

Report of a Complaint Handling Review in relation to Central Scotland Police

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

Summary and Key Findings

The applicant's complaints arose from her involvement with the police in relation to a series of reports by her of excessive noise emanating from the home of her downstairs neighbour. In particular, the applicant made two complaints about a letter sent to her GP by a senior police officer in connection with her complaints.

The Commissioner found that neither complaint was handled in a reasonable manner. In respect of complaint 1, the Commissioner recommended that Central Scotland Police writes to the applicant providing her with sufficient information to properly inform her of the reasons for the decision not to pursue misconduct proceedings against the officers concerned.

In respect of complaint 2, the Commissioner found that in the written response to the applicant no information was given as to the basis for a comment made in a letter sent to her GP by the senior officer. This information was identified during the Commissioner's complaint handling review and was included in his report. Because of this, the Commissioner did not require Central Scotland Police to carry out any further work in relation to this complaint.

The Commissioner also recommended that Central Scotland Police considers implementing a suggestion made by a member of its staff regarding disclosures of information of the kind made in this case.

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 for some time lived in an upper floor flat owned by the local authority. The downstairs flat is privately owned and occupied by a male who has also resided there for a number of years.

Since approximately 1991 the applicant has complained to the local authority, primarily its housing department, and latterly to the police, about the alleged anti-social behaviour of her downstairs neighbour. A number of agencies of the local authority have been actively engaged in trying to find a solution to the problem which, in the main, consists of alleged noise and nuisance behaviour. The applicant claims that she is disturbed on an almost daily basis by noise emanating from the home of her neighbour.

Over the years there have been numerous calls to the police in respect of these difficulties and the police and the local authority have worked jointly in seeking to resolve them. Despite the repeated nature of the applicant's calls little evidence has been found by the police or the local authority to support her claims of excessive noise. The action taken to deal with the problem has included the installation of noise monitoring equipment by the local authority. However, this did not provide evidence of excessive noise levels.

Other potential sources of the noise have been explored but none have proved conclusive and the complaints have continued.

The applicant made a number of complaints about the police handling of the incidents reported by her. This culminated in Inspector A being appointed to deal with them. Through a series of meetings and contacts with the applicant, the majority of her complaints were concluded. In essence she accepted the explanations offered by the police in respect of most of the issues that had caused her concern. While there were a number of issues that continued to cause her concern, she was content with the action taken by Inspector A to deal with them. Although the alleged noise appears to have continued, the applicant's engagement is now mainly with the local authority with, little direct involvement by the police.

In December 2007, following a number of complaints to the police, Superintendent B, wrote to the applicant's General Practitioner (GP). In that letter Superintendent B informed the GP of the following:

- that the applicant had made numerous complaints about noise from her neighbours home;
- that the noise took the form of "droning" and occasionally other noises;
- that electronic recording by the local authority had been unable to detect the noise;
- that the applicant's home was cold and that she had told an officer that her neighbour had a device that was able to remove heat from her house; and
- that there may be some medical issue which had an impact on the situation and that he (Superintendent B) felt it might be helpful to make the GP aware of the situation.

Superintendent B also included a copy of a letter sent by the applicant to the Chief Executive of the local authority. In this letter the applicant made a number of observations about the service provided by the local authority and the police. She also made reference to the adverse affect the alleged anti-social behaviour was having on her health.

The applicant's GP subsequently asked her to come to the surgery, which she did. While there, she became aware of the letter which Superintendent B had sent and thereafter lodged a complaint about the police in respect of what she perceived to be the content of the letter.

The Complaints

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

- (1) that an individual within Central Scotland Police accessed a computer database to obtain details of the applicant's GP; and
- (2) that a letter sent to the GP by Central Scotland Police contained false information.

The Commissioner's Review

The applicant first contacted the Commissioner's office by telephone on 13 November 2008. She thereafter submitted an application form on 3 December 2008.

On requesting the case papers from Central Scotland Police it was established that it had not finished dealing with some of the issues the applicant had raised. It was therefore agreed that Central Scotland Police would continue to deal with those outstanding matters before it forwarded its papers to the Commissioner's office. A series of contacts and meetings took place between the

applicant and officers of Central Scotland Police and a final response was sent to her on 27 February 2009.

Although the applicant originally asked the Commissioner to review numerous complaints, she subsequently clarified her position. In essence, the applicant is content that most of her original complaints have been resolved and the only outstanding ones are as detailed above.

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

Complaint 1: Access to a computer system to obtain her GP's details

In her letter of complaint of 10 February 2008 the applicant asked Central Scotland Police to identify who within the force had obtained details of her doctor. She also asked who had "authorised this request from [her] doctor", "why such information was required" and for details of its use. The applicant requested a full apology for the letter having been sent to her GP; a further letter to her GP "countermanding the previous letter" and apologising to her GP for having wasted her time; and disciplinary action against those who were responsible for sending the letter and those who had authorised it.

Internal Handling

On receipt of the applicant's letter of complaint of 10 February 2008 the enquiry was allocated to Superintendent B. On 25 February 2008 the applicant's MSP wrote to Superintendent B stating that, as he understood matters, the police had written to the applicant's GP requesting information on her medical condition. According to the letter, the applicant's complaint was that she had never given the police permission to access her medical records and did not feel that the police had any justification for doing so. The MSP also pointed out in his letter that under data protection laws a person must consent to third parties having access to their medical records.

As Superintendent B was the author of the letter to the applicant's GP, the complaint was passed to Central Scotland Police's Professional Standards Unit. The complaint was recorded and a Complaint About the Police (CAP) form completed. As the complaint was assessed as being potentially criminal in nature the matter was referred to the Area Procurator Fiscal.

The Area Procurator Fiscal thereafter wrote to Central Scotland Police seeking the view of the force's Data Protection Officer on the circumstances of the case. This view was provided on 20 March 2008, following which, on 2 April 2008, the Area Procurator Fiscal wrote to Central Scotland Police, advising that she did not assess the complaint as being criminal in nature. The Area Procurator Fiscal also offered the opinion that disclosure of the information contained in Superintendent B's letter might be covered by an exemption within the Data Protection Act 1998.

At the same time as the applicant's complaint was referred to the Area Procurator Fiscal, Central Scotland Police assessed the applicant's letter of complaint as being a request for information under the terms of the Freedom of Information (Scotland) Act 2002 ("the 2002 Act"). It was therefore passed to a member of staff responsible for dealing with such requests who responded to the applicant by letter of 11 April 2008. The letter informed the applicant that Central Scotland Police could not confirm or deny that it held the information the applicant had requested in her letter. The letter further advised that if the information was held by Central Scotland Police it was considered to be exempt from disclosure under the 2002 Act by virtue of section 18. The applicant was also provided with a "Subject Access Form" in the event that she believed Central Scotland Police held personal information with regard to her.

Following receipt of the Area Procurator Fiscal's decision, Central Scotland Police decided that an operational statement be provided by Superintendent B in relation to his decision to write to the applicant's GP. In that statement Superintendent B said that he had formed the opinion, based on the information provided to him, that the applicant may have some underlying medical issue. Accordingly, he had decided that it would be in the applicant's best interests to advise her GP. Superintendent B asked an officer to identify the applicant's GP but he could not recall who carried out this task on his behalf. He was later provided with the information and subsequently wrote to the GP.

A letter of response to the applicant's complaint was sent by the Deputy Chief Constable on 30 April 2008. The Deputy Chief Constable informed the applicant about the Area Procurator Fiscal's decision and referred to the separate letter sent to the applicant by a member of staff from the Freedom of Information section. The Deputy Chief Constable advised that he had considered the applicant's complaint and would not be taking any disciplinary action in relation to it. He confirmed that no request had been made to have the applicant examined by her GP and consequently he did not consider it appropriate to offer an apology in this regard.

Following receipt of Central Scotland Police's response to this complaint dated 30 April 2008, the applicant wrote to the force on 7 May 2008 asking further questions in relation to the letter. She also commented again on the police having accessed a computer to find out details of her GP's practice. On 9 May 2008 she wrote again to Central Scotland Police complaining that police had "taken the time to find out" details of her GP's medical practice.

On 20 May 2008 the Deputy Chief Constable wrote to the applicant enclosing a copy of the letter sent to the applicant's GP by Superintendent B. The Deputy Chief Constable repeated that he was satisfied there was no misconduct on the part of any officers involved in contacting the applicant's medical practice.

Consideration

This complaint is closely related to complaint 2 which is dealt with below.

The Commissioner's function in the present case is not to assess whether the exemptions under the Freedom of Information (Scotland) Act 2002 on which Central Scotland Police has relied in respect of the applicant's requests for information were appropriately applied. That is a matter entirely for the Scottish Information Commissioner. Similarly, to the extent that Central Scotland Police has sought to apply exemptions under the Data Protection Act 1998 to requests made by the applicant for personal data, such matters are for the UK Information Commissioner to determine. In short, the Commissioner's function is not to decide what information can and cannot be disclosed under either piece of legislation.

The Commissioner's role is to determine whether the applicant's complaints have been dealt with in a reasonable manner, bearing in mind the powers and responsibilities of the other statutory bodies which may have an interest.

From a complaint handling perspective, the Commissioner considers that Central Scotland Police's decision to provide the applicant with a copy of Superintendent B's letter to her GP was entirely appropriate. While this did not provide answers to all of the applicant's questions, it at least assisted her understanding of the situation.

Complaint 1 consists of a number of separate complaints, many of which amount to requests for information under the 1998 and 2002 Acts. In the Commissioner's view, however, there is one aspect of complaint 1 which was not addressed by Central Scotland Police. This concerns her

complaint as to how her GP's details were obtained by Central Scotland Police. As noted above, Superintendent B's position is that he was provided with the details of the applicant's GP by another officer. At the time he provided his statement, however, he had no recollection of which officer had obtained this information for him. In the Commissioner's view, that information should have been provided by Central Scotland Police in its response to the complaint. However, given that it is included in this report, the Commissioner does not require Central Scotland Police to take any further action in this connection.

As noted above, the Deputy Chief Constable informed the applicant on two occasions that he would not be pursuing misconduct proceedings against the officers involved in the incident concerning the applicant's GP.

In the Commissioner's view, in situations such as these, applicants 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 applicants are to be fully informed of the outcome of their complaints. The Deputy Chief Constable did not explain his decision in this connection. Accordingly, the Commissioner recommends that Central Scotland Police writes to the applicant providing her with sufficient information to properly inform her of the reasons for the decision not to pursue misconduct proceedings against Superintendent B.

Complaint 2: Alleged inaccuracies in the letter to the GP

In her letter dated 28 May 2008 the applicant raised a number of issues concerning the accuracy of what was written in the letter sent to her GP by Superintendent B. Specifically, she claimed never to have made any comment to the police that her neighbour was "stealing [her] heat". She referred to Superintendent B's letter suggesting that she had a medical problem and accepted that this was so. However, she denied having any "mental problems" and suggests that this may have been what Superintendent B was alluding to in his letter. She also pointed out that the reference in Superintendent B's letter to her upstairs neighbour was wrong: the problems she was having concerned her downstairs neighbour.

Internal Handling

The internal handling of this complaint is similar to that undertaken in respect of complaint 1.

The applicant's letter of 28 May 2008 was acknowledged by Superintendent C on 3 June 2008. Inspector D thereafter established contact with a local senior officer who made arrangements for the applicant to be visited at her home in relation to the issues causing her concern.

Over the course of the next two months officers from the Community Policing team visited the applicant at her home. Additionally arrangements were made to meet with the applicant to discuss her ongoing issues. Notes of these meetings were taken and formed the basis of subsequent action. Advice and assistance was offered to the applicant in relation to her ongoing noise concerns.

In his letter to the applicant dated 15 August 2008 the Deputy Chief Constable sought to reassure the applicant that the letter had been sent to her GP with the intention of providing background to a matter which had impacted upon her health. The Deputy Chief Constable stated that there was no suggestion, implied or otherwise, that the applicant suffered from mental health problems.

Consideration

In the Commissioner's view, the passage in the Deputy Chief Constable's letter of 15 August 2008 regarding the letter to the GP is very brief and does not provide the applicant with sufficient information to answer her complaint. Specifically, no information was given as to the basis for the comment made in Superintendent B's letter to the effect that the applicant believed her neighbour to have a device capable of removing heat from her house.

The papers made available to the Commissioner's office by Central Scotland Police included a report from Constable E to Superintendent B. According to the report, the applicant told Constable E that her downstairs neighbour had installed a machine with the ability to remove heat from her house. Constable B also commented that the applicant's home was very cold. Although the report is not dated it appears to relate to a meeting between Constable E and the applicant at her home in early December 2007.

In her letter of 28 May 2008 the applicant makes reference to this meeting but it is clear that no discussion took place in relation to her home being cold. Although the positions of Constable E and the applicant are contradictory, the source of the information included in the letter to her GP is now clear. In the Commissioner's view, this information should have been included in the Deputy Chief Constable's letter to the applicant of 15 August 2008. Again, however, since the details are included in this report, the Commissioner does not require any further action to be taken by Central Scotland Police in this connection.

As to the issue of the location of the neighbour's flat, the Commissioner considers this to be a minor error and makes no recommendation in relation to this.

Conclusions, Recommendations and Learning

Complaint 1: Access to a computer system to obtain Doctors details.

For the reasons given, the Commissioner does not consider that this complaint was dealt with in a reasonable manner. The Commissioner recommends that Central Scotland Police writes to the applicant providing her with sufficient information to properly inform her of the reasons for the decision not to pursue misconduct proceedings against the officers concerned. 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: Letter contained inaccurate and false information.

For the reasons given, the Commissioner does not consider that this complaint was dealt with in a reasonable manner. Specifically, no information was given as to the basis for a comment made in Superintendent B's letter to her GP. Given that the information has been included in this report, the Commissioner does not require any further action by Central Scotland Police in this connection.

Further recommendation

In her email of 20 March 2008, a member of staff from Central Scotland Police's Freedom of Information section questioned the force's policy/procedure regarding the provision of the information disclosed to the applicant's GP. This member of staff suggested that Central Scotland Police learn from the complaint as to how the force manages disclosures to GPs and other such individuals and perhaps put in place procedures whereby those within the force who deal with freedom of information requests are consulted before such disclosures are made.

The Commissioner recommends that Central Scotland Police considers this suggestion further and notifies his office of any changes it decides to make to its procedures in this connection.

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