

Report of a Complaint Handling Review in relation to Grampian Police

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

Summary and Key Findings

The complaints in this case surround police action taken on 22 November 2007 when the complainer was cautioned and charged with a breach of the peace.

During its investigation into the complaints, Grampian Police obtained a signed statement from the complainer withdrawing them and stating that Grampian Police had been “courteous and professional at all times”.

The Commissioner found Grampian Police’s handling of the complaints to have been reasonable. Indeed, the Commissioner has commended Grampian Police for its handling of the complainer following the withdrawal of his complaints. However, the Commissioner has identified as a learning point the need for Grampian Police to avoid involving officers who are potentially the subject of complaints in the handling 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 complainer. 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 complainer. Among the factors which the Commissioner takes into account are the following:

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

Background

On 21 November 2007, Ms A and her relative, Mrs B, attended at Grampian Police headquarters to report an incident which had occurred on 28 September 2007. Constable C received the report from Ms A.

The matter resulted in the complainer being tried at District Court X on a charge of breach of the peace. He was acquitted of the charge.

The following are summaries of the accounts given by those involved in the incident.

Constable C's account

Constable C states that both Ms A and Mrs B explained to her that they had been having a number of minor disagreements with the complainer, who is their upstairs neighbour. One of these concerned an incident which occurred on 28 September 2007 when it was alleged that the complainer had shouted and sworn at and threatened Ms A and Mrs B. According to Constable C this incident had arisen as a result of the complainer painting a communal door without prior consultation.

Constable C states that having been informed of the circumstances behind Ms A and Mrs B's attendance she discussed a number of options with both of them, one of which was community mediation. Constable C states that upon making this suggestion Ms A advised her that she was too scared to return to her flat and that the matter should be dealt with formally by the police. According to Constable C she then noted statements from Ms A and Mrs B.

On 22 November 2007, Constable C, along with Constable D, attended the complainer's address and cautioned and charged him with a breach of the peace. In reply to caution and charge the complainer replied "it's not true".

According to Constable C, a decision was subsequently made to issue the complainer with a Formal Adult Warning letter. Constable C stated that, although initially unhappy with this course of action, the complainer accepted this as a means of disposal. A Formal Adult Warning Letter was sent to the complainer by Inspector E on 23 November 2007.

Constable C subsequently became aware from Inspector E that the complainer was unwilling to accept the warning letter given to him. As a result of this, Constable C then submitted a standard police report to the Procurator Fiscal regarding the allegations made by Ms A.

Ms A's account

According to the statement taken by Constable C on 21 November 2007, Ms A stated that, upon discovering that the complainer had painted the communal door, Mrs B questioned why he had done this. In response to this, the complainer told Mrs B to be quiet and to go inside. Ms A then asked the complainer not to speak to Mrs B like that, in response to which the complainer acted in an aggressive manner and shouted.

Mrs B's account

According to her statement of 21 November 2007, Mrs B told the complainer that he should not be painting communal property, in response to which he told her to be quiet and get inside her house. When Ms A told the complainer not to speak to Mrs B like that, the complainer acted in an aggressive manner and shouted at Ms A.

Complainer's account

On 28 November 2007, the complainer wrote a letter of complaint to Grampian Police where he described his version of events. He explained that the particular "altercation" for which he was charged was in connection with:

"...a dispute over the colour of the shared front door."

The complainer also added that:

"This first row was extremely intense, in fact far more aggressive than the recorded one. [Mrs B] was of course the aggressor, a fact which I hardly need add. On this occasion [Ms A] who is normally more polite, also joined-in the screaming and shouting."

The Complaints

The complaints listed below are those which have been made to Grampian Police and the Commissioner's office.

Complaints made to Grampian Police

- (1) that an officer took unwarranted action against the complainer by issuing an adult warning letter;
- (2) that Constable C did not give the complainer time to gather evidence which would have placed doubt on the allegation against him;

- (3) that the warning letter issued to the complainer contained factual errors;
- (4) that Constable C did not clarify whether Ms A was a “truly independent” witness;
- (5) that Constable C “read the riot act” to the complainer; and
- (6) that Constable C would not consider the complainer’s evidence.

Complaints made to the Commissioner’s office

- (7) that the adult warning scheme is open to abuse;
- (8) that Constable C was on a “crusade” and acted “hysterically”;
- (9) that Constable C’s investigation was not thorough enough;
- (10) that the warning letter issued to him contained factual errors;
- (11) that Constable C was reactionary and “gender biased”;
- (12) that it should have been clear to Constable C that Ms A’s allegation was vexatious;
- (13) that Constable C would not consider the complainer’s evidence;
- (14) that no background checks were made of Ms A’s fitness to testify; and
- (15) that the complainer has been the victim of police “target chasing”.

The Commissioner’s Review

The complainer first contacted the Commissioner’s office on 9 May 2008. He thereafter submitted an application form on 9 June 2008.

On 17 June 2008, the Commissioner’s office requested the complaint papers from Grampian Police, which were received on 1 July 2008. As noted below, after being contacted by the complainer’s MSP, Grampian Police conducted further work into his complaints. The paperwork regarding this further work was received by the Commissioner’s office on 30 December 2008.

Internal Handling

Upon receipt of the complainer’s letter of 28 November 2007, the Deputy Chief Constable wrote to the complainer advising that he had forwarded his letter to the head of the Professional Standards and Conduct Department and that he would receive a response in due course.

On 4 December 2007, Officer F contacted the complainer by telephone. Officer F gave a description of his discussion with the complainer and noted the following in a memo to Chief Inspector G:

“I have discussed the issues with the Complainer on the telephone but was unable to resolve the complaint. Although the Complainer wrote to make complaint about the actions of Constable [C] I established that he is dissatisfied with the policy relating to the adult warning scheme. I explained the rationale of the scheme and the actions of Constable [C]

to the complainer and he has accepted that explanation... The complainer is more than happy for the matter to be referred for mediation. His complaint therefore relates to the policy regarding the Recorded Adult Warning Scheme. He contests the alleged evidence against him and the fact that there is no appeal against the recording warnings on [the Criminal History System]. I recommend that a Supervisory Officer reviews the circumstances and contacts the Complainer with a view to resolving this complaint."

From the initial report and assessment carried out after the telephone call, Officer F described the complainer's complaint as follows:

"It is alleged by the complainer that on 22/11/07 at his home address he was warned by Police Officers regarding a Breach of the Peace that allegedly occurred on 28/10/07. He disputes the allegation and policy in place regarding the Adult Warning Scheme".

On 11 December 2007, Superintendent H wrote to the complainer advising that Inspector E would carry out an investigation into the circumstances he had highlighted. On 8 January 2008, Inspector E took a statement from the complainer at his home address. The complainer signed the statement. In the statement the complainer gives some general background to his complaint, and then states the following:

"I have to advise at this point that the complaint was not against the officer involved or Grampian Police but was in relation to the system in place and that was utilised to deal with it.

Following explanation and discussion with Inspector [E] I now fully understand the substance of the allegation and although dispute the facts that were initially given to the enquiry officer accept that Grampian Police have followed a system that is now available to them and has to be utilised.

As the substance of my initial letter is an issue I have with the Adult Warning process and the legal system and corroborative evidence and not an actual complaint regarding officers from or Grampian Police (sic).

I now wish to withdraw the complaint and I will deal with my actual grievance regarding the Adult Warning System by firstly taking advice from my legal representative.

Again just to conclude I found the service of [Constable C] to be courteous and professional at all times as have Grampian Police."

On 14 January 2008, Superintendent H wrote to the complainer stating:

"Inspector [E] has advised that as a result of your meeting of 8 January 2008, conciliation was reached between you concerning the issues raised and that you elected to withdraw your complaint in this regard. I now consider the aspects of this complaint to be concluded".

Consideration

As noted above, the terms of the complainer's statement make clear his desire to withdraw his complaints about Constable C, and also Grampian Police in general.

As a result of this, Grampian Police closed the complaint and marked it as having been withdrawn by the complainer. There is no information to confirm the detail of what Inspector E discussed and

explained to the complainer. However, in light of the content of the complainer's statement the Commissioner finds Grampian Police's approach to these complaints reasonable.

The Commissioner notes that Inspector E was given the task of investigating the complaints. In the Commissioner's view, given that Inspector E was the officer who signed the Formal Adult Warning Letter, he should not have been involved in the investigation into the complainer's concerns. This is a learning point for Grampian Police.

The Commissioner notes that there are areas of dissatisfaction, specifically surrounding the actions of Constable C, which Grampian Police has never been made aware of. The Commissioner also notes that these areas of dissatisfaction were referred to his office after the complainer withdrew his complaints about Constable C. In the Commissioner's view, given the unequivocal terms of the complainer's signed statement, it would not be reasonable to require Grampian Police to conduct any further work in relation to these additional areas of dissatisfaction.

Other matters

(1) On 17 October 2008, the complainer wrote to his MSP giving the background to his being charged and his complaint about the police. The complainer wrote that he believed that innocent members of the public were being charged due to a police policy of "target chasing". The complainer also stated that he had been a victim of such a policy and that Constable C's investigation was not thorough enough. The complainer also advised that Inspector E's conclusion was that:

"[Constable C] had done nothing wrong, and was 'following procedures',

Following exchanges of correspondence with the complainer's MSP, Grampian Police arranged a meeting with the complainer. On 16 December 2008, the complainer met with Officer F and Temporary Chief Inspector K at Police Office Y. Officer F's file note contains the following passages:

"During the meeting I explained the policy relating to the Recorded Written Police Warning Scheme For Adult Offenders. I showed him two versions of the joint protocol documents between Grampian Police and Grampian Area Procurators Fiscal. The second document amended and replaced the first version on 10 December 2007.

I explained the roles of the Police, The Crown Office and Procurator Fiscal Service and the Scottish Court Service in the application of the Criminal Justice process in Scotland.

At the conclusion of the meeting, [the complainer] confirmed the explanations adequately clarified why he had been prosecuted regarding the alleged crime of Breach of the Peace. Although he was still dissatisfied that he had been prosecuted, he confirmed he was happy with the explanation of the Criminal Justice processes. He also indicated that he did not wish to comment further and would await the outcome of the review being undertaken by the Police Complaints Commissioner for Scotland."

It appears from these passages that the complainer was once again satisfied with the explanation given to him by Officer F regarding the police action taken. Given the content of his signed statement, the Commissioner notes that the complainer himself appears to have agreed with the conclusion reached by Inspector E, as quoted above. In the Commissioner's view Grampian Police should be commended for the further action it took taken in trying to reach a resolution with the complainer.

(2) According to Officer F's memo to Chief Inspector G of 4 December 2007, the complainer commented that there was no appeal mechanism for a member of the public having been issued with a Formal Adult Warning. When the complainer questioned this with Grampian Police, he was

told he could refuse to accept the letter if he wished and that that the matter would be reported to the Procurator Fiscal in the normal manner.

At the time the Formal Adult Warning Letter was issued to the complainer, the template letter which had been agreed by Grampian Police and Grampian Area Procurators Fiscal did not make clear the recipient's right to challenge the warning. However, the Commissioner notes that the agreement between Grampian Police and Grampian Area Procurators Fiscal has since been changed so that members of the public are advised that a Formal Adult Warning can be challenged and that, upon doing so, the matter may then be reported to the Procurator Fiscal.

Conclusions, Recommendations and Learning

During its investigation into the complaint, Grampian Police obtained a signed statement from the complainer confirming that he wished to withdraw his complaint and that he found the service of Constable C, and that of Grampian Police, "courteous and professional at all times". In these circumstances the Commissioner finds that the handling of this complaint by Grampian Police has been reasonable and requires no further action.

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