

Report of a Complaint Handling Review in relation to Lothian and Borders Police

under section 35(1) of the Police Public Order
and Criminal Justice (Scotland) Act 2006

Summary and Key Findings

The applicant's complaints arise from his home being searched under warrant by Lothian and Borders Police officers.

Of the four complaints raised by the applicant, the Commissioner found that two of them were dealt with in a reasonable manner while the remaining two were not. The Commissioner made two recommendations and also identified a learning point.

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 March 2009 Lothian and Borders Police obtained a warrant to enter the applicant's home and seize any computers, cameras and other forms of data storage. The warrant was granted on the basis of intelligence received by Lothian and Borders Police to the effect that the applicant was in possession of indecent images which he had downloaded onto his computer and personally recorded on a recent trip to Country Z.

Detective Sergeant A, Detective Constables B, C and D, and Constable E attended the applicant's home on 17 March 2009. All officers involved state that they knocked on the door for several minutes and that Detective Sergeant A shouted identifying himself as a police officer. According to the officers after receiving no response Detective Sergeant A authorised use of a police ram to gain entry to the property.

When the officers entered the property they found the applicant inside. He was thereafter handcuffed and taken into his living room by Detective Constable B who cautioned him and read over to him the contents of the warrant.

The police seized a number of items including a video camera, two cameras and numerous tapes, but found no computer equipment. When the search was concluded Detective Constable B questioned the applicant in the presence of Detective Constable C. The applicant was asked if any of the items seized contained indecent material, to which he replied that they did not. He also stated that he had never owned a computer and had never been to Country Z. The applicant told the officers that he was being victimised and that someone had set him up. The applicant asked to

be told the identity of the person who provided the intelligence upon which the warrant had been granted. The officers told him that they did not know the source of the intelligence and would not be able to find out.

No indecent material was found as a result of the search. On 9 April 2009, Detective Constable B and Constable E attended the applicant's home to return the items.

The Complaints

Based on the contents of the application form, the correspondence received from the applicant, and the information obtained from Lothian and Borders Police, the Commissioner has identified the following complaints:

- (1) that Lothian and Borders Police did not take action against the informant
- (2) that police officers forced the applicant's door without first knocking;
- (3) that police officers were uncivil towards the applicant during the search; and
- (4) that police officers left the applicant's house in a "state of disarray".

The Commissioner's Review

This section sets out the Commissioner's views on the manner in which the complaints were handled by Lothian and Borders police. Each complaint is set out in turn and is followed by details of Lothian and Borders Police's handling of it and the Commissioner's views on this.

Complaint 1: Action not taken against the informant

The applicant first made Lothian and Borders Police aware of his complaints regarding this incident by sending a handwritten letter which they received on 24 November 2009. Attached to the letter was a copy of a letter written by his solicitor dated 10 June 2009. The handwritten letter advised that he wished to complain about the issues raised in the solicitor's letter but also wanted to make a further complaint regarding the incident. The solicitor's letter does not mention this particular complaint however the handwritten letter expresses it by stating:

"There are further reasons for my complaint which my solicitor failed to mention in his report

When the police invaded my home on 17th March 2009 I was told by DC Inspector [B] that they were acting on information received ...

... I asked Mr [B] to tell me the source of this misinformation but he wouldn't reveal this to me. I strongly believe that if this was true the person responsible for the allegation should be prosecuted the same as if a call was made to the fire brigade when there was no fire or a hoax call to the ambulance service when there was no accident. In fact there were no justifiable grounds for the invasion of my home by the police."

The complaints were allocated to Inspector F who attended the applicant's home address on 22 December 2009. Inspector F completed his report on 21 March 2010 in which he described his visit to the applicant's home as follows:

"... the complainer claimed the information the officers were acting upon was malicious and he demanded to know the details of the informant ...

... He likened the issue to someone making a false '999' call, arguing that we always managed to establish who made them and prosecute them."

The applicant was sent a letter of response dated 26 April 2010 which referred to the other complaints the applicant had made regarding this incident, but made no mention of this particular complaint.

Consideration

Requests by individuals for personal data are ultimately dealt with by the (UK) Information Commissioner. Consequently, the question of whether Lothian and Borders Police was correct in not supplying the applicant with the information requested is not dealt with in this report.

There is, however, another aspect to the applicant's complaint, namely that the police failed to take any action against the informant for providing what the applicant alleges was false information. Although the manner in which this complaint was expressed by the applicant was vague, it was sufficiently clear to have alerted Lothian and Borders Police to his concerns. In the Commissioner's view, Lothian and Borders Police ought to have responded to this complaint or, at the very least, have obtained a statement from the applicant clarifying his concerns.

In these circumstances, the Commissioner does not consider that this complaint was dealt with in a reasonable manner. The Commissioner recommends that Lothian and Borders Police now issues the applicant with a response to this complaint, seeking any clarification from him considered necessary.

Complaint 2: The forcing of the applicant's door

In his letter of 10 June 2009 the applicant's solicitor stated the following:

"[The applicant] states that the officers had smashed through his front door without knocking or shouting and if they had simply knocked he would have been happy to let them in."

Internal Handling

As part of the enquiries into this complaint, operational statements were obtained from all five of the officers involved in the search of the applicant's home. Detective Sergeant A described the events as follows:

"I knocked for several minutes and declared who we were by shouting identifying myself and asking [the applicant] to open the door, to the extent that a neighbour opened their door to see what was going on ...

... As we had declared who we were and residents in the stair had known of our presence and as I believed that [the applicant] was within the address and had the potential to dispose and destroy crucial evidence I authorised that we force entry."

The other officers involved all gave statements supportive of Detective Sergeant A's description of events. On 18 March 2010 Inspector F interviewed one of the applicant's neighbours who confirmed that they had seen and heard the officers knocking and then banging on the applicant's door.

In his letter of response to this complaint dated 26 April 2010, the Deputy Chief Constable stated the following:

"In your letter you allege that the officers who forced entry to your property should have knocked and waited for you to open the door. I understand that the officers did indeed do this, such that a neighbour opened their door to see what the noise was. Having waited a time, officers were empowered by the warrant and authorised by their supervisor to force entry. I consider their actions to be lawful and proportionate to the enquiry..."

... as there is no corroboration for your claims, I am unable to substantiate them."

Consideration

The only evidence in support of the applicant's allegation comes from the applicant himself, and given that five police officers and one apparently independent witness all refute the allegation, it was entirely reasonable for Inspector F to find this complaint unsubstantiated. In addition, the Commissioner considers that the findings of the investigation were adequately conveyed in the Deputy Chief Constable's letter of response.

The Commissioner is therefore satisfied that this complaint was dealt with in a reasonable manner. Accordingly no further action is required in this connection.

Complaint 3: Alleged incivility

The applicant's solicitor stated the following in his letter of 10 June 2009:

"We are instructed to lodge a formal complaint about the attitude and behaviour of the officers which [the applicant] has described as aggressive. He has advised us that snide comments were made and he was asked "Have you been to [Country Z] recently and been up to no good?..."

... he found the comments offensive as the clear inference was that the officers were inferring that he was some kind of sex tourist."

Internal Handling

The operational statements obtained from the five attending officers all make reference to this complaint. In her statement, Detective Constable C stated the following:

"I remained with [the applicant] throughout and can confirm that all parties present were polite and professional at all times. At no time did I hear any person making any form of derogatory remark or comment about [the applicant's] travels to [Country Z]."

The statements of the other four officers support Detective Constable C's version of events. Inspector F noted the following in his report:

"In the initial letter of complaint, it is highlighted that the officers had aggressive attitudes, made a throw away comment thus, 'Have you been to [Country Z] recently and been up to no good?' The complainer did not mention this when I attended at his home to discuss the matter. When I raised it, he glossed over the comments made and changed the subject. He could not be specific about what was said nor could he describe the officer who allegedly said it. He was so vague that he could not say whether it was a male or female officer.

The officers involved in this incident deny this allegation. There is no evidence to support it."

In his response to this complaint the Deputy Chief Constable stated the following:

"I understand that you considered the officers to have been aggressive and claim one made a throwaway comment thus, 'have you been to [Country Z] recently and been up to no good?'...

... The officers involved reject this comment being made and deny having made it. They have been made aware that you considered them to be aggressive but disagree with this.

As there is no corroboration for your claims, I am unable to substantiate them"

Consideration

In the Commissioner's view, Lothian and Borders Police considered all of the available evidence and reached a reasonable conclusion in respect of the complaint. Inspector F's finding was also clearly communicated to the applicant in the letter of response.

The Commissioner is therefore satisfied that this complaint was dealt with in a reasonable manner. Accordingly no further action is required in this connection.

Complaint 4: The condition of the applicant's home following the search

The applicant's solicitor stated the following in his letter of 10 June 2009:

"[The applicant] advised that he tried to ask various questions of the officers and he was given no information or response and they simply left his house in a state of complete disarray"

Internal Handling

Inspector F stated the following in his report:

“The officers involved in this incident admit they moved items during the search but deny that it was a disruptive search. The only damage recorded is that to the door. The officers deny this allegation. There is no evidence to support it.

In his letter of response the Deputy Chief Constable stated the following:

“The letter also states that the officers left your house in ‘complete disarray’...

... [The officers involved] deny your property was left in a mess.

As there is no corroboration for your claims, I am unable to substantiate them.”

Consideration

Contrary to the terms of Inspector F’s report and the Deputy Chief Constable’s response, none of the officers present during the search mentions this complaint in their respective statements. Accordingly there is no basis in evidence for the finding that the officers denied this allegation.

During the course of the review the Commissioner’s office sought clarification from Lothian and Borders Police as to the source of the comments made by Inspector F and the Deputy Chief Constable. In an email dated 5 October 2010 Lothian and Borders Police provided the following response from Inspector F:

“With reference to the enquiry regarding the search, I spoke with [Detective Constable B] regarding the allegation that the property was left in a mess. It was not covered in any statement. [Detective Constable B] advised me that there had been no mess. Items were moved to facilitate the search but replaced. The only damage was to the door.”

As noted above, the Deputy Chief Constable’s response clearly suggests that all the officers involved in the search denied that the applicant’s home was left in a mess as a result. However, it is clear from the passage quoted above that the only enquiry made by Inspector F in this connection was to speak to Detective Constable B. There is accordingly one source of evidence in support of the complaint (the applicant) and one source disputing it (Detective Constable B). In the Commissioner’s view, that is an entirely different scenario from the one portrayed in Inspector F’s report and the Deputy Chief Constable’s response.

The manner in which Inspector F apparently obtained Detective Constable B’s account raises a further issue. In circumstances where a decision in respect of a complaint is based on evidence given by a witness, it is essential that an auditable record of their account is produced. Failure to do so gives rise to uncertainty regarding the content of the witness’s evidence or indeed as to whether any account has been given by the witness at all. It is plainly unacceptable for a decision in respect of a complaint to be reached based on informal, apparently unrecorded discussions with a witness.

In these circumstances, the Commissioner does not consider that this complaint was dealt with in a reasonable manner. The Commissioner recommends that Lothian and Borders Police seeks from the officers involved in the search their positions with regard to this complaint and issues the applicant a further response in light of these.

Conclusions, Recommendations and Learning

Complaint 1: Action not taken against the informant

In the Commissioner's view, this complaint was not dealt with in a reasonable manner. The Commissioner recommends that Lothian and Borders Police now issues the applicant with a response to this complaint, seeking any clarification from him considered necessary.

Complaint 2: The forcing of the applicant's door

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

Complaint 3: Alleged incivility

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

Complaint 4: The condition of the applicant's home following the search

In the Commissioner's view, the manner in which this complaint was dealt with by Lothian and Borders Police was not reasonable. The Commissioner recommends that Lothian and Borders Police seeks from the officers involved in the search their positions with regard to this complaint and issues the applicant a further response in light of these.

Learning Point

The Commissioner would remind Lothian and Borders Police of the need to maintain auditable records of all enquiries undertaken into complaints and the evidence on which its conclusions are based.

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