

# Report of a Complaint Handling Review in relation to Dumfries and Galloway Constabulary

under section 35(1) of the Police Public Order

## **Summary and Key Findings**

The applicant was involved in court proceedings with his former wife regarding a residency order for their children. The applicant believes that several individuals provided false information in relation to these proceedings. The applicant reported this to Dumfries and Galloway Constabulary (D&G), believing it to constitute the crime of perverting the course of justice. The applicant thereafter submitted a complaint to D&G about the way in which his allegation was dealt with.

The Commissioner concluded that the applicant's complaint was handled in a reasonable manner by D&G.

## The Commissioner's role

Section 35 of the Police Public Order and Criminal Justice (Scotland) Act ("the Act") gives the Commissioner the power to examine the manner in which a policing body has dealt with a "relevant" complaint, as defined in the Act.

The Commissioner is independent of the police service and performs his functions in a fair and impartial manner. Before considering a complaint, the Commissioner's office obtains all papers held by the policing body against which the complaint has been made. These papers are considered alongside information provided by the applicant. The Commissioner then assesses whether the policing body's handling of the complaint was reasonable in all the circumstances. The Commissioner will look at the entire handling process, from the initial investigation by the policing body to the final response issued to the applicant. Among the factors which the Commissioner takes into account are the following:

- whether the policing body's response to the complaint is supported by all material information available;
- whether in dealing with the complaint the policing body has adhered to all relevant policies, procedures and legal provisions;
- where the complaint has resulted in the policing body identifying measures necessary to improve its service, whether these measures are adequate and have been implemented;
- whether the policing body's response to the complaint is adequately reasoned; and
- whether the policing body has communicated with the applicant in a reasonable manner.

## Background

In around September 2004 the applicant separated from his wife, Mrs A, with whom he has two children. The applicant subsequently requested overnight contact with his children, which Mrs A refused. The applicant thereafter raised court proceedings in this connection.

It appears that as part of this process a letter was provided by Mrs B to Mrs A's solicitor (Mr C) on 28 May 2006. The letter contained an account of the applicant having behaved in a threatening manner towards Mrs A. The applicant became aware of the contents of the letter and his solicitor wrote to Mrs B on 12 June 2006 stating that the applicant considered her remarks to be libellous and requesting that Mrs B apologise. Mrs B replied by letter on 12 July 2006 stating that she was satisfied that the contents of her letter were true and refusing to apologise in this connection. On 19 June 2006 the applicant's solicitor also wrote to Mrs D (Mrs A's mother) refuting statements she apparently made about the applicant to a Miss E. On 3 January 2007 the applicant wrote to Mrs A, Mrs B and Mrs D stating that their allegations about him were "repudiated" and that their individual actions amounted to a perversion of the course of justice.

In April 2007 Mrs A began divorce proceedings and obtained a residence order in relation to the children. According to the applicant, he did not oppose the divorce or the residency order and received an extract decree of divorce on 7 June 2007.

The applicant later claimed that the address recorded in the residence order granted by the court was not the address at which Mrs A was residing. According to the applicant, Mrs A and their children were staying with Mr G at a different address. That address, the applicant claimed, was not suitable as it had only three bedrooms. The applicant attempted to appeal the residency order

on the basis that Mrs A had, according to him, given a false address in order to obtain the order. On 28 December 2007, the appeal was rejected.

According to the applicant, prior to the appeal hearing he was provided with two affidavits which had been provided when the residence order was initially granted. These affidavits were sworn by Mrs D and Mrs A and contain their accounts of the applicant's relationships with Mrs A and his children. The applicant claims that the information contained in these affidavits is false.

On 13 January 2008 the applicant wrote to Dumfries and Galloway Constabulary ("D&G") asking it to investigate Mrs A and Mr C for obtaining a residence order and legal aid by providing a false address and affidavit to the court. The applicant also made allegations against Mrs D for swearing a false affidavit, and against Mrs B for making false allegations against him. In his letter the applicant repeated his belief that Mrs A, her solicitor Mr C, Mrs D and Mrs B had perverted the course of justice.

On 10 April 2008 Chief Inspector H responded to the applicant's allegations. In his letter he stated that he had consulted with the Procurator Fiscal who had determined that it would not be in the public interest to pursue such a case. Chief Inspector H informed the applicant that he should direct his complaint to the Courts Directorate of the Scottish Government.

The applicant wrote to Chief Inspector H on 17 April 2008 stating that the personal opinion of the Procurator Fiscal was "irrelevant" and asking if his allegations had been investigated. Chief Inspector H replied to the applicant on 23 April 2008 stating that the police had consulted with the Procurator Fiscal and referring the applicant to his letter of 10 April 2008.

The applicant then complained to the Scottish Government which passed the matter to the Scottish Court Service. The Court Service replied to the applicant stating that if he had evidence of illegal activities he should report this to the police. The applicant thereafter wrote to the Lord Advocate regarding his allegations. The response he received from Crown Office stated that he should report his concerns to the police who would then decide if it was appropriate to submit a report to the Procurator Fiscal.

On 23 September 2008 the applicant wrote to Chief Inspector H enclosing his correspondence with the Crown Office and stating that the Courts Directorate was unable to deal with criminal matters. Chief Inspector H wrote to the applicant on 2 October 2008 referring him to his letter dated 10 April 2008. On 5 October 2008 the applicant wrote to Chief Inspector H stating that if criminal proceedings were not instigated he would take legal action against D&G. Chief Inspector H replied on the 9 October 2008 stating that his position remained unchanged

## The Complaints

Based on the contents of the application form, the correspondence received from the applicant, and the information obtained from D&G the Commissioner has identified a single complaint, namely that D&G has failed to pursue an allegation made by the applicant.

## The Commissioner's Review

This section sets out the Commissioner's views on the manner in which the applicant's complaint was dealt with by D&G. Further details of the complaint are provided, followed by a summary of the way it was handled and the Commissioner's views on this.

In his letter to D&G dated 12 November 2008 the applicant described his complaint as follows:

*"Re: Report of criminal activity at [court], I write to officially complain about the failure of Dumfries and Galloway Police in dealing with the above matter."*

### *Internal Handling*

D&G recorded the applicant's complaint in a Complaint about the Police (CAP) form in which it was categorised as one of service delivery. The CAP form described the applicant's complaint as follows:

*"Dissatisfied that police won't pursue his complaint of attempting to pervert the course of justice by his ex wife's solicitors at [court] during custody proceedings."*

Statements, dated 5 January and 26 February 2009, were obtained from the applicant in relation to his complaint. On 27 January 2009, Chief Inspector J submitted a report to the then Area Procurator Fiscal, Mr K, in relation to the applicant's complaint. The purpose of the report was to obtain guidance from Mr K on the following:

- whether the circumstances described by the applicant amounted to a crime under Scots law; and
- if so, whether there was merit in the police carrying out further investigation into the matter with a view to reporting it to the Procurator Fiscal for possible prosecution.

On 11 March 2009 Mr K wrote to the Deputy Chief Constable in the following terms:

*"I consider this is not an allegation from which it may reasonably be inferred that a Police Officer has committed a criminal offence and I have informed the complainer accordingly.*

*The complaint may therefore be investigated as a disciplinary matter. If, during the disciplinary investigation, there is disclosed evidence of other behaviour which amounts to criminal conduct, the matter should be re-referred to me."*

On the same date, Mr K wrote to the applicant. The letter is headed "Complaint about the Police by You" and contains the following passages:

*"I refer to your complaint to Dumfries and Galloway Constabulary arising out of the circumstances of your divorce. The police have reported the matter to me.*

*I have considered the statements and supporting material which you have provided to the police. I now write to advise you that I am satisfied that there is no basis for pursuing your complaint in the criminal justice system."*

On 24 March 2009, Chief Inspector J responded to the complaint as follows:

*"As you are aware, a subject report summarising your concerns, together with your statement of complaint and additional supporting documentation supplied by you was submitted to the Area Procurator Fiscal for his consideration. The Area Procurator Fiscal has now intimated that he is satisfied that there is no basis for pursuing your complaint in the criminal justice system.*

*Given that decision no further enquiry will be undertaken by Dumfries and Galloway Constabulary into the matter."*

### *Consideration*

As noted above, following the applicant's complaint Chief Inspector J sought the advice of the then Area Procurator Fiscal, Mr K, on whether the circumstances described by the applicant amounted to a crime and, if so, whether further police investigation was merited. However, there is no

evidence in D&G's file to indicate that such advice was received. Initially it appeared to the Commissioner that Mr K had not dealt with the requests made by Chief Inspector J in his report, and had instead considered whether the applicant's complaint inferred criminality on the part of police officers. The Commissioner's office therefore approached D&G to obtain its position on the matter.

In correspondence with the Commissioner's office dated 21 July 2010, Chief Inspector J stated that he had discussed matters with Mr K at a meeting on 19 January 2009. It was agreed at the meeting that Chief Inspector J would submit a report to Mr K detailing the applicant's concerns. It was considered that these potentially amounted to a criminal allegation of neglect of duty on the part of the officers concerned.

According to Chief Inspector J, the matter was discussed with Mr K again at a meeting on 23 February 2009 when the latter advised that he wished to consider the matter further before reaching a final decision. Subsequent to this meeting Mr K advised Chief Inspector J that it was not a criminal matter and that no further investigation was required. According to Chief Inspector J Mr K gave the reasons for his decision verbally but not in writing. Chief Inspector J was therefore unable to provide an audit trail regarding the decision.

Chief Inspector J acknowledged that Mr K's letter to the Deputy Chief Constable of 11 March 2009 could have been clearer but explained that he was fully aware that Mr K had considered the requests he made in his report of 27 January 2009.

As there was no audit trail of the decision-making, Chief Inspector H obtained the views of the current Area Procurator Fiscal, which reflected those which had been expressed by Mr K. In correspondence with Chief Inspector J, the current Area Procurator Fiscal stated that there was a note in the file confirming that Mr K had considered the applicant's allegations of perverting the course of justice and the reasons for his decision not to take any further action.

In the Commissioner's view, despite the absence of an audit trail within D&G's complaint file, it is clear that the issues raised by Chief Inspector J in his report of 27 January 2009 were considered by Mr K who decided to take no further action in respect of them. It must also be emphasised that prior to submitting his complaint to D&G, on 10 April 2008 the applicant was advised by Chief Inspector H that the Procurator Fiscal had determined it was not in the public interest to pursue the allegations.

In these circumstances, the Commissioner considers that the applicant's complaint was dealt with in a reasonable manner by D&G. Accordingly, no further action is required in this connection.

## Conclusions, Recommendations and Learning

In the Commissioner's view, the applicant's complaint was dealt with reasonably by D&G. Accordingly, no further action is required in this connection.

It is clear, however, that D&G maintained an inadequate audit trail of Mr K's decision in respect of the issues raised by Chief Inspector J in his report of 27 January 2009. This initially gave rise to doubts on the part of the Commissioner that the issues had been addressed. As a learning point, the Commissioner would highlight the importance of maintaining auditable, accurate records of enquiries and other work undertaken in dealing with complaints. This issue has been raised by the Commissioner in a previous complaint handling review involving D&G (see PCCS/00208/PF-D&G)

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