

# 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 son was found dead in 1997. On 18 March 2009 the applicant wrote to the Chief Constable making criminal allegations against police officers and naming members of the public whom he believed had information relating to Mr A's death. The applicant has complained that the information he provided was not investigated by Northern Constabulary; the applicant also complained about the content of a letter sent to him by Northern Constabulary.

Of the two complaints considered in this review, the Commissioner found that one was handled reasonably while the other was not. The Commissioner made two recommendations in this connection.

## 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 son (Mr A) was found dead in 1997. A Fatal Accident Inquiry returned an open verdict in relation to the cause of death. However, the applicant believes that Mr A was murdered.

On 18 March 2009 the applicant wrote to the Chief Constable of Northern Constabulary. In his letter the applicant makes criminal allegations against police officers and names members of the public whom he believes have information relating to Mr A's death. The applicant also comments that a doctor told the Fatal Accident Inquiry that the injuries sustained by Mr A were consistent with a "martial arts kick."

On 14 April 2009 Detective Superintendent B wrote to the applicant, stating:

*"Page one of your letter contains accusations of serious crime which are alleged to have involved serving or retired officers. Whilst it appears that you, or representatives of your family, have made similar and generalised allegations of this nature prior to this occasion, the specific nature of this information, which now identifies those with knowledge and implicates individuals, compels further action to determine the veracity of these accusations. I have therefore taken steps for immediate referral of this matter to the Deputy Chief Constable."*

In relation to the identification of members of the public whom the applicant claims have information relating to the death of Mr A, Detective Superintendent B's letter states:

*"Such material falls within the parameters of 'new information' and as such must be addressed in terms of the direction and protocol advised to you by [Mr C], the then*

*Procurator Fiscal, based at [location] in his letter to you of 7<sup>th</sup> August 2002, in that all such communication involving what is perceived to be new information should be directed by you to the Procurator Fiscal at [location] in the first instance, to allow consideration as to whether further police enquiry is to be undertaken. Although already copied into this information, I will communicate with the Procurator Fiscal as appropriate.”*

In his letter Detective Superintendent B comments on the statements made by the applicant about the medical opinions of pathologists at the Fatal Accident Inquiry. He states:

*“... I must advise that all matters of medical opinion provided by a number of experienced pathologists have been well documented and made available, and commonly provide a position which records that injuries were sustained accidentally. This is in keeping with the outcome of all enquiries, investigations and judicial examinations carried out to date, which have collectively determined the current status of the case being concluded.*

*Both the Procurator Fiscal and Crown Counsel have advised that the enquiry into this tragic death has been concluded. They have asserted that there is no evidence which supports the premise of criminality, and have affirmed the case is closed. This also reflects the position of Northern Constabulary, subject only to any pertinent direction of the Procurator Fiscal. ”*

On 15 April 2009 Detective Superintendent B wrote to the Procurator Fiscal in relation to the “new” information contained in the applicant’s letter of 18 March 2009. Detective Superintendent B enclosed a copy of the applicant’s letter and thereafter awaited instruction from the Procurator Fiscal.

On 20 April 2009 Chief Inspector D wrote to the Area Procurator Fiscal in relation to the applicant’s criminal allegations. In his letter Chief Inspector D stated that the Deputy Chief Constable had agreed that the matter should be raised as a complaint about the police. Chief Inspector D’s letter also stated that the Deputy Chief Constable had instructed him:

*“to forward the [applicant’s] letter and associated correspondence to you, to seek your direction in regard to any enquiry you wish to be undertaken in this regard.”*

On the same date Chief Inspector D wrote to the applicant stating that the matters raised in his letter of 18 March 2009 were being treated as complaints about the police and were being referred to the Area 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 Detective Superintendent B referred to the case involving Mr A as concluded and to Mr A’s injuries as having been sustained “accidentally”.
- (2) that Detective Superintendent B and Chief Inspector D did not investigate information provided by the applicant.

## The Commissioner’s Review

This section sets out the Commissioner's views on the manner in which the complaints were handled by Northern Constabulary.

### Complaint 1: Reference to case being "closed" and injuries being sustained accidentally

On 22 April 2009 the applicant wrote to the Deputy Chief Constable stating:

*"Please regard this letter as a formal complaint regarding Detective Superintendent [B] who is totally unmindful of our situation by issuing a catalogue of misinformation in his letter of 14 April 2009.*

*Clearly [Detective Superintendent B] arbitrarily decides on his own behest to over rule the FAI Determination in 1998, the Cameron Report in 2002, the PCCS report in 2007, and his own superior [Chief Constable] in 2008, where he informs me that the case of my son [Mr A] is now concluded – Closed."*

In his letter the applicant quotes an apparent extract from the Chief Constable's letter to him dated 31 January 2008:

*"Whilst the case is subject to periodic internal review and is in that sense, **still open** I see no opportunity or reasoning to support a more wide-ranging review given the actions and investigations undertaken by the Constabulary have been subject to independent consideration by the Crown on a number of occasions."* [emphasis added by the applicant]

On 5 May 2009 the applicant wrote to the Deputy Chief Constable requesting that Detective Superintendent B apologise for stating that Mr A's death was accidental.

#### Internal Handling

On 8 May 2009 Chief Superintendent E responded to the applicant's letters of 22 April 2009 and 5 May 2009. He states:

*"I have found Detective Superintendent [B's] letter to you, dated 14<sup>th</sup> April 2009 neither mendacious, unprofessional, disrespectful, improper, nor do I find his integrity or credibility in this matter requiring to be questioned.*

*Detective Superintendent [B] has accurately summarised to you our view of the findings of the pathologists in regard of [Mr A's] death. You rightly point out that the Fatal Accident Inquiry did not come to a definitive conclusion in regard to [Mr A's] death, but indeed it did concede accidental death as a distinct possibility. The Northern Constabulary position is that such is the conclusion we accept, unless evidence to the contrary is found ...*

*I therefore also find that there is no basis for Detective Superintendent [B] to withdraw the contents of his letter to you dated 14<sup>th</sup> April 2009, nor indeed apologise to you for this."*

#### Consideration

The applicant has two complaints in relation to Detective Superintendent B's letter: (a) that Detective Superintendent B refers to the case involving Mr A as concluded and (b) that Detective Superintendent B refers to Mr A's injuries as having been sustained accidentally.

In relation to (a), Chief Superintendent E did not specifically address this issue in his letter of response. In terms of the Chief Constable's letter of 31 January 2008, the case involving Mr A is still open in that it is subject to periodic internal review. As noted above, Detective Superintendent

B referred to the case as being “concluded” which, in the Commissioner’s view, is not necessarily inconsistent with the case still being “open”. The Commissioner unclear as to the information which has been provided to the applicant by the Crown; however, in the Commissioner’s view, there is scope for confusion in the information which has been given to the applicant by the Chief Constable and Detective Superintendent B. Accordingly, the Commissioner recommends that Northern Constabulary write to the applicant clarifying the current status of the case.

In relation to (b), in a complaint handling review conducted in 2007 the Commissioner recommended that the Chief Constable apologise to the applicant for having described Mr A’s death as a “tragic accident”. The basis for this recommendation was the finding of the Fatal Accident Inquiry which returned an “open” verdict in relation to Mr A’s death. The Fatal Accident Inquiry heard a substantial amount of evidence in relation to Mr A’s death but the sheriff was unable to establish whether Mr A’s injuries resulted from an assault or accidental fall. In these circumstances, the Commissioner does not consider it appropriate for Northern Constabulary to imply to the applicant that Mr A’s injuries were sustained accidentally.

The Commissioner therefore does not consider that this complaint was dealt with in a reasonable manner. The Commissioner recommends that Northern Constabulary apologise to the applicant for implying that Mr A’s death was accidental.

## Complaint 2: Failure to investigate the information in the applicant’s letter

On 13 May 2009 the applicant wrote to the Chief Constable stating:

*“I write to lodge a formal complaint regarding the conduct of your Deputy Chief Constable ... Detective Superintendent [B] and Chief Inspector [D], who together or individually failed in their duties to properly investigate the information in my letter of 18 March 2009...*

*... Instead of investigating this new and significant information, they all, or individually, referred my information to [Mr F], the Area Procurator Fiscal as ‘ Complaints About The Police’, which you, and they, are clearly well aware was not complaints.*

*May I please remind you and for your information the issue regarding new information, of which you yourself stated at the meeting of apology on 19<sup>th</sup> December 2007 in [location], and in your letter of 30<sup>th</sup> January 2008,*

***‘Any new information which you might have should be shared with either the Constabulary or the Crown. I can assure you that any new information shared directly with the Constabulary would be brought to the attention of the Crown and direction sought regarding any consideration of subsequent investigation.’***

*Therefore, why was my new and significant information which I provided to you on 18 March 2009 referred to the Area Procurator Fiscal as Complaints and not investigated by your force.” [emphasis in original]*

### Internal Handling

On 18 May 2009 the Chief Constable wrote to the applicant referring his complaint about the Deputy Chief Constable to the Northern Joint Police Board. On 22 May 2009 Chief Superintendent E responded as follows to the applicant’s complaints about Detective Superintendent B and Chief Inspector D.

*“The matters raised in your letter of 18 March 2009 contained allegations of criminal conduct by police officers and therefore required to be referred to the Area Procurator Fiscal. This is the correct procedure within Northern Constabulary....*

*... In your letter of 13 May 2009 you question why any new information shared by you with Northern Constabulary was not brought to the attention of the Crown. In referring the matter to the Area Procurator Fiscal, this was clearly achieved – ie, the Area Procurator Fiscal is the Crown representative.”*

### *Consideration*

The Commissioner has little to add to Chief Superintendent E’s response to this complaint. Northern Constabulary followed the correct procedure by providing the applicant’s information to the Procurator Fiscal. As such the Commissioner considers the response to the applicant’s complaint to be reasonable.

The Commissioner considers the handling of the complaint about the Deputy Chief Constable by Northern Joint Police Board in a separate report.

### **Conclusions, Recommendations and Learning**

#### **Complaint 1: Reference to case being “closed” and injuries being sustained accidentally**

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 writes to the applicant clarifying the current status of the case. The Commissioner also recommends that Northern Constabulary apologises to the applicant for implying that Mr A’s death was accidental.

#### **Complaint 2: Failure to investigate the information in the applicant’s letter**

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.

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