

Report of a Complaint Handling Review in relation to Northern Constabulary

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

Summary and Key Findings

The complaints dealt with in this report relate to allegations made by a teacher against the head teacher of her primary school, who is also a Special Police Constable. The complaints included allegations that the head teacher had failed to take appropriate action when a child protection issue was reported to her and had lied in a report she prepared regarding a school nursery.

The Commissioner concluded that all complaints were dealt with reasonably and required no further action by Northern Constabulary.

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

The applicant is a teacher in a primary school. The head teacher of the school is also a Special Constable with Northern Constabulary (depending on the context, she is referred to in this report as a head teacher and also as Special Constable A). In January 2008 the applicant raised with her head teacher concerns about another teacher who had allegedly behaved inappropriately towards a pupil in September 2007 and January 2008. The applicant felt that the incidents had not been properly investigated.

On 10 February 2008 the applicant also wrote to Northern Constabulary stating that she believed her head teacher had committed an offence. The incident mentioned in this letter related to a statement allegedly made by the head teacher at a "parent forum" meeting. Specifically, the applicant alleged that the head teacher had admitted at the meeting having provided false information to the Local Authority Area Education Management in connection with a children's nursery. The applicant believed that the alleged comment had implications for her head teacher's position as a Special Constable. The applicant's letter made no mention of her allegation concerning the alleged inappropriate treatment of a child by another teacher.

On receipt of the letter Northern Constabulary appointed a senior officer to contact the applicant to discuss her concerns. The complaint detailed in her letter was investigated as an off-duty complaint about the police and was recorded as such. During the course of the enquiry the applicant detailed two further complaints about the conduct of Special Constable A. One complaint, relating to the alleged unauthorised access to police systems, was recorded as an off-duty complaint. The other complaint, relating to child protection concerns, was considered to be

solely in connection with her position as a head teacher and was not recorded as a complaint about the police. The allegation that another teacher had behaved inappropriately towards a child in the school was, however, the subject of an investigation by the Public Protection Unit at Northern Constabulary.

The applicant also corresponded with the Area Procurator Fiscal in relation to her complaints about Special Constable A. The Area Procurator Fiscal determined that the alleged conduct related solely to Special Constable A's position as a head teacher and not to her role within Northern Constabulary. The Area Procurator Fiscal informed the applicant that he did not see any allegation of criminal conduct and that the Procurator Fiscal had no locus in relation to the complaint.

The Complaints

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

- (1) that Special Constable A failed to report a child protection issue to Northern Constabulary;
- (2) that Northern Constabulary failed to interview witnesses in relation to allegations that Special Constable A had behaved inappropriately at a meeting;
- (3) (a) that when made aware of a child protection issue Northern Constabulary failed to conduct an enquiry timeously
(b) that Northern Constabulary failed to investigate the local authority's delay in investigating a child protection issue; and
- (4) that Special Constable A unlawfully accessed police computer systems.

The Commissioner's Review

The applicant first contacted the Commissioner's office by letter on 1 March 2009. She thereafter submitted an application form on 24 March 2009.

This section sets out the Commissioner's views on the manner in which the complaints were handled by Northern Constabulary. Each complaint is set out in turn and is followed by details of Northern Constabulary's handling of it and the Commissioner's views on this.

Complaint 1: Alleged failure to report Child Protection issue

According to the applicant, Special Constable A should have reported the applicant's concern about potential child protection issues to Northern Constabulary.

Internal Handling

This complaint was made known to Northern Constabulary by the applicant in a telephone call to Detective Constable B on 11 March 2008, one week after her statement was noted in relation to complaints 2 and 5 below. The applicant told Detective Constable B that she had reported to her head teacher concerns about the way one of her colleagues had treated a child in her school. The applicant was not satisfied with the way the head teacher had dealt with her concerns. However, the applicant was not specific as to how she believed the head teacher had failed to deal with the matter effectively. She added that she had reported to the Education Authority her views as to how the head teacher had dealt with her concerns.

Detective Constable B spoke to the Education Area Manager, Person C, and was assured that the Education Department was aware of the applicant's concerns and was dealing with the situation. In her report Detective Constable B stated that in her view this was a matter for the Education Department and made no recommendations in respect of any further police involvement.

On reviewing Detective Constable B's report, Inspector D of the Professional Standards and Conduct Unit recommended that further enquiry should be undertaken in relation to the potential child protection issues disclosed by the applicant. This enquiry was allocated to Inspector E and is described further under complaint 3 below. In summary, however, there was insufficient evidence to libel any criminal charge against the suspect.

In his letter dated 13 January 2009 Chief Inspector F advised the applicant that Special Constable A had reported the concerns regarding child protection to the Education Authority in accordance with her duty as a head teacher. He told the applicant that he did not consider the head teacher's position as a Special Constable to be "pertinent to her role in this particular matter".

On receipt of Chief Inspector F's letter the applicant wrote to him expressing concern with the outcome of the investigation. Specifically she questioned the statement that Special Constable A had reported the child protection issue to the Education Department. Chief Inspector F responded by telling the applicant that, according to the evidence, Special Constable A had in fact reported the matter to the Education Department. He told her that, in any event, the referral was in connection with her role as a head teacher and any dispute about that should be taken up with the Education Department.

Consideration

The Commissioner notes that this complaint was not raised by the applicant in her initial letter to Northern Constabulary on 12 February 2008, nor was it mentioned by her in her statement noted on 3 March 2008. It was only on 11 March 2008 that the applicant contacted Detective Constable B to tell her about the child protection concerns.

For this complaint to be substantiated there would need to be an obligation upon an off-duty Special Constable to routinely report potential child protection concerns to the police, even when those concerns were brought to that person's attention in their professional capacity in another role. In this case, the concerns were brought to Special Constable A's attention in her role as head teacher of a primary school. So far as the Commissioner can establish, Special Constable A dealt with those matters in accordance with her requirements as a head teacher. In any event, if she had failed in that duty any complaint arising from this would be a matter for her employer, not the police or the Commissioner.

The applicant has not stated why she believes Special Constable A had a duty to report the potential child protection concerns to Northern Constabulary in addition to any professional responsibility as a head teacher. From the information made available to the Commissioner the Education Department was satisfied that, as a head teacher, Special Constable A took the appropriate action in respect of the matters reported to her. There is no evidence that her action in this matter adversely impinged on her role and responsibility as a Special Constable. In addition the Commissioner is not aware of any duty upon Special Constables that might have obliged Special Constable A to report these concerns to the police, as opposed to bringing them to the attention of the Education Authority.

In the Commissioner's view, this complaint was handled in a reasonable manner. Accordingly no further action is required.

Complaint 2: Alleged failure to interview witnesses

Internal Handling

In her correspondence dated 10 February 2008 the applicant complained that Special Constable A had committed a criminal offence. Specifically, she claimed that Special Constable A, in her capacity as head teacher of a primary school, admitted at a “parent forum” meeting that she had provided false information to the local authority in connection with a children’s nursery.

This complaint was recorded as an off-duty complaint and was allocated for enquiry. A statement was noted from the applicant by Detective Constable B on 3 March 2008. According to the applicant, at the meeting in question the applicant had said “off the record” that she had “accidentally” given Area Management wrong measurements relating to a children’s nursery within the school. The apparent significance of this lay in an application for a variation in the operation of the nursery from one daily session to two daily sessions. The available space within the nursery classroom was an important factor in the variation consideration by the Care Commission. The applicant’s position is that Special Constable A, by using the word “accidentally” to describe having provided the wrong measurements, clearly meant “a deliberate accident”.

Detective Constable B contacted the Area Education Manager, Person C, who advised her that all nursery provision is regulated by the Care Commission. Detective Constable B contacted the Care Commission Officer, Person G, the individual responsible for considering the application for variation. Person G said that shortly before the variation application she had completed an inspection of the school nursery. She was satisfied with the measurements provided in the variation application and saw “nothing untoward in the measurements given”.

Northern Constabulary was satisfied that there was no evidence of wrongdoing by Special Constable A and that the Education Department and the Care Commission had no concerns over the application. Northern Constabulary decided not to interview the parents present at the forum meeting as, given that neither the Education Department of Care Commission had any concern over the measurements submitted, to do so “would not add anything constructively to the outcome”. This information was communicated to the applicant by Chief Inspector F in a letter dated 13 January 2009.

On receipt of the letter from Chief Inspector F the applicant wrote to Northern Constabulary questioning the decision not to interview the parents present at the meeting. Chief Inspector F responded by letter on 7 February 2009. In the letter he stated that “in light of the nature of the allegation, the findings of the Care Commission and with due regard to proportionality, I do not consider it necessary to interview further witnesses.”

Consideration

In the Commissioner’s view the responsibility to submit the application for variation to the nursery school arrangements was one specifically associated with Special Constable A’s role as head teacher. Only where it could reasonably be inferred by her actions that she had had committed a criminal offence, or where there was reason to doubt her integrity or performance as a Special Constable, would there be a requirement for Northern Constabulary to become involved.

When made aware of the complaint Northern Constabulary conducted relevant investigation establishing that the application, according to the Care Commission, contained accurate details. The applicant’s view is that the police should have interviewed parents who were present at the meeting so that their recollection of events could be established. According to Northern Constabulary, however, the Care Commission and Education Authority were satisfied that there was no wrongdoing by the head teacher. In the absence of any evidence of wrongdoing, Northern Constabulary took the view that there was no requirement to interview any other witnesses.

In the Commissioner's view, Northern Constabulary adopted a reasonable and proportionate approach to this issue. Generally, the Commissioner believes that in all complaints about the police, enquiries must be sufficient to allow a reasonable response to be issued to the complaint. In essence, the applicant's complaint is that Special Constable A misled the local authority regarding the measurements of the nursery. Both the local authority and the Care Commission are satisfied that this is not the case and accordingly the Commissioner does not consider there to be any merit in Northern Constabulary undertaking the further enquiries suggested by the applicant. In the Commissioner's view, Northern Constabulary has undertaken sufficient enquiries to allow it to issue a reasonable response to this complaint.

Accordingly, the Commissioner considers that this complaint was handled in a reasonable manner. No further action is required of Northern Constabulary in this connection.

Complaint 3: Alleged Delay in investigating Child Protection issues

The applicant's position is that Northern Constabulary failed to act in relation to the child protection issue she reported until it was too late to interview the child concerned. She also complains that Northern Constabulary did not investigate why the local authority stalled and delayed their investigation of a child protection issue.

Although the applicant in her correspondence expresses general dissatisfaction with the way in which Northern Constabulary and the local authority dealt with her child protection allegations, she did not communicate these specific complaints to the force. In these circumstances, the Commissioner has not carried out a review of the handling of this complaint. For completeness, however, the Commissioner has included some observations on how Northern Constabulary dealt with the child protection allegations made to it.

The applicant's position is that the interview of the child concerned did not take place because the police and the local authority stalled and delayed the investigation until it was too late to do so. The first allegation that a child had been mistreated related to an incident in September 2007; the second concerned an alleged incident in early January 2008. Neither of those incidents was made known to the police in any form until the applicant's telephone call of 11 March 2008, 6 months after the date of the first incident and over two months from the date of the second incident. At that time it was established that the local Education Department was aware of the concerns and were actively dealing with the matter. Furthermore, the applicant did not provide a statement in relation to her allegations until 1 August 2008.

Inspector E arranged for relevant adult witnesses to be interviewed and none provided any corroboration of the alleged mistreatment of the child concerned. Inspector E also discussed the allegations with the Local Authority Child Protection Officer and agreed that the child would not be interviewed. The suspect was subsequently interviewed but denied the allegations and there was insufficient evidence to libel any criminal charge against her. The decision regarding the interview of the child would appear to have been taken after due consideration by persons experienced in the investigation of child protection allegations.

In the Commissioner's view, decisions by the police as to whether or not to interview a child during the course of an enquiry are often difficult exercises of discretion and judgement which require the consideration of a wide range of factors. In general, the Commissioner will not seek to challenge such a decision unless, based on all the information available to the decision-maker at the time, the Commissioner considers it unreasonable. On the basis of the information currently available to the Commissioner, he does not believe that the decision of Inspector E would fall into that category.

The Commissioner has no statutory responsibility for the review of complaints about local authorities and therefore has no comment to offer in relation to how the allegations were dealt with by the local authority in this case.

The information provided above may assist the applicant in understanding the Commissioner's approach to such issues. However, as these specific complaints have not been made to Northern Constabulary, clearly the Commissioner cannot examine the manner in which they were dealt with. If the applicant wishes to pursue these complaints, she should approach Northern Constabulary in this connection.

Complaint 4: Alleged unlawful access to computer systems

Internal Handling

This complaint was first made known to Northern Constabulary by the applicant in her statement of 3 March 2008. At the end of that statement the applicant alleged that Special Constable A, in relation to concerns expressed about the parent of a pupil at the school, said that she would use her connections in the police to find out if this parent had "a record".

Detective Constable B, having obtained the details of the parent concerned, established that there was no record of any checks having been made on the Police National Computer in respect of this individual.

On reviewing the circumstances of the complaint Inspector D recommended that another teacher present at the time the alleged comments were made be interviewed. Although there was no evidence of any checks having been conducted he took the view that if the comments had been made that itself would have been inappropriate.

Inspector E identified that the teacher present when the alleged comments were made was potentially a suspect in relation to other allegations made. Her interview in relation to this complaint was therefore delayed until her status was clarified.

The teacher, Person J, was interviewed on 10 December 2008 in relation to this complaint. She recalled the conversation but stated it was actually about the parent having to "undergo Disclosure Scotland checks which [the parent concerned] said he had done". Person J did not at any time hear Special Constable A mention anything about police checks. In fact, Person J took the view that "it wasn't anything to do with the police it was purely for the welfare of the children".

Special Constable A also provided her account of her involvement with the parent concerned in which she denied having made any comment about police checks. In fact, as with the applicant, she could not even remember the full name of the pupil's parents.

In his letter to the applicant of 13 January 2009 Chief Inspector F told her that there was no support for her position from the other people present at the meeting, namely Person J and Special Constable A. Furthermore, there was no record of the parent concerned having being checked on police systems.

Consideration

The Commissioner is satisfied that appropriate enquiry was conducted in relation to this complaint. The available evidence is clearly not supportive of the applicant's account and accordingly there is no evidence of misconduct by Special Constable A. In the Commissioner's view, Chief Inspector F's letter to the applicant of 13 January 2009 makes this position very clear.

In these circumstances the Commissioner considers that this complaint was dealt with in a reasonable manner. Accordingly no further action is required.

Conclusions, Recommendations and Learning

For the reasons given, the Commissioner considers that these complaints were dealt with in a reasonable manner. Accordingly no further action is required.

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