

Report of a Complaint Handling Review in relation to Fife Constabulary

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

Summary and Key Findings

In November 2006 Mrs A obtained a matrimonial interdict against the applicant which included a power of arrest. The applicant has been arrested on four occasions for breaching the terms of the interdict and has made complaints about the police arising from this.

Of the three complaints considered in this report, the Commissioner considered that all were handled in a reasonable manner by Fife 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's relationship with Mrs A ended in August 2006. On 16 November 2006 Mrs A was granted an interdict which carried a power of arrest. The interdict was in the following terms:

"The Sheriff interdicts [the applicant]... from molesting [Mrs A] by using physical violence towards her, threatening her, abusing her verbally, attempting to contact her in any way, putting her in a state of fear and alarm or distress at her home or the close leading to it or elsewhere within the Sheriffdom of Tayside, Central and Fife in terms of section 1 of the Protection of Abuse (Scotland) Act 2001, attaches to the foregoing interdict a Power of Arrest, specifying 16 November 2009 at 12 noon as the expiry of the said power of arrest."

On 19 January 2007 the applicant was arrested for allegedly assaulting Mrs A by throwing her down a flight of stairs at her flat. A report was sent to the Procurator Fiscal but no proceedings were taken against the applicant.

Between 1 February 2007 and 20 June 2007 Mrs A reported the applicant to Fife Constabulary on five separate occasions for allegedly breaching the terms of the interdict. On three of these occasions the applicant was arrested; on another, he was detained. In relation to the remaining allegation no action was taken due to there being insufficient evidence.

On 3 February 2007 the applicant reported Mrs A for throwing a brick through a window of his property. Mrs A was questioned by Fife Constabulary in relation to the incident and admitted responsibility. She was later reported to the Procurator Fiscal.

In May 2007 the applicant wrote to Fife Constabulary alleging that Mrs A had items of his property in her possession. Following enquiries by Sergeant C, these items were established to be a computer tower and a mobile phone "SIM" card. Sergeant C thereafter contacted Mrs A who denied having either item.

The Complaints

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

- (1) that the applicant was arrested for breaching the interdict;
- (2) that the applicant was arrested for allegedly throwing Mrs A down a flight of stairs;
- (3) that the applicant's property was not returned to him and that he was not in a fit state to sign a police officer's note book in relation to this complaint; and
- (4) that nothing was done about the applicant's window being broken.

The Commissioner's Review

The applicant first contacted the Commissioner's office by telephone on 9 July 2007. He thereafter submitted an application on 16 July 2007. Since submitting his application the applicant has made further complaints to Fife Constabulary. In respect of several of these complaints, the applicant has written to the Commissioner expressing his dissatisfaction with Fife Constabulary's responses. Fife Constabulary has provided the Commissioner with details of how these complaints were handled.

During March 2008 the Commissioner's review was suspended due to civil proceedings having been taken by the applicant. The Commissioner considered that these proceedings might have been prejudiced by completion of the review. On 17 November 2008 the applicant was asked by the Commissioner's Office to set out precisely his complaints about the police. On 20 November 2008 and 19 May 2009 the applicant provided the Commissioner's office with lists of complaints. Several of the complaints within these lists did not amount to complaints about the police.

On 14 April 2010, during a phone conversation with the Commissioner's office, the applicant listed complaints 1-4 below as those which he wanted the Commissioner to review. The applicant subsequently reversed his decision in this respect but has failed to provide the Commissioner's office with alternative or additional complaints. Accordingly, the Commissioner has proceeded with his review on the basis of the complaints agreed by the applicant on 14 April 2010.

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

Complaint 1: The applicant's arrest for attempting to contact Mrs A

On 25 and 26 January 2007 Mrs A contacted Fife Constabulary and reported that the applicant had been at her home address and was attempting to contact her. Mrs A contacted Fife Constabulary again on 28 January 2007 to report that the applicant had contacted her via telephone. On 1 February 2007 the applicant was arrested. According to Fife Constabulary the applicant admitted being at Mrs A's flat but claimed that she had invited him there.

Between 5 February and 18 April 2007 Mrs A contacted Fife Constabulary on several occasions and reported that the applicant had either contacted her or was outside her home. Following investigation by Fife Constabulary the applicant was arrested and charged with 13 separate breaches of the interdict.

On 20 June 2007 Mrs A moved house. Later the same day the applicant attended Mrs A's new home. The applicant was arrested and, according to Fife Constabulary, when questioned about the incident admitted having followed the removal van to Mrs A's new home.

The applicant is dissatisfied about the fact that he was arrested on these occasions.

Internal Handling

The applicant raised this complaint with Fife Constabulary on 23 March 2007. A Complaint about the Police (CAP) form was thereafter completed.

On 2 August 2007 Superintendent D responded to the complaint as follows:

"In relation to the interdict that currently exists, I should point out that this is a lawful document which carries power of arrest [sic]. My officers will deal with breaches of the various conditions appropriately, providing there is sufficiency of evidence. It is not for Fife Constabulary to question the validity of the document."

Consideration

In the Commissioner's view, there is little to add to Superintendent D's response to this complaint. By his own admission the applicant approached Mrs A's home on more than one occasion. As such he was in breach of the interdict and arrested by Fife Constabulary.

In the circumstances the Commissioner considers this complaint to have been handled reasonably. Accordingly no further action is required in this connection.

Complaint 2: The applicant's arrest for allegedly throwing Mrs A down a flight of stairs

On 19 January 2007 the applicant was arrested for assaulting Mrs A by allegedly throwing her down a flight of stairs. According to Fife Constabulary the applicant made several phone calls to the police up to and including 18 September 2008 to the effect that he had new information that could prove he was somewhere else at the time of the alleged incident. The applicant considered the allegation to be false.

Internal Handling

After receiving these calls from the applicant, arrangements were made for Detective Inspector E to investigate the complaint. On 26 September 2008 Detective Inspector E and Sergeant F attended the applicant's home to discuss matters with him. According to Detective Inspector E the applicant came to the front door and was abusive towards them. A CAP form was thereafter completed in relation to the complaint which recorded that the investigation had been "abandoned due to non co-operation of Complainer".

On 31 October 2008, Superintendent G wrote to the applicant stating:

"My purpose in writing to you at this juncture is to advise you that this file has now been closed off by the local Divisional Commander because it is alleged that you failed to engage with the local Sergeant who called to see you and were verbally abusive towards him."

Consideration

From the information available to the Commissioner it appears that the applicant was unwilling to cooperate with the officers appointed to investigate the complaint. There is no evidence to suggest that the applicant raised any concerns in response to Superintendent G's letter. As such the Commissioner considers that Fife Constabulary acted reasonably in deciding not to pursue the applicant's complaint further.

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

Complaint 3: Alleged failure to return property

On 7 May 2007 the applicant wrote to Fife Constabulary stating that Mrs A had given to a third party a computer tower belonging to him and that he would like it back. According to Sergeant C on 12 May 2007 he attended the applicant's home with Sergeant H to discuss complaints which he had made about the police. It was during their discussions that the applicant mentioned Mrs A having a computer tower and SIM card belonging to him.

Sergeant C states that he discussed the issue of the applicant's property with Mrs A. Mrs A confirmed that she had given a computer to a third party and that all property belonging to the applicant had been deposited at his place of work. According to Sergeant C he contacted the third party and recovered the computer from him. On 25 July 2007 Sergeant C and Constable J took the computer to the applicant who stated that it was not the one he was hoping to recover.

According to Sergeant C, on this occasion the applicant provided a signed statement to the effect he did not wish to make allegations of theft in relation to the computer and SIM card. According to Sergeant C, the applicant claimed that his only interest in obtaining these items was to retrieve emails, text messages and details of phone calls made by Mrs A in order to establish a case against the interdict. The applicant has suggested to the Commissioner's office (but not to Fife Constabulary) that he was not in a fit state to sign this statement.

According to Sergeant C, he told the applicant that he could not get involved in civil proceedings. In addition Sergeant C states that the applicant produced a letter stating that he had given Mrs A the computer tower for the use of her children, as well as a SIM card for her own use.

On 30 November 2007 the applicant wrote to Superintendent K stating that Sergeant C (referred to as former Inspector C in the letter) would recover the property which Mrs A had that belonged to him and that this has not been done.

Internal Handling

On 21 December 2007, Superintendent K wrote to the applicant in response to this complaint stating:

"With regard to the letter dated 30 November 2007 and your suggestion that [Sergeant C] and Constable [J] [referred to in the letter as Constable L] advised you that they would have your property returned to you I must advise you that this is not the case. This matter was previously investigated by [Sergeant C] who advised you to pursue a civil recovery of the property, which you admitted, had been freely given to Mrs [A] during your relationship. Indeed, I understand it was apparent from your own written communication that you had willingly given the computer tower and Sim cards to [Mrs A] and that she had not feloniously appropriated them, nor intended to deprive you of them."

Consideration

In the Commissioner's view, the response from Superintendent K clarified that Fife Constabulary would not recover the applicant's property and that he should pursue recovery by other means. Accordingly the Commissioner considers this complaint to have been handled reasonably.

The Commissioner notes that the applicant apparently signed a statement to the effect that he did not wish to make an allegation of theft regarding his property. The applicant claims that he was not in a fit state to sign the statement. However, as this complaint has not been made to Fife Constabulary the Commissioner has not considered it in his review.

Complaint 4: The applicant's broken window

The applicant wrote to Fife Constabulary on 19 July 2007 stating:

"[Mrs A] put my kitchen window in. The police turned up, seen the evidence and charged [Mrs A] (Sunday, Wednesday or Thursday)".

Internal Handling

Fife Constabulary did not consider this to be a complaint about the police.

Consideration

Given the terms of the applicant's letter of 19 July 2007, the Commissioner considers that Fife Constabulary was correct not to consider this as a complaint about the police.

In correspondence with the Commissioner's office the applicant has complained that nothing was done about Mrs A throwing a brick through a window in his house. However, Fife Constabulary questioned Mrs A about this and a report was sent to the Procurator Fiscal. It is therefore clear that the matter was investigated by Fife Constabulary.

Conclusions, Recommendations and Learning

Complaint 1: The applicant's arrest for attempting to contact Mrs A

For the reasons given the Commissioner considers that Fife Constabulary dealt with this complaint in a reasonable manner. Accordingly no further action is required in this connection.

Complaint 2: The applicant's arrest for allegedly throwing Mrs A down a flight of stairs

For the reasons given the Commissioner considers that Fife Constabulary dealt with this complaint in a reasonable manner. Accordingly no further action is required in this connection.

Complaint 3: Alleged failure to return property

For the reasons given the Commissioner considers that Fife Constabulary dealt with this complaint in a reasonable manner. Accordingly no further action is required in this connection.

Complaint 4: The applicant's broken window

The applicant has not made this complaint to Fife Constabulary. However, the Commissioner notes that, based on the information provided to him, Fife Constabulary conducted sufficient enquiries into this alleged offence to justify Mrs A being reported to the Procurator Fiscal.

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