

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 was tried and acquitted of the murder of a child. He later made a number of complaints to Central Scotland Police alleging unprofessional behaviour on the part of certain officers (complaint 1 in this report). He also made several complaints about Central Scotland Police's disclosure of information regarding the circumstances of his case to the Children's Reporter (complaint 2) and Disclosure Scotland (complaint 3).

In respect of complaint 1, the Commissioner found that Central Scotland Police dealt with this in a reasonable manner. In respect of complaint 2, the Commissioner found that Central Scotland Police had not dealt with this in a reasonable manner but in the circumstances made no recommendation in this connection.

The Commissioner also found complaint 3 to have been dealt with in a reasonable manner but noted that it had not been formally recorded as a complaint. The Commissioner recommended that this be done.

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 August 1998 Child A died in hospital. The death was treated as suspicious as the child had a number of superficial injuries. An autopsy identified that Child A died from a condition which was consistent with a forceful blow to the abdomen. Child A had been in the care of his mother (Mrs B) and the applicant, who was Mrs B's partner at the time. A report was sent to the Procurator Fiscal in relation to the alleged involvement of Mrs B in the death but no proceedings were taken. The case was reviewed in 2004 by Detective Chief Inspector C. Detective Chief Inspector C states that as the review progressed it was discovered that the applicant had been left alone with Child A shortly before his death and had an opportunity to inflict the injuries that resulted in Child A's death. At this point applicant became a suspect in the case.

On 29 March 2005 the applicant was detained by Sergeant D and Detective Constable E on suspicion of murdering Child A. He was taken to a police office by car where he was interviewed. Detective Chief Inspector C then made disclosures to the applicant's employer and the Children's Reporter. The disclosures contained details of the applicant having been interviewed regarding the alleged offence and the fact that a report would be submitted to the Procurator Fiscal in this connection.

On 15 January 2006 the applicant was arrested by Detective Sergeant F and Detective Constable G for the murder of Child A. The applicant was then driven by Detective Sergeant F to another police office.

In December 2007 the applicant was tried for the murder of Child A. The jury found the charge not proven.

In 2008 the applicant applied for jobs which were subject to an enhanced disclosure check by Disclosure Scotland. Central Scotland Police was contacted in this connection and provided Disclosure Scotland with details of the applicant having been charged and tried with the murder of Child A and the fact that the charge was found not proven. These details then appeared in the "Other relevant information" section of the certificate issued by Disclosure Scotland.

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 officers of Central Scotland Police officers were unprofessional towards the applicant;
- (2) that Central Scotland Police disclosed inaccurate information to the applicant's employer and the Children's Reporter; and
- (3) that Central Scotland Police provided details of the circumstances of the applicant's arrest to Disclosure Scotland.

The Commissioner's Review

The applicant first contacted the Commissioner's office by letter on 15 February 2008. He thereafter submitted an application form on 16 January 2009.

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: Alleged unprofessional behaviour

The applicant has raised concerns about the conduct of a number of police officers who were involved in the investigation that led to his arrest, the arrest itself and his subsequent trial. These complaints can be categorised as follows.

- (a) The conduct of police officers who detained the applicant caused distress to the applicant's wife and children.
- (b) Whilst being driven in a police vehicle following his detention Sergeant D and Detective Constable E were constantly swearing and discussing their previous arrests. The also applicant alleges that Detective Constable E was speeding while driving the police vehicle.
- (c) During a police interview Detective Sergeant F adopted a "sneering", aggressive and threatening attitude towards the applicant.
- (d) At the time of the applicant's arrest Detective Sergeant F told the applicant "I told you I'd be fucking back to get ye".
- (e) At the police station to which he was taken following his arrest, Detective Sergeant F's body language towards the applicant was threatening.

(f) During the course of applicant's trial, Detective Sergeant F stared at him on several occasions in an unprofessional manner.

(g) When driving the applicant to a police office following his arrest Detective Sergeant F drove at high speed and refused to put the applicant's seat belt on.

(h) When providing evidence at the applicant's trial Detective Sergeant F was unprofessional and admitted misleading the applicant.

Internal Handling

The applicant detailed each of these complaints in a letter to Central Scotland Police dated 5 February 2008. A Complaint about the Police (CAP) form was thereafter completed.

The complaints were initially passed to the Area Procurator Fiscal on the basis that some of them inferred criminality on the part of police officers. The Area Procurator Fiscal requested that a statement be obtained from the applicant. Inspector H was appointed to carry out an investigation into the complaints and obtained a statement from the applicant on 5 March 2008.

Following consideration of the information provided to her by Central Scotland Police, the Area Procurator Fiscal decided that, in relation to the allegation of speeding, criminal proceedings would be time barred and so she could not prosecute in relation to this. The Area Procurator Fiscal also considered the disclosures of information made by Central Scotland Police to the applicant's employer, the Children's Reporter and Disclosure Scotland (see complaints 2 and 3) but found that these did not constitute offences under the Data Protection Act 1998.

Inspector H obtained statements from Sergeant D, Detective Sergeant F and Detective Constable E in respect of the complaints against them. Each denied the allegations. Statements were also obtained from the available witnesses to each complaint. These included the following:

- Sergeant D, Detective Sergeant J and Acting Detective Superintendent K who witnessed the police interview conducted by Detective Sergeant F, which is the subject of complaint 1(c).
- Detective Constable G and the applicant's wife (Mrs L) who witnessed the applicant's arrest and who were interviewed in relation to complaint 1(d)
- Detective Constable G who was interviewed as a witness to Detective Sergeant F's alleged actions in relation to complaints 1(e) and 1(g).
- Mrs L and Ms M who were present at court with the applicant and who were interviewed in connection with complaint 1(f), along with Inspector N, Detective Inspector P, Sergeant D, Detective Sergeant Q and Sergeant R.

In relation to complaint 1(h) Inspector H requested a copy of the transcript of Detective Sergeant F's evidence from the High Court of Justiciary. According to his report, Inspector H was informed that the cost of this would be prohibitive. Instead, Inspector H contacted the Procurator Fiscal and enquired if any adverse comment had been made by the Advocate Depute or judge in relation to the quality of evidence provided by Detective Sergeant F.

On 26 August 2008 Deputy Chief Constable S wrote to the applicant in response to his complaints. He did not, however, respond to complaint 1(a) above.

In relation to complaint 1(b), Deputy Chief Constable N wrote the following:

“The officers concerned deny the allegations made about their conduct and in the absence of other evidence I have concluded that the evidence available to me does not substantiate the allegation.”

The following response was given in relation to complaint 1(c):

“...you were interviewed by [Detective Sergeant F and Sergeant D]. I understand that three interviews followed all of which were tape recorded in line with legal requirements. I can advise you that these interviews were subject to significant planning whereby a trained interview advisor was employed to provide an interview strategy. This is a technique which is employed in serious cases with a view to ensuring that interviews are structured, fair and that nothing is overlooked. I am also advised that a remote televisual link was utilised in order that the interview advisor and a senior officer in the case may monitor the interviews as they took place. These officers saw nothing in the conduct of [Detective Sergeant F] which gave them cause for concern and are of the opinion that the interviews were conducted professionally and in line with the devised strategy. It is apparent during these interviews that certain responses made by you to questions posed were in fact challenged by [Detective Sergeant F] but it is the opinion of the monitoring officers that this was done openly, in line with the strategy and within the realms of fairness. These interviews will have been subject to scrutiny by the prosecution and defence as the case against you was being prepared and were presented in evidence during the trial where they were subject to examination in open court.

I have concluded that the evidence available to me does not substantiate the allegation.”

The following response was given in relation to complaint 1(d):

“You allege that whilst alone with you [Detective Sergeant F] said to you ‘I told you I’d be fucking back to get ye’. This allegation is denied by [Detective Sergeant F] and investigation by [Inspector H] did not reveal any corroboratory evidence. Whilst I understand that there are contradictory positions on this matter the evidence available to me does not substantiate the allegation made by you.”

The following response was given in relation to complaint 1(e):

[Detective Sergeant F] refutes the allegation made by you. He concedes that due to the seriousness of the charge the procedures carried out in respect of you were done in a formal way but is adamant that he conducted himself in a professional and proper manner. He is supported in this regard by the other officer who was present.

The evidence available to me does not allow me to substantiate the allegation made by you.”

In relation to complaint 1(f), Deputy Chief Constable S commented:

“You allege that on a particular day during [court] proceedings [Detective Sergeant F] stared at you with the intention of intimidating you. This involved two incidents, one before and one after lunchtime.

In relation to the first incident, despite interviewing a number of persons, no witnesses could be found.

With regard to the second incident, support for your allegation was given by your wife and to a degree by [Ms M]. Inspector [H] travelled to the High Court where he examined the layout closely in light of the information he had gathered from witnesses. I am advised that Detective Sergeant [F] will have been standing about 50 feet from the position of the seats

you occupied. It is also evident that taking into account the seats occupied, whilst he may have had a clear view of [Mrs L] he would have had difficulty in seeing you. I also understand that the position occupied by Detective Sergeant [F] is covered by CCTV and is a very public area where reception staff [etc] may be present.

[Detective Sergeant F] denies the allegation. In his response he intimated that it was his perception that you had been in the habit of staring intently at him on a number of occasions. He admits that on some of these alleged occasions he may have stared back but is of the opinion that this was a natural human reaction. He insists that he had no intention of intimidating you at any time.

In considering all the evidence gathered in relation to this allegation it is clear that the presence of Detective Sergeant [F] has made you feel extremely uncomfortable. Whilst I appreciate that you and [Mrs L] are of the opinion that Detective Sergeant [F] has deliberately tried to intimidate you on these occasions I am not convinced that this is the case.

In weighing up all the circumstances and evidence available to me it is my opinion that there has been no misconduct in the part of [Detective Sergeant F].

[Detective Sergeant F] has, however been made aware of your perceptions on this issue.”

Deputy Chief Constable S commented as follows in relation to complaint 1(g):

“I note that you have mentioned that during this journey your seat belt was not applied. I can advise you that Central Scotland Police policy in respect of this issue is that prisoners should be assisted in wearing seat belts wherever possible. Although the officers present cannot recall whether your seat belt was applied, I have in any case taken the opportunity to remind Detective Sergeant [F] of the force policy in this regard.”

In relation to Complaint 1(h) the following response was given:

“In response I would simply say that [Detective Sergeant F] gave his evidence in open court. That evidence was subjected to cross examination by the defence and close examination by the judge and jury. Central Scotland Police are not aware of any adverse comment made by the presiding judge in respect of the quality of evidence given.

I am aware that the Advocate Depute in the case took time out to praise the contribution of Detective Sergeant [F] in the case in general and with regard to the quality of his evidence specifically.”

Consideration

In the first instance, the Commissioner must make clear that he has no power to deal with those elements of complaints 1(b) and (g) which allege criminality on the part of the officers concerned. Accordingly, those elements have been excluded from this review.

Many of the other elements of complaint 1 involve competing accounts from the applicant and the police officers subject to the complaints. Given that the complaints are disputed by the officers involved, and in most cases there were few other witnesses aside from the applicant, it is not surprising that Central Scotland Police found many of these to be unsubstantiated.

In addition, a number of the complaints (particularly (c), (e), (f) and to some extent (h)) concern the applicant's perception of Detective Sergeant F's conduct and attitude towards him. From the information available to the Commissioner it does not appear that this perception was shared by other witnesses. The exception to this is complaint 1(f) in which Mrs L and Ms M shared the

applicant's concerns about the conduct of Detective Sergeant F. This was in contrast to the position adopted by Detective Sergeant F and each of the officers who were with him at court on the occasions in question. In light of these competing accounts, and the fact that much of the applicant's concern is based on his own perception of matters, it is again unsurprising that Central Scotland Police found these complaints to be unsubstantiated. Despite these findings, however, Detective Sergeant F was made aware of the applicant's perception and those of Mrs L and Ms M regarding his alleged behaviour in court. In addition, despite Central Scotland Police being unable to substantiate complaint 1(g) Detective Sergeant F was nonetheless reminded of Central Scotland Police's policy in respect of fastening prisoner's seatbelts.

With regard specifically to complaint 1(h), the Commissioner considers that Central Scotland Police's response was reasonable, based on the available evidence. In recent correspondence with the Commissioner's office the applicant has claimed that Detective Sergeant F admitted under oath that he had not disclosed all relevant information to expert witnesses. This, the applicant claims, led to the opinions of these experts being slanted to fit in with the theory held by certain officers within Central Scotland Police. The Commissioner notes, however, that the applicant makes no reference to this issue in his statement of 5 March 2008. Although in his letter to Central Scotland Police of 5 February 2008 the applicant refers to Detective Sergeant F being cross examined regarding medical evidence, there is no mention of any failure to disclose evidence to experts. In these circumstances, this element of the applicant's complaint is beyond the Commissioner's statutory remit. If he wishes to pursue this matter further, he should contact Central Scotland Police.

In the Commissioner's view, Central Scotland Police has conducted an extensive investigation into the various elements of these complaints and reached reasonable conclusions based on the available evidence.

However, as noted above Central Scotland Police did not respond to complaint 1(a) in which the applicant alleges that the conduct of the officers who detained him caused distress to his wife and family. The applicant made this complaint in his letter to Central Scotland Police of 5 February 2008. In the letter he claimed that the "manner and conduct" of each of the four CID officers who attended his home that day was "unacceptable and led to a very distressing situation" for his wife and two young children. He does not, however, specify in what way the conduct of the officers concerned while within his home was unacceptable, nor does he provide any such detail in his statement of 5 March 2008. Indeed, after making complaint 1(b), the applicant comments as follows in his statement:

"I have no further complaints about [Sergeant D] and [Detective Constable E] that day."

It may be that this is the reason why Central Scotland Police did not consider this complaint further. In the Commissioner's view, if the applicant wishes to pursue this complaint he should specify to Central Scotland Police why he considered the conduct of the officers who detained him to be unacceptable.

Complaint 2: Disclosure of inaccurate information

According to the applicant, in 2005 Central Scotland Police disclosed information to his former employer and to the Children's Reporter which he considered to be incorrect. In particular, the applicant believes that Central Scotland Police informed the Children's Reporter that he was a "Schedule 1 Offender". According to his statement, the applicant's understanding of that term is an individual who has been charged or convicted of a crime against children. At the time the disclosures were made to the Children's Reporter and the applicant's former employer, the applicant had not been charged with or convicted of such an offence. Accordingly, he considers that the information disclosed was incorrect.

Internal Handling

As part of his investigations into this complaint Inspector H obtained a statement from Detective Chief Inspector C who disclosed the information to the applicant's employer and the Children's Reporter. In his statement Detective Chief Inspector C confirmed that none of the correspondence forwarded to the Children's Reporter made any reference to the applicant being a Schedule 1 Offender. Inspector H also engaged in email correspondence with Detective Chief Inspector C. In these emails Detective Chief Inspector C provided details of the information relating to the applicant's case and confirmed that he was unable to find the original paper work detailing which chief officer had signed off the disclosure.

Inspector H then attempted to obtain copies of the letters sent by Central Scotland Police to the Children's Reporter in relation to the applicant. A letter had been sent by Detective Chief Inspector C to the Children's Reporter on 1 April 2005 regarding the applicant. Despite enquiries, both internally and with the Children's Reporter, Inspector H was unable to locate a copy of this letter. Inspector H did, however, recover a copy of a Juvenile Record Form that was sent to the Children's Reporter along with the letter of 1 April 2005. This form provided details of the circumstances that led to the applicant being reported to the Procurator Fiscal. Inspector H's report notes that the form contains no mention of the term "Schedule 1 Offender". A second letter sent by Detective Chief Inspector C to the Children's Reporter on 27 July 2005 was also found to contain no reference to the applicant being a Schedule 1 Offender.

On 26 August 2008 Deputy Chief Constable S wrote to the applicant regarding this complaint. In his letter he states:

"On examining the letter in question dated 29 July 2005 which was signed by then Detective Chief Inspector [C], it is clear that it contains no reference to the term 'Schedule One Offender'".

Deputy Chief Constable S concluded his response to this complaint by stating that the term "Schedule 1 Offender" may have been selected by the Children's Reporter and that the applicant may wish to pursue the matter with them.

Consideration

It is clear from his letter to Central Scotland Police of 5 February 2008 that the applicant was at that stage dissatisfied with Central Scotland Police having provided information to his former employer. However in his statement provided to Inspector H on 5 March 2008 the applicant states:

"I am not complaining about my employer being approached by the police in this regard. I have no issues whatsoever about this. This may change when I find out what the content of the information passed on was."

It is not clear to the Commissioner whether the applicant has since been provided with the information supplied by Central Scotland Police to his former employer. However, on the basis of the information available, the Commissioner considers that the passage quoted above amounts to a withdrawal of the complaint made in the applicant's letter of 5 March 2008. It may be that Central Scotland Police has taken the same view since there is no reference to this complaint in Deputy Chief Constable S's letter of response of 26 August 2008. In recent correspondence with the Commissioner's office the applicant has indicated ongoing concerns about the information provided to his former employer. If the applicant wishes to pursue this complaint he should do so by contacting Central Scotland Police.

The applicant's statement continues:

“My complaint is that the police passed inaccurate information to the Reporter. I would like to know who did that and why it was done. I understand and have no concerns that information was passed to the Reporter but this should have been accurate.”

The applicant therefore appears to accept that Central Scotland Police has a duty to inform the Children’s Reporter of the circumstances surrounding the report being sent to the Procurator Fiscal. It appears that his complaint centres on him being referred to as a Schedule 1 Offender.

According to his report Inspector H contacted the Children’s Reporter in an attempt to locate a copy of Detective Chief Inspector C’s letter dated 1 April 2005. In response, the Children’s Reporter wrote to Central Scotland Police on 11 July 2008 advising that they were unable to locate the letter. The Reporter did, however, provide a copy of Detective Chief Inspector C’s letter of 27 July 2005. On this letter there is a hand written note which states “S52(2)(f)”. This would appear to be a reference to section 52 of the Children (Scotland) Act 1995 (“the 1995 Act”). The relevant provisions of the 1995 Act are as follows:

“52(1) The question of whether compulsory measures of supervision are necessary in respect of a child arises if at least one of the conditions mentioned in subsection (2) below is satisfied with respect to him.

(2) The conditions referred to in subsection (1) above are that a child –

(d) is the child in respect of whom any of the offences mentioned in Schedule 1 of the Criminal Procedure (Scotland) Act 1995... has been committed

(f) is, or is likely to become, a member of the same household as a person who has committed any of the offences referred [to] in paragraph (d) above.”

The offences listed in Schedule 1 of the Criminal Procedure (Scotland) Act 1995 include the following:

“Any offence involving bodily injury to a child under the age of 17 years.”

There is no evidence available to identify who noted the reference to the 1995 Act on the letter, or when this was done. However, as the letter was obtained from the Children’s Reporter, it is perhaps unlikely that anyone with Central Scotland Police did so. In the Commissioner’s view, the note serves no purpose other than to identify where the reference to the applicant being a Schedule 1 Offender may have originated.

There is no reference to the applicant being a Schedule 1 Offender in any available correspondence sent from Central Scotland Police to the Children’s Reporter. This is reflected by Deputy Chief Constable S in his final response to the applicant. However, in his response Deputy Chief Constable S makes no mention of the letter sent on 1 April 2005.

Despite Inspector H’s enquiries, it was not possible to recover a copy of Detective Chief Inspector C’s letter of 1 April 2005. Neither Central Scotland Police nor the Children’s Reporter has retained a copy. There is accordingly an incomplete record of the correspondence between the Central Scotland Police and the Children’s Reporter in relation to this matter. The only indication as to the content of the letter is given by Detective Chief Inspector C in his statement. There, he claims that he made it clear in his letter that investigations were continuing and that a full report would be submitted following conclusion of the enquiries.

In the Commissioner’s view, Deputy Chief Constable S ought to have informed the applicant of Detective Chief Inspector C’s letter of 1 April 2005 and explained to him that Central Scotland Police had been unable to recover a copy. An acknowledgement of this would have constituted a more transparent handling of the applicant’s complaint. The absence of any reference to this letter

in the response to the applicant has led the Commissioner to conclude that this complaint was not dealt with in a reasonable manner. However, given that the letter cannot now be recovered there is no more that can be done by Central Scotland Police in this connection. Accordingly, the Commissioner makes no recommendation in this connection.

Complaint 3: The passing of information to Disclosure Scotland

The applicant is dissatisfied about Central Scotland Police having provided to Disclosure Scotland details of his being tried and acquitted of the murder of Child A. The applicant has requested that Central Scotland Police provide him with an explanation as to why this information was provided to Disclosure Scotland.

Internal Handling

In response to this complaint Assistant Chief Constable T wrote to the applicant on 12 June 2008. His letter states:

“It is a requirement that when any individual applies to work with children or vulnerable adults we must give due consideration to the post applied for and any conviction material or indeed non conviction material we hold in respect of that individual. In your case the material we hold relates to non-conviction material, as outlined in regard to the above mentioned trial. In our view it is therefore relevant, proportionate and necessary that we consider the facts of the case on each occasion we are advised by Disclosure Scotland that you have applied to work with children of vulnerable adults.”

Consideration

Section 115(7) of the Police Act 1997 provides that before issuing an enhanced disclosure certificate (of the kind issued to the applicant by Disclosure Scotland, the chief officer of the relevant police force must be asked to provide any information which, in the chief officer’s opinion, “might be relevant” to the person’s suitability for the position in question.

In the present case, the applicant had applied for a job which involved working with young people. Part of the selection process for this job was an enhanced disclosure certificate. The very purpose of such a disclosure is to provide comprehensive background information on an individual to allow the employer to determine if they are suitable to be offered the job. The applicant had been tried for murdering a child, the charge against him found not proven. In the Commissioner’s view, there is no doubt that such information “might be relevant” to the applicant’s suitability for such a position.

For these reasons, the Commissioner considers that this complaint was dealt with in a reasonable manner by Central Scotland Police.

From the information available to the Commissioner it does not appear this complaint has been formally recorded by Central Scotland Police. The Commissioner therefore recommends that this be done.

Conclusions, Recommendations and Learning

Complaint 1: Alleged unprofessional behaviour

In the Commissioner’s view, the manner in which this complaint was dealt with by Central Scotland Police was reasonable. Accordingly no further action is required in this connection.

Complaint 2: Disclosure of inaccurate information

For the reasons given, the Commissioner considers that the manner in which this complaint was dealt with by Central Scotland Police was not reasonable. However, in the circumstances he makes no recommendation in this connection.

Complaint 3: The passing of information to Disclosure Scotland

In the Commissioner's view, the manner in which this complaint was dealt with by Central Scotland Police was reasonable. However, the Commissioner recommends that the complaint is formally recorded as such.

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