

# Report of a Complaint Handling Review in relation to Tayside Police

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

## Summary and Key Findings

The two complaints considered in this review arose from an incident at a police station in October 2007, when the applicant had attended with his adult daughter in order to support her in providing a statement.

The Commissioner concluded that neither complaint was handled in a reasonable manner. In respect of both complaints, the Commissioner recommended that Tayside Police apologises to the applicant for not taking steps to obtain a statement from Person A and for issuing a response to the complaint in the absence of any statement from Constable C.

The Commissioner also identified three learning points. The first of these is in respect of what constitutes proportionate enquiries in respect of a particular complaint; the second concerns the need for Tayside Police to ensure that records in relation to complaints are retained for the period specified in the guidelines issued by ACPOS; and the third concerns the application of the correct “closure categories” when recording the outcome of 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 15 October 2007, the applicant accompanied his daughter, Person A, to Police Station X to a pre-arranged appointment. The purpose of the appointment was for the police to obtain a statement from Person A. The statement, which had been requested by a procurator fiscal depute, was required in respect of the forthcoming criminal trial of Person A's partner. It was agreed with Person A that the statement would be taken by Constable B at Police Station X at a pre-appointed time. Person A was apparently upset over the events which led to her requiring to provide a statement, and the applicant had agreed to attend with her to provide support.

### The Applicant's Account

According to the applicant's statement dated 26 September 2008, whilst in the interview room prior to the start of the interview, Constable B received a call on her police radio from Constable C, the reporting officer for the case against Person A's partner. Constable B informed Constable C that she was "with the witness" and, after listening for some time, excused herself from the interview room. According to the applicant, Constable B returned and told them that Constable C wanted to speak to Person A on the telephone. The applicant told Constable B "No, [Person A] won't be doing that." His reasons for adopting this stance were that he was Person A's father, that Person A was upset, and that they had an arrangement with Constable B. Constable B then left the room again and on her return asked the applicant and Person A if they could wait as Constable C was nearby and wanted to come and speak to them.

A short time later, Constable C "burst" into the room, startling the applicant. Constable C then made a "formal announcement" that Person A had been requested to give a statement to the procurator fiscal depute and that he would advise the latter that they were refusing to do so. The

applicant and Person A replied that they were not refusing to provide a statement and that they were present in order that a statement could be taken. According to the applicant, there was no debate or discussion and Constable C asked them to leave. Throughout the exchange, Constable C remained standing, which the applicant found quite intimidating.

According to the applicant's correspondence to Tayside Police dated 31 August 2008, Constable C then "interposed" himself between the applicant and Person A and the main door of the station so that the applicant had to ask him to move. The applicant believed that this would have been seen by the station receptionist (Person F).

The applicant also refers to this alleged incident in his statement. There he states that, after asking the applicant and Person A to leave, Constable C "seemed to stand in the way obstructing us from leaving." The applicant thereafter got angry and raised his voice, saying "You asked us to leave, now let us leave."

According to the applicant's statement, Person A was distressed and vomited once they left the station. The applicant claimed that Constable B was "very much taken aback and upset when [Person A] began to cry". The applicant also noticed the receptionist, Person F, looking "quite startled". Person A was later taken to see her doctor.

After returning home, the applicant called Superintendent D at Police Station X, who made a fresh arrangement for the statement to be taken. Person A gave her statement at home the following day, in the presence of Constable E. The applicant did not accompany Person A on that occasion.

#### Constable B's Account

According to her statement dated 4 October 2008, whilst in the interview room Constable B immediately became aware that the applicant seemed to "speak for his daughter" and that the latter hardly spoke. The applicant was "quite angry in his tone of voice" and Constable B formed the impression that he did not like the police. The applicant began asking Constable B questions about the case against Person A's partner, which Constable B said she could not discuss with him. The applicant then asked hypothetical questions which Constable B presumed were intended to make her discuss the case. Constable B noticed at that time that the applicant was writing in a notepad everything that she was saying and was repeating what was being said as he wrote it down. Constable B said that she "felt quite intimidated by [the applicant's] actions."

According to Constable B, she then contacted Constable C to "ascertain what instructions if any the Procurator Fiscal had given with regards to the ... statement." Constable B stated

*"I wasn't comfortable with him being present when noting a statement from [Person A] and ... I thought he was going to influence and interrupt her statement. Constable [C] offered to travel across to [Police Station X] so that the statement could be corroborated."*

On arrival, Constable C asked the applicant to leave the room while the statement was noted. It was explained to him that the officers felt his presence would affect Person A's statement. The applicant refused to leave the room and stated that Person A would not provide a statement if he could not be allowed to stay. According to Constable B, Person A remained quiet and Constable B could not remember her saying very much, if anything. It was apparent to Constable B that the applicant was "doing all the talking for [Person A]". Constable C explained to the applicant that if Person A did not wish to provide a statement they could leave the office. According to Constable B, the applicant became very angry, was "ranting and raving" and "very angry and aggressive".

According to Constable B, the applicant then left the interview room along with Person A and in the entrance to the station continued "ranting and raving". Person A appeared to be upset at this. Constable C explained again to the applicant that the statement could be taken from Person A without him being present as it was felt he would interfere with the noting of the statement and

would influence her. According to Constable B the applicant repeated that he would “not allow [Person A] to provide a statement without him”. He then left the station with Person A. Constable B’s statement continues

*“At no time did Constable [C] obstruct anyone from leaving the office and his manner was not at any time aggressive ... Constable [C] raised his voice only to be overheard over [the applicant], who was very loud and angry.”*

### Constable C’s Account

According to his statement given on 20 October 2008, Constable C attended at Police Station X “in the company of Constable B” to note Person A’s statement. Along with Constable B, he entered the interview room where the applicant and Person A were waiting for him. Constable C’s statement continues:

*“I fully explained to [Person A] that the statement would be noted and then passed on to the procurator fiscal... I asked [the applicant] why he has [sic] attended at the office as his daughter was of an age which did not require a parent to be present. [The applicant] replied that he was going to record the events that were to follow as he did not trust the police. I informed him that he would not be permitted to record the interview under any circumstances. [The applicant] was adamant that it would be recorded and removed a notepad and paper and placed it on the desk. I explained to both parties that the interview would not be recorded. I asked [Person A] if she would provide the statement without her father recording it, she refused. As there was no other action to be taken at that time I informed them both that they could leave the office.”*

Constable C denied that he was intimidating and “over the top”. He stated

*“I did not burst into the room, nor was I intimidating towards any party. I fully explained the process to [Person A] and it was her choice not to provide the statement. I did not block or obstruct their exit from the office.”*

He also stated

*“[Person A] refused to provide a statement to me at that time. I asked her more than once and explained that any statement may help her partner.”*

### Person F’s account

Person F was working at the reception desk of Police Station X on 15 October 2007. She recalled the applicant and Person A attending the station in order that Person A could provide a statement. She also recalled that Constable B spoke with them and that they all entered the interview room. Person F was aware that, some time later, Constable C arrived at the station and entered the interview room. However, Person F was not in the interview room at any time and did not know what was said by any of the parties. She did not notice any altercation between the applicant and Constables B and C. Person F was also not aware of any raised voices or any incident occurring during the applicant’s time at the station. She could not recall the applicant and Person A leaving.

## **The Complaints**

Based on the contents of the application form, correspondence received from the applicant, and the information obtained from Tayside Police, the Commissioner has identified the following complaints:

- (1) that Constable C falsely accused Person A of refusing to provide a statement; and
- (2) that Constable C's behaviour was intimidating and "over the top".

The applicant raised his complaints with Tayside Police by writing to Superintendent G on 31 August 2008. A Complaint against the Police (CAP) form was raised in which the complaints were initially categorised as relating to "quality of service".

Inspector H prepared an initial report on the complaints dated 4 October 2008. In making enquiries prior to compiling her report, Inspector H obtained statements from the applicant, Constable B and Person F. As Constable C was on long term sick leave no statement was obtained at that stage from him. However, Inspector H noted that Constable C was aware of the complaint and would provide a statement in due course. In an email dated 8 October 2008, Inspector H advised the applicant that, in order to avoid a delay whilst she was on annual leave, paperwork had been forwarded to Superintendent G without a statement from Constable C.

No CCTV evidence was available from Police Station X and the Commissioner's office has received confirmation that no written records or audio recordings exist of the meeting in the police station.

On 13 November 2008, Deputy Chief Constable Z noted on the CAP form that the complaint had been one of "oppressive conduct/harassment" and that it had been both "unsubstantiated by available evidence" and "resolved by explanation to the complainer".

Superintendent G wrote to the applicant on 16 October 2008 in response to the complaints. On the same date, he sent a memo to Inspector H in which he asked her to "ensure that [the applicant]'s concerns are brought to the attention of Constable C." An undated, handwritten annotation on the memo by Inspector H states

*"[Constable C] made aware and matters discussed. Please find his operational statement attached."*

## **The Commissioner's Review**

The applicant first wrote to the Commissioner's office on 1 December 2008. In that letter, the applicant stated his dissatisfaction with the manner in which his complaints had been handled by Tayside Police. On receipt of the applicant's application form in March 2009, the Commissioner's office requested the case files from Tayside Police, which were received on 24 March 2009.

The remainder of this section sets out the Commissioner's views on the manner in which the complaints were handled by Tayside Police. Each complaint is set out in turn and is followed by details of the manner in which Tayside Police handled it and the Commissioner's views on their complaint handling.

### **Complaint 1: Alleged false accusation that Person A refused to provide the statement**

According to the applicant's statement, Constable C falsely accused Person A of refusing to provide a statement required by the procurator fiscal depute.

#### *Internal Handling*

Details of Inspector H's report are provided above. Inspector H noted in her report that Person A had not been interviewed in relation to the applicant's complaint.

Superintendent G stated the following in response to this complaint:

*"I understand from your email of 6 October 2008 that you did indeed refuse to allow your daughter [Person A] to speak on the telephone and I accept this may have been construed as being a refusal to provide a statement. I would add in the circumstances it would have been reasonable for a statement to be provided by telephone ... your concerns will be made know [sic] to [Constable C] I do not consider it reasonable or proportionate to arrange any further enquiry into this matter."*

### *Consideration*

In the Commissioner's view, this complaint was not adequately investigated by Tayside. Indeed, the Commissioner notes that in her email to the applicant of 8 October 2008, Inspector H informed him that an investigation into his complaint had not taken place and that there had simply been a "collation of others' recollections at this time."

In the Commissioner's view, given the nature of the complaint, it was essential that steps were taken to obtain statements from all those who were present during the meeting at Police Station X. Although statements were taken from the applicant and Constable B (as well as Person F), at the time of Superintendent G's response none had been taken from the officer subject to the complaint, Constable C. Equally importantly, it does not appear that any steps were taken to obtain a statement from Person A who was clearly a critical witness to the events within the interview room. The absence of any statement from Person A is all the more surprising given that it is she who, according to the applicant, was falsely accused of refusing to provide a statement.

For these reasons, the Commissioner does not consider that this complaint was handled in a reasonable manner. Ordinarily, the Commissioner would have recommended that Tayside Police endeavour to obtain a statement from Person A regarding what occurred in the interview room. However, given that almost three years have elapsed since the interview, the Commissioner is doubtful that further enquiries by Tayside Police would produce reliable evidence. Accordingly, the Commissioner recommends that Tayside Police apologise to the applicant for not taking steps to obtain a statement from Person A and for issuing a response to the complaint before first obtaining a statement from Constable C.

### **Complaint 2: Alleged intimidating behaviour**

As noted above, the applicant believes that Constable C acted in an intimidating and "over the top" manner while at Police Station X.

### *Internal Handling*

In her report, Inspector H summarised the accounts given by the various witnesses as described above.

In his response to the complaint, Superintendent G stated:

*"[Constable B] accepts that [Constable C] did raise his voice but at no time did she consider he was abusive or 'over the top'. I will arrange for [Constable C] to be spoken to on his return from sick leave and your concerns will be made clear to him in respect of his behaviour that day. However, in all the circumstances, I do not consider it reasonable or proportionate to instigate any additional enquiry into this matter at this time"*

### *Consideration*

At no time did the applicant allege that Constable C had shouted or raised his voice while within Police Station X. Indeed, in his statement the applicant states explicitly that Constable C did not

shout or swear; rather, it was Constable C's demeanour which the applicant found threatening. Accordingly, Superintendent G's focus upon Constable C not raising his voice did not reflect the terms of the applicant's complaint.

The Commissioner also considers that the handling of this complaint suffers from the same inadequacies as have been highlighted under complaint 1 above. No steps were taken to obtain a statement from Person A who was clearly a crucial witness in respect of Constable C's alleged behaviour. Although Constable C's statement does not support the applicant's complaint, it was inappropriate for a response to the complaint to be given without having obtained that account.

For these reasons, the Commissioner does not consider that this complaint was handled in a reasonable manner. The Commissioner's recommendation in respect of complaint 1 applies equally to this complaint.

## Conclusions, Recommendations and Learning

### Complaint 1: Alleged false accusation that Person A refused to provide the statement

For the reasons given, the Commissioner does not consider that this complaint was handled in a reasonable manner. Accordingly, the Commissioner recommends that Tayside Police apologises to the applicant for not taking steps to obtain a statement from Person A and for issuing a response to the complaint in the absence of any statement from Constable C.

### Complaint 2: Alleged intimidating behaviour

For the reasons given, the Commissioner does not consider that this complaint was handled in a reasonable manner. The Commissioner's recommendation in respect of complaint 1 applies equally to this complaint.

## Learning points

(1) As noted above, Superintendent G refers on two occasions in his letter to it not having been "reasonable or proportionate" to conduct further enquiries into the applicant's complaints. However, it is not entirely clear what Superintendent G meant by this. In particular, it is not clear why, in making enquiries into this complaint, Tayside Police considered it appropriate to obtain statements from the applicant, Constable B and Person F, but not Person A. As noted above Tayside Police was also prepared to issue a response to the applicant before any statement was taken from the officer subject to the complaint.

Clearly, complaints received by police bodies vary in complexity and "seriousness". In respect of all complaints, however, the Commissioner expects them to be accurately recorded and for any enquiries to be sufficient to allow a reasonable response to be issued to the complainer. In the present case, the Commissioner does not consider that a reasonable response could be issued to the applicant without obtaining Constable C's account and at least taking steps to obtain a statement from Person A.

(2) In his correspondence of 31 August 2008 to Tayside Police, the applicant implied that Superintendent D had carried out some form of enquiry into his complaints in 2007. The applicant repeated this in his statement in which he stated that, at the request of Person A's partner, he had not progressed his complaint at that time. Similarly, in his statement Constable C stated that he had been under the impression that the applicant's complaints had been made in the previous October and had been fully investigated and dealt with by Superintendent D.

During his review of these complaints, the Commissioner requested from Tayside Police any files relating to Superintendent D's earlier enquiries. Tayside Police confirmed that no such records

exist at Divisional headquarters and that it is no longer possible to verify the existence of any records with Superintendent D, who has since retired. It is not clear to the Commissioner precisely how far the applicant's complaints were progressed by Superintendent D but it appears from Constable C's statement that matters may have reached an advanced stage. In any event, it does not appear that Tayside Police has retained the paperwork in relation to Superintendent D's involvement in accordance with the guidelines issued by ACPOS in 2006. The Commissioner would remind Tayside Police that relevant information in relation to such complaints should be kept for 6 years plus the current year.

(3) Based on the available information, the applicant's complaints were initially categorised by Tayside Police as concerning "quality of service", specifically "service delivery" which is defined by Tayside Police as "Complaints in respect of the policing response [including] policing presence, time of response, and type of response." That classification was later altered by Deputy Chief Constable Z to "oppressive conduct/harassment" on the part of Constable C. The Commissioner considers that this was the correct category for statistical purposes and that it is appropriate that ultimate responsibility for categorisation of complaints about Tayside Police lies with its Professional Standards Department.

However, on this occasion the involvement of the Professional Standards Department also resulted in the complaint being allocated two closure categories, one of which was "resolved by explanation to complainer". Tayside Police's standard operating procedures in relation to complaints do not define this term; however, the following definition was provided by Tayside Police during the course of the review:

*"Resolved by Explanation' as a closure outcome is where our office staff are of the view that the Preliminary Report narrative provides sufficient information from Division that after discussing the circumstances of a complaint with a complainer, he/she is satisfied as to the explanation offered as to why certain courses of action/decisions were taken, outcomes arrived at, etc by the police officers who dealt with them."*

Based upon the information provided by the Commissioner, Tayside Police had no basis for concluding that the applicant was satisfied with any of the explanations given to him in response to his complaints. Accordingly, it was not appropriate for Tayside Police to categorise the complaints as having been resolved by explanation. Although this may seem a minor issue, the accurate recording of complaints and their outcome is clearly important for the production of reliable statistical data.

The Commissioner therefore recommends that Tayside Police reviews its complaint closure categories and ensures that these are applied appropriately and consistently by all those involved in the recording of complaints.

**John McNeill**  
**Police Complaints Commissioner for Scotland**

Hamilton House  
Caird Park  
Hamilton  
ML3 0QA