

# 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

The complaint dealt with in this report arose following an incident at a Procurator Fiscal's office in which the applicant was threatened with arrest by police officers for a breach of the peace. The applicant subsequently complained to Fife Constabulary that the officers had no good reason for threatening him with arrest and in doing so had abused their powers.

The Commissioner found that the complaint was dealt with in a reasonable manner. However, for the reasons stated in the report, the Commissioner recommended that Fife Constabulary reminds the officers concerned of the current definition of breach of the peace. The Commissioner is aware that a number of police forces have recently issued guidance to officers regarding developments in the case-law surrounding breach of the peace. If it has not already done so, Fife Constabulary should now issue similar guidance to all officers.

## 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 30 December 2009 the applicant attended at a Procurator Fiscal's office to deliver some papers. The applicant asked staff within the office to copy the papers and apply a receipt stamp to these. The staff complied with this request but the applicant was not content with the quality and positioning of the stamps. The applicant refused to leave the office and the police thereafter attended.

The following are the accounts given by the applicant and other witnesses.

### *The applicant's account*

According to an email he sent to Fife Constabulary on 20 January 2010, the applicant noticed that the stamps initially applied to the documents did not contain the date. He therefore asked a member of staff to date-stamp the documents. Fresh copies were supplied to the applicant which included a date-stamp. However, the applicant believed that the date was so faint that it could not be read and he therefore requested legible copies. The member of staff refused to provide further copies.

At this point a second member of staff became involved. The applicant again requested legible copies, telling staff that if they refused he would "seek police assistance" as he believed they were "obstructing" him. A third member of staff stated to him that the stamps could be read and that staff had done all they were prepared to do. According to the applicant, he then called the police and took a seat in the waiting area until they arrived.

Some time later, the third member of staff returned saying that she could fetch the police from within the court. The applicant agreed to this.

A male officer (Constable A) arrived and, according to the applicant, “immediately took the fiscals’ side”. Constable A, the applicant claims, did not “properly examine the stamps before he said they were fine and I should accept them.” The applicant then returned to a seat in the waiting area advising that he “would not be leaving without the stamps.” According to the applicant, Constable A asked him to leave and said he would be arrested if he did not do so. The applicant refused to leave and the officer left to obtain assistance.

Constable A returned a short time later with a female officer (Constable B) and they spoke for about 20 minutes. According to the applicant he was then threatened with arrest for a breach of the peace, Constable B explaining that he would “spend a night in the cells and then have a court appearance”. The applicant’s email contains the following passage:

*“[Constable B] explained that I was refusing to leave a public place. I told her what constituted breach of the peace ‘to cause alarm to the average man’ and [Constable A] said annoyance also counts. I further disputed the fiscal’s office was a public place and even if I am wrong on this I pointed out that the room was empty.”*

According to the applicant, Constable B told him that he was “now going to be arrested, locked up and appear in court.” The applicant claims that at this point he was “in no state to carry on” and he then left.

#### *The account given by a member of office staff*

Person F, a member of staff at the Procurator Fiscal’s office, provided a statement in connection with the investigation of the applicant’s complaint. According to Person F, the applicant had complained about the quality of the copies provided, as well as the stamps which had been applied to them. When staff within the office refused to “re-do” the documents, the applicant refused to leave and “would ring the bell”.

According to Person F, staff contacted the police within the court to ask the applicant to leave. The officers tried to explain matters to the applicant but he was unwilling to listen. Person F’s statement continues:

*“I believe that [the officers] had told him that he would have to go or would be arrested. In my opinion they would have been entitled to do so if he hadn’t left as he was making such a nuisance of himself. The officers should have left work before they did so they were more than patient.”*

#### *Constable A’s account*

Constable A recalled being approached at about 4 pm by another member of staff, Person G, who advised that the applicant was refusing to leave the public area of the office. Constable A was given details of the circumstances and could see that Person G was “now annoyed”. Person G showed Constable A the papers which had been provided to the applicant and he saw that each page had been stamped.

Constable A spoke to the applicant who explained his position. Constable A advised that as far as the staff were concerned they had complied with his request and would not repeat the exercise. Constable A also advised the applicant that, in his view, the stamps were legible. According to Constable A, however, the applicant would not accept this and refused to leave until his request had been completed to his satisfaction. Constable A again spoke to Person G as well as Person F who were both “annoyed” by the applicant’s attitude and wanted him to leave. Constable A

explained the position to the applicant but he again refused to leave until his request had been complied with. According to Constable A, the applicant's attitude was "calm but belligerent."

Constable A then informed the applicant that "his refusal to leave the building under these circumstances would constitute a Breach of the Peace" and would leave no alternative but to arrest him. However, the applicant again refused to leave.

Constable A thereafter obtained the assistance of Constable B. Both officers explained to the applicant that he required to leave the area as

*"... his continued presence constituted a Breach of the Peace, in that his presence was now a source of annoyance to the staff."*

Constable A's statement concludes with the following passage:

*"I believe that [the applicant's] attitude was ultimately unreasonable and that his continued persistence on demanding a course of action, which had been complied with, and his continuous presence within the public area was a source of annoyance to the Fiscal's staff."*

#### *Constable B's account*

Constable B stated that she was approached by Constable A at about 4.15 pm. She spoke to members of staff and noted that Persons F and G were "frustrated and annoyed" by the applicant's behaviour and wished him to leave the reception area.

Constable B spoke to the applicant who was calm throughout the conversation but refused to leave the premises. Her statement continues:

*"I advised [the applicant] that if he continued to refuse to leave the building he would be committing a crime. [The applicant] asked me which crime and I informed him that it would be a Breach of the Peace and explained to him what that was. I carefully explained to [the applicant] that if he continued to choose not to leave the building he could be arrested."*

According to Constable B, she took particular care to make the applicant understand what might happen. The applicant then left.

## **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 a single complaint, namely that Constables A and B abused their power by threatening the applicant with arrest for no good reason.

## **The Commissioner's Review**

This section sets out the Commissioner's views on the manner in which the applicant's complaint was dealt with.

In his email to Fife Constabulary of 20 January 2010 the applicant alleged that the officers concerned had used "psychological pressure" to cause him to leave the Procurator Fiscal's office and breached their "common law duty of care" to the public. He also alleged that the officers had "breached trust" and "shamed their constabulary". However, these allegations appear to the Commissioner to be covered by the single complaint described above.

### *Internal Handling*

Inspector E, who was appointed to make enquiries into the complaint, arranged to meet the applicant to obtain a statement from him. However, the applicant later contacted Fife Constabulary declining to provide a statement, stating that he wished his email of 20 January 2010 to be treated as his statement.

Inspector E obtained operational statements from Constables A and B and also attended the Procurator Fiscal's office where she obtained a statement from Person F. She thereafter submitted a report to Chief Inspector C detailing the results of her enquiries.

On 19 January 2010 Chief Inspector C sent a letter to the applicant in response to his complaint. The letter contains the following passage:

*"It appears from the information obtained that efforts were made to accommodate your requests at the time, however as the officers did not have any jurisdiction over the PF staff they were unable to do anything further for you. The officers were not in a position to leave you in the office and although it would have been a relatively minor breach of the peace, they felt that they had no other option in order to make you leave."*

On 18 February 2010 the applicant wrote to Fife Constabulary expressing concern about the content of Chief Inspector C's letter. Specifically, he stated that the officers had not made any attempt to "accommodate [his] request" and that both "took side with the Fiscal's office." The applicant also sought an explanation as to why the officers "were not in a position to leave [him] in the office and how they can justify their actions to threaten [him] with arrest on grounds of breach of the peace when clearly [he] was being mistreated." The applicant felt that the investigation into his complaints had "not been able to justify the officers' course of action (threat of arrest, night in the cells and a court appearance)".

On 24 February 2010 Superintendent D wrote to the applicant following a review of the information relating to his complaint. His letter contains the following passages:

*"A Breach of the Peace is a crime at common law in Scotland and police officers are entitled to arrest any person who they see committing a crime or when the[y] receive reliable information from others who have witnessed the crime. Failing to desist in a course of action, which is perceived to be threatening or alarming by others, may amount to a Breach of the Peace. Having reviewed all the circumstances surrounding your complaint, I am satisfied that your conduct, by failing to leave the office of the Procurator Fiscal when requested to do so, first by a member of staff from that office and then by the Police officers who were called to assist with that situation, would have amounted to a Breach of the Peace had you continued to refuse to leave the premises..."*

*I am satisfied from the evidence provided by the police that they informed you of the crime that you may be committing if you continued with your behaviour and of the potential consequences of continuing to fail to desist in your actions. Had you not decided to leave, I am in no doubt that you probably would have been arrested and you could have been kept in custody to appear at court the next day albeit that would have been a decision taken by a senior police officer taking into account the full circumstances of the case..."*

*The officers were correct to take the action they did, and if they left you in the office as you desired, they would have been neglectful of their duties, given the staff wished you to leave. It would not have been appropriate to allow you to remain in the office and I do not agree with your position that you were mistreated..."*

*In conclusion, I am satisfied that the actions of the officers were lawful, proportionate, appropriate and justified."*

### Consideration

In order to determine whether this complaint was dealt with reasonably by Fife Constabulary, it is important to refer briefly to the law relating to breach of the peace as set out by various decisions of the High Court of Justiciary. The following is a brief summary of those decisions.

(1) Breach of the peace is, in many cases, a relatively minor crime which can be committed in a variety of circumstances (*Smith v Donnelly* 2001 SCCR 800).

(2) In order to amount to a breach of the peace the conduct in question must be “severe enough to cause alarm to ordinary people” and be “genuinely alarming and disturbing, in its context, to any reasonable person.” (*Smith v Donnelly*; also *Paterson v HMA* 2008 SCCR 605; *Harris v HMA* 2010 SCCR 15). The offending conduct must have a public element in that it should cause or threaten a disturbance to the public peace (*Harris v HMA*).

(3) Breach of the peace requires “something substantially greater than mere irritation” on the part of witnesses to the behaviour (*Smith v Donnelly*).

As noted above, Superintendent D concluded that by persistently refusing to leave the premises the applicant’s conduct would have amounted to a breach of the peace, and accordingly the actions of the officers were justified.

Ultimately, it is for the courts to decide whether conduct amounts to a breach of the peace and whether an arrest was lawful. As the applicant was neither arrested nor convicted, that is clearly not possible in the present case. The issue raised by this complaint is whether there was any proper basis for the officers *threatening* him with arrest for breach of the peace.

In light of the case law summarised above the Commissioner considers that Superintendent D’s conclusion was reasonable. According to Person F and Constables A and B, staff within the office had complied with the applicant’s request and were not prepared to provide any further assistance. As a result of this, and despite repeated requests from staff and the officers concerned, the applicant refused to leave the premises. The officers had attended the incident at around 4 pm, relatively close to the point at which the office would be due to close. In the Commissioner’s view, it is not difficult to envisage the applicant’s persistent refusal to leave the premises as giving rise to alarm on the part of the staff, particularly if he did so when the office was about to close. Accordingly, it is at least arguable that his behaviour in refusing to leave posed a threat to the peace. In the Commissioner’s view, the fact that the incident took place in the public area of the office was sufficient to satisfy the requirement in the case law that the behaviour has a “public element”.

The Commissioner notes, however, that both officers appeared to attach weight to the evidence that staff were “annoyed” by the applicant’s behaviour. Constable A, in particular, appears to have considered that the applicant was committing a breach of the peace simply because he was annoying the staff. In addition, the applicant claims that when discussing with the officers whether his behaviour amounted to a breach of the peace, Constable A told him that “annoyance also counts”. It is clear from the case law, however, that mere irritation on the part of witnesses is not sufficient to constitute a breach of the peace. Accordingly, insofar as the officers proceeded on the basis that the mere annoyance of staff was a sufficient basis for the applicant’s arrest, there was no justification for this.

In conclusion, the Commissioner considers that Superintendent D's issued a reasonable response to this complaint. However, for the reasons given the Commissioner recommends that Fife Constabulary reminds Constables A and B of the current definition of breach of the peace and, in particular, that mere irritation on the part of witnesses is not sufficient to constitute this offence. The Commissioner is aware that a number of police forces have recently issued guidance to officers regarding developments in the case-law surrounding breach of the peace. If it has not already done so, Fife Constabulary should now issue similar guidance to all officers.

In the Commissioner's view, implementation of the above will be of benefit not only to members of the public but to officers in the exercise of their duties

### Conclusions, Recommendations and Learning

In the Commissioner's view, this complaint was dealt with in a reasonable manner. However for the reasons given the Commissioner recommends that Fife Constabulary reminds Constables A and B of the current definition of breach of the peace and, in particular, that mere irritation on the part of witnesses is not sufficient to constitute this offence. The Commissioner is aware that a number of police forces have recently issued guidance to officers regarding developments in the case-law surrounding breach of the peace. If it has not already done so, Fife Constabulary should now issue similar guidance to all officers.

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