

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

NOTE: This is an amended version of the report published by the Commissioner on 19 March 2010. The amendments follow intimation by Strathclyde Police of a factual inaccuracy in the report regarding complaint 3 in PCCS/00162/PF-SP(B).

On 29 June 2006 officers from Strathclyde Police responded to a call made by the applicant reporting a domestic incident. The applicant subsequently made complaints about the conduct of the officers who responded to this call.

Some time later, following the conclusion of Strathclyde Police's investigation into the applicant's original complaints, the applicant made a number of further complaints about the police.

Overall, of the eight complaints considered the Commissioner found that four were handled reasonably by Strathclyde Police while four were not. In respect of complaints 1, 2, 3 and 4 of PCCS/00162/PF-SP(A) the Commissioner recommended that Strathclyde Police inform the applicant why misconduct proceedings were considered not to be justified in respect of these complaints.

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

On 29 June 2006, at approximately 6.30 am, officers from Strathclyde Police responded to a call from the applicant reporting a domestic incident. The applicant subsequently made six complaints about the conduct of police officers who responded to the call.

The applicant's account of events

(The following account is taken from the applicant's statement to police dated 1 November 2006).

On 29 June 2006 at around 6 am the applicant called the police because her husband, Mr A, was playing music loudly and refusing to turn the volume down.

Shortly thereafter, four officers from Strathclyde Police arrived at the applicant's house. The applicant informed the officers about the recent death of Mr A's son and explained that all she wanted was for Mr A to "calm down and to keep the noise down". The four officers then entered the applicant's living room and informed Mr A that he was being detained for six hours to allow him to "sober up and calm down". The applicant agreed that this would be "a good idea".

According to the applicant, after being informed of his detention, Mr A "put his arms up with his palms facing the officers and started to say 'I've just lost my...' [after which] the big officer punched him right on the left eye". A struggle then took place between Mr A and two male police officers which resulted in the applicant's chair and CDs being broken. As this struggle was taking place the applicant "looked over at the two Policewomen as if asking them to do something but they didn't."

Mr A was then handcuffed, taken outside and made to lie face down in a neighbour's garden. According to the applicant, while lying on the grass Mr A was punched by the two male police officers. The applicant claims that while this was happening the "two Policewomen did nothing".

Police officers' response to complaint

All the officers subject to complaint denied the applicant's allegations in their respective operational statements which were provided in the course of a misconduct investigation.

The Complaints

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

- (1) an officer from Strathclyde Police physically assaulted Mr A within his home;
- (2) two officers from Strathclyde Police physically assaulted Mr A outside his home;
- (3) Mr A was arrested for crimes he did not commit;
- (4) officers from Strathclyde Police damaged items of the applicant's property; and
- (5) two officers from Strathclyde Police failed to stop their colleagues assaulting Mr A.

The Commissioner's Review

The applicant first contacted the Commissioner's by letter on 29 September 2007. She thereafter submitted two application forms, the most recent of which was received on 30 September 2008.

This section sets out the Commissioner's views on the manner in which the applicant's 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.

Complaints 1 - 4: Potential misconduct arising from allegations of assault

In her statement of 1 November 2006, the applicant made the following allegations:

- (1) that on the morning of 29 June 2006 Constable B ("the big officer") punched Mr A;
- (2) that Constables B and F thereafter punched Mr A as he was lying face down on the grass outside his home;
- (3) that Mr A was wrongfully arrested; and
- (4) that officers from Strathclyde Police damaged items of her property

Internal Handling

These complaints were initially categorised as criminal allegations and, on 13 September 2006, were reported by Inspector J to the Area Procurator Fiscal for her direction.

On 11 October 2006 the Area Procurator Fiscal instructed Strathclyde Police to carry out a full enquiry in respect of the complaints on the basis that the allegations reasonably inferred the commission of criminal offences by police officers. The Area Procurator Fiscal also instructed Strathclyde Police to submit a full report for her consideration.

Inspector D, of Strathclyde Police's Complaints and Discipline branch, was subsequently appointed to carry out the investigation into the applicant's complaints. Following completion of this investigation, Inspector D sent a report to the Area Procurator Fiscal on 3 January 2007. On 20 September 2007 the Area Procurator Fiscal wrote to Strathclyde Police advising that she had decided to take no proceedings in respect of the applicant's allegations. Thereafter, the applicant's complaints were considered in the context of potential misconduct.

On 20 November 2007 Chief Superintendent H wrote to the applicant explaining that the Area Procurator Fiscal had decided to take no proceedings in respect of this complaint. Chief Superintendent H also stated the following:

"...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."

Consideration

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. In the Commissioner's view, however, the purpose of section 34(3)(b) is to preserve the role of the Crown in considering criminal complaints about the police, and to prevent any conflict between its functions and those of the Commissioner. In the present case, the Area Procurator Fiscal decided to take no proceedings against the police officers concerned. The applicant's allegations were thereafter considered by Strathclyde Police as potential misconduct, the decision being taken that there was no basis for such proceedings against the officers.

Given that the Area Procurator Fiscal considered the allegations, and that they were thereafter treated by Strathclyde Police as non-criminal allegations under the Police (Conduct) (Scotland)

Regulations 1996, the Commissioner considers that he has the power to review the handling of these complaints so far as this relates to potential misconduct.

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. In the Commissioner's view, the reasons given by Chief Superintendent H were not sufficiently detailed to properly inform the applicant as to why misconduct proceedings were not being pursued.

The Commissioner therefore recommends that Strathclyde 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.

Complaint 5: Alleged neglect of duty

The applicant maintains that Constables I and J failed to stop Constables B and F assaulting Mr A.

Internal Handling

In the statement he provided to Inspector D, Mr A explained that he was unaware of Constables I and J being present while he was being restrained but stated that, if they were, they did not intervene.

Constable B denied this allegation in his operational statement, maintaining that neither he nor Constable F had assaulted Mr A. As such, Constable B did not consider that Constables I and J needed to intervene.

Constable F also categorically denied this allegation in his operational statement.

Constable I explained the following in her operational statement:

"... at no stage was [Mr A] assaulted or mistreated by any officer and as such there was no requirement for [Constables I and J] to intervene and subsequently [Constables I and J] were not in neglect of [their] duty."

Support for Constable I's account was provided by Constable J in her operational statement.

Inspector D also sought and examined statements from neighbours of the applicant who witnessed Mr A being restrained on 29 June 2006.

Witness M explained that she witnessed Mr A being restrained but in her opinion "there was no excessive force being used".

Witness N explained that he witnessed Mr A being restrained outside his home and stated he "was not beat up by the Police at any time while [Witness N] was watching what was happening."

Witness O stated that she did not see Mr A being "kneed" or punched by a police officer while he was being restrained.

Witness P stated that she did not see any police officer "knee", punch or kick Mr A while he was being restrained.

On the basis of the evidence Inspector D considered this complaint to be unsubstantiated. This finding was reflected in Chief Superintendent H's letter to the applicant dated 20 November 2007.

Consideration

All the officers involved in the arrest of Mr A maintain that the latter was not assaulted but rather was restrained because of his aggressive behaviour. This account is supported by the statements of four independent eye witnesses.

In the Commissioner's view, Inspector D conducted a thorough investigation into this complaint and, along with Chief Superintendent H, reached a reasonable conclusion based on the available evidence. Accordingly, no further action is required by Strathclyde Police in respect of this complaint.

Conclusions, Recommendations and Learning

Complaints 1 – 4: Potential misconduct arising from allegations of assault

For the reasons given, the Commissioner does not consider that the non-criminal aspect of these complaints was handled reasonably. The Commissioner therefore recommends that Strathclyde 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 applicants fully informed of the outcome of their complaints. The Commissioner has no view on whether misconduct proceedings were justified in the present case.

Complaint 5: Alleged neglect of duty

For the reasons given the Commissioner considers that this complaint was dealt with in a reasonable manner. Accordingly, no further action is required by Strathclyde Police in respect of this complaint.

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Case reference/PCCS/00162/PF-SP(B)

Background

The background to the complaints dealt with in this report is set out in report reference PCCS/00162/PF-SP(A).

According to the applicant's statement to the police of 15 January 2008 Constable B manipulated his colleagues into changing their operational statements with regard to the incident which occurred on 29 June 2006. The applicant also claimed that Constable I lied in her operational statement when she described the applicant as being "intoxicated" on the occasion in question.

The Complaints

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

- (1) an officer from Strathclyde Police manipulated his colleagues in the preparation of their operational statements;
- (2) an officer from Strathclyde Police lied in her operational statement; and
- (3) Strathclyde Police failed to photograph Mr A at Police Station X.

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 manipulation of statements

The applicant claims that Constable B manipulated his colleagues in the preparation of their operational statements given in connection with a prior domestic incident.

Internal Handling

Inspector Q from Strathclyde Police's Complaints and Discipline Branch conducted an investigation into the applicant's fresh complaints.

Constable B provided an operational statement in which he described the allegation as "false and malicious". Constables F, I & J also provided operational statements denying that they had been influenced by Constable B in the preparation of their statements.

On the basis of the evidence Inspector Q concluded that this complaint was unsubstantiated. This finding was repeated by Chief Superintendent R in his letter to the applicant on 19 August 2008 who wrote:

"... in answer to your concerns regarding the preparation of statements for the purposes of this enquiry, I can advise you that all the officers involved describe that their statements were prepared on an individual basis."

Consideration

In the Commissioner's view, Inspector Q carried out a thorough investigation into this complaint by seeking operational statements from all relevant officers.

Constable B denied that he had manipulated his colleagues in the preparation of their statements. Constables F, I & J denied that they had been manipulated in this connection.

In these circumstances, Inspector Q and Chief Superintendent R were justified in concluding that this complaint was unsubstantiated. Accordingly, the Commissioner considers that this complaint was dealt with in a reasonable manner. No further action is required of Strathclyde Police in respect of this complaint.

Complaint 2: an officer from Strathclyde Police lied in her operational statement

The applicant claims that Constable I lied in her statement when she described the applicant as being "intoxicated" on the occasion in question.

Internal Handling

In his statement of 15 January 2008 Mr A stated that he had "a vague memory of being in the kitchen and hearing [a police officer] saying something like 'We know [Mr A] was drunk but you [the applicant] weren't'. Mr A also said that "the topic of [the applicant] being drunk or not never came up when [he] gave his [prior] statement".

Constable I maintained in her operational statement that the applicant was "indeed intoxicated" on 29 June 2006. Constable I was supported in this version of events by Constables B, F and G in their respective operational statements.

Based on this evidence Inspector Q concluded that this complaint was unsubstantiated.

This finding was repeated by Chief Superintendent R in his letter to the applicant dated 19 August 2008. In particular, Chief Superintendent R informed the applicant that Constable I's account was supported by those of her colleagues and that he was therefore unable to substantiate the complaint.

Consideration

In the Commissioner's view, Inspector Q and Chief Superintendent R were justified on the available evidence in concluding that this allegation was unsubstantiated. Accordingly, the Commissioner considers that this complaint was dealt with in a reasonable manner. No further action is required by Strathclyde Police in respect of this complaint.

Complaint 3: Mr A was not photographed on his arrival at Police Station X

In her letter to Strathclyde Police dated 3 December 2007, the applicant complained that Mr A was not photographed while being held at Police Station X on 29 June 2006. The applicant's concern appears to be that an opportunity was missed to photograph Mr A's injuries.

Internal Handling

Although not raised by the applicant at the time, this matter was referred to by Inspector D in his report of 29 December 2006, although not in the context of any failure to photograph Mr A's injuries. Inspector D observed in his report that "no prisoner's photograph" had been taken of Mr A while in police custody. Inspector D added that this matter had been discussed with the relevant Sub Divisional Officer who was to ensure that all duty officers within Police Station X were aware of their responsibilities in respect of the photographing and fingerprinting of prisoners.

On 3 December 2007, the applicant wrote to Strathclyde Police asking for a "full explanation why a photograph was not taken of [Mr A] while in custody". She stated that this was "routine police procedure" and that she found it "'strange' that the picture which could prove that these police officers did commit assault inside and outside my house does not appear to be there."

On 12 December 2007 Chief Superintendent H wrote to the applicant stating the following:

"Finally, you raise questions regarding why [Mr A's] photograph was not taken while he was in custody. You are quite correct when you say that this is normal police procedure and I can tell you only that due to an administrative oversight such a photograph was not taken. This was fully reviewed by Inspector [D] during the course of his investigation and advice was given to the officer responsible for this."

Consideration

In the Commissioner's view, Inspector D carried out reasonable enquiries into this issue, as a result of which steps were taken to ensure that all duty officers within Police Station X were aware of their responsibilities in this area. This was adequately communicated to the applicant by Chief Superintendent H in her letter of 12 December 2007.

According to her signed statement of 15 January 2008 it appears that the applicant was content with the response she had received from Chief Superintendent H. The following passage is taken from her statement:

"The other points that I raised in my letter back to Chief Superintendent [H] have all been answered and I have no complaint about being passed about or no photograph being taken."

In the circumstances the Commissioner considers that this complaint was dealt with in a reasonable manner by Strathclyde Police. Accordingly, no further action is required in connection with this complaint.

Conclusions, Recommendations and Learning

Complaint 1: Alleged manipulation of statements

For the reasons given, the Commissioner considers that this complaint was dealt with in a reasonable manner. Accordingly, no further action is required by Strathclyde Police in respect of this complaint.

Complaint 2: An officer from Strathclyde Police lied in her operational statement

For the reasons given, the Commissioner considers that this complaint was dealt with in a reasonable manner. Accordingly, no further action is required by Strathclyde Police in respect of this complaint.

Complaint 3: Mr A was not photographed on his arrival at Police Station X

For the reasons given, the Commissioner considers that this complaint was dealt with in a reasonable manner. Accordingly, no further action is required by Strathclyde Police in respect of this complaint.

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