

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

This review relates to the police investigation into the disputed ownership of computers that were used in an office shared by the applicant and Mr A. The applicant made six complaints in relation to various aspects of the police investigation into the alleged theft of the computers.

The Commissioner determined that five complaints were within his remit and that all of these were handled reasonably by Tayside Police. However, the Commissioner recommended that Tayside Police considers making an amendment to the letter it routinely sends to alleged victims of crime.

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 allegations against Mr A

In July 2007 the applicant and Mr A entered into a business arrangement through which they shared office space. In December 2007 this arrangement came to an end and the applicant ceased using the office. The applicant states that he left in the office two computers which he claims to own. On 22 January 2008 the applicant discovered that Mr A had vacated the office and shortly after this learnt that the computers were gone. The applicant states that he then entered into correspondence with Mr A to have the computers returned. This proved unsuccessful.

On 21 February 2008 the applicant contacted Tayside Police alleging the theft of the computers by Mr A. A short time later, Constables B and C attended the applicant's home. Constable C was a probationary officer at this time and was being supervised by Constable B and Sergeant D. A statement was taken from the applicant in which he claimed that the computers belonged to him and that Mr A had refused to return them. The applicant also alleges that Mr A had been impersonating him by using his business cards. In addition, the applicant claims to have alleged that Mr A might potentially commit fraud against vulnerable individuals. However, Constable B denies that the applicant made such an allegation and Constable C does not recall him doing so.

On 22 February 2008 Constables E and F attended Mr A's home address and interviewed him under caution. Mr A stated that the computers were leased on behalf of a company which he owned and that he therefore considered them to be his property. Mr A claimed that the computers were to be paid for from his business account but that, unbeknown to him, the applicant had

changed these details so that he (the applicant) made the payments for them. According to the statements of Constables E and F, Mr A refused to tell them the location of the computers.

On 13 March 2008 Constable C attended the shop from which the computers had been leased and made enquiries in this connection. It was confirmed by staff from the shop verbally and then in writing that the rental agreement was in the sole name of the applicant.

On 26 March 2008 the crime report was updated by Constable C with the following:

“Reporting officer has received paperwork from [computer shop], this confirms that the rental agreement is solely between [the applicant] and [computer shop] and has nothing to do with the business or the suspect [Mr A]. Therefore, it is respectfully requested that [Police Station X] officers attend at the suspect’s home address and caution and charge him with this theft and also make attempts to recover the property.”

On 27 March 2008 Sergeant G updated the crime report with the following:

“... as there is no urgency in this enquiry please retain for you [Constable C] to trace suspect and take appropriate action, thus minimising the witness list.”

At this time Constable C was on a three week driving course and returned to work on 21 April 2008. According to Constable C’s statement, due to a lack of opportunities for himself to trace Mr A he arranged for officers from Police Station X (Constables H and J) to re-attend Mr A’s home to caution and charge him. This was carried out on 4 May 2008. A report was sent to the Procurator Fiscal on 30 May 2008. On 6 June 2008 the Procurator Fiscal decided that a civil remedy would be more appropriate in relation to the applicant’s allegation.

The applicant’s complaints about Tayside Police

On 30 October 2008 the applicant wrote to Tayside Police expressing dissatisfaction with the service he had received from Tayside Police in relation to the alleged theft of his property. In his letter the applicant states:

“From the very beginning of the case, I feel that everything has been handled very poorly. I have always had to chase matters up and have not been kept informed at all. For some reason, you decided that because the accused lived nearer another Station in your area, they would handle it. I find it incredible that [Police Station X] did not contact me once to get further information about the case or kept me updated at anytime. If they had, it would have increased the chance of a successful prosecution. They have made no attempt to get my stolen property back even though the accused has admitted taking them and you know I am responsible for them.

Every time I had to chase up what was happening the original Constables [B] and [C] that I dealt with, were on Night Shift, Days Off or Holidays etc and nobody in your force would deal with it. This meant I had to wait until they came back before I got an update. The last time I chased it up with your force, they couldn’t even trace my Crime Reference number on the system!! When I eventually did get an update after having to phone up because my email had been ignored, it was the usual Night Shift/Going on Holiday message, the case was not proceeded with, didn’t know why and I should phone the fiscal’s office for a reason!!”

Arrangements were made for a senior officer to contact the applicant and, on 20 November 2008, Inspector K obtained a statement from him regarding his complaints. According to his statement the applicant's complaints were as follows:

- “1. The time taken to investigate this case*
- 2. Lack of communication – no contact from [Police Station X] officers*
- 3. I always had to call for an update and there was no pro-activity by officers*
- 4. No serious attempt to get my computers back, especially when [Mr A] had admitted taking them*
- 5. The other two aspects about [Mr A] (Potential fraud and impersonating me) were dismissed*
- 6. The Procurator Fiscal not contacting or acknowledging receipt of the case*
- 7. The Procurator Fiscal not advising me of their decision not to proceed with the case*
- 8. I've received no letters from Tayside Police or Procurator Fiscal Service”*

A Complaint about the Police (CAP) form was completed which detailed each of these complaints. Statements were then obtained from Constables B, C, F, E, H, J and Sergeant G. During the course of her enquiries Inspector K considered the crime report relating to the investigation of the theft of the computers, Tayside Police's telephone records and the shift rota relating to Constables B and C.

On 23 December 2008 Inspector K submitted an internal report detailing her findings. The report listed a number of observations and learning points in connection with Constable C's involvement in the investigation and his supervision.

On 5 January 2008 Superintendent L wrote to the applicant in response to his complaints.

On 24 January 2009 the applicant wrote to Superintendent L commenting on the responses he had received. Reference to this letter is made throughout this report but the following passage is relevant for present purposes:

“Never the less it is now time to move on. I am willing to finish the complaint on the condition that you show this letter to your Inspectorate/Auditors/Police Authority so that they insist that you improve your abysmal service and systems... If you unable or unwilling to do this, please move my complaint to the next stage.”

On 16 February 2009 Tayside Police referred the applicant's case to the Commissioner's office requesting that he conduct a complaint handling review.

On 3 March 2009, the Commissioner received an application form from the applicant. In the accompanying letter, the applicant requested that the Commissioner “investigate the content of the original complaints” and also deal with the comments in his letter to Superintendent L of 24 January 2009, as quoted above.

The Complaints

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

- (1) that the length of time taken to investigate the case was excessive;
- (2) that there was a lack of communication from Tayside Police in relation to the police enquiry;
- (3) that no serious attempt was made by Tayside Police to recover the computers;
- (4) that allegations about Mr A impersonating the applicant and posing as a bogus caller were dismissed;
- (5) no receipt of letters from Tayside Police; and
- (6) that there was a lack of communication by the Procurator Fiscal.

The Commissioner's Review

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. The exception to this is complaint 6 which is about the Crown Office and Procurator Fiscal Service (COPFS). The Commissioner has no power to deal with complaints made about the COPFS and accordingly complaint 6 does not form part of this review.

Complaint 1: The length of the investigation

The applicant first reported the theft of the computers to the police on 21 February 2008. A report was thereafter sent to the Procurator Fiscal on 30 May 2008. The applicant believes that this constitutes an excessively lengthy investigation.

Internal Handling

After considering statements from Constables B and C and Sergeant G, as well as the crime report, Inspector K's internal report comments as follows:

"On 26 March enquiry was passed to Territorial but a supervisory decision by [Sergeant G] resulted in the crime report being returned to [Constable C], [Sergeant G] being unaware that [Constable C], was due to attend a 3 week driving course.... No enquiry was carried out between 26 March and 2 May."

Inspector K concluded that the time between 27 March 2008 and 2 May 2008 amounted to an unnecessary delay.

Inspector K also stated the following:

"I feel that [Sergeant G's] decision to return the enquiry contributed to the delay, however, had [Constable C] not been assigned his driving course at short notice, this delay would have

likely been a few days as opposed to a few weeks. [Constable C] was aware that the crime report had been returned as was [Sergeant D].”

According to Inspector K, Constable C fully accepted being aware that the enquiry was “sitting in his work basket with no action being taken.” Inspector K noted that the delay had occurred during a difficult part of Constable C’s probation when he struggled to manage his workload and had to be assisted by his supervisor. Inspector K also noted that Constable B, who was tutoring Constable C, had other responsibilities during this period.

Superintendent L responded to this complaint as follows:

“We made an error when the enquiry was passed to an Officer who was due to be away from his place of work on a training course for over 3 weeks as a result of which no enquiry was carried out between 26 March and 2 May. The suspect was cautioned and charged on 4 May and regrettably there was a further delay in submitting the report to the Procurator Fiscal on 30 May. Our crime enquiry systems are such that our shortcomings should have been addressed long before they were and corrective advice has been provided to the Constable and his Supervisors.”

Superintendent L apologised to the applicant for Tayside Police’s failure to provide the level of service he was entitled to expect.

Consideration

It is clear from Tayside Police’s file that Inspector K conducted a thorough investigation into this complaint and correctly identified the failings which led to it being made in the first place. It is also clear from Inspector K’s report that these failings and the learning points she identified during her investigation were discussed with Constable C, as well as Constable B and Sergeants D and G. The following passage is taken from Inspector K’s report:

“An important matter to highlight is that [Constable C] had only three months service at the time of this complaint and was under the guidance of a tutor constable [Constable B] and supervisor [Sergeant D]. [Constable B] was abstracted from shift a number of times for [various other duties] which left her with less focussed time to concentrate on [Constable C]. This was identified by [Sergeant D] and he allocated [Constable C] a different tutor constable.”

In light of this, it appears that the real source of this complaint (and many of the others made by the applicant) is the inadequate supervision of Constable C at the time. In terms of Inspector K’s report it seems that these inadequacies were rectified by Tayside Police. There is no explicit reference to the issue of supervision in Superintendent L’s response to the complaint, although he does refer to organisational errors. In the Commissioner’s view, Superintendent L ought to have also informed the applicant of the fact that the learning points identified by Inspector K had been discussed with other officers including those responsible for Constable C’s supervision.

On the whole, however, the Commissioner considers that Superintendent L’s response to the complaint was reasonable in that it explained the source of the delay, contained an appropriate apology and informed the applicant of the corrective advice which had been given to Constable C. Indeed, it appears that at the time the applicant received Superintendent L’s letter he was content with the response to complaint 1. As noted above, the applicant wrote to Superintendent L on 24 January 2009 commenting on the responses he had been given to his complaints. In respect of complaint 1, the applicant wrote the following:

“I am glad that you agree that the time taken was excessive and you feel that that an apology is warranted.”

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

Complaint 2: Alleged lack of communication regarding the progress of enquiry

The applicant is dissatisfied that he was not kept informed of the police enquiry into his allegations against Mr A and, in particular, that he was not kept informed by officers based at Police Station X. The applicant also expressed concern that in order to obtain information about the investigation he had been forced to contact Tayside Police rather than officers being proactive and contacting him. The applicant is also dissatisfied that officers arrived unannounced at his home and that he did not receive updates from the police after a report was submitted to the Procurator Fiscal.

Internal Handling

In addition to obtaining the statements listed above, Inspector K retrieved a record of calls logged from the applicant's landline and mobile phones. These records revealed two calls having been made by the applicant to Tayside Police on 21 and 28 February 2008. In light of her enquiries, Inspector K made the following findings.

- The applicant was not informed that Constable C had "ownership" of the enquiry which left him confused as to who was responsible for making enquiries.
- Although the applicant was updated sufficiently, these updates were initiated by the applicant and not the police.
- Constables B and C state that they tried to update the applicant a number of times but that he was not home. None of these attempts is detailed in the crime report

Superintendent L responded to the complaint as follows:

"In effect ownership of the enquiry remained with Constable [C] who noted your initial complaint; I accept this was not made clear, leaving you confused as to who was enquiring into the alleged theft. This confusion arose as it was initially decided to allocate the enquiry to an Officer from [Police Station X] however, this never took place. I am advised that Constable [C] tried to update you a number of times on the passing, however, you were not at home. I would add that none of those attempts were detailed on the crime report and were therefore ineffective... Inspector [K] has informed me that you made no comment to Constable [C] that you were unhappy with their service and as such he continued in a manner that he believed was appropriate and acceptable to you. Had you advised him that you did not appreciate unannounced visits, favouring telephone calls prior to a visit, I would have expected that preference to have been respected.

I fully appreciate your frustration in obtaining an update and clearly we did not get it right on this occasion. I also understand that you were unaware that updates from police would end when the accused was charged and a report submitted to the Procurator Fiscal and you were surprised to learn that the Police are not updated by the Procurator Fiscal. This is a common perception and I agree that there should be a better method for keeping victims better informed. While we have improved significantly in respect of serious crime, we in the Criminal Justice System clearly have some way to go to keep all victims fully informed."

Consideration

In the Commissioner's view, Inspector K conducted a thorough investigation into this complaint and reached conclusions that were reasonable. As detailed under complaint 1 above, her findings were discussed with Constable C, as well as the officers responsible for his supervision. Likewise,

Superintendent L's response recognised the apparent failings of those involved and issued an appropriate apology.

In terms of his letter to Superintendent L of 24 January 2009, it does not appear that the applicant would dispute these conclusions. In the letter, he wrote the following in respect of this complaint:

"I am also glad that you agree that there was a lack of communication from your officers and again an apology was warranted."

There is, however, one issue arising from Superintendent L's response which the Commissioner believes should be addressed. As noted above, Superintendent L identifies what appears to be a common misconception on the part of alleged victims that they can still expect updates from the police even after the alleged offence has been reported to the Procurator Fiscal. In the Commissioner's view, this misconception could be avoided if alleged victims were routinely informed that the responsibility of the police to update them comes to an end as and when the alleged offence is reported to the Procurator Fiscal. Having viewed the standard letter which Tayside Police sends to victims of crime, it appears to the Commissioner that a simple amendment to this would avoid the misconception identified by Superintendent L. The Commissioner recommends that Tayside Police considers this issue further and reports to him the steps it is to take in this connection.

Complaint 3: No serious attempt to recover the computers

The complainer is dissatisfied that, despite Mr A having been charged with the theft of the computers, no attempt was made to recover them.

Internal Handling

Inspector K reported that attempts were made at an early stage to retrieve the computers; however, Mr A had refused to hand them over, claiming he was the rightful owner. According to Inspector K, there was no other attempt to retrieve the property and that this was "down to communication." Inspector K explained that although a request to have the computers recovered had been made in the crime report, the officers who cautioned and charged Mr A did so on the basis of an email sent to them and did not consider the crime report.

Inspector K highlights, however, that a warrant would have been required to search Mr A's property and, having consulted with the Procurator Fiscal, it was unlikely that one would have been granted. In any event, even if the computers had been seized, due to the fact that there was disputed ownership, the applicant would not have received them until "a civil process" was completed.

Superintendent L's response to the complaint largely reflects the terms of Inspector K's report. The following passage is quoted from the letter:

"Any subsequent attempt to search and seize the property would have required a search warrant to have been craved by the Procurator Fiscal. Given the Procurator Fiscal's position that any remedy would be best served through civil proceedings it is unlikely one would have been granted. I would however have preferred that we had indeed addressed that issue with the Procurator Fiscal at an earlier stage and I apologise for any inconvenience this has caused."

Consideration

In the Commissioner's view, the fact that no application was made for a warrant and that there was no discussion with the Procurator Fiscal at the time supports the applicant's view that no serious attempt was made to recover the computers.

However, given the Procurator Fiscal's decision that the disputed ownership was a matter appropriately dealt with by civil rather than criminal proceedings, it is unlikely that a search warrant would have been granted in any case. Accordingly, even if Tayside Police had not overlooked the possibility of recovering the computers, it is unlikely that this would result in a different outcome for the applicant.

Superintendent L adequately reflected this in his response to the complaint and offered an apology for the oversight. Accordingly, the Commissioner considers that this complaint was handled in a reasonable manner. No further action is required of Tayside Police in this connection.

Complaint 4: Alleged dismissal of allegations against Mr A

The applicant states that Constables B and C dismissed his allegations that Mr A was impersonating him and could potentially commit frauds or "bogus work" for vulnerable individuals.

Internal Handling

Inspector K's report comments:

"It is fair to say that [the applicant] has a feeling that his ex business partner is up to no good as opposed to having any strong evidence. He wished to report the matter as a fraud, however, [Constables B and C] believed it was not a fraud and gave suitable advice following a discussion regarding his ex business partner's character and ethics. [The applicant] did not explain to officers he was unhappy with the way they had considered the fraud, despite his claim that he was unhappy at the time."

Inspector K also comments that there is no evidence to support the allegation that Mr A was posing as a bogus caller to vulnerable people. There was, however, an indication that Mr A had posed as the applicant by handing out the company's business card following the break up of the business.

In concluding her consideration of this complaint, Inspector K states:

"There may or may not be an enquiry into a fraud. [The applicant] is to Email me (Inspector [K]) all the information he has in support of his belief that [Mr A] posed as him. I will review it and make a decision whether an enquiry is required. He will be updated once I have made a decision."

Superintendent L responded to the complaint as follows:

"I understand that you did not supply any evidence to Constable [C] who believed the circumstances you reported did not amount to a fraud and there is no evidence whatsoever of [Mr A] acting as a bogus caller to vulnerable people. Inspector [K] has undertaken to review this decision should you provide her with any evidence of criminal activity."

On 17 January 2009 Inspector K sent a further internal report to the Professional Standards Department which she copied to Superintendent L. It appears that Inspector K acted on additional evidence provided by the applicant in relation to his allegation of criminal activity on the part of Mr A. In relation to the allegations apparently made to Constables B and C, Inspector K comments:

“On 21 December 2007, [Mr A] called at [name and address of business] where he informed one of the [staff] that he was [the applicant], providing him with a business card relating to [name of the applicant’s company]. All the contact details related to [name of the applicant’s company] that both [Mr A] and [the applicant] represented prior to their break up a few weeks earlier. A colleague... recognised [Mr A] and when he left enquired with [the member of staff] as to what he wanted. At that time the name discrepancy became evident. An Email was sent to [the applicant] using the details on the calling card and at that time [the applicant] confirmed with the surveyors that he had not personally called at their office but suspected that [Mr A] probably had.

... At the time [Constables B and C] noted the complaint regarding the theft of the computers (21 February 2008) [the applicant] had the above information, however it was not shared. [The applicant] states that the officers, [Constable B] in particular, was not interested and didn’t ask for evidence. [Constable B] (during the initial preliminary enquiry) states that the information [the applicant] shared at the time did not contain evidence and was only hearsay...

I suggest there was a responsibility on the police officers to confirm they had understood everything and give a clear explanation of their intentions before leaving, but there was also responsibility on [the applicant] to inform officers that he had further information and that he was unhappy that it had not been noted.”

According to Inspector K, over one year later Mr A had made no further attempt to impersonate the applicant to the business in question. Indeed, Mr A had since contacted the business in his own name. As there was no criminality associated with Mr A’s previous impersonation of the applicant, Inspector K did not consider it necessary to interview him.

According to Inspector K, on 13 January 2009 she informed the applicant of the enquiries she had carried out. It is unclear from the papers provided to the Commissioner what form this update took.

Consideration

The applicant and Constables B and C have different accounts of the conversation that took place when the applicant reported the theft of the computers. According to his statement the applicant made three allegations to Constables B and C: the theft of his computers; that Mr A was using his business cards and impersonating him; and that Mr A could potentially commit frauds or “bogus work toward vulnerable people”.

Constable C’s recollection is as follows:

“[The applicant] stated that [Mr A] had been ‘poaching’ his clients who called the office when he was not there, and that he was working as an unlicensed mortgage advisor. The applicant was advised that this was not a Police matter and that he should contact his head office to advise them of his concerns regarding [Mr A]. At no time can I recall the applicant stating that [Mr A] was preying upon vulnerable people as a bogus caller.”

In relation to the same meeting, Constable B states:

“[The applicant] also stated that he had heard that [Mr A] had apparently been impersonating him... on the telephone. I asked him if he had any evidence of this and who overheard the telephone conversation/s and he could not give me an answer. At no time did [the applicant] make a statement or comment that [Mr A] would focus on vulnerable people as a bogus caller.”

There is no independent evidence to confirm any one of these versions of events. However, it is clear that neither officer accepts the applicant's account of what was discussed.

As noted above, Inspector K considered that there was a responsibility upon Constables B and C to ensure they had gathered full details from the applicant, and a similar responsibility upon the applicant to provide such details. In the Commissioner's view, this is an entirely reasonable conclusion. In addition, Inspector K went on to consider in detail the evidence provided by the applicant in support of his allegation. Accordingly, it is clear that once in possession of the information provided by the applicant, Tayside Police acted upon it.

In the Commissioner's view, this complaint was dealt with in a reasonable manner. Accordingly, no further action is required of Tayside Police in this connection.

Complaint 5: Alleged failure to issue letters

In his statement of 20 November 2008 the applicant complains that he has received no letters from Tayside Police. It is unclear from the statement what letters the applicant expected to receive in this connection.

Internal Handling

Inspector K's internal report concludes that this complaint relates to the applicant not having received "victim support" letters (i.e. the standard letters Tayside Police sends to alleged victims of crime, referred to above). Inspector K explains that such letters are not sent to persons reporting crime or when the complainer (i.e. victim) is a company.

Superintendent L's response to this complaint reflected Inspector K's conclusions and informed the applicant that the victim in his case had been wrongly recorded as a company. This was the reason a letter had not been sent to the applicant. Superintendent L apologised for this oversight.

Consideration

In the Commissioner's view, this matter was appropriately investigated by Tayside Police and a reasonable response issued to the applicant. Accordingly, no further action is required of Tayside Police in this connection.

Conclusions, Recommendations and Learning

Complaint 1: The length of the investigation

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 2: Alleged lack of communication regarding the progress of enquiry

For the reasons given, the Commissioner considers that this complaint was handled in a reasonable manner. However, the Commissioner considers that the issue raised by Superintendent L in his response to this complaint could be dealt with by an amendment to the letter which Tayside Police routinely sends to alleged victims of crime. The Commissioner recommends that Tayside Police considers this issue further and reports to him the steps it is to take in this connection.

Complaint 3: No serious attempt to recover the computers

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 dismissal of allegations against Mr A

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 5: Alleged failure to issue letters

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.

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