

# 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 complaint dealt with in this report relates to police surveillance of the applicant and evidence provided by a police officer at a parole hearing.

The Commissioner found that the complaint was not dealt with in a reasonable manner by Strathclyde Police. With regard to the lack of detail provided in the response to the applicant, the Commissioner considered that his report sufficiently covered the information that ought to have been given to the applicant. He therefore made no recommendation in this connection. However, the Commissioner found that a comment made by Strathclyde Police in its response to the complaint was unjustified based on the information contained within its file. The Commissioner therefore recommended that Strathclyde Police write to the applicant explaining the basis for this comment.

## 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

These complaints arise from a surveillance operation carried out on the applicant by Strathclyde Police following his release from prison on 1 December 2006 under the restrictions of a non-parole licence. The licence was due to run until 30 November 2017 and specified, amongst other things, that he should not approach, speak to or communicate in any way with a child under the age of 17 years old without the prior approval of his supervising officer.

This section of the report has been prepared using the statements of the applicant and the police officers involved in his surveillance and apprehension.

### The applicant's account

In his statement dated 20 December 2007, the applicant states that on 15 December 2006 he attended his local benefits office. While standing outside the office he spoke with a woman he estimated to be 45-50 years old. The applicant remained outside smoking a cigarette before entering and speaking with the concierge who directed him to the cashier's office. In the cashier's office he saw the woman he had been speaking with outside, two men aged 19-20 years old, two women also aged 19-20 years, and a member of staff.

The applicant states that on leaving the benefits office he made his way towards a bus stop around 500 yards away. While doing so he spoke to the 45-50 year old woman to whom he had spoken outside the benefits office. The applicant claims that this woman was not accompanied by any other person. The woman stopped near the bus stop while he continued on to a nearby shop. The applicant claims that he left the shop and asked the same woman if she knew when a particular bus was due. He states that, at this time, one of the 19-20 year old women he had seen in the

cashier's office was also at the bus stop and that this woman advised him that she was also waiting on that bus, which was running late.

The applicant claims while waiting for the bus he walked away to have another cigarette. When the bus arrived he boarded before the other people who were waiting. The applicant states that he sat at the raised area towards the rear of the bus (a single deck vehicle) and noticed that the 19-20 year old woman sat near the front in a forward-facing seat usually reserved for the elderly or people with pushchairs. He states that around five minutes into the journey he decided to change seats as the heating system was making it warm at the rear of the bus. He moved to a seat two or three rows back from the driver's cabin and states that the 19-20 year old woman was two or three seats in front of him. The applicant asserts that during the journey he did not speak to anyone on the bus or see the 19-20 year old woman speak with anybody. He states that he neither had face to face nor eye contact with this woman and that he did not sit looking at her.

### **Police officers' accounts**

On 15 December 2006 Strathclyde Police was conducting surveillance of the applicant in order to meet their requirements under the terms of the Sexual Offences Act 2003. This surveillance was being conducted to gather intelligence on the applicant's lifestyle following his release from prison.

Constable A was part of a team of officers tasked with carrying out surveillance of the applicant and was aware of the terms of his licence. The movements of the applicant were relayed by Constable A to Constable B who completed a surveillance log. Constable A followed the applicant on foot during the time when he was in the benefits office and while he was waiting at the bus stop. He also travelled on the same bus as the applicant.

During his surveillance, Constable A stood at the bus stop where the applicant had been waiting. Whilst there, Constable A witnessed the applicant engage in conversation with two females for several minutes. Constable A estimated one of the females to be between 25-30 years old and the other, Female X, as between 12-15. Constable C and Sergeant D also witnessed this and both provided statements to the effect that the younger female looked to be under 16 years of age. According to Constable A the applicant and Female X boarded the bus and he followed them.

Constable A states that shortly after the bus pulled away the applicant moved from his seat to one closer to where Female X was seated. Constable A observed the applicant turning his head towards Female X and that each time he did so Female X appeared to smile and giggle. Constable A states that in his opinion the applicant was communicating with Female X. Female X then got off the bus while the applicant and Constable A remained on board. Subsequent attempts to identify and interview Female X were unsuccessful.

After the applicant alighted from the bus Constable A informed Sergeant D about what he had witnessed while on board. Sergeant D informed Sergeant E of the findings of the surveillance operation. Sergeant E in turn reported the findings to Mrs F, a criminal justice social worker. Mrs F stated that she would inform the Scottish Government Justice Department regarding the applicant's breach of his licence conditions. Sergeant E states that he was contacted by the Justice Department on 18 December 2006 and was asked to prepare a report regarding the circumstances of the applicant's alleged breach of his licence. Having done this Sergeant E was informed that the applicant was to be returned to prison. On 18 December 2006 the applicant was arrested for breaching the terms of his licence.

On 31 August and 15 October 2007 Constable A attended the applicant's Extended Sentence Tribunal hearing ("the Tribunal hearing") and provided evidence. This evidence included Constable A's account of his surveillance of the applicant, the reading out of the surveillance log and the viewing of the CCTV footage.

## 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 the following complaints:

- (1) that a police officer lied to get the applicant's licence revoked;
- (2) that Strathclyde Police tampered with CCTV evidence; and
- (3) that a police officer lied when giving evidence at the applicant's Tribunal hearing.

## The Commissioner's Review

The applicant first contacted the Commissioner's office by letter on 24 November 2008. He thereafter submitted an application form on 28 November 2008.

In the Commissioner's view, complaints 1 and 2 are criminal allegations. 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 not considered the handling of these complaints.

The remainder of section sets out the Commissioner's views on the manner in which complaint 3 was handled by Strathclyde Police. Further details of this complaint are given and are followed by information regarding Strathclyde Police's handling of it and the Commissioner's views on this.

The applicant states that at the Tribunal hearing Constable A provided evidence to the effect that he had seen the applicant speaking with a young female aged 12-14 years old who, in Constable A's opinion, had Down's Syndrome and learning difficulties. According to the applicant Constable A also gave evidence that the CCTV footage did not cover all of the bus; however, the applicant claims that on contacting the bus company he had been told that the CCTV cameras covered all areas of the bus. The applicant believes that the CCTV evidence shows that he did not gesticulate towards Female X and proves that she did not have Down's Syndrome. Given this the applicant believes that Constable A lied at the Tribunal hearing.

### *Internal Handling*

The applicant made this complaint in the same letter to Strathclyde Police in which he made complaints 1 and 2. The complaint was deemed to be non-criminal as evidence at such tribunals is not provided under oath. It was therefore dealt with by Strathclyde Police as a non criminal complaint of wilful or careless falsehood.

As the applicant had been returned to prison by the time this complaint was made, arrangements were made for a member of the local police to obtain a statement from him. This was done by Sergeant M on 20 December 2007. Statements were also obtained from officers involved in the surveillance operation. Inspector J, who dealt with all of the applicant's complaints, also reviewed the CCTV evidence from the bus. Inspector J's report was completed on 8 February 2008 and, as it also addressed complaints 1 and 2, was sent to the Area Procurator Fiscal. The Area Procurator Fiscal responded to Strathclyde Police on 1 May 2008 stating that no criminal proceedings would be taken.

On 30 June 2008 Chief Superintendent K wrote to the Parole Board for Scotland requesting details of Board members involved in the Tribunal hearing in order to have them interviewed in relation to this complaint. Following an exchange of letters between the Parole Board and Strathclyde Police

relating to the purpose of the interviews, a final letter was sent from Mrs N from the Parole Board on 4 August 2008, stating:

*“The chairman of the tribunal does not consider it appropriate for the members of the tribunal to be interviewed about their views of the witness that appeared before them... therefore the board members are unable to be made available for interview.”*

The receipt of this letter marked the end of the complaints investigation by Strathclyde Police. Chief Superintendent P wrote to the applicant on 18 August 2008 in response to this complaint. In his letter Chief Superintendent P states:

*“The officer subject to the complaint denies this allegation and states that the oral evidence he provided was accurate and truthful. Further enquiry reveals that no concerns were expressed by the Chair of the Tribunal regarding the quality of the evidence provided by the officer.*

*Therefore on the basis of the available evidence I am unable to substantiate your allegation.”*

### Consideration

The applicant made the following specific allegations regarding Constable A's account of the surveillance operation:

- (a) that Constable A wrongly claimed to have observed the applicant in conversation with a female of approximately 14 years of age (Female X) at a bus stop and that the applicant later conversed with this female while on a bus;
- (b) that Constable A claimed the CCTV footage did not cover the whole of the bus and that this had been disproved by the bus company; and
- (c) that Constable A claimed that Female X had Down's Syndrome, which is disproved by the CCTV footage.

As no statements were given by Parole Board members it is not possible to establish the precise content of the evidence given by Constable A to Tribunal hearing. In the Commissioner's view, however, there was nevertheless sufficient evidence available to Strathclyde Police as a result of Inspector J's enquiries to allow it to address the substance of these allegations.

In relation to allegation (a) Constable A does indeed refer in his statement to the applicant conversing with two females one of whom was between 12-15 years of age. Constable A believed that the “conversation was directed more towards the younger of the two females.” The surveillance log also contains details of the applicant having been observed in conversation with a female “aged 15-16 years” who was in the company of an adult female. Constable A's account of the incident is supported by those of Constable C and Sergeant D who both made the same observation. Accordingly, there was not one but three police officers who apparently observed the applicant conversing with a female under the age of 17.

According to Constable A's statement, only Female X boarded the bus. To some extent this is supported by the account given by Constable C who observed Female X boarding the bus and makes no mention of her being accompanied by the older female. On the other hand, Sergeant D states that he was informed by Constable A that both females had boarded the bus. The CCTV footage from the bus confirms that more than one female boarded the bus at the same stop as the applicant. The footage shows Female X boarding the bus but not where she was seated. It also shows the applicant sitting towards the rear of the bus and then moving to a seat closer to the front of the bus. However, as the footage does not show the position of Female X it is not possible to

confirm if the applicant communicates with her while on the bus. Accordingly, aside from the applicant's account, there is no evidence to suggest that Constable A's claim that the applicant was communicating with Female X while on the bus was fabricated or otherwise untruthful.

In relation to allegation (b) the applicant claims that, contrary to Constable A's evidence at the Tribunal hearing, the bus company had confirmed that the CCTV covered the whole bus.

The Commissioner notes that the applicant wrote to Mr Q at the bus company on 24 September 2007 requesting information relating to the CCTV on the bus. Mr Q's letter response of 28 September 2007 states that the CCTV cameras covered all areas within the bus. However, on 30 October 2007 Mr Q wrote to the applicant again stating that there were in fact blind spots on the bus and that on occasions cameras may move from their intended position due to vibration, vandalism etc.

In light of this, the Commissioner considers that if Constable A stated during the Tribunal hearing that the whole bus was not covered by CCTV he would have been correct in doing so.

In respect of allegation (c), according to his statement Constable A believed Female X to have been "mentally disabled". As noted above, the CCTV footage shows Female X getting on the bus but is inconclusive as to whether she suffers from Down's Syndrome or any other disability. Accordingly the CCTV footage does not support the applicant's contention that Constable A lied to the Tribunal on this point.

None of the above information was included by Strathclyde Police in its response to the applicant. As noted above, given the absence of any statements from Parole Board members, it was not possible to establish for certain the content of Constable A's evidence. However, it would have been open to Strathclyde Police to assume that Constable A's evidence was consistent with the terms of his statement. It would therefore have been possible to assess Constable A's statement alongside the CCTV footage and the statements given by his fellow officers, in the same way as the Commissioner has set out above. In the Commissioner's view, had Strathclyde Police taken this approach it would have been able to provide a more convincing response to the complaint than the one in fact given.

In conclusion, the Commissioner considers that the response issued to the applicant did not reflect sufficiently the enquiries conducted by Inspector J. However, as the Commissioner has set out above the detail which he believes ought to have been given to the applicant in response to his complaint, the Commissioner makes no recommendation in this connection.

In the Commissioner's view, there is one further aspect of Strathclyde Police's response to this complaint which is worthy of comment. As noted above, Chief Superintendent P advised the applicant of the following:

*"Further enquiry reveals that no concerns were expressed by the Chair of the Tribunal regarding the quality of the evidence provided by [Constable A]."*

However, there is nothing in the materials supplied to the Commissioner which justifies this comment. As noted above, the Chairman of the Tribunal did not consider it appropriate for members of the tribunal to be interviewed about their views of Constable A. Accordingly, it is unclear what basis Strathclyde Police had for concluding that the Chairman of the Tribunal had not expressed any concerns regarding the quality of Constable A's evidence. The Commissioner therefore recommends that Strathclyde Police write to applicant to clarify the position with him.

## Conclusions, Recommendations and Learning

For the reasons given, the Commissioner does not consider that this complaint was dealt with in a reasonable manner. With regard to the lack of detail provided in the response to the applicant, the

Commissioner considers that his report sufficiently covers the information that ought to have been given to the applicant. He therefore makes no recommendation in this connection. However, with regard to the comment regarding the Chair of the Tribunal having expressed no concerns as to the quality of information provided by Constable A, the Commissioner recommends that Strathclyde Police writes to the applicant explaining its basis for this comment.

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