

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 complaint dealt with in this report arises from an incident involving the applicant's son and his school headmaster. The applicant complained that an officer of Northern Constabulary, having decided that the matter should be dealt with by the local education authority, failed in his duty to undertake a police enquiry.

The Commissioner considered that Northern Constabulary dealt with the complaint in a reasonable manner.

As a learning point, the Commissioner highlighted that simply because an officer who is subject to a complaint retires from police service before the complaint is resolved, is not, in itself a reason not to investigate the complaint.

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 5 March 2007 the applicant took her son to the office of his school headmaster, Mr A. According to the applicant, her son knocked on the door, there was a "sort of noise from within" and her son then opened the door and entered. Mr A, the applicant claims, was standing in the room looking angry and aggressive and he moved towards the applicant's son raising his hand. Although the applicant did not see Mr A touch her son, the latter came back towards her and she took hold of his shoulders to support him. The applicant believes that Mr A assaulted her son.

According to the applicant, later that morning she contacted a representative of the education authority, Mr C, who told her that a full investigation would be undertaken. The applicant waited 24 hours and then asked the police for advice. According to the applicant, she was told that a child protection officer would be in touch and that her son would be interviewed if this was considered necessary. The applicant claims that some time later she was contacted by Mr C who told her that, following a full enquiry, Mr A had been exonerated. About a week later, the applicant contacted the police again and was told by Chief Inspector B that, having talked to Mr A, he did not believe that there was a "case to answer" as Mr C had already carried out a full investigation.

The "incident history" prepared by Chief Inspector B confirms the approach taken by Northern Constabulary. According to this, Chief Inspector B decided that the matter should be dealt with by Mr C as it related "solely to quality of service/professional attitude issues rather than anything within a child protection sphere."

The applicant wrote to Northern Constabulary on 5 April 2007 raising concerns about Chief Inspector B's decision to allow the education authority to deal with the matter. The letter contains the following passage:

“I believe that the willingness of the police protection officer to trust that the education authority can and does regulate itself fairly is unfounded and that the failure of the officer to talk with either myself or my son prior to making his decision perpetuates this to the detriment of all.”

On 21 May 2007, Chief Inspector B and Superintendent D met with the applicant to explain the decisions which had been taken. On the same date Superintendent D wrote to the applicant, stating:

“Clearly there is a professional judgement to be taken by the Designated Officer in child protection cases where there is an inference of criminality and Chief Inspector [B] articulated the factors that are taken into consideration.

I understand that you are satisfied with the explanation preferred and Chief Inspector [B] quite rightly highlighted the fact that it may have been preferable if the Police had met with you at an earlier time to discuss your concerns.

It was confirmed once again at the conclusion of our meeting that no official complaint was being made against the Police in this particular case and that you accepted the explanations discussed.”

On 16 August 2009, over two years later, the applicant wrote to Northern Constabulary submitting a formal complaint against Chief Inspector B.

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 a single complaint, namely that Chief Inspector B failed appropriately to investigate an alleged assault on the applicant's son.

The Commissioner's Review

The applicant first contacted the Commissioner's office by telephone on 30 July 2009. She thereafter submitted an application form which was received by the Commissioner's office on 8 October 2009. Enclosed with her application were a number of documents relating to the local authority's enquiry into the incident.

The remainder of this section sets out the Commissioner's views on the manner in which the complaint was handled by Northern Constabulary. Further information regarding the complaint is set out below and is followed by details of Northern Constabulary's handling of the complaint and the Commissioner's views on this.

In her letter to Northern Constabulary of 16 August 2009, the applicant describes her complaint as follows:

“I am writing to make a formal complaint against Chief Inspector [B] for his lack of judgement regarding the failure to appropriately investigate a reported assault on my son by his then head teacher, [Mr A]...”

The applicant makes the following specific allegations regarding Chief Inspector B's handling of the matter:

“... they [Chief Inspector B and Superintendent D] do appear to have been overly influenced by the truthfulness of one position without giving equitable consideration to the other.

Specifically I am disturbed that notification to Chief Inspector [B] and his colleague of the fact that there appeared to be glaring inconsistencies in the manner in which the Education Authority had conducted their investigation into an allegation of assault and the reliability of the evidence utilised was of seemingly no importance...

... At no time were my son and I availed of an opportunity to make a statement and this fact was also made known to Chief Inspector [B].

Documentation in our possession clearly illustrates that representatives of [the local authority] believed that Chief Inspector [B] had been so persuaded by Mr [C]'s presentation of 'fact' that he believed Mr [A] to have been provoked. If this statement is a true reflection of Chief Inspector [B]'s opinion, then it was an opinion reached without allowing us representation or right of rebuttal.”

According to the applicant, Chief Inspector B acted negligently in relation to the matter; however, she also felt that he himself had been the “possible victim of deceit.”

Internal Handling

The applicant's complaint was recorded in a Complaint about the Police (CAP) form in which it was categorised as one of neglect of duty against Chief Inspector B. The CAP form describes the complaint as follows:

“Complainer alleges [Chief Inspector B] failed in his duty to properly investigate a reported assault on her son by his then head teacher, [Mr A], at [school] on 5 March 2007.”

On 3 September 2009 Chief Superintendent E wrote to the applicant in the following terms:

“I should draw your attention to the fact that Chief Inspector [B] retired from the police service in July 2008.

Our records indicate that the issues in your letter relating to the police involvement in this matter were previously addressed during a meeting with Chief Inspector [B] at your home on 21 May 2007. A concluding letter was sent to you after the meeting which summarised the outcome of these discussions and your apparent acceptance of these explanations given.

I have researched and reviewed the case file in regard to this incident and find no evidence to substantiate the allegation that Chief Inspector [B] neglected his duty or in any way lacked judgment in his handling of this matter. The role of Designated Officer clearly involves exercising a degree of professional judgement and Chief Inspector [B] was experienced in that role. I believe that during the meeting at your home he explained the factors he took into consideration.”

On 17 September 2009 the applicant wrote to the Deputy Chief Constable claiming that Chief Superintendent E 's response was flawed:

“Our complaint as of now lies in the fact that had we been given access to the erroneous information seemingly presented to the Chief Inspector as fact by the education Authority,

we would not then and do not now believe, that he exercised any 'degree of professional judgement.'"

On 29 September 2009 Chief Superintendent E responded to the applicant, stating:

"I would reaffirm that Chief Inspector [B] is now a retired Police Officer and therefore his past actions and conduct are no longer subject to the Police (Conduct) (Scotland) Regulations 1996. The matter has been recorded as a complaint but given the subject officer has retired it will incur no further investigation."

Consideration

In the Commissioner's view, the question raised by this complaint is whether, at the time Chief Inspector B decided not to investigate, there was evidence that justified him treating the incident as criminal in nature.

It is clear that Chief Inspector B's position on this issue was that the incident was not criminal in nature. It appears that Chief Inspector B may have based this decision on the outcome of the enquiries conducted by Mr C on the same date as the incident occurred. According to the report of the investigation, Person F, who was present in Mr A's room when the incident occurred, stated that Mr A "did not touch" the applicant's son. Person F's position was that Mr A also had not acted aggressively. Mr A's own account was that he simply stood up and told the applicant's son in a "loud voice" that he was in a meeting and that he should make an appointment. According to the report, Mr C was advised by a social worker against interviewing the applicant's son as the latter was "too stressed".

The applicant clearly accepted Chief Inspector B's position at the time. According to an entry in the incident history dated 8 March 2007 Chief Inspector B spoke to the applicant who was described as "understanding of the police position that this is not a crime." As noted above, Superintendent D's letter of 21 May 2007 also shows that the applicant accepted the decision not to conduct a police investigation into the incident. Furthermore, in her application to the Commissioner, the applicant stated:

"We allowed ourselves to be guided by [Chief Inspector B and Superintendent D's] considerations and believed, albeit not without deep reservations, their statements that the incident was not criminal enough."

It was not until 16 August 2009 that the applicant made a formal complaint about the police. In terms of her letter of that date, the reason for this delay was that in the interim period the applicant had obtained information from the local authority regarding the enquiries it undertook. The applicant stated in the letter that she and her husband had allowed themselves to be guided by Chief Inspector B and Superintendent D but were unaware at that time of the "dubious measures already taken against us by certain [local authority] representatives."

In the Commissioner's view, there is nothing in the applicant's submissions to support her allegation that Chief Inspector B's decision not to investigate amounted to a neglect of duty. Based on the enquiries conducted by Mr C there was no evidence available to Chief Inspector B that Mr A had assaulted the applicant's son. The applicant herself accepts that she did not witness an assault, and even if her son had alleged this, there would have been no support for this in the accounts given by Mr C himself and, more importantly, Person F.

Whatever the applicant's concerns about the scope and quality of the local authority's investigation, this does not alter the validity of Chief Inspector B's decision not to pursue a police investigation.

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

Conclusions, Recommendations and Learning

For the reasons given the Commissioner considers that the handling of this complaint by Northern Constabulary was reasonable.

The Commissioner notes that in his letter to the applicant of 29 September 2009 Chief Superintendent E suggests that the reason why no further enquiries were undertaken into the applicant's complaint is that Chief Inspector B had since retired. In light of the Commissioner's decision that the applicant's complaint was handled reasonably, Chief Superintendent E's approach to this issue is of no practical significance. However, as a learning point, the Commissioner wishes to highlight that simply because an officer who is subject to a complaint retires from police service before the complaint is resolved is not, in itself, a justification for not investigating that complaint.

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