

# Report of Complaint Handling Reviews in relation to Strathclyde Police

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

## Summary and Key Findings

**The six complaints reviewed in these reports relate to complaints made to Strathclyde Police by the applicant and his mother between March and May 2008. The complaints were as a result of contact the applicant had with Strathclyde Police over a period of around four and a half years. Given the nature of the complaints, Strathclyde Police conducted two separate investigations and wrote separately on each to the applicant. Both have been reviewed here separately under one cover.**

Of the six complaints reviewed, the Commissioner has decided that one (Complaint 1) was not handled in a reasonable manner and that consequently further action is required by Strathclyde Police. The Commissioner has recommended that Strathclyde Police provides the applicant with sufficient reasons to properly inform him why no misconduct proceedings were taken against the officers subject to complaint.

As a learning point, the Commissioner would remind police bodies that officers should, in line with ACPOS guidance in the Manual, record in their notebooks their reasons for deciding to handcuff suspects. As the Manual recognises, the use of handcuffs amounts to the use of physical force and requires to be justified in each case. The recording of the reasons for taking such action assists in achieving this objective.

The Commissioner also wishes to see, within the reports of officers who investigate complaints about handcuffing, explicit reference to Use of Force reports, where these exist. Such reports detail occasions when force is used during police operations and include narrative regarding its effectiveness or otherwise.

In the Commissioner's view, adherence to these practices will have a significant impact upon the ability of police forces to respond convincingly to complaints arising from the use of handcuffs.

## The Commissioner's role

Section 35 of the Police Public Order and Criminal Justice (Scotland) Act ("the Act") gives the Commissioner the power to examine the manner in which a policing body has dealt with a "relevant" complaint, as defined in the Act.

The Commissioner is independent of the police service and performs his functions in a fair and impartial manner. Before considering a complaint, the Commissioner's office obtains all papers held by the policing body against which the complaint has been made. These papers are considered alongside information provided by the applicant. The Commissioner then assesses whether the policing body's handling of the complaint was reasonable in all the circumstances. The Commissioner will look at the entire handling process, from the initial investigation by the policing body to the final response issued to the applicant. Among the factors which the Commissioner takes into account are the following:

- whether the policing body's response to the complaint is supported by all material information available;
- whether in dealing with the complaint the policing body has adhered to all relevant policies, procedures and legal provisions;
- where the complaint has resulted in the policing body identifying measures necessary to improve its service, whether these measures are adequate and have been implemented;
- whether the policing body's response to the complaint is adequately reasoned; and
- whether the policing body has communicated with the applicant in a reasonable manner.

## Background

The applicant has asked the Commissioner to review the handling of his complaints about Strathclyde Police relating to an incident on 15 March 2008. The incident surrounds police attendance following receipt of a report which indicated that the applicant and two of his friends may have been responsible for an assault outside a pub.

### The applicant's account

The following details are taken from the applicant's statement of 25 April 2008 which he gave in connection with his complaints about Strathclyde Police.

At around 12.25 am on 15 March 2008 the applicant and two friends were refused entry to a local pub. The applicant states that one of his friends attempted to re-enter the pub but was pushed out by the door stewards. He states that they all then left the scene in order to look for a taxi.

The applicant states that, whilst waiting for a taxi, he saw his two friends running towards him being chased by the door stewards. The applicant then joined one of these friends, Person A, and started himself to run away from the door stewards. The applicant then witnessed two police officers pursuing him and Person A on foot and a police car pulling up beside both of them.

The applicant states that, as he continued to run, he saw a:

*"... baldy officer wearing a yellow fluorescent jacket coming from my left hand side running at pace and rugby tackled me into a big hedge."*

The applicant believed this officer to be Constable B. He claims that despite offering to Constable B that he would "come quietly", Constable B pushed his face further into the hedge, causing him pain. The applicant states that he was aware of Constable B's other hand "coming in from my left" and that the next thing he was aware of was lying:

*"... face down on the road, handcuffed to the rear behind a Police Van. I was facing onto the back of it. I know my mouth was burst inside the top of the right hand side of my mouth."*

The applicant states that he was then picked up by both shoulders and "flung" into the back of the police van, which caused him to stumble and fall into the rear of the van. The applicant states that, upon stumbling, he struck the right side of his head off the metal seat inside the police van.

The applicant was then taken to Police Station X by two officers, where his handcuffs were removed. Upon removal of his handcuffs, the applicant states that his right wrist was "deeply cut" and that there was blood all over the handcuffs he had been wearing. The applicant was cautioned and charged with breach of the peace, assault, police assault and resisting arrest.

The applicant spent the weekend at Police Station X and appeared at court on 18 March 2008 where he was released on bail.

### Constable B's account

Constable B provided a statement, dated 24 March 2008, in response to the complaints. Following his attendance at the scene of the alleged assault, he became aware that two males, possibly involved in the incident, were in the near locality. Both he and Constable C located the applicant and his friend, drove past them and stopped their vehicle. Constable B states that he pursued the shorter of the two (the applicant's friend) whilst Constable C pursued the taller (the applicant). Having apprehended the applicant's friend, Constable B notes that he was aware that Constable C

had caught the applicant but that the applicant had started struggling. Constable B states that he watched as:

*“... the struggle continued and both Constable [C] and [the applicant] fell against a nearby hedge.”*

According to Constable B, Constable C was then assisted by Constable D. However, the applicant continued to struggle violently and all three then fell to the ground. Constable B stated that both Constables C and D eventually restrained the applicant and handcuffed him to the rear.

Constable B states that the applicant began to struggle with his colleagues as they attempted to place him into the rear of the police van and that he then assisted these officers to do so. Constable B noted that the applicant was aggressive and was shouting and swearing at the three officers. He also noticed that the applicant had a cut to his mouth.

Constable B's statement continues that, upon seeing him, the applicant kicked out at him as he (the applicant) sat slumped in the rear of the police van.

Constable B noted that after a few minutes the applicant tired and the three officers seized the opportunity to place him into the rear of the police van.

### **Constable C's account**

In his statement of 25 March 2008, Constable C states that he was on foot patrol duty with Sergeant D when he witnessed two door stewards chasing three males from a local pub. Upon being told by the stewards that the three males had been responsible for two assaults, both he and Sergeant D gave chase.

Having apprehended one suspect with Sergeant D, he and Constable B then drove off to pursue the two other suspects. According to Constable C, having caught up with the two suspects, he got out from the vehicle and asked the applicant to stop. The applicant failed to do so and ran to the driver's side of the car where Constable B had apprehended Person A.

Constable C states that the applicant continued to run away from the area despite several instructions to stop. As the applicant tried to run past, Constable C apprehended him. Constable C states that as he apprehended the applicant:

*“... my momentum carried both me and the [applicant] into the hedge at the locus. I informed the [applicant] that he was under arrest for an assault and the [applicant] began to struggle violently with me, lashing out with his arms in an attempt to break free.”*

Constable C states that he then heard one of the officers shouting that the applicant may have been in possession of a weapon and for this reason, together with the fact the applicant was struggling, he decided to restrain him on the ground. Constable C was then joined by Constable E who assisted him in lifting the applicant to his feet. Constable C states that the applicant again began to struggle and had to be restrained against the hedge and handcuffed to the rear.

Constable C's statement concludes by stating that a Special Constable and Constable E then moved the applicant to the rear of the police van where the applicant again started to struggle. The applicant was restrained on the ground by the officers at the van until he had calmed down. He was then lifted to his feet and placed within the van.

### **Constable E's account**

In his statement of 23 March 2008, Constable E states that he was on mobile patrol in a marked police van along with Constable F when he was called to assist in the pursuit of a group of males who had been fighting outside a local pub.

According to Constable E, he stopped the police van where he saw that Constable B had apprehended a male. He noted that Constable C was still struggling with another male on the pavement beside a large hedge.

Constable E then assisted Constable C in apprehending the applicant, who then fell to the ground taking both constables with him. Constable E then managed to hold both the applicant's arms whilst Constable C placed him in handcuffs "stacked" to the rear. Both then directed the applicant to the rear of the police van.

Constable E then opened the doors of the police van and instructed the applicant to get in. According to Constable E, the applicant then turned round and sat on the floor of the van with both legs outside. Constable E states that the applicant had blood coming from his mouth at this point. He then took hold of the applicant's arm to position him to go into the van properly. Constable E states that at this point the applicant immediately began kicking out with his feet and struck Constable B, who had come over to assist. Constable E states that Constable B then grabbed hold of the applicant's legs and, as he tried to continue holding his arm, the applicant fell to the ground where he continued to try to break free. After a few minutes, the applicant became tired and was placed in the rear of the police van by Constable E.

Constables E and F then conveyed the applicant to Police Station X. Upon attendance there, Constable E noticed that the applicant had:

*"... a cut or graze to his chin, slight swelling to his top lip and his right wrist had a 2 cm slight cut where the handcuffs had dug in whilst he was struggling to the ground."*

### **Constable F's account**

In her statement of 25 March 2008, Constable F states that she and Constable E made their way towards an area where the police were chasing a number of males who had been involved in an altercation.

According to Constable F, upon arrival, she noticed that Constable B had apprehended one male who appeared to be totally compliant and that Constable C was struggling with the applicant "at the side of the pavement, partially in a hedge". Constable F states that Constable E went to assist Constable C and that both officers brought the applicant under control and handcuffed him to the rear.

Constable F states that both officers then led the applicant to the rear of the police van and that, because he continued to struggle, the applicant had again to be restrained by both officers and Constable B. Constable F states that the applicant continued to shout, swear and struggle for several minutes before the officers were able to control him and place him into the rear of the van.

Constable F states that while taking him to Police Station X the applicant told her that he had "been fighting earlier in the evening and that someone had punched him in the mouth."

### **Special Constable G's account**

Special Constable G states that he was one of the officers giving chase to the suspects on foot. He states that, upon arrival at the scene, he noticed that Constables E and F were already in attendance, and observed the applicant struggling with Constable C.

Special Constable G states that he witnessed the applicant kick out whilst at the rear of the police van and that he kicked Constable B to the legs. Special Constable G grabbed hold of the applicant's legs, following which the applicant fell out of the van onto the ground where he continued to struggle aggressively.

Special Constable G concluded his involvement with the applicant when he helped place him into the rear of the van.

### **Special Constable H's account**

Special Constable H's statement of 23 May 2008 states that, as he was pursuing the suspects on foot, Constable C drove past him. According to Special Constable H, Constable C went past the applicant, stopped, threw open the door and ran out, taking hold of the applicant. Special Constable H stated that it was the applicant's momentum which carried him and Constable C into the hedge.

Special Constable H states that the applicant was pinned against the hedge by Constable C and two other officers whom he did not know, but that this was only due to the applicant struggling. Constable B went to assist Constable C but Special Constable H did not see Constable C push the applicant's head into the hedge.

Special Constable H states that the initial attempts to place the applicant into the rear of the police van were unsuccessful as the applicant was using his feet and legs to prevent himself being placed inside. Special Constable H's statement contains the following passage:

*"... pulled back from the van and lowered into the prone position face down. He was kicking out with his legs and I saw him strike Constable B on the legs ... He was then bodily lifted into the cell by officers there but I can't recall who actually did it. He was not pushed or thrown into the van and I did not see him stumble or strike his head ... I have been informed that [the applicant] has alleged he was not properly informed or directed on how to get into the van. I heard an officer who was holding [the applicant], I can't recall who, telling him to "STOP KICKING OUT" and "CALM DOWN". This was ignored by [the applicant] who continued to physically resist all efforts to put him in the van."*

### **Constable J's account**

According to Constable J's statement of 25 March 2008, having conveyed one of the applicant's friends to Police Station X in another police vehicle, he noticed that the applicant had fresh injuries to his face. Constable J states that, upon asking the applicant what happened to him, the applicant replied that he had been fighting outside a pub and had been punched in the face.

On 20 March 2008 the applicant visited his GP who, following examination, noted that the applicant had seven injuries, none of which required medical treatment.

## The Complaints

Based on the information provided by the applicant and Strathclyde Police, the Commissioner has identified the following complaints:

- (1) that the applicant was assaulted on two occasions;
- (2) that excessive force was used in the application of handcuffs;
- (3) that officers failed to provide the applicant with specific instruction about how to enter and sit in the police van; and
- (4) that the applicant was wrongfully arrested.

Following intimation of the applicant's complaints to Strathclyde Police, Inspector L was appointed to make preliminary enquiries. On 21 March 2008, Inspector L attended at the applicant's home and obtained a statement from him in the presence of his mother. The statement detailed the applicant's complaint of assault.

During the course of his enquiries, Inspector L obtained statements from the officers involved in the incident, both door stewards and the applicant's friends. On 26 March 2008, Inspector L forwarded his initial report to Chief Inspector M of the Complaints and Discipline Branch. On 4 April 2008, Chief Inspector M wrote to the applicant informing him that an initial report had been compiled and was being considered. As the applicant had made complaints from which criminality was inferred on the part of police officers, Chief Inspector M forwarded a copy of the report and associated papers to the Area Procurator Fiscal for determination.

Inspector L's report summarised the complaints as follows:

*"... it is [the applicant]'s belief that he was assaulted on a least two occasions. The first was when his face was deliberately pushed into the hedgerow whilst being arrested, the second when he was thrown into the rear of the police van. [The applicant] is also of the opinion that at some point during his arrest he was unconscious and is obviously unable to state what happened during this time. He is also unable to say how he sustained a cut to his mouth. It is his opinion that the officers responsible for assaulting him should be reported to the Procurator Fiscal."*

The Area Procurator Fiscal responded on 14 April 2008 stating that she was satisfied the applicant's complaint involved allegations of criminal conduct. She therefore requested that Strathclyde Police send a full report on the allegations by 23 June 2008. The applicant was advised on 17 April 2008 that Inspector N of the Complaints and Discipline Branch had been appointed to conduct this enquiry. A further statement was then taken from the applicant, again in the presence of his mother, on 25 April 2008. This second statement detailed complaints 2 – 4 and reiterated the complaint of assault. Inspector N also obtained further statements from one of the door stewards at the pub, one of the applicant's friends and from the special constables who were also involved in the incident.

The full report, dated 24 June 2008, was sent to the Area Procurator Fiscal on 3 July 2008. Having considered the report and supporting evidence, the Area Procurator Fiscal wrote to Strathclyde Police on 22 July 2008, advising of the decision to take no proceedings in respect of those criminal complaints.

Chief Superintendent P wrote to the applicant on 28 August 2008 with the outcome of the enquiry into his complaints. In relation to the complaint of assault, Chief Superintendent P informed the

applicant that the Area Procurator Fiscal had decided to take no criminal proceedings. Chief Superintendent P ended her letter by stating that no formal action was being taken against any officer:

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

On 3 September 2008, the applicant's mother wrote to Chief Superintendent P expressing her dissatisfaction with the outcome. A further letter was sent to the applicant on 16 September 2008, giving some additional explanation of the conclusions reached and advising the applicant's mother that she may contact the Commissioner's office should she remain dissatisfied.

## **The Commissioner's Review**

The applicant's mother first contacted the Commissioner's office on 16 September 2008 by telephone. Her application form, received on 3 October 2008, was appended to a detailed letter containing the complaints. Also enclosed were copies of correspondence between her, the applicant, the Area Procurator Fiscal and Strathclyde Police. The Commissioner's office requested the complaint file from Strathclyde Police on 6 October 2008 and received it on 23 October 2008.

### **Complaint 1: Alleged misconduct by the officers**

As detailed above, the applicant complained that he was assaulted on two occasions during his contact with Strathclyde Police on 15 March 2008. The alleged assaults involve the applicant's face being pushed into a hedge and being thrown into the back of a police vehicle, causing him to strike his head on the side of a metal seat.

In terms of section 34(3)(b) of the Act, the Commissioner's office has no power to deal with complaints about the police which consist of an allegation of an act which constitutes a crime. However, as stated in previously published complaint handling reviews, the Commissioner considers that the purpose of section 34(3)(b) is to preserve the role of the Crown in dealing with criminal complaints about the police. Section 34(3)(b) also prevents any conflict arising between this function and those of the Commissioner.

In the present case, the Area Procurator Fiscal decided to take no proceedings against the officers concerned. According to Chief Superintendent P's letter of 28 August 2008, a review of the circumstances then took place and it was decided that it was "not appropriate to take formal action" against the officers. The Commissioner has assumed that by "formal action" Chief Superintendent P meant misconduct proceedings under the Police (Conduct) (Scotland) Regulations 1996.

Given that the Area Procurator Fiscal considered the allegations and that they were thereafter treated as "non-criminal" for the purposes of potential misconduct proceedings, the Commissioner considers that he has the power to review the manner in which Strathclyde Police dealt with these complaints, but only in respect of any alleged misconduct. In the Commissioner's view, any other approach to the interpretation of section 34(3)(b) would mean that Strathclyde Police's decision in relation to misconduct proceedings would be free from independent scrutiny.

As noted above, Chief Superintendent P informed the applicant simply that it was "not appropriate to take formal action" (i.e. misconduct proceedings) against the officers concerned. In the Commissioner's view, when decisions of this nature are communicated, complainers should be given as much information as is necessary to properly inform them of the reasons why misconduct proceedings are not considered justified. The conveying of such information is essential if complainers are to be fully informed of the outcome of their complaints and the reasons for it.

It is clear from her letter of 28 August 2008 that Chief Superintendent P did not provide sufficient information to explain the decision not to pursue misconduct proceedings against the officers concerned. The Commissioner therefore recommends that Strathclyde Police provide the applicant with additional information so that he is properly informed of the reasons for this decision.

### **Complaint 2: Alleged excessive force**

The applicant's second statement highlighted his dissatisfaction that he had been handcuffed too tightly by an attending officer, resulting in his right wrist being cut. The applicant's mother has also expressed her belief that had the injuries to her son's wrist been caused by him struggling or resisting arrest, they would not have been confined to a single wrist.

#### *Internal Handling*

Inspector N summarised this complaint as follows:

*"... a male police officer handcuffed [the applicant] to the rear in a manner that was too tight and did thus use excessive force."*

During his investigation into this complaint, Inspector N took account of the statements provided by the sergeant who had processed the applicant at Police Station X, Constable F, and the applicant's GP. Based on the content of these statements, Inspector N concluded that the complaint was unsubstantiated.

In her final response to the applicant, Chief Superintendent P stated:

*"You told us firstly that a male police officer handcuffed you to the rear in a manner that was too tight and did thus use excessive force. The officer concerned denies this allegation and states that the handcuffs were applied in accordance with officer safety training and he is supported by colleagues.*

*I have carefully reviewed the evidence available to me and I am satisfied that the officer concerned used the appropriate officer safety techniques when applying the handcuffs and restraining you to prevent injury to both yourself and the police officer."*

#### *Consideration*

Inspector N noted that, upon removal of the handcuffs, Constable F and the processing sergeant noticed that the applicant was bleeding from a cut to his right wrist. Constable F also saw that a bracelet being worn on the applicant's right wrist had:

*"... become entangled with the handcuffs and therefore may have been the cause of his wrist being cut."*

Inspector N also took account of the findings of the applicant's GP, who suggested that the injuries sustained could have been caused in a number of ways, including resisting or struggling. The Commissioner notes that Constable E also stated:

*"I assisted Constable [C] in handcuffing the complainer stacked to the rear. I checked the handcuffs for tightness and they had been applied in the proper manner."*

Although it is not possible to establish precisely how the applicant sustained the injuries to his wrist, it is clear that Inspector N made reasonable attempts to do so. In the Commissioner's view, based on the available evidence, it was not unreasonable for Inspector N to have concluded that

the complaint was unsubstantiated. The Commissioner also considers that Chief Superintendent P's response to the applicant was reasonable.

Although not specifically addressed by Inspector N, Chief Superintendent P's response states that the handcuffs were applied in accordance with officer safety training and that the applicant was restrained for both his and the attending officers' safety.

The Commissioner has considered the terms of the Officer Safety Training Manual ("the Manual") in this connection. The Manual is a central reference point for all officer safety training in Scotland. It provides a common, minimum standard for all Scottish police officers on a range of issues including the use of force and self defence. One of the general principles within the manual is as follows:

*"No Police Force adopts the policy whereby every prisoner will be handcuffed. The application of handcuffs is the use of physical force, therefore it must be justified. However officers are encouraged to apply the handcuffs more often:*

- *To ensure their own safety*
- *To ensure the safety of others*
- *To ensure the safety of the prisoner"*

As noted above, all the officers who attended the scene state that the applicant became involved in a struggle with Constable C and that he was resisting arrest. There is also evidence of the officers being concerned that the applicant was carrying a weapon.

In these circumstances the Commissioner is satisfied that the applicant's handcuffing was in accordance with the above principle and that Chief Superintendent P's comment to this effect was justified. Accordingly, the Commissioner considers that this aspect of the applicant's complaint was dealt with in a reasonable manner.

### **Complaint 3: Alleged failure to provide proper instruction**

The applicant's second statement explained that, having been "flung" into the police vehicle whilst handcuffed, he got up by himself and sat in the seat. The applicant feels that Strathclyde Police failed to follow procedure by not placing him in the seat.

#### *Internal Handling*

Inspector N summarised this complaint as follows:

*"... a number of male police officers failed to provide him with specific instruction when placing him in the rear of a police van and how to be seated in said vehicle."*

Having looked at the evidence gathered, Inspector N commented:

*"The complainer is alleging that he was not provided with sufficient instruction on how to be placed within the rear of the police van and how to be properly seated within the van, however there is no evidence to support his version of events. Constables [C], [E] and [G] deny the allegation and are fully supported by Constables [F] and Special Constable [H], who state that due to the complainer's demeanour he was not prepared to take any instruction from the officers."*

Inspector N concluded that this complaint was unsubstantiated. Chief Superintendent P's response stated the following:

*“The officers subject to complaint describe your actions as being influenced by alcohol, in that you failed to comply with instructions and sat on the floor of the vehicle with your legs outside. The officers describe having to use reasonable force to lift you into a seated position which resulted in a struggle.*

*... The officers concerned are supported by a number of colleagues and, based on the evidence available to me, I am unable to substantiate your complaint.”*

### **Consideration**

According to the statements given by the officers the applicant refused to enter the rear of the police vehicle and refused to listen to the instructions that were given to him by the attending officers. In particular, Constable F stated:

*“... due to [the applicant]’s violent behaviour, the officers were not afforded the opportunity of placing [the applicant] into the police van in a compliant manner. I did, however, hear one of the officers instructing him to get into the rear of the van. If [the applicant] had been compliant, no instruction from any officer would have been necessary as he would have just simply walked into the back.”*

Special Constable H also stated that he:

*“... heard an officer who was holding [the applicant] telling him to ‘stop kicking out’ and ‘calm down’. This was ignored by [the applicant] who continued to physically resist all efforts to put him into the van. He was heavily under the influence of alcohol and any verbal instructions of any kind appeared to be ignored by him as he put up sustained resistance to the officers.”*

Having considered this information, together with statements summarised above, the Commissioner is satisfied that this complaint was handled in a reasonable manner. Accordingly, no further action is required in this connection.

### **Complaint 4: Alleged unlawful arrest**

The applicant’s second statement details his dissatisfaction that he was charged with breach of the peace, police assault and resisting arrest. The applicant also states that it was only when he appeared in court that he was aware of these charges.

### **Internal handling**

Inspector N summarised this complaint as follows:

*“... a number of male police officers unlawfully arrested him in respect of charges of Assault, Breach of the Peace, Resist Arrest and Police Assault.”*

Having considered the evidence gathered, Inspector N commented that four civilian witnesses and the CCTV images taken from the local bar provided “full support” in relation to the charges of assault and breach of the peace. He also commented that the evidence of Constable F and Special Constable H provided full support for the charges of resisting arrest and police assault.

Inspector N subsequently concluded that this complaint was unsubstantiated. Chief Superintendent P’s response stated:

*“The officers concerned deny this allegation and are supported by a number of colleagues and other independent witnesses.*

*... I have reviewed the entire circumstances of your complaint and I am satisfied that there was sufficient evidence in law for the officers to arrest you and liable [sic] the appropriate charges."*

### **Consideration**

The Commissioner notes that the applicant appeared in court on four charges and pleaded not guilty to three of them. He was found guilty of assaulting a police officer. Constable E noted in his statement that, when charged in the police station, the applicant responded as follows:

Charge 1 (assault): "he assaulted me first. I retaliated to defend myself."

Charge 2 (breach of the peace): "I'll accept that."

Charge 3 (resisting arrest): "no reply".

Charge 4 (police assault): "I'm not taking that".

Constable E is supported in his account by Constable F.

In the Commissioner's view, the terms of the statements summarised above fully support the decision to arrest the applicant, as do a number of his alleged responses to caution. The fact that the COPFS proceeded with four charges against the applicant provides further support for the actions of the officers in this connection.

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

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

#### **Complaint 1: Alleged misconduct by the officers**

For the reasons given, the manner in which these complaints were handled by Strathclyde Police, in the context of potential misconduct, was not reasonable. The Commissioner therefore recommends that Strathclyde Police sends a further letter to the applicant providing him with sufficient information to properly inform him as to why misconduct proceedings were not considered appropriate.

The Commissioner wishes to make clear that this recommendation is made with the sole aim of keeping complainers fully informed of the outcome of their complaints. The Commissioner has no view on whether misconduct proceedings were justified in the present case.

#### **Complaint 2: Alleged excessive force**

In the Commissioner's view, the manner in which this complaint was dealt with by Strathclyde Police was reasonable. Accordingly the Commissioner requires that no further action be taken by Strathclyde Police in this regard.

#### **Complaint 3: Alleged failure to provide proper instruction**

In the Commissioner's view, the manner in which this complaint was dealt with was reasonable. Accordingly, no further action is required in this connection.

#### **Complaint 4: Alleged unlawful arrest**

In the Commissioner's view, the manner in which this complaint was dealt with by Strathclyde Police was reasonable. Accordingly no further action is required in this connection.

## Learning point

As a learning point, the Commissioner would remind police bodies that officers should, in line with ACPOS guidance in the Manual, record in their notebooks their reasons for deciding to handcuff suspects. As the Manual recognises, the use of handcuffs amounts to the use of physical force and requires to be justified in each case. The recording of the reasons for taking such action assists in achieving this objective.

The Commissioner also wishes to see, within the reports of officers who investigate complaints about handcuffing, explicit reference to Use of Force reports, where these exist. Such reports detail occasions when force is used during police operations and include narrative regarding its effectiveness or otherwise.

In the Commissioner's view, adherence to these practices will have a significant impact upon the ability of police forces to respond convincingly to complaints arising from the use of handcuffs.

## Background

The applicant believes that he has been subject to harassment by a particular police officer on the grounds of his having come into contact with this officer on several occasions over a period of approximately four and a half years. In this report, that officer is referred to as Constable A. In the previous report, the same officer was referred to as Constable B. For clarity, the background circumstances to the complaints contained in this review are presented below.

On 13 December 2003, police were called by staff at Leisure Centre X, who reported that they had a problem with a 14 year old male who was causing a disturbance within the ice rink. It was alleged that the applicant was drunk and refusing to leave and, by attempting to skate on the ice, was causing a danger to himself and to others. Constable A and Special Constable B arrived and arrested the applicant on a charge of breach of the peace. The police report which was subsequently submitted to the Reporter to the Children's Panel stated that the applicant had been behaving in an excited and abusive manner.

On 15 March 2008, the applicant was arrested together with his two friends and all three were charged with offences following alleged assaults outside a local pub. This incident led to the applicant making a number of complaints about Strathclyde Police, including wrongful arrest and assault on the part of Constable A. The manner in which these complaints were dealt with is contained in PCCS/00508/PF-SP(A) above. As noted above, Constable A is referred to in that report as Constable B.

On 27 March 2008, Constable A and Constable C were tasked with following up an enquiry regarding a suspected stolen vehicle. On being provided with information that three young men had been driving the car and had subsequently abandoned it, Constables A and C stopped a group of young men in the vicinity, which included the applicant. Constable C noted the names of each of the males; Constable A did not speak to the applicant.

On the evening of Friday 9 May 2008, the applicant was with a group of three friends at a grassy spot near a residential area. They had a quantity of alcohol with them. Constables A and C, who were on uniform cycle patrol in the area, state that their attention was drawn to this group and that they then noticed an individual throwing away a bottle which he had been holding. Both Constables approached the group and, having established which of the young men had been responsible for throwing the bottle, Constable C cautioned and charged him with littering. Details of the other persons present, including those of the applicant, were also taken. Having obtained these details, it was established that one of the group was under 18 years of age. As a result, the alcohol that had been in their possession was confiscated. Constables A and C informed them that it could be collected later that evening from Police Station Y.

The applicant states that after charging his friend for throwing the bottle away, Constable A asked him about some graffiti, for which the applicant denied responsibility. According to the applicant, Constable A replied that "if he was that way inclined he would charge [the applicant] with it".

The applicant also alleged that someone in the group said something about complaints, to which Constable A replied "[the applicant] is good at complaints".

Constable A, the applicant claimed, then said that he "didn't want any attitude from [the applicant] or he would lock [the applicant] up ... then he said that [the applicant] was Jekyll and Hyde with a group of people."

The applicant claims that, in response to questioning about the remaining alcohol, he replied that some of it belonged to him. The applicant's statement went on:

*“[Constable A] then told us that he could take the drink off of us and quoted some law because we were with a junior. I said to him that he wasn't going to take the drink until he knew that it belonged to me to which he said ‘Aye a know’”.*

According to Constable A, he did ask the applicant about some graffiti he had seen and made a reference to likening him to “Jekyll & Hyde”. However, he denied the other comments alleged by the applicant. Constable A also states that the applicant swore and laughed loudly in front of his friends when the alcohol was confiscated, and that he told the applicant to “calm down”.

Following this exchange, the applicant called his mother to inform her that Constable A had confiscated his and his friends' alcohol. Upon hearing this, the applicant's mother contacted the police and was told by Inspector D to make a formal complaint.

## **The Complaints**

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

- (1) Constable A has deliberately targeted the applicant on a number of occasions, amounting to harassment; and
- (2) Constable A made provocative comments to the applicant.

At approximately 10.45 pm on the same day the applicant's mother made her complaints, Sergeant E took a statement from her at her home address. The following day, Sergeant E took a statement from the applicant. Both statements refer only to the action taken by the police on 9 May 2008. Further statements were taken from the applicant and his mother by Inspector F on 29 May and 2 June 2009 respectively. These statements collectively refer to the circumstances surrounding the action taken by the police on 13 December 2003, 15 and 27 March and 9 May 2008. Complaint About the Police (CAP) forms were completed under the same reference number for both the applicant and his mother and the complaints were categorised as incivility and oppressive conduct/harassment.

Inspector F was appointed to conduct an enquiry into the complaints. In addition to the statements taken from the applicant and his mother, Inspector F obtained statements from Constables A and C and the three friends of the applicant who had been present during the incident on 9 May 2008. The circumstances surrounding the arrest of the applicant on 15 March 2008 were considered under a simultaneous but separate investigation (reviewed above under reference PCCS/00508/PF-SP(A)). The two other incidents referred to by the applicant and his mother were addressed by Inspector F, having taken consideration of incident reports, police reports and crime file data compiled at the time of the incidents.

Inspector F found the complaints of harassment and incivility to be unsubstantiated. Superintendent G thereafter wrote to both the applicant and his mother in response to their complaints.

## **The Commissioner's Review**

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

## Complaint 1: Alleged targeting of the applicant

The applicant focused in both his statements on the circumstances of the occasion on 9 May 2008 when his alcohol was confiscated. He also briefly referred to the incident on 27 March 2008.

The applicant's mother stated the following:

*"... the whole thing started when [Constable A] lifted [the applicant] when he was 13 years of age one night at [Leisure Centre X] ... since then [Constable A] has come across [the applicant] on a few occasions, to my knowledge and as far as I know nothing really happened. Things have all started up again since March this year when he arrested [the applicant] and there is a complaint of assault against [Constable A]. Since that night, as far as I know, [Constable A] has stopped [the applicant] twice although I believe he was in the company of other boys. I couldn't say whether this was a coincidence or not ... when you put all these things together as far as I'm concerned this is harassment and I'm very concerned for my son's safety when he goes out at night with his friends."*

### Internal Handling

Having obtained the statements from both the applicant and his mother, Inspector F described the applicant's complaints as follows:

*"Harassment – that [Constable A] is picking on him if he sees him out on the street"*

Inspector F described the complaint made by the applicant's mother as:

*"Harassment – that [Constable A] has been targeting [the applicant] on a number of occasions over a number of years and harassing him."*

Having taken account of the witness statements, police incident logs and standard prosecution reports, Inspector F's report provided a background to each of the incidents referred to by the applicant and his mother.

### 13 December 2003 incident

In relation to the arrest of the applicant at Leisure Centre X, Inspector F noted that police had been called out by staff who reported a disturbance. He acknowledged that Constable A was one of the attending officers.

In his letter of response to the applicant, Superintendent G stated the following:

*"In this instance [the applicant was] the subject of a complaint by members of staff from [Leisure Centre X] who contacted the police reporting that they had removed a 14 year old drunken male ... from the ice skating rink as he was posing not only a danger to himself but other skaters. The officer you complained about and his colleague who were on duty at the time attended the ice rink where they observed [the applicant] to be in a drunken state, as described by staff and, due to [the applicant's] abusive behaviour, [the applicant was] arrested and ... subsequently charged with a Breach of the Peace and the matter reported to the Area Reporter."*

### 15 March 2008 incident

In relation to the allegation that the applicant had been wrongfully arrested and assaulted by Constable A, Inspector F's report noted the following:

*“The complainer ... alleged he was assaulted when arrested by Constable [A] but according to all police statements noted the arrest was made by Constable [H] and this has been highlighted in both reports to the Procurator Fiscal and Complaint About the Police report to the Complaints & Discipline Branch.”*

Superintendent G's response stated the following:

*“The second incident you refer to took place in March 2008, some 4 years after the first incident which resulted in a complaint being made about the officer involved which is being progressed separately from this enquiry. I am aware [the applicant] was arrested on a separate matter that is subject of an ongoing report to the Procurator Fiscal. With this being the case, I am not permitted to make any comment on the matter until both the pending criminal proceedings and complaint about the Police are concluded.”*

#### 27 March 2008 incident

Inspector F's report contains the following passage:

*“The third incident relates to when PC [A] and PC [C] stopped a group of males, that included the [applicant], when following up an enquiry regarding a suspect stolen motor vehicle. The names of each of the males were noted and according to the [applicant], Constable [A] never spoke to him as it was the other officer who noted the details. Nor did he think it was unusual in being stopped by the police.”*

In her letter of response, Superintendent G described the call made to the police by a member of the public reporting three males driving a suspect stolen vehicle who, on seeing police officers approaching, ran off. Shortly afterwards, the same person reported that the three males had been joined by two others. Superintendent G went on to state:

*“[Constable A] was on duty at this time [and] was actioned to the call and attended at the suspect stolen vehicle. Approximately one hour later, the officer and his colleague observed a number of males ... in the general vicinity of the suspect stolen vehicle. [Constable A] and his colleague stopped and questioned the males, one of which happened to be [the applicant] ... furthermore, according to [the applicant] he did not find it unusual to be stopped by the police and made mention that [Constable A] made no comment to him whatsoever.”*

#### 9 May 2008 incident

In relation to the incident leading to the confiscation of alcohol, the applicant complained that

*“ ... the night [Constable A] took the beer I think he was picking on me. I don't think he was going to take the drink until he found out it was mine”.*

Inspector F considered statements from Constable A, his colleague Constable C, the applicant, his mother and the three friends of the applicant who had been present at the time. He also considered the police report and crime report relating to one of the applicant's friends having been reported for having discarded a bottle of alcohol.

In relation to this incident, Constable A stated that his “... duties that evening was [sic] to provide a high visibility policing on cycles in [two specific areas] which have been experiencing numerous youth disorder problems.”

Constable A related how the young man who had thrown the bottle on their approach had been cautioned and charged and, because of the presence of two carrier bags containing more alcohol

on the ground beside them, the details of the other three young men were also noted. One of these individuals was 17 years of age. Constable A stated the following:

*"I formed the opinion that these males had been drinking alcohol, although we had not observed them drinking in public and I believed that they would continue drinking alcohol and suspected that they may share the alcohol with [the 17 year old]. Because of this we seized the alcohol under the terms of the Crime and Punishment (Scotland) Act 1997 ... We informed them that the alcohol would be taken to [Police Station Y] and that they would be able to retrieve the alcohol at 2230 hours that evening."*

Inspector F's report referred to one of the other young men present having believed that the police would have seized the alcohol regardless of the applicant being present. Inspector F concluded his report by noting that both constables concerned acted within the relevant legislation and that all of the alcohol was seized, not only that belonging to the applicant.

Superintendent G's letter to the applicant stated the following:

*"The actions ... complained of ... [were] as a result of a policing plan that was being operated within [Area Z]. [Area Z] suffers an extremely high number of incidents of low level crime such as anti-social behaviour, youth disorder, street drinking, under age drinking and vandalism. On Friday 9 May 2008, additional Police resources were instructed to patrol [Area Z] with particular instructions to concentrate on certain areas, one being ... near to where the police spoke to you and your friends. [Constable A] and his colleague confiscated the alcohol under legislative powers suspecting that it may have been supplied to a person under 18 years of age who was in your company."*

He further stated that it had been:

*"... the presence of you and your friends that brought you to the attention of police, in particular where it was alleged that one of the males discarded a bottle of alcohol on to the ground as the officers approached. It followed that the alcohol was thereafter seized and contrary to what you and your friends may have thought, this was the very reason why the officers were detailed to work in this area in the first place."*

Superintendent G summarised his overview of the incidents considered in the enquiry by stating the following::

*"... each of the aforesaid set of circumstances in isolation does not amount to harassment by the officer concerned ... in my opinion had it not been for you or the actions of your associates there would have been no reason for the police to have had any contact with you whatsoever and it has been nothing more than a coincidence that the officer identified by you has been involved on each occasion rather than him seeking you out to harass you."*

### **Consideration**

The essence of the applicant's complaints is that Constable A has "picked on him". Similarly, his mother's complaint is that the contact Constable A has had with her son over the years is indicative of a pattern of behaviour which she believes to be harassment. From their combined statements the applicant and his mother have specified four instances in which Constable A has come into contact with the applicant. (According to the applicant's mother, there have been instances of alleged harassment additional to those four instances. The applicant's mother believes that these other incidents have not been covered by the enquiries undertaken by Strathclyde Police. However, neither she nor the applicant specify any other alleged incidents in their statements. In light of this, the Commissioner has limited his review to the four incidents described above.)

Inspector F researched each of the incidents which had been brought to his attention, taking into account police, crime and Children's Panel reports. Given the historical nature of the applicant's complaints, the Commissioner believes this was a proportionate way of investigating them. In relation to the more recent incidents, Inspector F also obtained statements from the witnesses named by the applicant, asking each for their account of how they viewed Constable A's conduct on 9 May 2008.

Having collected this information, Inspector F sought to ascertain the reasons behind Constable A's contact with the applicant over the years. The final response from Superintendent G explained that, considering the circumstances, each contact was justified by the available evidence .

The Commissioner finds no basis on which to disagree with this assessment. In relation to the incident of 13 December 2003, it is clear that the police were called following a report from staff members at Leisure Centre X. Any number of officers could have been allocated to attend this call and, as it has not been alleged that Constable A had any prior knowledge of the applicant at this time, his attendance on this occasion could only be viewed as random.

In relation to the incident of 15 March 2008, Inspector F's investigation highlighted that the officer who arrested and allegedly assaulted the applicant was not in fact Constable A. As the investigation into the matter had not been concluded by Strathclyde Police at the time of Superintendent G's response, this information was not relayed to the applicant at that time.

As detailed in the Commissioner's review (reference PCCS/00508/PF-SP(A)), Constable A was involved in the incident to the extent that he arrested the applicant's friend. In any event, Constable A's involvement was again in response to a report that a third party had been assaulted. It also appears that, at the time when the police began their pursuit of the individuals involved in the incident, Constable A (or any of the other officers) would not have been aware that the applicant was among them. In the Commissioner's view, these factors provide no support for the allegation of harassment.

In relation to the incident of 27 March 2008, it appears that Inspector F's enquiries into this complaint were confined to police logs and to the information contained within the applicant's and Constable A's statements. The police log shows that at 9.46 pm a call was made to the police advising that three males were driving a car on a local football park. According to the log, at 9.58 pm a further call was received stating that the car had been "dumped" and that five youths were involved in the incident. At 10.10 pm Constable A was allocated to enquire into the incident. Inspector F's enquiry established that the applicant and his friends were stopped by Constable C and their details noted.

The applicant stated that he, along with three or four of his friends, was stopped in the early hours of 28 March 2008 and that Constable C asked his name, where he had been and where he was going. According to the applicant, Constable A did not say anything at all to him. Constable A's statement briefly refers to him and Constable C having to stop a number of youths, including the applicant, during his enquiries into the theft of a car in the locality.

Although there is no suggestion that the applicant had any involvement in the incident, given the information which had been provided to the police by the anonymous caller, Constables C and A would have been expected to ask a group of "four or five" individuals close to the scene where they had earlier been. It is also significant that the applicant himself states that Constable A did not speak to him during this incident. Again, these factors do not support the allegation that Constable A was harassing the applicant.

In relation to the incident of 9 May 2008, Constables A and C were on uniformed cycle patrol with the remit of discouraging offences relating to the consumption of alcohol and general youth

disorder in the local neighbourhood. There is no dispute that the applicant's friend threw a bottle of alcohol away when he noticed Constables A and C; both officers state that this was the reason why they had approached the group of individuals. Again, this does not support any allegation that Constable A was seeking to harass the applicant.

The witness statements taken by Inspector F confirm that some of the group did not believe that Constable A intended to confiscate the alcohol until he found out that some of it belonged to the applicant. However, one of the witnesses said the following:

*"I don't think it would have made any difference if [the applicant] had been there or not as I think the police would still have taken the drink anyway."*

To some extent, this contrasts with the statements given by Constables A and C. Both state that, having approached the group, they believed that some members were going to supply alcohol to another member who was under 18 years old and that the group would be drinking in public. Some support for this is found in the statements of one of the individuals, who claimed that it had been his intention to consume alcohol in public. Once again, this suggests that Constable A had reasonable cause to approach the applicant and his friends and does not support the allegation that he was seeking to harass the applicant.

In conclusion, the incidents to which the applicant and his mother refer in their complaints took place over a considerable period of time. In respect of three of the incidents, the officers involved were responding to reports by members of the public. The Commissioner also notes that in respect of one of the incidents, Constable A was found not to have been the officer who had arrested the applicant and allegedly assaulted him. For these reasons, and those given above, the Commissioner considers that this complaint was handled in a reasonable manner. Accordingly, no further action is required of Strathclyde Police in this connection.

The Commissioner would wish to highlight the helpful tone and the level of explanatory detail provided by Superintendent G in his letter to the applicant. His response reflected the effort which Inspector F clearly expended in carrying out his enquiries. The Commissioner considers this to be an example of good complaints handling.

## **Complaint 2: Alleged provocation of the applicant**

The applicant's mother stated that, during her telephone call with the applicant on 9 May 2008, he told her that Constable A had confiscated some alcohol and had threatened to "lift" him. According to his mother, the applicant also reported that Constable A had "said other things to [the applicant] about making complaints and referring to him as a Jekyll and Hyde character and basically he appeared to be trying to wind him up."

### *Internal handling*

Having obtained the statements from both the applicant and his mother, Inspector F described the complaint as follows:

*"incivility – that [Constable A] has made inappropriate comments in an effort to gain some sort of reaction that would lead to his arrest."*

In his report, Inspector F referred to the statements of the applicant's friends as being "very vague" when pressed as to what was actually said by Constable A.

Superintendent H's response letter stated the following:

*"... your friends felt that [Constable A] had focussed his attention on you but when asked what was specifically said, each of them were extremely vague ... the Jekyll and Hyde*

*comment was mentioned and, whilst regrettable, the officer had no intention of being disrespectful towards you ... having reviewed all the information available to me, it would be inappropriate to take any formal action against the officer concerned although you can be assured your concerns have been raised by a Senior Officer to the officer concerned."*

Superintendent G added the following:

*"... if the officer concerned did suspect that an individual was responsible for graffiti or any other type of vandalism, it would be in neglect of his duty not to question that individual."*

### **Consideration**

Although not entirely clear it appears that the applicant, and especially his mother, believes that the actions allegedly taken to antagonise the applicant were:

- that Constable A likened the applicant to "Jekyll and Hyde";
- that the applicant was asked about graffiti in the local area; and
- that Constable A made a remark that the applicant was "good at complaints";

There is no doubt that Constable A commented to the applicant that he was "like a Jekyll and Hyde character". However, Constable A stated he meant no harm in this comment and that he has received no complaint when describing others in similar terms. As noted above, Superintendent G found it regrettable that this phrase had been used. In the Commissioner's view, given the nature of the comment, this was a reasonable response.

There is also no doubt that Constable A asked the applicant about graffiti in the local area. The applicant stated that Constable A told him he could charge him with it if he wished to do so. However, the statements taken from the other witnesses do not make any reference to Constable A threatening the applicant with arrest. Additionally, none of these statements makes reference to Constable A's alleged comment that the applicant was good at making complaints. In light of this, the Commissioner considers Superintendent G's response to be reasonable.

## **Conclusions, Recommendations and Learning**

### **Complaint 1: Alleged targeting of the applicant**

In the Commissioner's view, the manner in which this complaint was dealt with by Strathclyde Police was reasonable. Accordingly no further action requires to be taken in this connection.

### **Complaint 2: Alleged provocation of the applicant**

In the Commissioner's view, the manner in which this complaint was dealt with by Strathclyde Police was reasonable. Accordingly no further action requires to be taken in this connection.

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