

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 applicant's complaints arose from the police investigation into a road traffic collision in which he and others were injured. Of the four complaints considered, the Commissioner found that two were handled reasonably by Northern Constabulary and required no further action.

However, the Commissioner found that two complaints were not handled reasonably and made a number of recommendations in this connection. The Commissioner also identified a learning point in respect of the issuing of apologies.

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 16 October 2007 the applicant's car was involved in a collision with another car travelling in the opposite direction. As a result of the collision the applicant's car overturned and left the carriageway, coming to rest upside down on grassland adjacent to the road. The other car also left the carriageway and came to a halt in a ditch at the side of the road.

The applicant and his passenger, Person A, were injured but managed to free themselves from the car. They were conveyed to hospital by ambulance and, following treatment, were discharged. The driver of the other vehicle, Person B, was trapped in his car for approximately two hours. He was freed by the fire and rescue service and was taken to hospital by air ambulance, where he was treated for a broken femur. As a result of the collision the carriageway was closed for a number of hours.

The police were contacted and Constables C and D attended at the scene. Following enquiry, it was established that the applicant had been driving on the correct side of the road. There was no evidence that he had been driving at excessive speed. It was found that the collision had been caused by Person B pulling out without warning from a line of opposing traffic into the path of the applicant's car. No other vehicles were involved in the crash.

It was initially decided that no report would be submitted to the Procurator Fiscal in respect of the collision. The applicant was informed of this decision on 22 October 2007.

Constable C updated the computerised record of the incident and recorded that the applicant had experienced "pain to neck and shoulders but discharged from hospital". He also recorded that

Person A had “sustained pain to chest and neck but also discharged from hospital following pain relief”. The injury to Person B was recorded as “sustained fracture to right femur”.

On 5 November 2007, the applicant wrote to the Chief Constable of Northern Constabulary asking that the incident be reviewed by a senior officer and that justification be given for the decision not to report Person B to the Procurator Fiscal. On 1 February 2008, Inspector E wrote to the applicant advising that a report would only be submitted to the Procurator Fiscal in relation to road accidents where

“... serious injury is caused to a person other than the driver of the offending vehicle and or where extreme carelessness has been shown.”

Inspector E explained that enquiry made at the hospital had revealed that the injuries sustained by the applicant and Person A were of a minor nature and that both had been released from hospital. Inspector E stated that in line with the “manual of guidance” these injuries would not be classed as serious. Inspector E also explained that although the vehicles were extensively damaged, because the level of carelessness was not assessed as extreme the matter had not been reported to the Procurator Fiscal.

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 Person B should have been charged and reported to the Procurator Fiscal;
- (2) that a police report was not submitted to the Procurator Fiscal in sufficient time;
- (3) that the reporting of the incident was influenced by the relationship between Person B and a serving police officer; and
- (4) that the length of time taken to reply to the applicant was “prolonged”.

The Commissioner’s Review

This section sets out the Commissioner’s views on the manner in which the applicant’s complaints were dealt with. Each complaint is set out in turn and is followed by details of Northern Constabulary’s handling of it and the Commissioner’s views on this.

Complaint 1: Failure to report the incident

On 12 March 2008 the applicant sent a letter of complaint to Northern Constabulary in which he detailed his dissatisfaction about the decision not to report Person B to the Procurator Fiscal.

The applicant explained in his letter that the position as stated by Inspector E in her letter 1 February 2008 was the “foundation” of his complaint. He alleged that there had been a “gross and blatant” misinterpretation by Northern Constabulary of the applicable guidance and that the police had “played down” the level of the injuries sustained by himself and Person A. The applicant also stated that Northern Constabulary had “done their best to tone down the seriousness of the incident to allow it to fall under the remit of the ... guidance”. The applicant claimed that, in arriving at its decision not to report the incident, Northern Constabulary had failed to consider factors such as the “previous driving history of the offending driver and cost to the tax payer.”

Internal Handling

On receipt of the complaint Chief Inspector F advised the applicant that a senior officer had been appointed to carry out a preliminary enquiry. On 24 March 2008, Superintendent G was appointed in this connection. In his report Superintendent G described the applicant's complaint as follows:

"[Constable C] was in neglect of duty by not submitting a crime report against [Person B]."

As part of his enquiries, Superintendent G obtained a copy of guidance issued to Northern Constabulary by the Procurator Fiscal entitled "Reporting of Careless Driving Offences". He then instructed that Person B be cautioned and charged and that a full report be submitted to the Procurator Fiscal. An operational statement was obtained from Constable C on 1 April 2008 in which he stated the following:

"On 16/10/07 I attended at Road Traffic Collision ... At the time the offending driver was seriously injured, but the occupants of the other vehicle only complained of slight injuries.

Following the collision, I discussed the matter with my supervisor and it was decided not to report the offending driver as we believed that the incident did not fall within the guidelines for reporting him."

Superintendent G then submitted a report to Chief Inspector F, which concluded:

"It is clear to the reporting officer that [Constable C] relied on his interpretation of the Procurator Fiscal's guidelines in respect of reporting careless driving cases ... The reporting officer believes that the officer, who did discuss the matter with his immediate supervisor, erred in his interpretation of these guidelines which clearly state that if there is any dubiety and where serious injury has occurred, a report should be submitted to the Procurator Fiscal ...

As a result of this, and other like incidents, the investigating officer, as Divisional Commander, has brought this to all supervisors attention and reminded them of their duty in ensuring proper compliance with the said guidelines."

On 22 April 2008, Chief Inspector F wrote to the applicant advising that he had received a preliminary report from Superintendent G, and that a senior officer had been asked to review the circumstances of the complaint. Inspector H was appointed in this connection.

On 8 May 2008 Chief Inspector F wrote to the applicant in response to the complaint. The letter stated:

"The matter was investigated by a senior police officer and it was found that the circumstances were such that a report should be submitted to the Procurator Fiscal for his consideration of a prosecution of the other driver involved ...

The officer involved is to be counselled by a senior Police Officer in respect of the foregoing circumstances. These discussions shall include reference to your views on the matter, to add an alternative perspective to the facts of the case that were used to determine the decision made in consultation with the Procurator Fiscal's Guidelines. It is hoped that this will provide positive learning points for the Police Officer concerned in any future similar incidents."

In January 2009 the applicant wrote to the Commissioner's office and copied his letter to the Chief Constable of Northern Constabulary. On 9 January 2009, the Deputy Chief Constable responded to the applicant's letter, stating

"I apologise for the error made by the officer who attended initially. He was dealt with and I believe all that possible was done to correct the error. Nevertheless, I accept you remain disappointed or angry."

Consideration

The applicant's main area of dissatisfaction is that Northern Constabulary failed to submit a report to the Procurator Fiscal in respect of Person B's alleged careless driving. The foundation of the applicant's complaint was the letter he received from Inspector E dated 1 February 2008. As noted above, the applicant was advised in that letter that Northern Constabulary submitted reports to the Procurator Fiscal only where:

"... serious injury is caused to a person other than the driver of the offending vehicle and or where extreme carelessness has been shown."

In assessing whether Constable C's decision not to report the matter to the Procurator Fiscal was correct, Superintendent G considered the terms of the guidance issued by the Procurator Fiscal on such matters. The Commissioner has obtained a copy of this guidance, the relevant passages of which are as follows:

"In normal circumstances a report will not be submitted to the Procurator Fiscal regarding instances of careless driving in contravention of Section 3 of the Road Traffic Act 1988 made known to the police unless one or more of the following criteria apply:

1. The degree of carelessness is on the upper end of the scale...

9. Injury has resulted (other than the most trivial injury).

In any case where doubt exists or there is difficulty in interpreting the guidelines a report should be submitted to the Procurator Fiscal." (emphasis in original)

As the foundation of the applicant's complaint was Inspector E's letter of 1 February 2008, the Commissioner has examined the terms of that letter in light of the above guidance.

The guidance makes no distinction between injury to the driver of the offending vehicle and any other injured party. Accordingly, the position adopted by Inspector E in her letter was flawed in this respect. Leaving aside the injuries sustained by the applicant and Person A, it is clear that those sustained by Person B were not trivial. Accordingly, on this basis alone the matter ought to have been reported to the Procurator Fiscal. By quickly arranging for the matter to be reported to the Procurator Fiscal, Superintendent G recognised this.

In addition, contrary to the terms of Inspector E's letter, the guidance does not specify that the degree of carelessness involved must be "extreme". The guidance states that the Procurator Fiscal will not normally proceed against persons reported for careless driving unless there is "significant carelessness and not merely an error judgement." However, with regard to the responsibility to report matters to the Procurator Fiscal the guidance is clear that this should be done when the degree of carelessness is "on the upper end of the scale". Superintendent G makes no reference in his report to the degree of Person B's carelessness, although in the Commissioner's view this in itself might have justified the matter being reported to the Procurator Fiscal.

In the Commissioner's view, the errors in Inspector E's letter compound those made initially in deciding not to report Person B to the Procurator Fiscal. Indeed, given the divergence between the two, it would be reasonable to assume that Inspector E did not read the guidelines before preparing her letter. Had this been done, it is possible that Person B would have been reported to the Procurator Fiscal at an earlier stage. In the Commissioner's view, in responding to the applicant's complaint, Northern Constabulary ought to have acknowledged the errors in Inspector E's letter.

Overall, however, the Commissioner considers that this complaint was dealt with in a reasonable manner. Following his appointment as investigating officer Superintendent G very quickly came to the conclusion that Person B ought to have been reported to the Procurator Fiscal and, within four days of being allocated the complaint, had arranged for this to be done. By reminding all supervising officers of the need to comply with the guidelines, Superintendent D also took steps to ensure that such errors did not occur again. It is clear that Constable C was counselled in this connection.

Finally, although initially no apology was offered to the applicant in Chief Inspector F's responses to the complaint, the Commissioner notes that the Deputy Chief Constable did so in his letter of 9 January 2009.

Complaint 2: Failure to report in sufficient time

On 5 January 2009, the applicant wrote to the Commissioner expressing his disappointment at the fact that the Procurator Fiscal had decided to take no proceedings against Person B. He stated in the letter that because of the delay in sending the report the Procurator Fiscal had not been given sufficient time to progress the charge.

The applicant submitted a copy of this letter to the Chief Constable of Northern Constabulary and asked him to respond as he saw fit.

Internal Handling

On 9 January 2009, the Deputy Chief Constable responded to applicant's letter as follows:

"In summary, it was found that the officer who attended the road crash did not submit a report to the Procurator Fiscal. The senior officer who reviewed this case believed that in terms of our guidelines a report should have been submitted and this was instructed. The officer who had attended the road crash was counselled. It is fully accepted that the decision taken by the police officer in the case delayed submission of the report but it was submitted prior to the case being time-barred. I do however, fully acknowledge that little time was left for the Procurator Fiscal to initiate proceedings. I cannot comment on any decision taken by the Procurator Fiscal but I note she has provided you with a comprehensive letter, dated 25th November 2008 ...

In conclusion, I believe the Force has responded to your complaint and dealt with it appropriately. I apologise for the error made by the officer who attended initially. He was dealt with and I believe all that was possible was done to correct the error. Nevertheless, I accept you remain disappointed or angry."

Consideration

On 25 November 2008 the Procurator Fiscal wrote to the applicant explaining the decision to take no proceedings against Person B. In the letter the Procurator Fiscal advised that it had not been considered to be in the public interest to prosecute Person B. The Procurator Fiscal listed a number of factors which had been taken into account in reaching that decision. Among them was the "age" of the offence by the time it had been reported by Northern Constabulary. The

Procurator Fiscal advised that a prosecution for an alleged contravention of section 3 of the Road Traffic Act 1988 (driving without due care and attention) must be commenced within six months of the incident. She added that the case had not been reported until some five and a half months after the collision.

It is therefore clear that one of the factors considered by the Procurator Fiscal in deciding that prosecution of Person B was not in the public interest was the delay in receiving the report of the incident. Notwithstanding this, the Commissioner considers that complaint 2 is essentially the same as complaint 1, as complaint 2 simply reflects the consequences of the failure to report Person B immediately after the collision. As noted above, Superintendent G quickly identified the initial error and took immediate steps to have a report submitted to the Procurator Fiscal. In any event, it appears from the Procurator Fiscal's letter that even in the absence of the delay in submitting the report, the decision not to prosecute might still have been taken.

For these reasons, and those given above in respect of complaint 1, the Commissioner considers that this complaint was handled in a reasonable manner. Accordingly no further action is required in this connection.

Complaint 3: Alleged influence in the decision not to report

Following receipt of Northern Constabulary's response to his complaints, the applicant wrote to Chief Inspector F on 25 May 2008 with a number of concerns he wished to have addressed. In particular, he stated

"Personally I feel the seriousness of the crime was intentionally played down to either avoid work load or to protect someone that was known to the officer concerned. I have heard rumour that [Person B] has a son who is an officer in the Northern Constabulary. This might support the later theory. The blatant misinterpretation of the guidance would also back the case for intentional misinterpretation. However, this alternative theory is conjecture and perusing it further would not avoid any gain for me. Although I am not so easily convinced of the reasoning behind the initial flaws, I am at least content with the end conclusion.

I am however concerned that the flaws of the initial investigation will provide [Person B] with a possible defence in what would otherwise be a clear cut case. I would appreciate if you can comment on this and assess whether the prosecution case has been compromised by the initial inadequacies of the police investigation. I would also like you to confirm if [Person B] has any family members in the Northern Constabulary and whether at any time they have had any input into the investigation."

Internal Handling

The applicant's letter was acknowledged by Chief Inspector F and passed to Inspector H. It was established that Person B has a brother who is a serving officer with Northern Constabulary (Inspector J).

On 9 June 2008 Chief Inspector F sent a memo to Inspector J regarding the applicant's complaint. Inspector J was advised that research of the IMPACT system (the system used by Northern Constabulary for recording operational incidents including road crashes) had shown that he had viewed the record of the collision on three separate occasions. Chief Inspector F asked Inspector J to submit an operational statement explaining why he had viewed the record of the incident. Inspector J's statement contains the following passages:

"I have been informed that I viewed this incident on three occasions on 17, 23 and 25/10/07. Given the passage of time I have little or no recollection as to when I viewed this

incident and the reason was as a self briefing process viewing incidents of interest. I was not aware of any reason why I should not have been doing so.

At no time did I make any attempt to discuss the matter with colleagues involved in dealing with the incident.”

On 15 July 2008, Inspector H emailed Constable C asking whether or not Inspector J had contacted him about the incident. Constable C replied the following day stating that Inspector J had not done so.

Chief Inspector F wrote to the applicant with his findings on 5 November 2008. The letter contains the following passages:

“There is no evidence of any wrongdoing in the actions of the officers involved. They have been spoken to and provided details of their conduct in respect of your specific concerns. They deny any intention to interfere with the due processes involved in dealing with such matters.

Our investigation has indeed pointed to the reporting officer misinterpreting the guidelines, rather than having any seemingly intentional or underhand motive... There is no evidence of prejudiced behaviour on the part of the Police. The matter was dealt with impartially.

The injured driver identified himself at the locus to [Constable C] as being the brother of a serving Northern Constabulary officer. [Constable C] does know the relative involved and, at the request of the injured party, arranged to have him contacted and informed of the circumstances. No details other than the physical condition of the driver were passed. This is routine procedure, done with the intention of alleviating unnecessary worries to relative of injured persons. The serving officer is no less entitled to this practice...

As previously stated, the injured party has a brother serving in this Force. That particular officer had no contribution to make in respect of the circumstances. There was no input by him to this incident at any time.”

Consideration

There is no evidence in Northern Constabulary's file that Inspector J in any way influenced the decision not to report Person B to the Procurator Fiscal. However, as noted above this decision was made by Constable C following discussions with his supervising officer. There is no indication in Northern Constabulary's file as to the identity of the supervising officer and it does not appear that a statement was taken from him/her in relation to any contact he/she might had with Inspector J. In the Commissioner's view, such a statement is necessary in order to deal with the applicant's concerns.

In addition, at no time was the applicant informed that Inspector J had viewed the record of the incident. This is despite the fact that it was deemed sufficiently important to warrant enquiries with both Inspector J and Constable C.

For these reasons, the Commissioner considers that this complaint was not handled in a reasonable manner. The Commissioner recommends that Northern Constabulary obtain a statement from Constable C's supervising officer to establish whether he/she had any contact with Inspector J in connection with the decision to report the incident to the Procurator Fiscal. A further response should be issued to the applicant in the light of these enquiries.

By virtue of this report, the applicant is now aware that Inspector J viewed the incident record. However, because this issue was not raised in Chief Inspector F's letter of response, the applicant

was not given Northern Constabulary's specific view on this. The Commissioner therefore recommends that Northern Constabulary writes to the applicant setting out its position on Inspector J's actions in the context of the applicant's complaint.

Finally, although this matter was treated by Northern Constabulary as a complaint, it does not appear to have been formally recorded as such. Accordingly the Commissioner recommends that Northern Constabulary now take steps to do so.

Complaint 4: Time taken to deal with enquiries

In his letter to Northern Constabulary of 12 March 2008 the applicant stated that the time taken to reply to his enquiries and send a report to his insurance company was "prolonged and unsatisfactory". He asked Northern Constabulary to justify the delays.

Internal Handling

Superintendent G confined his enquiries to the issues raised by complaint 1 above but acknowledged that other aspects also required to be addressed.

In his letter of 8 May 2008 Chief Inspector F stated the following:

"... it was found that the required timescales for submission of reports on the incident had not been met by the Investigating Officer. This caused the inordinate delay in dealing with your claim..."

The officer involved is to be counselled by a senior Police Officer..."

Consideration

This complaint concerns the length of time taken to produce a report to the applicant's insurance company but also the time taken to respond to his own enquiries. This appears to be a reference to the fact that the applicant's letter of 5 November 2007, in which he sought a review of the decision not to report the incident to the Procurator Fiscal, was not responded to until 1 February 2008.

Although Chief Inspector F acknowledged that there had been an inordinate delay in dealing with the applicant's insurance claim, no apology was offered in relation to this. Chief Inspector F also made no reference to the delay in responding to the applicant's letter of 5 November 2007.

For these reasons the Commissioner does not consider that this complaint was handled in a reasonable manner. The Commissioner recommends that Northern Constabulary responds to the applicant's complaint about his letter of 5 November 2007. The Commissioner also recommends that Northern Constabulary apologises for what it concedes was the inordinate delay caused by the failure to meet reporting timescales.

Conclusions, Recommendations and Learning

Complaint 1: Failure to report the incident

In the Commissioner's view, the manner in which this complaint was dealt with by Northern Constabulary was reasonable. Accordingly no further action is required in this connection.

Complaint 2: Failure to report in sufficient time

In the Commissioner's view, the manner in which this complaint was dealt with by Northern Constabulary was reasonable. Accordingly no further action is required in this connection.

Complaint 3: Alleged influence in the decision not to report

In the Commissioner's view, the manner in which this complaint was dealt with by Northern Constabulary was not reasonable. The Commissioner recommends that Northern Constabulary obtain a statement from Constable C's supervising officer to establish whether he/she had any contact with Inspector J in connection with the decision to report the incident to the Procurator Fiscal. A further response should be issued to the applicant in the light of these enquiries.

The Commissioner also recommends that Northern Constabulary writes to the applicant setting out its position on Inspector J's actions in the context of the applicant's complaint.

Finally, although this matter was treated by Northern Constabulary as a complaint, it does not appear to have been formally recorded as such. Accordingly the Commissioner recommends that Northern Constabulary now take steps to do so.

Complaint 4: Time taken to deal with enquiries

In the Commissioner's view, the manner in which this complaint was dealt with by Northern Constabulary was not reasonable. The Commissioner recommends that Northern Constabulary responds to the applicant's complaint about his letter of 5 November 2007. The Commissioner also recommends that Northern Constabulary apologises for what it concedes was the inordinate delay caused by the failure to meet reporting timescales.

As a learning point the Commissioner would remind all policing bodies that when a failure to deliver a satisfactory service is identified an apology should be issued to the complainer as a matter of course.

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