

# 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 applicant made allegations of fraud to Strathclyde Police in 1997 following a dispute in the late 1980s over the ownership of several properties. These allegations were reported to the Area Procurator Fiscal who determined that no crime had been committed. The applicant has since contacted Strathclyde Police on several occasions stating his belief that his allegation was not properly investigated.

The Commissioner found that, despite this, Strathclyde Police did not identify the applicant's concern as a complaint about the police. In any other circumstances, the Commissioner would have recommended that Strathclyde Police investigate the applicant's complaint and issue him with a response. However, given the passage of time the Commissioner did not consider that such enquiries would be likely to yield reliable evidence.

Accordingly, the Commissioner recommended that Strathclyde Police apologise to the applicant for failing to identify his complaint at the time. The Commissioner also recommended that Strathclyde Police takes steps to record the applicant's concern as a complaint about the police.

## The Commissioner's role

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

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

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

## Background

The applicant has been involved in a long-standing dispute with a third party over the ownership of several properties. The applicant believes that he owns these properties and that a third party owes him a significant amount of rent for them that has accrued up to the present day. The applicant also believes that a solicitor acting on behalf of the third party fraudulently obtained £10,477 from him. On 5 April 1997 the applicant wrote to the Procurator Fiscal informing him of his fraud allegation. The Procurator Fiscal wrote to the applicant's solicitor on 20 June 1997 stating that the matter had been investigated by Strathclyde Police and that there was no evidence to support criminal proceedings. The Procurator Fiscal concluded that the matter should be pursued in the civil courts.

## The Complaints

Based on the contents of the application form, the correspondence received from the applicant, and the information obtained from Strathclyde Police, the Commissioner has identified a single complaint, namely that Strathclyde Police did not fully investigate the applicant's allegation that he had been defrauded by the solicitors' firm.

## The Commissioner's Review

The applicant first contacted the Commissioner's office in person on 5 March 2009 and completed an application form on the same day.

This section sets out the Commissioner's views on the manner in which the applicant's complaint was handled by Strathclyde Police. The complaint is described below and is followed by details of Strathclyde Police's handling of it and the Commissioner's views on this.

The applicant wrote to Strathclyde Police raising this complaint on 6 June 2004. In his letter the applicant claimed that he had written to the Procurator Fiscal on 5 April 1997 with information which substantiated his allegation. It is clear from his letter of 6 June 2004 that the applicant does not believe his fraud allegation to have been fully investigated. According to the applicant, if the allegation had been investigated "this whole matter would have been cleared up at the time and criminal proceedings would have been enforced."

#### *Internal Handling*

It is clear that the applicant's concern was never recorded by Strathclyde Police as a complaint. In her letter to the Assistant Inspector of Constabulary of 27 July 2004, Chief Superintendent A explained that the applicant's criminal allegation had previously been investigated by Strathclyde Police and thereafter by the Procurator Fiscal's office. Chief Superintendent A added that based upon the report produced by Strathclyde Police at the time, it was found that there was no evidence to support any criminal proceedings. Chief Superintendent A added that, in the circumstances, the matter had not been registered as a complaint about the police and that no enquiry would be conducted in that connection.

On the same date as she wrote to the Assistant Inspector of Constabulary, Chief Superintendent A also wrote to the applicant in response to his letter of 6 June 2004. In her letter Chief Superintendent A informed the applicant that his letter had been forwarded to the Fraud Squad to be addressed. The letter concluded by informing the applicant that a senior officer from the Fraud Squad would contact him.

On 21 July 2004 Inspector B wrote to the applicant confirming that an investigation had been conducted in 1997 in relation to his allegations and a report sent to the Procurator Fiscal. Inspector B reminded the applicant that the Procurator Fiscal had been "satisfied based on [Strathclyde Police's] report that there is no evidence to support any criminal proceedings."

In response to this letter the applicant wrote to Inspector B on 26 July 2004 requesting a "reassessment" of his case. The applicant also stated the following:

*"In your letter to me you have stated that the Procurator Fiscal was satisfied with the police report. As a member of the public it appears that I have to take the word of your officers carte blanche. I find this unacceptable. My case is too large and serious to be whitewashed."*

Inspector B replied in writing on 27 August 2004 in effect repeating the information contained in his letter of 21 July 2004. Inspector B stated that the investigation was "closed and will not be re-opened unless express instructions are given by the Crown Office and Procurator Fiscal Service."

The applicant wrote to Strathclyde Police again on 1 September 2004 stating the following:

*"My complaint concerns the handling of my complaint by Strathclyde Police. My complaint is not with the Procurator Fiscal or the Solicitor General's office. My letter to the Chief Constable is directed at those who failed to evidence that criminal acts had been committed by various solicitors."*

On 14 September 2004 Chief Superintendent C responded in similar terms to Inspector B, stating that his allegation had been investigated in 1997 and reported to the Procurator Fiscal. Chief Superintendent C added that from the perspective of Strathclyde Police the matter was concluded.

The applicant telephoned Strathclyde Police on 20 February 2009 reiterating some of his concerns. On the same date Chief Superintendent D wrote to the applicant referring him to Chief Superintendent C's letter of 14 September 2004 and repeating that, as far as Strathclyde Police was concerned, the matter was concluded.

### *Consideration*

As noted above, the concern expressed by the applicant has never been dealt with by Strathclyde Police as a complaint. This appears to be because Strathclyde Police has misinterpreted the applicant's correspondence as amounting simply to a resubmission of the allegations he made in 1997. However, the applicant made clear on several occasions that he wished to complain about alleged inadequacies in the police investigation conducted in 1997. The following passage is quoted from the applicant's letter of 6 June 2004:

*"I believe that my complaint as outlined in my letter and which was substantiated with supporting documentation was never fully investigated."*

As noted above, this concern was repeated by the applicant in his letter to Strathclyde Police of 1 September 2004.

The Commissioner notes that Strathclyde Police's standard operating procedures for handling complaints at the time the applicant made his complaint in 2004 define a complaint about the police as follows:

*"A complaint made by or on the behalf of any person against one or more on duty members of a police force and from which it can be reasonably inferred that any act or omission which was committed or made by any of the individuals concerned amounts, or may amount, to a criminal offence or professional misconduct."*

This definition is the same as applied by all Scottish police forces at the time.

On the basis of that definition the Commissioner considers that Strathclyde Police ought to have recognised the applicant's concerns as a complaint and responded accordingly.

In any other circumstances, the Commissioner would recommend that Strathclyde Police investigate the applicant's complaint and issue him with a response. However, given the passage of time the Commissioner does not consider that such enquiries would be likely to yield reliable evidence. This decision is supported by the fact that, given the passage of time, neither Strathclyde Police nor the Crown Office and Procurator Fiscal Service is in possession of the report originally submitted to the Procurator Fiscal.

Accordingly, the Commissioner recommends that Strathclyde Police apologises to the applicant for failing to identify and his complaint at the time. The Commissioner also recommends that Strathclyde Police takes steps to record the applicant's concern as a complaint about the police.

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

For the reasons given, the Commissioner does not consider that the applicant's complaint was handled in a reasonable manner. Accordingly the Commissioner recommends that Strathclyde Police apologises to the applicant for failing to identify his complaint at the time. The

Commissioner also recommends that Strathclyde Police takes steps to record the applicant's concern as a complaint about the police.

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