

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

On Friday 2 July 2004 the applicant was arrested by officers from Strathclyde Police and charged with several offences. The five complaints made by the applicant relate directly to police conduct during and subsequent to his arrest.

In respect of complaint 1 the Commissioner recommended that Strathclyde Police informs the applicant of precisely what action was taken against an officer under the Police (Conduct)(Scotland) regulations 1996 and why it was taken.

In respect of complaints 2, 3 and 4 the Commissioner found that the applicant had not received an adequate response to these. However, he considered that the information provided in his report was sufficient in this connection.

In respect of complaint 5, the Commissioner found that Strathclyde Police's response was inadequate and that it ought to have reflected more fully the findings of the investigating officer.

The Commissioner identified as a learning point the need for complainers to be given sufficient information to properly inform them as to how key conclusions were reached in response to their 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 Friday 2 July 2004 the applicant was arrested by officers from Strathclyde Police and charged with several offences.

The applicant's account

(The following account is taken from the applicant's statement to police dated 23 August 2004).

The applicant claims that during his arrest on 2 July 2004 he was assaulted by a police officer who punched him on the back of the head. The applicant also alleges that a pair of handcuffs applied to him were twisted by a police officer.

Furthermore, the applicant states that while being conveyed in a police vehicle to Police Station X on 2 July 2004 he was punched once more on the back of the head by a police officer. The applicant also claims that during this journey the handcuffs applied to him were again twisted by a police officer.

Finally, the applicant believed that further charges were brought against him because he made a complaint about the police.

The position of the officers

All officers involved in the arrest of the applicant provided operational statements in which they denied the allegations against them.

As several of the applicant's complaints were criminal in nature, they were referred to the Area Procurator Fiscal who subsequently decided to take no proceedings against any of the officers. A misconduct investigation was thereafter undertaken by Strathclyde Police. As a result of this investigation one of the officers involved in the applicant's arrest was dealt with under the Police (Conduct) (Scotland) Regulations 1996 ("the Regulations").

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) that an officer from Strathclyde Police physically assaulted the applicant by twisting handcuffs applied to him;
- (2) that an officer from Strathclyde Police physically assaulted the applicant by punching him on the head;
- (3) that an officer from Strathclyde Police physically assaulted the applicant by punching him on the back of the head while in a police vehicle;
- (4) that an officer from Strathclyde Police physically assaulted the applicant by twisting handcuffs applied to him; and
- (5) that additional charges were brought against the applicant because he had made a complaint about the police.

The Commissioner's Review

This section sets out the Commissioner's views on the manner in which the complaints were handled by Strathclyde Police. With regard to complaints 1 to 4 which are criminal in nature, the Commissioner's review is restricted to Strathclyde Police's handling of the misconduct issues arising from these. 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) – (4): Potential misconduct arising from allegations of assault

Internal Handling

Complaint (1): alleged twisting of handcuffs

This complaint, as with all the complaints made by the applicant, was recorded on a Complaint about the Police (CAP) form on 3 July 2008. A statement was obtained from the applicant on that date and a preliminary report on the complaints compiled by Inspector B on 5 July 2004.

Due to seriousness of the applicant's allegations, Inspector B's report was transmitted to the then Complaints and Discipline Branch of Strathclyde Police for consideration. On 15 July 2004 Chief Superintendent C sent Inspector B's report to the Area Procurator Fiscal for her direction.

On 22 July 2004 the Area Procurator Fiscal instructed Chief Superintendent C to carry out a full investigation into the applicant's complaints as she was satisfied that the allegations reasonably inferred the commission of a criminal offence by a police officer.

Inspector D was subsequently appointed to investigate the applicant's complaints, producing a report on 30 September 2004.

As part of his investigation Inspector D noted a second statement from the applicant on 23 August 2004 and also requested operational statements from all the officers involved in the arrest of the applicant. In addition, statements were sought from Police Surgeon E (undated) who examined the applicant at Police Station X and from Witness F (dated 31 August 2004) who was an eye witness to the arrest of the applicant. A statement was also obtained from Sergeant G (undated), a specialist in officer safety training, in relation to the use of force by police officers. Inspector D also examined CCTV footage of the applicant's arrest.

In respect of complaint 1, Inspector D noted that according to Police Surgeon E the applicant had a "handcuff cut to the interior of his left wrist" but that this was "consistent with the normal usage of handcuffs". The injuries were subsequently photographed by Sergeant L on 3 July 2004 within Police Station X.

Inspector D also examined the operational statements provided by the arresting officers. The following is a summary of these.

- Constable A refuted the allegation and stated that "[the applicant] was treated in a professional manner at all times by all officers..."
- Constable H refuted the applicant's allegations and maintained that the handcuffing of the applicant was done "as per procedure and not used as a tool to effect arrest."
- Constable I denied that the applicant was assaulted by police during his arrest.
- Constable J denied that the applicant had been assaulted during his arrest and stated that the applicant "was treated fully in accordance with police and officer safety regulations."

Based on the evidence, Inspector D considered this complaint to be unsubstantiated.

Inspector D's report was subsequently transmitted to the Area Procurator Fiscal on 30 September 2004. On 10 August 2007 the Area Procurator Fiscal decided that there should be no criminal proceedings in respect of the applicant's complaints. The Area Procurator Fiscal further advised Strathclyde Police that it may "carry out such investigation as [it] consider[s] appropriate as regards any disciplinary matters".

On 10 April 2008, Chief Superintendent C wrote to the applicant's solicitor advising of the Area Procurator Fiscal's decision and the fact that the Deputy Chief Constable had instructed a "conduct investigation" to be undertaken.

On 30 October 2008 Chief Superintendent K wrote to the applicant's solicitor advising that as a result of the conduct investigation "one of the Officers... complained about has been dealt with in terms of the Police (Conduct) (Scotland) Regulations 1996."

Complaint (2): alleged punching

Inspector D examined the operational statement provided by Constable A dated 23 August 2004. Constable A maintained that the amount of force he used during the arrest of the applicant was justified. His statement contains the following passage:

"I would like to clarify that the level of force used by myself in effecting the arrest of [the applicant] was based on the level of risk /threat that I perceived [the applicant] to have posed both to the other members of the public and myself. ... I believe my force was justified as I was in the situation alone and was unable to use other forms of Officer Safety Training, such as my CS spray or baton due to the confined space in which I faced the accused."

Each of the other three arresting officers also denied that the applicant had been assaulted during his arrest.

A statement was also taken from Witness F who had witnessed the applicant's arrest. Witness F expressed the opinion that the officers who arrested the applicant "acted properly".

Police Surgeon E noted in his statement that the applicant had grazing to the right hand area of his forehead "which was consistent with having been involved in a struggle and a ground impact". Police Surgeon E further stated that "[a]ll of [the applicant's injuries] were soft tissue injuries and not serious."

A statement was also sought from Sergeant G in respect of the use of force by police officers. Sergeant E viewed the CCTV footage of the applicant's arrest and examined Constable A's statement. The following passages have been taken from Sergeant E's statement:

"... the use of a defensive tactic such as a punch may be deemed excessive force unless [Constable A] can specify some form of intent that the accused intended to seriously injure him at the juncture when he utilised these strikes. In addition if other options were not open to [Constable A] then he must make this clear.

I would strongly suggest that [Constable A] receive further training in all areas of tactical communication and threat assessment."

Inspector D also examined CCTV footage of the arrest and noted that it showed "Constable A striking [the applicant] on the back of the head."

On the basis of the evidence, Inspector D considered this complaint to be "partially substantiated".

As noted above, the Area Procurator Fiscal decided to take no proceedings in respect of the applicant's complaints and the matter was thereafter investigated by Strathclyde Police as potential misconduct under the Regulations. On 30 October 2008 Chief Superintendent K wrote to the applicant informing him that as a result of that investigation one of the officers subject to complaint (Constable A) had been dealt with under the Regulations.

Complaint (3): alleged punching

Constables I and J, who conveyed the applicant to Police Station X, explained in their statements that the applicant was kept face down in the police car because of his behaviour. They both denied that the applicant was assaulted during the journey and maintained that they had acted professionally at all times.

On the basis of the evidence, Inspector D considered this complaint to be unsubstantiated.

Complaint (4): alleged twisting of handcuffs

As noted above Police Surgeon E explained in his statement that the applicant had injuries to his left wrist but that these were consistent with normal handcuff usage.

Constables I and J, who conveyed the applicant to Police Station X, both denied in their operational statements that the applicant was assaulted in any way.

On the basis of the evidence, Inspector D considered this complaint to be unsubstantiated.

Consideration

In terms of section 34(3)(b) of the Act, the Commissioner has no power to deal with complaints about the police which consist of an allegation of an act which constitutes a crime. Accordingly the Commissioner has no remit to consider the handling of complaints 1 to 4 in so far as they have been dealt with as criminal allegations.

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 officers involved. Complaints 1 to 4 were thereafter investigated by Strathclyde Police as alleged misconduct.

Given that complaints 1 to 4 have been dealt with as non-criminal, disciplinary matters by Strathclyde Police, the Commissioner considers that he has the power to review the manner in which they were handled in this context.

The Commissioner considers that in situations such as these complainers should be given as much information as is necessary to properly inform them of the outcome of their complaints. In the Commissioner's view, Chief Superintendent K's letter to the applicant of 30 October 2008 did not provide sufficient information in this connection. Although the applicant was informed that one of the officers he complained about had been "dealt with" under the Regulations, there was no explanation given as to what this entailed and why the action was taken. There was also no information provided as to the outcome of the applicant's other complaints under this heading.

The Commissioner therefore recommends that Strathclyde Police informs the applicant of precisely what action was taken against the officer concerned in terms of the Regulations and why it was taken.

In respect of the other complaints under this heading the Commissioner considers that the information provided above is sufficient to inform the applicant of the outcome of these. Accordingly, the Commissioner makes no recommendation in this connection. However, as a learning point, the Commissioner expects complainers to be given sufficient information to properly inform them of how key conclusions are reached in response to their complaints.

Complaint 5: Additional unwarranted charges

The applicant alleged that, because he made a complaint about the police, additional charges were made out against him.

Internal Handling

This complaint was categorised as being non-criminal in nature and investigated by Inspector D.

Inspector D examined CCTV footage of the applicant being processed at Police Station X and noted that the applicant was originally charged with possession of a knife and resisting arrest. According to Inspector D these charges were justified by the CCTV footage of the applicant's arrest.

Inspector D also explained that the applicant had provided false details at the charge bar which resulted in him being charged with attempting to pervert the course of justice. In addition, Inspector D noted that two bladed items were subsequently found in the applicant's property which led to two further charges.

In light of this evidence, Inspector D considered that the charges brought against the applicant were justified.

In his letter of 30 October 2008 Chief Superintendent K stated the following:

“Your client also made one non-criminal allegation, alleging that a Police Officer had libelled additional charges against him, however, I can advise you there was no evidence to substantiate this allegation.”

Consideration

Although the Commissioner considers Inspector D’s findings to be reasonable as far as they go, none of the information detailed above was communicated to the applicant by Strathclyde Police in its response to the complaint. Chief Superintendent K’s letter of 30 October 2008 simply advises that there is no evidence to substantiate the applicant’s allegation. In the Commissioner’s view, Chief Superintendent K’s letter ought to have included fuller details of Inspector D’s consideration of the complaint.

Inspector D considered the charges under section 49(1) of the Criminal Law (Consolidation) (Scotland) Act 1995 (carrying a knife and other bladed items); section 41(1)(a) of the Police (Scotland) Act 1967 (resisting arrest) and for attempting to pervert the course of justice. However, Inspector D did not consider the applicant’s complaint in the context of the charge of assaulting Constable A. In the Commissioner’s view, however, there was sufficient evidence to justify this charge. Constables A and H both claim that the applicant presented a knife at Constable A, while Constables I and J state that on arrival at the scene they saw a knife lying on the ground. Again, however, none of this information was conveyed to the applicant in the response to this complaint.

Due the lack of information given to the applicant in Strathclyde Police’s response, the Commissioner does not consider that this complaint was dealt with in a reasonable manner. However, the Commissioner considers that the information given above is sufficient to properly inform the applicant of the outcome of his complaint. Accordingly, the Commissioner makes no recommendation in this connection.

Conclusions, Recommendations and Learning

Complaint (1) – (4): Potential misconduct arising from allegations of assault

For the reasons given, the Commissioner does not consider that this complaint was dealt with in a reasonable manner. Accordingly, the Commissioner recommends that Strathclyde Police informs the applicant of precisely what action was taken against the officer concerned in terms of the Regulations and why it was taken.

In the Commissioner’s view, the applicant has not received substantive responses to the other complaints he made under this heading. However, the Commissioner considers that the information provided above is sufficient properly to inform the applicant as to the outcome of these complaints. As a learning point, however, the Commissioner expects complainers to be given sufficient information to properly inform them of how key conclusions are reached in response to their complaints.

Complaint 5: Additional unwarranted charges

For the reasons given, the Commissioner does not consider that this complaint was dealt with in a reasonable manner. However, the Commissioner considers that the information contained in this report is sufficient properly to inform the applicant of the outcome of his complaint. Accordingly, the Commissioner makes no recommendation in this connection.

John McNeill
Police Complaints Commissioner for Scotland

Hamilton House
Caird Park
Hamilton
ML3 0QA