I agree that in an ideal world, all witnesses would have been fully interviewed at the time but this was never a practical proposition.”

Consideration

From the statements obtained by Chief Inspector U, upon attendance Constable H was tasked with noting witness details while Constable G undertook the preservation of the scene. The Commissioner notes that Constable H's notebook shows a partially completed statement from the driver of the oncoming vehicle, Mr D. This would suggest that Constable H intended to take statements from the witnesses at the scene.

As discussed in Complaint 1b, Constables G and H then left the scene at approximately 4.20 pm to retrieve the vehicle which Person A had been driving. It could be argued that had the driver not been allowed to leave the scene, Constable H may have continued taking statements from witnesses resulting in the full parameters of the scene being known.

Given the above, and that Constables G and H breathalysed Person A, it would not have been possible to ask each witness for a statement at the scene. As such, the conclusions drawn and response given appears to the Commissioner to be reasonable.

(d) Failure to forensically examine evidence

During their meeting with Inspector Q on 22 December 2004, the applicants discussed tyre marks found on the bumper of the vehicle driven by Person A. The applicants explained that it was their belief that the vehicle had collided with the rear wheel of the bicycle and that this was the reason why their son fell off his bike and sustained his injuries. During this meeting, the applicants also said that Person A's family had given conflicting reasons for the existence of the tyre mark on the bumper which, in their view, amounted to perverting the course of justice.

This complaint was contained within the applicants' statement of 1 August 2005, where they specifically complain that police officers were in neglect of their duty by not obtaining a sample of the tyre mark to compare with the rubber compound of the bicycle's rear tyre.

Internal Handling

Chief Inspector U recorded this complaint as:

"The complainers allege that on 29 July 2003, on observing a black tyre mark on the offending vehicle, the Police Officers in failing to obtain forensic samples of this mark and from their son's pedal cycle tyre for analysis and comparison, they acted in neglect of their duty."

During Inspector Q's enquiries, he commented:

"I have been unable to establish if 'swabs' were taken from the 'scuff' marks on the car, and the rear tyre of the bicycle."

Assistant Chief Constable S's response did not address this matter.

During Chief Inspector U's investigation, he obtained the statements of the two road policing officers and the two crash investigating officers which were included in the sudden death report. He also obtained further statements from these officers and advice from a senior forensic scientist within Strathclyde Police. Having reviewed the evidence, Chief Inspector U noted:

"[both road policing officers] speak to observing black marks on the front of the offending motor vehicle. [both crash investigating officers] speak to noting black tyre marks on the front of the offending motor vehicle. Constable [M] states that he did not consider examining the black tyre marks with a control sample from the deceased's pedal cycle tyres as he believed that at best this could only show that it came from a similar batch of tyres"

and that no specific identification could be made linking the scuff marks to the deceased's pedal cycle. The ... Forensic Scientist for Strathclyde Police confirms Constable [M]'s assessment and that the scuff marks could not be specifically identified to the deceased's pedal cycle and at best only to a type similar to a batch of tyres."

Chief Inspector U concluded:

"The complainer's allegation is given some support by the fact that the black tyre mark was not analysed against a controlled sample from the deceased's pedal cycle tyre however the evidence of Constable [M] is that he dismissed this due to his knowledge of the short fall in such examinations and he is supported in this position by the evidence of [Strathclyde Police's Forensic Scientist]. Hence, on balance, this allegation is unsubstantiated."

Chief Superintendent W's response stated:

"As you are aware this issue was aired in Court and it is my understanding that an Officer gave the opinion that marks found on the vehicle could have come from [the applicants' son's bike]. The officers concerned are experienced in this field and their reasons for not obtaining forensic samples were quite simply based on their experience that, at best, this might give a cross match to a batch of tyres but would not prove a direct relationship with any individual tyre, a position endorsed by a Forensic Scientist. Therefore, any forensic test would not have added to their own testimony of opinion. Their decision was based on operational experience and their own extensive knowledge in the field. From the content of Chief Inspector [U]'s report I am satisfied that they were acting in good faith."

Consideration

During his investigation, Chief Inspector U obtained statements from various personnel to establish whether a forensic examination of the tyre mark found on the front bumper of the vehicle would have gleaned any information to prove the vehicle driven by Person A was the cause of the applicants' son falling from his bicycle. Included in this was detailed statements from the crash investigators and the road traffic officers who had investigated the incident. Constable M, an experienced officer with 11 years road traffic experience and numerous road crash qualifications, explained that he did not forensically examine the mark on the car against the tyre on the applicants' son's bike as such an examination could only establish that the mark came from a similar batch of tyre, and could not identify a specific link to bike in question. In this respect, he appears to have made a considered decision not to have obtained a tyre sample.

The Commissioner notes that Chief Inspector U also took advice from the force forensic scientist – an expert in the area of tyre examination – who confirmed this to be the case.

It is noted that the Procurator Fiscal was aware of the information provided by the road traffic officers and the crash investigators in their statements. In such circumstances, it was for the Procurator Fiscal to have directed the police, had further information been required. From the information provided, both crash investigators also gave their opinion in court that the scuff mark on the vehicle could have come from the applicant's son's bike.

From the information provided it would not have been possible, regardless of any forensic testing, to establish that the scuff mark on the bumper of the vehicle was definitely made through contact with the applicant's son's bike.

Having taken into account all relevant witness statements, having sought expert forensic advice and having accurately communicated the findings to the applicants, it is the Commissioner's view that this complaint has been handled reasonably.

(e) Failure to trace other witnesses

During their meeting with Inspector Q on 22 December 2004, the applicants informed him that it appeared that there were a number of persons present at the scene of the incident whom the police had not located. The applicants' statement of 1 August 2005 shows that they supplied Sergeant J with the names of two specific witnesses (Mrs X and Mr Y) and two witnesses who they could not identify. It appears that the applicants are concerned that potential witness evidence was not included in the sudden death report.

Internal Handling

Although Chief Inspector U took a statement from Mrs X and Mr Y during his investigation, it does not appear that this complaint has been recorded or responded to.

Consideration

The Commissioner notes from the statement taken from Mrs X that, whilst she did not witness the incident, she attended to the applicants' son until the ambulance arrived. Mrs X also confirms that she had left the scene before police officers arrived and did not know anybody at the scene or leave any contact details with anyone. From this, it would appear reasonable that she was not located by the police.

However, the Commissioner understands that having read about the incident in a local newspaper, Mrs X contacted Strathclyde Police. The Commissioner can confirm that, following this contact, a statement was obtained from Mrs X on 4 August 2003 and her account included in the sudden death report.

From the statement taken from Mr Y he asserts that, as his vehicle approached the scene of the incident, he was aware of stationary traffic and that he got out of his car and walked to where the applicants' son was lying. He confirms that the ambulance and police arrived but that he did not leave or take any details as he was only out of his car for about five minutes. From this, it again appears reasonable that he was not located by the police.

Additionally, taking into account the timelines discussed in Complaint 2c above – and that traffic was flowing shortly after the ambulance left – it is understandable that Constable H was not able to isolate Mr Y during the brief period she was at the scene.

In relation to the two unnamed witnesses, Mrs X confirmed that these individuals were at the scene as she attended to the applicants' son. However, from the information supplied to the Commissioner, no further reference to these witnesses is made. As these witnesses have never been identified, whatever account they could give will have to remain a matter of conjecture.

Although Chief Inspector U obtained a statement from Mrs X and Mr Y during his investigation into the applicants' complaints, it is unfortunate that a response was never been provided to the applicants. As such, this complaint has not been handled reasonably. However, given the explanations provided above, the Commissioner does not require Strathclyde Police to revisit this complaint.

(f) Failure to ask Mr B specific questions

The applicants' statement of 1 August 2005 details their belief that one of the road policing officers, Constable L, should have specifically asked Mr B about his recollection of the position of the wheelie bin. The applicants believe this information is important as it could have established the cause of the incident.

Internal Handling

Chief Inspector U recorded this complaint as:

“The complainers allege that on 30 July 2003, a Police officer aware that the road crash on 29 July 2003 involved the presence of a wheelie bin, failed to ask a witness [Mr B] what he had seen in relation to the wheelie bin and this was in neglect of duty.”

During his investigation, Chief Inspector U took statements from Constable L and a witness to the incident. Chief Inspector U attempted to speak with Person A and her family during his investigation but they refused to provide any further information. Having reviewed the evidence, Chief Inspector U noted:

“The Police account is supported by [Mr B]’s signed statement in which he comments that he discussed the position of the wheelie bin, with a witness at the scene. Given this, it is logical if he had seen the presence of the wheelie bin, he would have volunteered that information.”

Chief Inspector U concluded:

“The complainers’ allegation is offered some support by the fact that there is no indication within the witness [Mr B]’s statement that he had been asked to position the wheelie bin within the scenario of the road crash however he does mention the existence of the wheelie bin in the content of his statement and if he had wished to include the position of the wheelie bin, it could be argued that he would have done so in his statement therefore on balance, this allegation is unsubstantiated.”

Chief Superintendent W’s response stated:

“While [Mr B] does make mention of the bin at the end of his statement, his knowledge of it being there appears to have been based solely on another witness having mentioned it to him. He referred to having been told of its presence by a third party with the inference being that he had not seen it himself at the time of the incident. The Police Officer taking the statement did not ask about the bin in any great detail since his opinion was that the witness was not in a position to give any direct evidence on the matter. I do not believe that this could be construed as a neglect of duty in the circumstances.”

Consideration

The Commissioner notes that police officers may have their own style of obtaining witness statements but it is his understanding that the normal method of obtaining witness statements is to ask the witness for a narrative of what was seen and then ask specific questions to clarify any ambiguity. Mr B’s statement shows that he was advised by another witness that:

“a bin had been lying on the road in the morning”.

Whilst not explicit, it appears from this response that Constable L specifically enquired about the bin. As such, it was not unreasonable for Strathclyde Police to infer that Mr B had not seen the wheelie bin at the time of the incident. In this respect the handling of the complaint appears reasonable.

(g) Failure to ask Mr D specific questions

The applicants’ statement of 1 August 2005 notes that the evidence given in court by Mr D was not consistent with the statement taken from him by Constable K on 29 July 2003.

Internal Handling

Chief Inspector U recorded this complaint as:

“The complainers allege that on 29 July 2003, a Police Officer when interviewing the witness [Mr D] failed to ask pertinent questions in relation to the presence of a wheelie bin at the crash scene, and that this officer recorded this witness stating that he had observed the wheelie bin after the collision, when in court the witness had clearly stated that he had seen the wheelie bin prior to the crash and that its presence had clearly been a factor, and consequently he was in neglect of his duty.”

During his investigation, Chief Inspector U took a statement from Mr D and considered its contents alongside his precognition statement, the statement which he gave to Constable K on 29 July 2003 and the evidence the applicants said he had given in court:

Chief Inspector U concluded:

“[Mr D] has maintained his position given initially to the officer concerned when interviewed during the course of this enquiry and consequently this allegation is unsubstantiated.”

Chief Superintendent W’s response stated:

“I understand that you complained that the Officer noting [Mr D]’s statement recorded that he stated he had observed the bin after the collision, whereas in Court he had clearly stated that he had seen the bin before the crash and that its presence had been a factor. [the applicants’], experience shows that people’s recollection of events can change considerably from the time when they give their original statement to the Police, through to precognition by the Crown, through to precognition by the defence and into Court itself where under cross examination the power of instant recall is not available to everyone. From Chief Inspector [U]’s report I think it is fair to say that [Mr D]’s recollection may have changed through time. However, I am satisfied that the Officer who took the original statement did ask appropriate questions and recorded what was said to him honestly and in good faith.”

Consideration

The statement obtained from Mr D on 29 July 2003 by Constable K noted:

“There was a wheelie bin lying on the roadway ... I had not seen this on the road prior to the accident but again I had been concentrating on the cyclist.”

From this, it is clear that Mr D was specifically asked for his recollections regarding the significance of the wheelie bin. However, according to the statement he provided to the applicants’ solicitor, Mr D stated that the applicants’ son had to cycle round a wheelie bin and may have collided with it. Additionally, Mr D gave evidence in court that he thought the wheelie bin had caused the incident.

During his complaints investigation, the statement obtained from Mr D by Chief Inspector U on 13 October 2005 asserted:

“I do not remember seeing this wheelie bin at the gate when I first saw the cyclist and the car coming towards me. I saw it after the accident and it was lying on the ground. I initially said I never saw the wheelie bin prior to the accident when I gave a statement later that night, and I am still adamant that that is the case.”

Whilst the Commissioner understands that it would be natural for the applicants to have questions over these apparent inconsistencies, it is clear that Mr D's position has vacillated over time and that the information provided by him has been contradictory. The Commissioner does not believe that Strathclyde Police can be held responsible for any contradictions in witnesses statements.

What is clear is that Mr D confirmed to Chief Inspector U what he had told Constable K on 29 July 2003. In light of this, the response provided by Chief Superintendent W captures well the difficulties in witness recollection. Overall, proper conclusions have been reached from the evidence available and the complaint has been handled in a reasonable manner.

(h) Failure to use appeal boards

The applicants' letter of 24 February 2005 and statement of 1 August 2005 detail their concern that the police failed to use witness appeal boards both at the scene and at other strategic locations in the area. The applicants believe that using appeal boards may have brought forward further witnesses to the incident.

Internal Handling

Chief Inspector U recorded this complaint as:

"The complainers allege that they suggested that witness appeal boards should be placed ... in relation to the road crash on 29 July 2003, and that the failure of a Police Officer to carry out this suggestion, may have led to the loss of additional witness evidence, and consequently this officer was in neglect of his duty."

During his investigation, Chief Inspector U took statements from the applicants and their daughter. These statements confirmed that Sergeant J had advised them he had spoken to a local transport manager, Mr DD, regarding the use of appeal boards. Chief Inspector U then obtained a statement from Mr DD. Having considered all of these statements, he noted:

"The complainers speak to the allegation and are supported by their [daughter] who speaks to her parents informing Sergeant [J] of their suggestion of putting up Witness Appeal Boards ... The witness [Mr DD] speaks to not being approached by any Police Officer to put up such appeal boards. There is no Police account in relation to this allegation."

Chief Inspector U concluded:

"The complainers are supported by their daughter in that the suggestion of placing Appeal Boards was made to Sergeant [J] and that he rejected the idea. The officer concerned has not responded to this allegation hence his position is unknown, however albeit the suggestion appears reasonable, there is no obligation for the officer to carry it out. Hence whilst it would have been best practice, this allegation is unsubstantiated."

Chief Superintendent W's response stated:

"In this regard I can only say that while on the one hand there appears to have been within a very short time after the crash eyewitness testimony supported by forensic evidence and it is questionable what further evidence might have been obtained by putting up such boards, on the other hand, I do think this was a reasonable and proportionate request to make and I am disappointed that your suggestion was not acted upon."

Consideration

The statements given by the applicants and their daughter say that shortly after the incident it was suggested to Sergeant J that appeal boards should be used at strategic locations in order to gather potential witness account to the incident. The applicants' daughter's statement shows that Sergeant J advised them that he had spoken to the person in charge of these strategic locations, Mr DD, and had been advised that he could not put appeal boards where the applicants wanted. The applicants' daughter stated that she was surprised that:

"[Mr DD] could tell the police what to do."

The applicants' correspondence shows that Sergeant J advised them that, having spoken to Mr DD, there would be no benefit in using appeal boards. The Commissioner notes that Sergeant J's statement did not cover the circumstances surrounding this complaint.

In the Commissioner's view, this complaint asks two questions of the police:

- Should witness appeal boards have been used at strategic points in the locality?
- Did Sergeant J speak to Mr DD as alleged?

In relation to the first question, although he noted that Sergeant J was under no obligation to have used appeal boards, Chief Inspector U believed that the applicants' suggestion was reasonable, a point reiterated by Chief Superintendent W. As there was no duty to use appeal boards, the conclusion that this part of the complaint was unsubstantiated appears correct.

During the meeting with the applicants in July 2005, Chief Superintendent W again agreed that appeal boards should have been used in an attempt to trace witnesses and the Commissioner understands that, following HMICS' recommendation that Strathclyde Police consider the use of appeal boards in rural communities, a policy is now in place to ensure that this is the case.

In relation to the second question, the Commissioner notes that Chief Inspector U asked Mr DD if he had any recollection of being asked to put up witness appeal boards. Mr DD's statement contained the following passage:

"I cannot remember being asked to do this, however I don't think I would have refused any approach by the police especially if it would help the police in their enquiry."

Unfortunately, Chief Inspector U has not developed this area further and Sergeant J's statement makes no reference to appeal boards. As such, it appears that he was not asked to comment on this particular matter. It is noted that HMICS commented on its disappointment that Sergeant J was not asked to address this allegation, particularly when Mr DD disputed what Sergeant J had allegedly said. The Commissioner shares this view.

Whilst the Commissioner understands that, under the current system of dealing with complaints, an officer subject to a complaint is under no obligation to respond to the specific allegations made against him or her other than to provide an operational statement, the standard of proof needed to substantiate a complaint is on the balance of probability. The Commissioner believes in such situations it is important that the officer concerned presents his or her side of the story, and is given the opportunity to formally account for any action taken, as much for his or her own sake as for a complainer. This is a learning point for Strathclyde Police.

Given the nature of the issue – that an officer of Strathclyde Police provided false information to the applicants and their daughter – the Commissioner believes that Strathclyde Police should have given greater consideration to the inconsistencies between what the applicants had allegedly been told and what Mr DD had stated and that it should have placed higher importance on establishing

the facts concerning this complaint with Sergeant J. As such, this complaint has not been handled in a reasonable manner by Strathclyde Police.

(i) Failure to establish the seating arrangements in the driver's car

The applicants' statement of 1 August 2005 commented that, when comparing information provided to them by Sergeant J alongside precognition statements and the information gathered during the trial, there was a discrepancy over the seating arrangements within the vehicle driven by Person A and that the police should have investigated this discrepancy. The applicants believe that, had it been investigated, the credibility of Ms C would have been placed in doubt.

Internal Handling

Chief Inspector U recorded this complaint as:

"The complainers allege that Police Officers who obtained statements from the witnesses to the road crash on 29 July 2003 ... which showed discrepancies in the seating position of [Mr B and Ms C] within the offending vehicle, failed to explore these discrepancies and were thus in neglect of their duty."

During his investigation, Chief Inspector U looked at the statements given on 29 July 2003 by the five occupants of the oncoming vehicle. He also took account of the statements given by Mr B and Ms C. Additionally, he also considered the precognition statements taken from Mr D and Mr EE alongside the applicants' solicitors notes from the trial.

Chief Inspector U concluded:

"Statements taken from the witnesses at the time of the road crash on 29 July 2003 where they mentioned the position of [Mr B and Ms C] within their vehicle coincides with the evidence given by [Mr B and Ms C] of their position within the vehicle and consequently there were no discrepancies at the time hence this allegation is unsubstantiated."

Chief Superintendent W's response stated:

"It is true to say that some witnesses placed the various members of [Person A's] Family differently within their vehicle. I think as you must now realise some witnesses can be more reliable, or more sure of what they have seen than others. Generally speaking, even Police Officers who are trained and expected to take in the events of serious incidents which they attend so that they can give reliable evidence in Court can at times produce inconsistencies through no particular fault other than adrenalin or the horror of what they are seeing influencing their view of events. Ordinary members of the public without the experience of witnessing difficult and dangerous circumstances on an almost daily basis are at something of a disadvantage in trying to take in a scene for which they must provide an account at a later time. I do not think it is unusual that some of the witnesses would differ about the respective positions in the vehicle of [Person A's] family. Such an issue would be significant, if for example, the driver had denied being the driver and some other members of the family had attempted to take the blame. This was clearly not the case and in the overall investigation appears not to have been significant. That said, it might have been better to reinterview the witnesses for the purpose of clarity, although it is debatable if anything would have been added to the investigation."

Consideration

It is the applicants' belief that had the road policing officers established the seating arrangements to a more accurate degree on the evening of 29 July 2003 they may have found that Mr B had in fact been the front passenger in the vehicle. It is also the applicants' belief that, had this been the

case, there may have been doubt cast over Ms C's evidence as her view of the incident would not have been as clear had she been a rear passenger.

From this, the applicants do not appear to be questioning the contents of Mr B and Ms C's statements or the conclusions which have been drawn from them, but rather that the road policing officers should have established to a greater degree of certainty the seating arrangements in the vehicle driven by Person A.

It is noted that, excluding Person A, there were seven eye witnesses to the events which resulted in the death of the applicants' son – two witnesses in the vehicle driven by Person A and five in the oncoming vehicle. The statements taken from these witnesses on 29 July 2003 refer in some degree to the seating arrangements of the vehicle Person A was driving and three specifically confirm that Ms C was in the front of the vehicle. Another three statements show that witnesses could not remember the seating arrangements and the remaining witness makes no reference to the matter at all. None specifically confirm that Ms C was a rear passenger.

In this light, the road policing officers appear to have attempted to establish the seating arrangements in the vehicle but unfortunately the witnesses could not provide the clarity which the applicants seek. It is the Commissioner's view that the police cannot be criticised if the majority of witnesses cannot remember specific details of an incident.

Although Chief Inspector U's conclusion that there was no discrepancy within the statements taken on 29 July 2003 is reasonable, Chief Superintendent W's response should have also referred to the fact that the road policing officers appear to have attempted to ascertain the seating arrangements in Person A's car. Overall, however, this complaint has been handled in a reasonable manner.

(j) Failure to seize 999 call(s) as evidence

The applicants' statement of 1 August 2005 explains their concern that the details of the 999 call made at the time of the incident was not secured by Strathclyde Police. The reason the applicants feel this is important is because of the conflicting information given both during this call and at the trial of Person A. The applicants believe that, had the transcript been obtained, the evidence given during the trial could have been challenged.

Internal Handling

Chief Inspector U recorded this complaint as:

"The complainers allege that in the failure of the Police to secure and examine the contents of a 999 telephone call from [Ms C] to the Ambulance Control on 29 July 2003, reporting the road crash, they were in neglect of their duty."

During his investigation, Chief Inspector U noted:

"[Constable K] speaks to obtaining a statement from [Ms C] on 30 July 2005 which she signed and to believing it contained the best evidence. He states he did not consider looking for a transcript of the telephone call made by [Ms C] and what it may potentially contain. Armed with hindsight and the knowledge of the witness [Ms C]'s evidence at Court, good practice should have ensured this tape recording was seized."

Chief Inspector U concluded:

"The complainers' allegation is offered some support by the content and availability of the transcript of the telephone call which was not seized by the police. However, having secured the evidence of the witness in a signed statement, the officer would believe he

had the best evidence. We now know the contents of the transcript, which could not reasonably have been anticipated, and indeed was not requested by the Procurator Fiscal's Office on the circumstances being reported. On balance this allegation is unsubstantiated."

In response to this complaint, Chief Superintendent W stated:

"Firstly, I can confirm that there is no record of any enquiry being made by the Police with the Ambulance Service to retain a copy of that call. Consequently, it does appear that the relevance of the 999 call and whether its content would have contributed to the prosecution case was not considered. In considering the evidence obtained by Chief Inspector [U] I have had to weigh up whether this would have been a reasonable line of enquiry given all the circumstances.

A detailed statement was obtained from the witness who made the telephone call and direct evidence of this nature is usually considered to be the best evidence. While I cannot deny that the recording of the 999 call may have had relevance to the case, and in anticipation of the witness's subsequent demeanour in Court it would have been useful to have had the transcript available, what is actually said in the course of a 999 call often be unreliable due to the inherent panic which invariable accompanies such events. As such, while I do not believe that there was any overt neglect of duty on the part of the Officer, there was a failure to appreciate the possible future significance of the text of the 999 call."

Consideration

This complaint appears to have transpired due to information that was provided by Sergeant J shortly after the incident. The applicants allege he had informed them that the police initially thought it was attending a minor incident. As such, their solicitor had written to the Ambulance Service requesting a transcript of the 999 call.

Having received the transcript they believed that the content lent weight to their belief that their son had been knocked down. Having been supplied with a copy of the transcript, the Commissioner notes that Ms C initially advised ambulance control that "a cyclist has been knocked down by a car". However, upon further questioning by the call handler, Ms C then states "he fell over and a car's gone over him".

During his investigation, Chief Inspector U established that the 999 call had not been secured as evidence. However, he understood that the content of the transcript may have been relevant. This point was also acknowledged by Chief Superintendent W.

Since the caller was a relative of the driver and a possible court witness, the Commissioner agrees that it would have been good practice to secure the recording of the call. In this regard, Chief Superintendent W's views on the reliability of 999 calls seem largely irrelevant. However, it is acknowledged that Strathclyde Police correctly identified and investigated the complaint and provided the applicants with a reasonable response. As such, the complaint has been handled reasonably.

The Commissioner notes that the Road Death Investigating Manual, introduced shortly after the applicants' son's death, makes specific reference to securing, as evidence, recordings of telephone messages to the police following such incidents.

(k) Failure to carry out eye test on driver

The applicants' statement of 1 August 2005 details their concern that the driver of the car had difficulty in seeing the productions presented during her trial and that she wore thick glasses. They assert that Person A did not see the wheelie bin on the road and that the road policing officers

should have considered Person A's eyesight as a contributory factor and recommended that a full eye test be carried out on Person A.

Internal Handling

Chief Inspector U recorded this complaint as:

"The complainers allege that Police officers who had contact with [Person A], the driver of the offending vehicle involved in the road crash on 29 July 2003 ... being aware that she wears spectacles should have considered her eyesight might have been a contributory factor, and consequently should have recommended that a full eyesight test be carried out on her, and were thus in neglect of duty."

Following investigation, Chief Inspector U concluded that:

"There was no evidence led at the time of the road crash that [Person A] suffered from any eyesight impairment which could be a contributory factor other than the fact that she sported spectacles hence there would be no obligation on the officers to have her submit to a full eyesight test therefore this allegation is unsubstantiated."

Chief Superintendent W's response stated:

"In this regard I can only comment that as you are aware legislation does empower Police Officers to have drivers carry out an eye test. This practice would most often be considered in dealing with the more elderly driver or where there is a definite allegation of an eye defect. The circumstances were such that there was no reason to suspect a major eye defect although [Person A] was a spectacle wearer. When the suggestion of an eye defect was communicated to Sergeant [J], he recorded the allegation appropriately and made arrangements for such an eye test to be carried out. This took place some four days later with the driver concerned passing the statutory eye test. Again, having considered Chief Inspector [U]'s report, there was nothing in it which indicates to me that it would have been appropriate to carry out such an eye test prior to the doubt being cast on [Person A]'s eyesight being intimated. Having received this information, it was of course appropriate to explore it further although the outcome showed that the eye test was passed and this in itself had no bearing on the crash."

Consideration

Chief Inspector U's investigation appears to have looked into whether eye tests should be carried out in such circumstances as a matter of course. It is noted he came to the conclusion that, in the absence of a definite allegation of impairment, the road policing officers were not in neglect of their duty. By referring to the more elderly driver, Chief Superintendent W's response develops further the circumstances in which an eye test would be conducted.

From this, the fact a driver wears spectacles was not considered as justification for an automatic eye test. In the absence of any guidance on this matter, the investigation and response to this complaint appears reasonable.

The Commissioner notes that during his investigation Chief Inspector U ascertained that, on 6 August 2003, Sergeant J was made aware that Person A may have suffered from a hereditary eye defect and, as a result of this, Person A was made to undergo an eye test under Section 72 of the Motor Vehicles (Driving Licences) Regulations 1999 on 10 August 2003. Person A passed this test.

Complaint 3 – Time taken for police to arrive at the scene

The applicants' letter of 25 November 2004 highlighted their concern over the length of time it took Constables G and H to attend the incident. The applicants letter of 24 February 2005 stated that, to have travelled from Police Office Y to the scene of the incident, Constables H and G would have had to have been travelling at 19mph. This letter also disputed that it was raining heavily at the time and asked if the police car diverted anywhere before attending the scene.

Internal Handling

Inspector Q's report of 10 January 2005 noted this concern as:

"In court PC [G], a local police officer said that he and his colleague PC [H] ... arrived at the scene at '15.40ish' just as the ambulance was leaving. We know the ambulance did not leave the scene until about 15.55. As this was a road traffic incident why did the officers take so long to get there?"

During his enquiries, Inspector Q commented:

"Incident.....refers to the report of a road accident received at 15.39 hours on 29 July 2003, code 2. Initial information was received that a male had been knocked down, he was young, aged about 15 years and was conscious. At 15.40 hours, Constables [G] and [H] were actioned to the incident using call sign UA59. They left [Police Office Y] and made their way to the locus of the incident, their time of arrival being logged at 15.58 hours. Given the geography of the road system and road conditions prevailing I submit that the response time was timeous."

Assistant Chief Constable S's response to the applicants stated:

"...it may help if I place events in the chronological order provided by Inspector [Q], so that the context of the police action may be fully understood. Inspector [Q] has, of course, had access to documents that were not available to Constable [G] in court, and so the timings of the police response can be provided more accurately. According to records the initial report of the collision was received from ambulance control at 15.39 that day, with Constables [G] and [H] being actioned to the incident one minute later at 15.40. They were, at the time, within [Police Office Y] and responded in accordance with current instructions, that is as swiftly as safely as possible. Their arrival at the scene was timed at 15.58, some 18 minutes later. It is the view of the senior officers who have reviewed the situation that, given the prevailing weather and road conditions at the time, combined with the topography [of the area], this response was timely."

Consideration

Although this matter was not re-addressed during Chief Inspector U's investigation, the Commissioner notes that Constable G gave an extremely detailed account of his actions on 29 July 2003 to Chief Inspector U. Part of this statement accounts for his recollection of receiving the call to attend and attending at the scene. He states that, upon receiving the call to attend the incident at 3.40pm, he prepared to leave the office and:

"dressed for the weather conditions which was heavy rain and in the belief that we would get wet I further replaced my utility belt."

Constable G continued that the road conditions were poor due to the rain and that he was aware of “reaching the scene in one piece bearing in mind I was attending an incident” and that on a particular stretch of road during the journey “there was a downpour so bad that I had the windscreen wipers on double speed and still had difficulty seeing”. At no time does Constable G state that he diverted anywhere during the journey. Constable H’s statement confirms this account.

It is noted that, whilst Strathclyde Police had previously made its position clear to the applicants, the Commissioner believes that it would have been good practice for Chief Superintendent W to have reiterated this. However, taking into account the comments made by Constable G and the description of the road conditions given by other witnesses, the explanation that was provided by Assistant Chief Constable S was reasonable under the circumstances.

Complaint 4 – That false information was provided to the applicants

The applicants' statement of 1 August 2005 details their concern that the reason provided to them by Sergeant J for the delay in informing them of their son's death was false. The applicants state that Sergeant J attended their home three hours after the incident to inform them of the death of their son and that, upon asking him why it had taken so long for this to be done, Sergeant J advised them that a subscriber check had had to be carried out on their son's mobile phone before his identity could be fully established. The applicants subsequently contacted Orange regarding the check and received a letter from the company informing them that no such request for information had been received.

Chief Inspector U classified the complaint as:

"The complainers allege that on 29 July 2003 ... Police Officers informed them that establishing the identity of their son ... was assisted by a subscriber check with the mobile phone company Orange, who confirmed that a mobile phone in their son's possession was registered under his name, and that they believe this is false and that no such enquiry was made with orange."

During his investigation, Chief Inspector U noted:

"The complainers speak to the allegation and to receiving a letter from Mr [FF] of the mobile phone company Orange, confirming that there was no subscriber check made by the Police on 29 July 2003 in relation to their son's mobile phone. Sergeant [GG] states that at the request of Constable [G] ... he made a subscriber check at Orange by telephone which revealed the deceased as being the subscriber. A tape recording of this conversation together with notations on the STORM print out of the incident and audit log of the facsimile machine within Force Control all indicate that a fax was sent From Force Control to Orange on 29 July 2003. Additional support is offered to this by a copy of the fax transmitted to orange on 29 July 2003 with a transaction accepted log attached thereto together with correspondence from Mr [FF] in which he accepts that on 29 July 2003, dropped telephone calls (emergency calls) from the Police were not always documented."

Having considered the complaint, Chief Inspector U found the complaint to be unsubstantiated and Chief Superintendent W's response stated:

"To summarise I understand that Police Officers advised you that they were assisted in identifying [the applicants' son] by a subscriber check carried out with 'Orange'. I understand that you believe this to be false and that no such enquiry was made. Somewhat perplexingly, I note that you have this confirmed in writing by a representative of that company. It might be helpful if I could outline the actions taken in this respect. In the first instance one of the Officers at the scene contacted our own Force Control when he became aware that [the applicants' son] was in possession of a mobile phone. He is quite clear that he contacted the Deputy Officer at Force Control from [the hospital] to ask that a subscriber check be carried out with the mobile phone company. The Duty Sergeant at Force Control confirmed receiving the request, duly contacting the company and being advised of the subscriber details in respect of [the applicants' son]. Chief Inspector [U] has listened to a tape recording of this conversation which together with notes made on the Incident Log all very much confirm the Officer's assertion. Additionally, there is a copy of a facsimile message transmitted to 'Orange' on 29 July 2003. Quite clearly, therefore, our contact with 'Orange' is well documented. I am sorry that you have been led to believe that this was not the case by the correspondence which you have from 'Orange'. Further, Chief Inspector [U] was able to obtain a recording of a telephone call from the Duty Sergeant to a representative of 'Orange' requesting subscriber details for [the applicants' son's] mobile

telephone number to which the representative duly gave his details. I would therefore ask you to accept that this has been an error on behalf of 'Orange'.

Consideration

It is noted that during his investigation, Chief Inspector U checked police communications records and obtained a fax that had been sent to the mobile phone company. He also located a confirmation sheet with the details of when the fax was sent. These documents have been supplied to the Commissioner's office. Chief Inspector U also stated he had listened to a tape recording of a call between the police and the mobile phone company during which the subscriber was named as the applicants' son. This recording has also been provided to the Commissioner's office and it is confirmed that Chief Inspector U's account is correct. Chief Inspector U also wrote to the mobile phone company for an explanation regarding the discrepancy. However, it does not appear that the discrepancy has been explained.

The applicants state that, during their meeting with Chief Inspector U in October 2005, he informed them he was satisfied the checks had been carried out in the normal manner. However it is noted that he carried out further checks following the meeting, and wrote to the mobile phone company's representative. He requested confirmation that the fax number was correct, and asked for an explanation. The response showed that the fax number was indeed the out of hours contact number for the mobile phone company, and that the system at that time could not record specific details for such subscriber checks. It is clear that all of the evidence he gathered, including the letters provided by the applicant and statements from the officer involved, had been contained within the report to the Area Procurator Fiscal. The Commissioner notes that Chief Inspector U carried out a thorough investigation into this complaint and that the response from Chief Superintendent W accurately reflected the thoroughness of this investigation. As such, this complaint has been handled reasonably.

Organisational failing

The majority of the complaints raised by the applicants relate to procedural shortcoming and it is evident that some of these complaints were based upon a comparison of police action taken against the guidance contained within the Road Death Investigation Manual. Whilst the Commissioner is aware that the Road Death Investigating Manual brought together best practice across the eight Scottish police forces, Strathclyde Police has informed the Commissioner's office that the only guidance available to attending officers at the relevant time was that contained within Strathclyde Police's Road Accident Procedures.

Given the lack of detail contained within the Road Accident Procedures, it could be argued that the failings identified by Strathclyde Police should also be regarded as organisational and not confined to any individual officer.

However, that is not to suggest that individual officers have not contributed to the frustration which the applicants have experienced. Notwithstanding the pressures which would have been faced upon attendance at the incident, the key failing was allowing Person A to drive away shortly after the incident. This decision initiated a chain of events which effectively put the attending officers at an immediate disadvantage and it is unsurprising that a number of the applicants' complaints have been centred around the effects of this decision.

Family Liaison

A number of the applicants' concerns also relate to information which they claim was given to them by Sergeant J following his appointment as Family Liaison Officer. The Commissioner notes that HMICS commented on the lack of detail provided by Sergeant J and requested that Strathclyde Police conduct an interview with Sergeant J to enable a "more evidenced response" to be given to the applicants. It is noted that Strathclyde Police refused this request. In the absence of the necessary detail, the applicants have grown increasingly concerned to the extent that, in the later stages of the police enquiry, they believed that Sergeant J's motives were more malevolent than the information supplied would suggest. As a result of this, doubts have been placed in the applicants' mind which the Commissioner believes will never be quelled.

Whilst the Commissioner acknowledges that, under the present system of dealing with complaints, Sergeant J was under no obligation to provide a statement in relation to complaints served on him, he is of the view that the detail required to provide the applicants with as much closure as possible related to the information he provided the applicants in his role as Family Liaison Officer. As the information required was clearly within his operational duties, the Commissioner believes further clarification should have been obtained from Sergeant J, as much for his sake as for that of the applicants. This is an important learning point for Strathclyde Police.

The Commissioner notes that, during its investigation, Strathclyde Police came to the conclusion that Sergeant J was not fully trained to carry out the role of Family Liaison Officer. Given the nature of the incident, the technical issues involved and his own involvement, it is indeed questionable whether Sergeant J should have been appointed Family Liaison Officer. However, it must be noted that the Road Death Investigation Manual specifically recognises the importance of appointing a person suitably qualified to act as a liaison and provides guidance on how such liaison should be conducted. Had this guidance been in place and followed at the time of the incident, many of the applicants' concerns may have been avoided.

Misconduct regulations

The complaints and issues raised by the applicants highlight acutely the problems which can be faced when dealing with complaints through the perspective of “misconduct”.

As discussed above, when complaints are viewed through this perspective the officer subject to a complaint is under no obligation to respond to the specific allegations made against him or her other than to provide an operational statement. This has the potential to have a detrimental effect on the quality and depth of any investigation carried out.

Additionally, the responses provided by Strathclyde Police in relation to the concepts of good faith and partial substantiation highlight the potential for outcomes to be skewed when complaints are looked at under “misconduct”.

The Commissioner notes that HMICS also considered the difficulties which can be experienced when using the regulations relating to misconduct in dealing with complaints about the police and commented that the Scottish Government and ACPOS were working towards producing new procedures which they hoped would enable more flexibility and consistency in the complaint handling process.

The Commissioner is aware that these procedures are still being considered by ACPOS and the Scottish Government through the medium of the Police Advisory Board for Scotland Technical Working Group. In furtherance of his general functions as detailed in Section 42 of the Police, Public Order and Criminal Justice (Scotland) Act 2006 to secure efficient and effective complaint handling arrangements, he has already expressed his views to members and officials of that Group on the need for further change. He is pleased to note that the Working Group has recently agreed (March 2010) the need to revisit progress to date. The Commissioner expects to play a pro active role in this work where appropriate with a view towards achieving a complaints handling system that reflects a learning, rather than a blame, culture.

Changes

As already discussed, there has been significant work carried out by ACPOS and the Scottish Police Service to consolidate the manner in which road deaths are investigated, the results of which may prevent similar failings being repeated.

The Commissioner would also like to recognise the changes which the applicants have effected in the investigation of road traffic incidents. As a result of their complaints, Strathclyde Police initiated training for all officers in rural areas. The potential benefits of this cannot be underestimated. Given that in such areas there may be delays in either road policing officers or crash investigating teams attending road traffic incidents, it is essential that initial attending officers are aware of the demands placed upon them. Taking into account the potential for changes in staff in these locations, the Commissioner recommends that such training is a continuous process.

Responses

Whilst the various enquiries carried out by the force had gathered enough information to answer the vast majority of the applicants’ concerns, the various responses are sometimes characterised by a clear acceptance of failure followed with partial justification for the actions taken. It is clear that, within the paperwork supplied, Strathclyde Police has accepted that there were failings in how the incident was dealt with and the Commissioner now recommends that it should now issue a final unreserved apology to the applicants.

Given the above, the Commissioner acknowledges that the applicants may never be fully satisfied with the explanations which they have received from Strathclyde Police and it is hoped that this

review can in some way answer some of the questions which the applicants have over the initial incident and the manner in which Strathclyde Police has investigated their complaints. However, the Commissioner is also aware that the issues involved in the applicants complaints have now been looked at by a number of agencies. Other than the further work required, it is the Commissioner's view that there is little of substance that Strathclyde Police can now add to the enquires it has previously undertaken.

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