

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 applicant made several complaints about Tayside Police in respect of alleged harassment and victimisation of her son.

The Commissioner reviewed three out of the five complaints made by the applicant. Of those three complaints, the Commissioner decided that two were handled reasonably while one (complaint 1) was not.

In respect of complaint 1, the Commissioner recommended that Tayside Police provide the applicant with sufficient information to properly inform her of the reasons for its response to the complaint.

The Commissioner considered that two out of the five complaints made by the applicant did not fall within his statutory remit.

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

In her statement of 4 October 2008, the applicant makes a single complaint regarding alleged victimisation of her son Mr A. However, she gives various individual examples which she believes support her claims.

The applicant claims that over several years officers of Tayside Police have attended the applicant's home to speak to Mr A in relation to various crimes which have been committed in the local area. The applicant believes that although each visit could be explained "the overall pattern of so many visits did not add up" and that Mr A would be questioned "whether there was evidence or not". The applicant also complained that Mr A was given Fixed Penalty Notices for offences which he did not commit and accepted these in order to avoid being taken to a police station for questioning.

In addition, the applicant maintains that Tayside Police was insensitive to the fact that Mr A's father was dying. As an example of this, the applicant refers to Mr A being called by police to arrange an interview when his father was in the last stages of life.

The applicant states that on another occasion she was awoken at her home at 2.30 am by police officers who were looking for Mr A. The applicant checked whether Mr A was at home and informed the officers that he was not. The applicant claims that in response to this one of the officers said "does he just not want to speak to us" which the applicant took as an indication that the officer did not believe that Mr A was not at home. According to the applicant she then invited one of the officers to check her house but he refused. She states that she did so on three

occasions. According to the applicant, on the first occasion the officer replied, “no it’s ok”, and on the third occasion said, “if I didn’t believe you I would go up”. Her complaint in this connection was that she felt the officer had insinuated that she was not telling the truth when she told him that Mr A was not at home. She later telephoned the local police station to complain about being woken at 2.30 am and officers returned to her home at 3 am to apologise for disturbing her in the first place. According to the applicant, she accepted this apology but she still felt it was alarming to answer the door at that time of night.

The applicant also stated that on 2 and 3 September 2008 Mr A was “stopped by Police to do with his car being registered to him but insured in a different name.” According to the applicant it appeared there had been “a mistake in the Police Control Room”. The applicant claims that this was “another minor irritant reflecting unnecessary Police intervention.”

Although the applicant claims to have a single complaint about Tayside Police, the Commissioner considers it appropriate to deal separately with each of the individual concerns she has raised.

The Complaints

Based on the contents of the application form and the information obtained from Tayside Police the Commissioner has identified the following complaints: a single complaint, namely that Tayside Police has victimised Mr A. This, she claims, is evidenced by the following:

- (1) that Tayside Police has victimised and harassed Mr A;
- (2) that Tayside Police was insensitive to the fact that Mr A’s father was dying;
- (3) that an officer from Tayside Police disbelieved the applicant when on one occasion she claimed that her son was not at home;
- (4) that Mr A was given Fixed Penalty Notices by Tayside Police for offences he did not commit; and
- (5) that Mr A was stopped in his vehicle without a valid reason.

The Commissioner’s Review

The applicant first contacted the Commissioner’s office by email on 21 January 2009. She thereafter submitted an application form on 23 January 2009.

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 Tayside Police’s handling of it and the Commissioner’s views on this.

Complaint 1: Alleged victimisation

Internal Handling

This complaint was recorded by Tayside Police in a Complaint about the Police (CAP) form on 15 September 2008. A preliminary report into the applicant’s complaint was produced by Inspector B on 10 October 2008. A full investigation into the applicant’s complaints was thereafter conducted by Inspector C of Tayside Police’s Professional Standards Department, with a report being produced on 29 December 2008.

Inspector C identified that between January and August 2008 Mr A was the subject of two Standard Police Reports which resulted in him receiving Fixed Penalty Notices in respect of two offences. Inspector C also noted that Mr A had been “checked out” on a police intelligence database 22 times and that five crime reports had been submitted in relation to him.

Statements were obtained from a number of officers who had contact with Mr A, all of whom stated that they “always act in a professional manner and [Mr A] is only interviewed when he has been identified as a suspect in an incident.” Inspector C commented that attempts to speak to Mr A in relation to the complaint had proved negative despite several messages having been left on his answering machine.

According to Inspector C’s report the applicant had been visited by officers twice in the “last year”, both after the death of her husband. Inspector C concluded the following:

“[The applicant] states her son... is being victimised by the police but on checking computer systems he does not appear to have been checked out or interviewed more than necessary. [Mr A] appears to be heavily involved in petty crime and officers would not be carrying out their duties properly if they did not interview him if he was a suspect for a crime. In fact it may be said that [Mr A] has been treated very lightly and has received [Fixed Penalty Notices] when in fact he could have been taken to [a police station] and interviewed regarding some of the offences.”

A letter of response was sent to the applicant by Deputy Chief Constable F on 16 January 2009. The letter contains the following passage:

“I would add that having reviewed your file you also appear to be under the impression that police officers... unnecessarily interview your son in relation to incidents that occur in the area and having read the report on this matter I am of the opinion that every interview with [Mr A] has been justified in light of evidence available to police. As such I do not believe that any unnecessary or unjustified interviews have been undertaken with him.”

Consideration

In essence, the applicant’s complaint is that the visits made by officers to her home in order to speak to Mr A have been unnecessary and have taken place regardless of any evidence of his involvement in offences.

Although Deputy Chief Constable F sought to respond to this complaint, in effect his response is simply an assurance that each police intervention was justified in light of the evidence available. There is no attempt by Deputy Chief Constable F to justify this finding. In the Commissioner’s view, in order to provide a properly reasoned response to this complaint it was necessary for the Deputy Chief Constable to provide some explanation for his conclusion that police intervention was justified.

Accordingly, the Commissioner does not consider that this complaint was handled in a reasonable manner. The Commissioner recommends that Tayside Police provides the applicant with sufficient information properly to inform her of the reasons for Deputy Chief Constable F’s conclusion quoted above.

Complaint 2: Alleged insensitivity

As noted above, the applicant claims that an officer was insensitive because he called Mr A to arrange an interview when he was aware that Mr A’s father was very ill and expected to die.

Internal Handling

As part of her investigations, Inspector C obtained a statement from Constable D, the officer identified as having made the telephone call to Mr A at the time in question. In his statement dated Constable D stated that he recalled calling Mr A to request him to attend a local police station regarding an alleged offence. According to Constable D, Mr A informed him that his father had died, as a result of which Constable D apologised and asked him to make contact at a later date that was suitable to him. Inspector C noted that Constable D had mentioned this exchange in the relevant crime report.

On the basis of this evidence, Inspector C concluded that this complaint was unsubstantiated. This finding was repeated Deputy Chief Constable F in his letter to the applicant dated 16 January 2009 in which he stated the following:

“The officers have been required to submit their version of events and it is their position that having been told that your husband had died they apologised to your son for calling him at that time and asked him to contact them at some future suitable time to arrange a further interview. The officers then entered this information on the report in relation to the crime in respect of which they required to interview your son in order that other officers would have an awareness of the situation.”

Consideration

The Commissioner has examined Constable D’s statement and the relevant crime report which confirms the account given by Deputy Chief Constable F in his letter to the applicant.

In the Commissioner’s view, the only indication that Constable D was insensitive is the account given by the applicant who, by her own admission, did not hear the conversation between Mr A and the officer. Accordingly, there is no real evidence within the police files that Constable D was insensitive towards Mr A. The Commissioner therefore considers that this complaint was handled reasonably by Tayside Police and makes no recommendation in this connection.

Complaint 3: Alleged Refusal to believe applicant

The applicant maintains that on one occasion an officer refused to believe her when she informed him that Mr A was not at home.

Internal handling

Inspector C obtained an operational statement from Constable E, the officer who attended the applicant’s home on the night in question. In his statement Constable E explained that he had attended the applicant’s home to speak to Mr A because he was investigating a complaint regarding alleged damage to a neighbour’s fence. Constable E stated further that when the applicant informed him that Mr A was not at home and that he could search the house he declined the offer as he had “no reason to disbelieve [the applicant’s] previous comment”.

Inspector C therefore concluded that this complaint was unsubstantiated. In his letter to the applicant of 16 January 2009, Deputy Chief Constable F stated the following:

“... it is the officers’ position that having been told by you that your son was not at home and being invited to enter your home to confirm this for themselves it was not the case that they did not believe you. The officers state that in complete contrast they had no reason to disbelieve you and that this is why they declined your offer your home to confirm this fact themselves.”

Consideration

In the Commissioner's view, Tayside Police conducted reasonable enquiries into this complaint and issued the applicant with a reasonable response. Essentially, the complaint is one based on the applicant's perception of Constable E's reaction, which Constable E does not accept.

Accordingly, the Commissioner considers that this complaint was handled in a reasonable manner. No further action is required of Tayside Police in relation to this complaint.

Complaint 4: Alleged unwarranted Fixed Penalty Notices

The applicant claims that her son has been issued with Fixed Penalty Notices for offences he did not commit. Tayside Police has not responded to this complaint.

In terms of section 34(1) and (6) of the Act, the Commissioner may undertake a complaint handling review in relation to relevant complaints made by the following:

- (a) a member of the public who claims to be the person in relation to whom the act or omission by a police body took place;
- (b) a member of the public not falling within paragraph (a) who claims to have been adversely affected by the act or omission;
- (c) a member of the public who claims to have witnessed the act or omission; and
- (d) a person acting on behalf of a person falling within any of paragraphs (a) to (c).

In the Commissioner's view, the applicant does not fall into any of the above categories. She is clearly not the person in relation to whom the fixed penalty notices were issued. On the basis of the available evidence, the Commissioner also does not consider that she can legitimately claim to have been adversely affected by the issuing of the notices. Nor, in the Commissioner's view can she be described as someone who witnessed any unwarranted fixed penalty notices. The Commissioner also does not consider that the applicant is acting on behalf of Mr A as there is no evidence that Mr A seeks to make a complaint in this connection.

Accordingly, even if Tayside Police had dealt with this complaint, the Commissioner does not consider that he has the power to conduct a review the manner in which this was done. The Commissioner therefore makes no recommendation in this connection. He would observe, however, that if Mr A believed that he had been wrongly issued with a fixed penalty notice, he had the option of disputing it and defending any subsequent charge against him in court.

Complaint 5: Alleged unwarranted vehicle stop

The applicant maintains that her son was stopped in his vehicle without a valid reason. Again, Tayside Police has not responded to this complaint. However, even if it had, for the reasons given above, the Commissioner does not consider that he has the power to examine the manner in which this was done.

Conclusions, Recommendations and Learning

Complaint 1: Alleged harassment / victimisation

In the Commissioner's view, the manner in which this complaint was dealt with by Tayside Police was not reasonable. Accordingly, the Commissioner recommends that Tayside Police provides

the applicant with sufficient information to properly inform her of the reasons for Deputy Chief Constable F's conclusion quoted above.

Complaint 2: Alleged insensitivity

For the reasons given, the Commissioner considers that this complaint was handled in a reasonable manner. Accordingly no further action is required in this connection.

Complaint 3: Alleged refusal to believe applicant

For the reasons given, the Commissioner considers that this complaint was handled in a reasonable manner. Accordingly no further action is required in this connection

Complaint 4: Alleged unwarranted Fixed Penalty Notices

Tayside Police has not responded to this complaint. However, for the reasons given the Commissioner considers this complaint to be outside his statutory remit.

Complaint 5: Alleged unwarranted vehicle stop

Tayside Police has not responded to this complaint. However, for the reasons given the Commissioner considers this complaint to be outside his statutory remit.

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