

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 arise from a road traffic incident on 28 October 2004 which resulted in the applicant's brother being seriously injured.

Many of the applicant's complaints were beyond the Commissioner's statutory remit and therefore were not included in the review. Of the four complaints reviewed (complaints 3(a)-(d)), the Commissioner found that three were handled in a reasonable manner. With regard to complaint 3(d), in the Commissioner's view, although not recorded as a complaint, for completeness Northern Constabulary should write to the applicant and acknowledge an error in a road traffic report.

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 has been granted a power of attorney to act on behalf of his brother who was seriously injured as a result of a road traffic collision on 28 October 2004. The circumstances of the collision are described briefly below.

About 6.45 pm on 28 October 2004, during the hours of darkness, the applicant's brother was walking at Location X. As there was no footpath he appears to have been walking on the carriageway. It was raining heavily at the time and a large puddle had formed across approximately one third of the carriageway. A car driven by Person A appears to have moved out from the side of the road to avoid the surface water. A collision thereafter occurred, as a result of which the applicant's brother suffered serious injury.

An ambulance attended and the applicant's brother was taken to a local hospital. An off-duty police officer, Constable B, passed the scene of the incident in his private car although he did not witness the collision. He stopped his vehicle and assisted in dealing with the incident. He spoke to the ambulance crew who informed him that they were attending to the injured party in the rear of the ambulance. The ambulance crew provided a brief description of what they knew about the incident. Constable B arranged for the driver of the vehicle to be taken to a nearby house and took control of the scene until the arrival of an on-duty police officer.

At about 6.50 pm Sergeant C was informed of the collision and made his way to the incident, arriving there at approximately 7.30 pm.

The enquiry conducted by Sergeant C at the scene revealed that there did not appear to be any tyre impressions on the roadway, nor was there other physical evidence. There were also no independent witnesses to the collision. Person A's vehicle had been moved prior to Sergeant C's arrival and therefore was not in the position at which it had come to rest following the collision. Sergeant C and Constable B spoke to Person A who was cautioned and interviewed regarding the road crash. The interview involved a series of questions asked by Sergeant C. A breath screening test was administered to Person A which was negative, indicating that there was no trace of alcohol. The vehicle was removed from the scene by a local contractor in order that it could be mechanically examined at a later date, should this prove necessary. Sergeant C photographed the vehicle prior to the arrival of contractors, who removed it to secure storage. Further photographs were later taken of the vehicle before its return to Person A.

Sergeant C attended at the local hospital and obtained an update in respect of the injuries suffered by the applicant's brother. It was established that he had sustained a number of fractures as well as several cuts and grazes. Although he was to be detained in hospital for further treatment, his injuries were not considered by medical staff to be life threatening. The applicant's brother was unable to speak to the police at that time, but medical staff and a relative advised that he did not appear to have any recollection of the incident.

Sergeant C later completed a "road accident report form" (Form RT/31/1) and updated the "incident history" throughout. In terms of the cause of the incident, Sergeant C formed an opinion based on the account given by Person A, his own observations of the scene and to an extent the input of the doctor who dealt with the applicant's brother. Sergeant C could find no evidence to suggest that Person A's account of the incident was inaccurate or untruthful. At the time of the incident it was dark, windy and raining. Street lighting was poor and the large pool of surface water on the carriageway would, in Sergeant C's view, have been likely to cause a pedestrian to venture out from the side of the road onto the carriageway. According to Sergeant C, the applicant's brother was known to have been wearing dark or black clothing and the evidence strongly suggested that he was under the influence of alcohol. Sergeant C also found that there was no evidence that Person A had exceeded the speed limit.

No charges were brought against Person A and no report submitted to the Procurator Fiscal.

The applicant's brother was later transferred to another hospital as his condition had deteriorated. Once his condition had stabilised he was transferred back to a hospital near to his home although his injuries were of such severity that he required to have a leg amputated.

Between July 2006 and April 2008 the applicant, through his solicitor, MP and MSP, engaged in a series of correspondence with Northern Constabulary. The correspondence consisted of requests for information and various complaints about the investigation into the incident. Relevant aspects of this correspondence are detailed throughout this report.

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 Northern Constabulary exceeded the time limit in sending correspondence to the applicant;

- (2) that Northern Constabulary did not initially provide a copy of the road accident report on request;
- (3) that the police investigation was deficient in the following areas
- (a) no report was sent to the Procurator Fiscal
 - (b) the issue as to whether the applicant's brother was under the influence of alcohol unduly allowed his views to be disregarded
 - (c) insufficient account was taken of the fact that the first language of the applicant's brother was Gaelic rather than English
 - (d) the incident and road accident reports contained inaccuracies
 - (e) the ambulance crew were not interviewed
 - (f) the conclusions reached regarding the collision were wrong
- (4) that Northern Constabulary did not return the applicant's passport and utility bill on initial request;
- (5) that Northern Constabulary did not offer to meet the applicant at a location convenient to him; and
- (6) that officers made derogatory remarks about the applicant's brother.

The Commissioner's Review

The applicant first contacted the Commissioner's office by telephone on 23 February 2009. He thereafter submitted an application form on 8 March 2009.

The Commissioner has included only complaints 3(a) – (d) in his review. In respect of complaints 1, 3(e) and (f), 4, 5 and 6, although these were included in the application form submitted to the Commissioner's office, they have not been made to Northern Constabulary. If the applicant wishes to pursue these complaints he should in the first instance contact the Professional Standards Department of Northern Constabulary.

In respect of complaint 2, as this relates to a request for information the Commissioner considers that it is more appropriately a matter for the Scottish Information Commissioner or the UK Information Commissioner (depending on the nature of the applicant's original request).

In his letter to the Commissioner's office dated 8 July 2010, the applicant raised three additional areas of concern. In the first of these, the applicant complained that the off-duty officer who attended the road traffic collision (Constable B) was not recalled to duty to complete a report on the incident. Secondly, the applicant complained that Northern Constabulary "more or less ignored" correspondence from an MP and MSP. The final issue the applicant raised in his letter related to Sergeant C allegedly forming a view on the condition of the applicant's brother based on his previous involvement with him in relation to a drink driving charge.

As none of these complaints has been raised with Northern Constabulary, they have not been included in this review.

The remainder of this section sets out the Commissioner's views on the manner in which complaints 3(a) to (d) were dealt with. Details of Northern Constabulary's handling of these complaints are set out and are followed by the Commissioner's views on this.

Internal Handling

The alleged failure to report the incident to the Procurator Fiscal was first raised in July 2006 in a letter sent to Northern Constabulary by the applicant's solicitor. Sergeant C responded to the letter, advising that a report would only be sent to the Procurator Fiscal where a death had occurred, or where a person had been charged. As neither criterion was met, no report was submitted.

A similar issue was raised by the applicant's MP in a letter he sent to Northern Constabulary on 15 December 2006. In particular, the MP asked why the incident had not led to charges being brought against Person A. He also conveyed the applicant's opinion that the issue of whether his brother was under the influence of alcohol at the time had unduly allowed his brother's views to be disregarded. The MP also expressed the applicant's view that insufficient account was taken of the fact that the applicant spoke Gaelic as a first language.

Following receipt of the MP's letter, Chief Inspector E arranged for Inspector F to conduct an enquiry into the matter.

In his report dated 1 February 2007 Inspector F reached the following conclusions:

- that Person A was not charged as there was no evidence to support a charge of careless driving;
- that the applicant's brother was noted by everyone who came into contact with him that evening as being under the influence of alcohol, but that this factor had no undue influence on the outcome of the investigation; and
- that the applicant's brother's preference for speaking Gaelic had no bearing upon the enquiry.

Although Inspector F concluded that Sergeant C conducted the enquiry correctly, he concluded that Sergeant C had omitted to pursue a statement from the applicant's brother.

On receipt of Inspector F's report Chief Inspector E arranged to have the actions of Sergeant C reviewed. Inspector G conducted the review and consulted with Inspector H of the Roads Policing Unit. In his report of 6 February 2007, Inspector G comments that Inspector H was particularly impressed with the way in which the incident was dealt with. Inspector G concluded that Sergeant C's enquiries were conducted properly and professionally. With regard to the apparent failure to pursue a statement from the applicant's brother, Inspector G commented that Sergeant C and his team had made continuous efforts to contact the applicant's brother during his initial period of medical treatment but that he was not fit to be seen by them. Inspector G added that it was apparent that the applicant's brother was unlikely to have any meaningful information to offer and indeed had no recollection of the incident.

On 27 February 2007, Chief Inspector E sent two letters in response to the complaints, one to the applicant's MP, the other to the applicant's solicitor.

In his letter to the applicant's solicitor, Chief Inspector E explained that the circumstances of the incident had been scrutinised and that it had been found that the officers had dealt with it satisfactorily. Chief Inspector E acknowledged that a statement had not been obtained from the applicant's brother but explained that, given his condition, medical staff had advised investigating officers that such an interview was unlikely to produce any meaningful additional evidence. Chief

Inspector E added that medical staff and a family member had advised that the applicant's brother had little or no recollection of the incident. Chief Inspector E accepted that this might change and that it was possible that the applicant's brother might now be able to provide additional information.

Chief Inspector E advised the solicitor that no-one had been charged in connection with the incident as there was insufficient evidence to support an allegation of careless driving or any other offence.

In his letter to the MP, Chief Inspector E provided some additional information. He commented that there was ample evidence that the applicant's brother had been under the influence of alcohol on the night in question. He explained, however, that this was merely a contributing factor to the result of the investigation.

Chief Inspector E added that the applicant's brother's preference for Gaelic had no bearing upon the enquiries into the incident.

In a letter submitted by the applicant's solicitor dated 3 October 2007 it was indicated to Northern Constabulary that the damage to Person A's vehicle was inconsistent with the details recorded in the road accident report. Specifically, the letter stated that according to the evidence the applicant's brother appeared not to have been walking on the side of the road indicated in the report.

Consideration

With regard to complaint 3(a), Sergeant C considered all the information that was available to him and formed the opinion that there was no evidence of careless driving on the part of Person A. Accordingly Person A was not charged with any offence and no report was submitted to the Procurator Fiscal. In the Commissioner's view, Sergeant C's assessment was sound. It is clear that there was insufficient evidence to justify Person A being charged with careless driving and therefore no basis upon which to report her to the Procurator Fiscal.

In these circumstances, the Commissioner considers that this complaint was dealt with by Northern Constabulary in a reasonable manner.

With regard to complaint 3(b) the Commissioner has seen nothing to indicate that the amount of alcohol consumed by the applicant's brother on the night in question led to his views being disregarded. According to the information contained in Northern Constabulary's file, Sergeant C attempted on a number of occasions to speak to the applicant's brother but was unable to do so due to the latter's condition. The evidence obtained from health professionals and a relative of the applicant indicated that his brother had no recollection of the incident. In light of this the Commissioner considers that, while obtaining a statement from the applicant's brother would have been prudent, there is nothing to suggest that the omission to do so affected the outcome of the enquiry.

For these reasons, the Commissioner considers that this complaint was dealt with in a reasonable manner.

With regard to complaint 3(c), again there is nothing within the information provided to the Commissioner to suggest that the applicant's brother's preference for Gaelic rather than English had any impact upon the investigation into the incident. Accordingly, the Commissioner considers that this complaint was dealt with in a reasonable manner.

In respect of complaint 3(d), according to the application form to the Commissioner's office, the "after – incident" report produced by Northern Constabulary contained details of the collision that were different from the version of events provided by Person A to her insurance company. The applicant claims that he was shown a copy of the report at a meeting with Inspector F and that he

(the applicant) had pointed out the difference to him. According to the applicant, Inspector F stated that he had not noticed a difference and the matter was left at that. In his correspondence to the Commissioner's office the applicant does not detail what he believed to be the difference between the two sources. However, as noted above, the letter from his solicitor to Northern Constabulary dated 3 October 2007 makes this clear.

It appears to the Commissioner that the road accident report form (RT/31/1) does indeed contain the error as identified by the applicant's solicitor in his letter of 3 October 2007. Northern Constabulary has since confirmed the error to the Commissioner's office. In the report, the applicant's brother is described as "walking east" at the time of the incident and Person A's car as being "driven west". In fact, however, the applicant's brother had been "walking west" and Person A's car being "driven east". This description of how the incident occurred is consistent with the evidence relating to the damage to the vehicle and the positioning of the water on the roadway. The Commissioner notes that the same error does not appear in the incident history (IMPACT) report.

The terms of the letter from the applicant's solicitor are unclear as to whether he was intimating a formal complaint about the police. Northern Constabulary did not record it as a complaint but it has since acknowledged the error contained in the report. In the Commissioner's view, although not recorded as a complaint, for completeness Northern Constabulary should write to the applicant and acknowledge the error in the report.

Conclusions, Recommendations and Learning

For the reasons given, the Commissioner considers that complaints 3(a), (b) and (c) were dealt with in a reasonable manner. Accordingly, no further action is required of Northern Constabulary in this connection.

With regard to complaint 3(d), although not recorded as a complaint, for completeness Northern Constabulary should write to the applicant and acknowledge the error in the report.

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