

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 (then aged 13) made an allegation of rape against a 17 year old male.

The applicant was dissatisfied with how Northern Constabulary investigated her allegation and made a number of complaints. The Commissioner found that, of the 18 complaints contained within this review, 15 were not handled in a reasonable manner and has recommended further work be carried out in relation to 10 of these.

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 (then aged 13) attended the same school as Mr A and Mr B (both then aged 17). According to the applicant she was in a relationship with Mr A and was friends with Mr B. The applicant's mother (Mrs C) states that on 29 September 2003 the applicant told her that Mr B had "tried it on with her". Mrs C describes her conversation with the applicant as follows:

"... I asked her what she meant. She said 'I couldn't get him off'. She said 'that he had grabbed her breasts'. She said that [Mr A] knew about this. I said 'don't you think it would have been responsible of him to let me or a teacher or somebody know because that was a sexual assault'."

On the same day the applicant's father (Mr D) became aware of the applicant's account and attended at Mr A's home seeking the address of Mr B. After failing to obtain the address, Mr D attended a police station and reported the circumstances to Northern Constabulary. According to the police log of the incident, on 30 September 2003 Mrs C was contacted by the police in pursuance of the report received by Mr D. The log states the following:

"... [Mrs C] informed me that she has discussed the matter with her daughter and that there is no intention to make a formal complaint regarding this incident. [Mrs C] was not prepared to discuss the matter any further."

On 1 October 2003 Northern Constabulary and the local authority social work department agreed to hold a joint enquiry into the matter. It appears that Mrs E of the social work department subsequently persuaded Mrs C to allow a statement to be obtained from the applicant by the police.

A statement was obtained from the applicant, at her home, on 2 October 2003 by Constable F in the presence of a social worker (Mrs G). The applicant's statement provides an account of two separate occasions when she engaged in consensual sexual acts with Mr A and one incident of sexual intercourse with Mr B. According to the applicant, the first incident with Mr A took place while on a school nature walk and the incident involving Mr B took place in a school hall during a morning break period. The information provided by the applicant at that time indicated offences having taken place under sections 5(3) and 6 of the Criminal Law (Consolidation)(Scotland) Act 1995.

The applicant's statement concluded by recounting the following conversation she had with Mrs C on 1 October 2003.

"...So on Wednesday night I told [Mrs C] everything about [Mr A and Mr B]. She sort of twisted it to make it all bad. I told her it wasn't and she said 'well you must be a little slut then'. I never said anything. I can't say anything back to her. She called me a tart and that for the rest of the night. She said that if I didn't say that I hadn't consented to it she was going to make me stay up here. I don't want to stay up here. I felt sad [Mrs C] would make me do that. I thought that if I told [Mrs C] she would understand. She said that she would be able to live better with it if I'd been raped rather than consented to it. She asked 'what are your cousins going to think?'. I asked 'what are you going to tell them?' She said nothing and walked away. I didn't want anything unnecessary to happen to [Mr B]. I didn't think [Mrs C] would make me do it. I told her that I wouldn't lie to the police and she said your going to have to if you want to move down south."

The applicant signed the statement, as did the social worker who was present.

According to the incident log, attempts were made by Northern Constabulary to arrange a medical examination for the applicant. The following entry details the discussion which Detective Sergeant H had with Mrs C in this connection:

"attempts were made to arrange a medical exam for [the applicant] but her mother stated that she was taking her to England to be examined. It was explained to [Mrs C] that this will not assist the enquiry and that it would be better for the exam to take place in Scotland. This is to be further discussed with [Mrs C] ... when she has spoken to [the applicant] who is currently sleeping."

The incident log also records the further contact between the police and Mrs C:

"[Mrs C] spoken to by [Inspector J] and she stated neither she nor [the applicant] wished the medical examination to go ahead. [Mrs C] was hostile and would not agree to any more contact with [the applicant] by police or social work. She stated the family were leaving this afternoon to go to [England]. [Doctor K] informed a medical would not now take place."

On 4 October 2003, Mr A and B were interviewed under caution. Both denied the allegations and also denied knowing the applicant or having had anything to do with her.

As the applicant had alleged that both Mr A and Mr B had sent text messages to her mobile phone, the phone records of Mr A, Mr B and the applicant were checked. These did not provide any evidence that the applicant had been in contact with either individual. One of the numbers saved in the applicant's phone under Mr A's name was subsequently found to be the number for a local business unrelated to Mr A. Two SIM cards belonging to the applicant were obtained by Detective Sergeant H and sent for analysis.

In October 2003, Detective Sergeant H obtained statements from a teacher and pupils who had been on the nature walk when the applicant was alleged to have had her first sexual contact with Mr A. According to these statements, only female pupils went on the walk. Detective Sergeant H also spoke to school staff and visited the area within the school where the applicant alleged that she had had intercourse with Mr B. Doubts were expressed over the applicant's credibility given that the area was "always populated by students during the morning break".

On 30 October 2003, Detective Sergeant H forwarded a report to the Procurator Fiscal detailing the progress and findings of his investigation thus far.

On 19 November 2003, Detective Constable L travelled to England where a further statement was obtained from the applicant. A social worker was again present at this interview, the purpose of which was to clarify aspects of the original statement which the applicant had provided to Constable F. During the interview, the applicant stated the following:

"In addition to the statement I made earlier to the police, I felt the police tried to make what happened between [Mr B] and I alright because I wasn't kicking and screaming they felt I had consented but I hadn't consented.

... I told [Mrs C] I didn't think what [Mr B] had done was rape and that's when she called me a slut, what happened between [Mr B] and I was something I really regret. I was scared because if I did anything he might fight back. I asked him to stop at one point, he did but then he carried on ...

... I don't want the Police to tell [Mrs C] what is in this statement."

Each page of the statement was signed by the applicant.

On 1 December 2003, Detective Constable L forwarded a further report to the Procurator Fiscal detailing his findings.

The applicant identified two pupils who saw her distressed after the incident with Mr B. Statements were obtained from these pupils both of whom denied having seen the applicant upset.

Statements were subsequently obtained from several other pupils who knew either the applicant and/or Mr A and Mr B. None of these statements provided any evidence of the applicant being in a relationship with Mr A or Mr B. Indeed, the statements commonly indicate that the applicant was never seen in the company of Mr A or Mr B.

During the police enquiries Mrs C apparently contacted Northern Constabulary stating that Mr M "had heard the older boys" planning the assault on the applicant. Enquiries by the police found no record of a Mr M at the school.

On 28 February 2004 the applicant's father Mr D contacted Northern Constabulary and reported that the applicant had received disturbing text messages which had caused her to self-harm. According to Northern Constabulary's record of the phone call Mrs C had told Mr D about the texts which were "of a sexual nature saying that they knew what happened with [Mr A]."

Subsequent enquiries into the number from which the text messages were sent established that it belonged to a Miss N, who according to Northern Constabulary, was:

"... either a very good friend of [the applicant] or is her cousin. She is the daughter of [Mrs O] whose address the applicant and [Mrs C] stayed in [England]."

On 5 August 2004 the applicant attended a police station in the Northern Constabulary area and repeated her allegation that she had been raped by Mr B on 18 September 2003. The applicant

also stated that on 19 September 2003 she received a letter from Mr A confirming that he had been in a relationship with her. According to the applicant, this letter also made reference to her being raped and that Mr A had himself been raped by an unidentified male, assisted by Mr B. The applicant provided a photocopy of this letter.

Given this new information, Detective Chief Inspector P was tasked with reviewing the original investigation to identify any new lines of enquiry. On 18 August 2004, Detective Chief Inspector P and Detective Constable Q met with the applicant and Mrs C at police headquarters where they were informed by the applicant that she had been the victim of further sexual offences. According to Detective Chief Inspector P's subsequent report, the applicant would not provide any additional details due to a "mistrust of the police".

On 26 August 2004 Mr A was interviewed by Detective Sergeant R and Detective Inspector S. Mr A denied any knowledge of the letter. He also denied having had any relationship with the applicant or been the victim of a sexual assault. In addition, samples of Mr A's handwriting were obtained which bore "no resemblance" to the handwriting in the letter given to police by the applicant.

On 27 August 2004, Detective Chief Inspector P forwarded a report to the Procurator Fiscal explaining that no evidence had been found corroborating the applicant's allegations.

On 24 September 2004, the applicant was medically examined by Doctor T at a victim support suite in Northern Constabulary area. The examination was terminated due to the applicant finding the procedure painful.

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 the police interview of 2 October 2003 was not conducted appropriately for the following reasons:

- (a) the applicant was forced into making a statement after refusing to do so
- (b) the applicant was not given any break during the interview
- (c) Constable F made inappropriate comments during the interview
- (d) the applicant was shown no sympathy, understanding or support
- (e) the applicant's mother was not allowed to sit in on the interview and the applicant not informed of her right to have an appropriate adult present
- (f) the interview was not recorded
- (g) the applicant was asked leading questions
- (h) the applicant was asked to sign paperwork without explanation
- (i) the reasons for taking no further action were not fully explained

(2) that the applicant was not allowed access to a sexual assault centre;

(3) that the applicant was not allowed access to a family liaison officer;

- (4) that a medical examination was not arranged for the applicant following her move to England;
- (5) that a “forensic surgeon” was not present during the applicant’s medical examination;
- (6) that new information provided by the applicant was not taken seriously;
- (7) that police officers were oppressive and threatening towards the applicant;
- (8) that Northern Constabulary maintained that the applicant requested certain information was not to be disclosed to her mother
- (9) that Northern Constabulary alleged that the applicant’s mother forced her into making the allegation that she had been raped; and
- (10) that the police investigation was poorly conducted.

The applicant initially wrote to Northern Constabulary on 15 September 2006 complaining about the service she had received and that Constable F had behaved in an unethical and unprofessional manner.

Upon receipt of the applicant’s letter, Inspector U was asked by the Deputy Chief Constable to provide a briefing note on the issues raised by the applicant. On 26 October 2006, Inspector U submitted a memorandum detailing the circumstances behind the applicant’s allegations. The memorandum concluded that there was no evidence to support the complaints listed in the applicant’s letter. On 13 November 2006, the Deputy Chief Constable sent a letter to the applicant reflecting Inspector U’s findings.

The applicant then instructed a solicitor (Solicitor V) to act on her behalf. Solicitor V wrote to Northern Constabulary on 26 March 2007 raising complaints 1 – 10. The letter concluded by asking 20 questions of Northern Constabulary in relation to the complaints.

On 28 March 2007, Chief Inspector W wrote to Solicitor V advising that the applicant’s letter of 15 September 2006 covered “several, if not all, of the points raised in the letter of 26 March 2007. Chief Inspector W’s letter concluded:

“... It may be beneficial to you at this stage if your client would allow you sight of her letter dated 15th September 2006 and the response from Northern Constabulary dated 13th November 2006. When your client allows this you may feel that the points you raise have already been answered.”

Solicitor V subsequently replied to Chief Inspector W stating that she did not believe that the questions contained within her letter had been answered. Correspondence ensued between Solicitor V and Northern Constabulary, culminating in Chief Inspector W writing to Solicitor V on 29 October 2007 providing answers to the questions which had been raised.

On 11 August 2008, Solicitor V wrote to Chief Inspector W querying a number of the answers which he had provided. Inspector X was at this point asked to review the complaint.

During his review, Inspector X met separately with Detective Sergeant H and Detective Constable L; statements were obtained from both officers in December 2008. On 10 March 2009, Inspector X submitted a report to Chief Inspector W in which he concluded that there was no further useful information in connection with the applicant’s complaint.

On 20 April 2009, Chief Inspector W provided the final police response to the complaints.

The Commissioner's Review

This section sets out the Commissioner's views on the manner in which the complaints were handled by Northern Constabulary. 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(a): Alleged forcing of statement

In her letter of 26 March 2007 Solicitor V state that the applicant was told she could not leave the local area until she had made a statement. Solicitor V asked why her client had been "forced" into making a statement. Solicitor V subsequently claimed that the applicant had been pressurised and bullied during the interview.

Internal Handling

Chief Inspector W's response of 29 October 2007 stated:

"... I can find nothing which suggests that your client was 'forced' into making a statement. Perhaps you could inform me of your clients perception of 'force' ...

... I can find no evidence that your client was 'bullied' by the enquiry officer. You may wish to enlighten me as to your client's perception of 'bullying'."

Solicitor V responded as follows in her letter of 11 August 2008:

"... Our client was told that she could not leave the area until she made a statement. She was told that she had to give a statement due to other children in the area being at risk and she had been threatened not to speak to the police themselves by her perpetrator as he would hurt both her and her friend [Mr A]. In addition it was witnessed by our client's mother that one police officer and two social workers stood over her while she was sat down telling her that she had to give a statement after which she could leave [the area] Finally our client was asked what her cousins would think of her when they knew what was going on. Therefore our client felt that she had no alternative and this is her perception of force."

Chief Inspector W responded as follows in his letter of 20 April 2009:

"...I note that it is your client's perception that she was forced into making a statement. There is no evidence that this was the case."

Consideration

From the information supplied by Northern Constabulary, the applicant was interviewed by Constable F in the presence of a social worker, Mrs G. The Commissioner notes that statements were not taken from either individual during the complaints investigation. Consequently, the Commissioner is unclear as to the evidential basis for Chief Inspector W's response.

The Commissioner finds it difficult to understand how this complaint could be properly investigated and fully answered without seeking to obtain the accounts of those present at the interview, and is concerned that such an obvious course of action was not taken. It is difficult to avoid the conclusion that no genuine attempt has been made to gather the evidence required to investigate this complaint. In the circumstances the Commissioner can understand why the applicant remains dissatisfied with the responses provided.

Accordingly the Commissioner considers that the handling of this complaint by Northern Constabulary was not reasonable. The Commissioner's recommendation in this connection is contained within the conclusions, recommendations and learning section of this report.

Complaint 1(b): That the applicant was not given a break during interview

Solicitor V complained that Constable F's interview of the applicant lasted nearly five hours and that the applicant was not provided with a break. Solicitor V questioned why this had occurred.

Internal Handling

Chief Inspector W responded as follows in his letter of 29 October 2007:

"... Your client was advised by the interviewing officer, in the presence of a social worker, that she could request a break at any time during the interview. There was a comfort break during the interview and the offer of refreshments from an on-duty social worker who was in attendance with your client's mother. The enquiry officers availed themselves of the offer, whilst your client declined. She was also asked on a number of occasions if she was comfortable."

Solicitor V responded as follows in her letter of 11 August 2008:

"... Our client was only offered a break when her mother interrupted the interview after hearing our client sobbing. At this time the police officers had a toilet break. Our client states that she was never asked if she wanted to use the toilet, if she wanted a drink or if she was comfortable. We are instructed that she kept asking to see her mother and to be left alone and was told that she was not allowed to. At no time was our client given the opportunity of having a full break i.e. a break overnight or even an hour to a couple of hours."

In his letter of 20 April 2009 Chief Inspector W stated:

"... I have addressed this matter in my letter of 29 October, 2007."

Consideration

As noted above, as statements were not obtained from Constable F and Mrs G, the Commissioner is unclear of the basis in evidence for Chief Inspector W's response.

As with complaint 1(a) the Commissioner does not consider that this complaint was dealt with in a reasonable manner. The Commissioner's recommendation in this connection is contained within the conclusions, recommendations and learning section of this report.

Complaint 1(c): Alleged inappropriate comments

Solicitor V complained that Constable F had made "crude remarks" to the applicant during the interview and asked why this had occurred.

Internal Handling

Chief Inspector W's response of 29 October 2007 stated:

"... I can find no evidence of crude remarks being made by a Police officer during the interview, which was carried out jointly with a Social Worker. During her interview your client recounts a number of incidents involving two named males. I am of the opinion that any reference to them by the Police Officer would have been in the context of what was

referred to by your client. At the conclusion of the enquiry the Procurator Fiscal deemed that there was insufficient evidence to prosecute any perpetrators.”

In her response of 11 August 2008 Solicitor V stated:

“... Further the enquiry officer implied a joke about our client’s friendship with [Mr A]. [Constable F] made comments such as ‘you could have found a better place to have done that’ regarding [Mr B], minimising the actual rape. [Constable F] told our client about her own first sexual experience which was inappropriate to raise with our distressed client. [Constable F] and [Mrs G] told our client that as she was under 13 and her rapist was under 25 she had not been raped. [Constable F] told her she had not been raped and compared it to her own first sexual experience.”

Chief Inspector W’s further response of 20 April 2009 stated:

“... There is no evidence that the officer made any inappropriate remarks and the intention in that difficult situation was to reassure your client.”

Consideration

As with complaints 1(a) and (b), given that neither Constable F nor Mrs G have provided statements the basis for Chief Inspector W’s response is unclear. Indeed, Chief Inspector W’s response appears to be based simply on conjecture.

Accordingly, the Commissioner does not consider that this complaint was handled in a reasonable manner. The Commissioner’s recommendation in this connection is contained within the conclusions, recommendations and learning section of this report.

Complaint 1(d): Alleged lack of sympathy or support

In her letter of 26 March 2007 Solicitor V complained that the applicant was shown little sympathy or understanding throughout the interview with Constable F.

Internal Handling

Chief Inspector W responded as follows in his letter of 29 October 2007:

“... I can find nothing to support your claim that your client was shown no sympathy, understanding or support during this extremely difficult time. Your client travelled outwith Northern Constabulary Force area shortly after her interview. Communication took place via [Mrs C]. You may wish to consult with your client on this point and expand.”

Solicitor V provided the following response in her letter of 11 August 2008:

“... We are instructed that our client was not assigned a “Victim Liaison Officer” and despite showing signs of distress the interview was continued.”

Chief Inspector W’s response of 20 April 2009 stated:

“... Your client was offered support, understanding and sympathy. She claimed she had consensual sex within the school grounds. Shortly after her interview your client travelled out-with the Northern Constabulary area and, in the circumstances, the appointment of a family liaison officer was not appropriate.”

Consideration

Whilst Solicitor V provides no detail of why the applicant believes she was not shown any sympathy, given that statements were not obtained from Constable F and Mrs G the basis for Inspector W's response unclear.

Accordingly, the Commissioner does not consider that this complaint was handled in a reasonable manner. The Commissioner's recommendation in this connection is contained within the conclusions, recommendations and learning section of this report.

Notwithstanding the above, the Commissioner notes that when asked for further information by Chief Inspector W, the complaint changed to one alleging that the applicant was not assigned a "Victim Liaison Officer." The Commissioner's view on the handling of this matter is provided under complaint 2.

Complaint 1(e): That Mrs C was not allowed to sit in on the interview and appropriate adult

In her letter of 26 March 2007 Solicitor V complained that Mrs C was not allowed to sit in on the interview of the applicant on 2 October 2003 and that the applicant was not informed of her right to have an appropriate adult present.

Internal Handling

Chief Inspector W responded as follows in his letter of 29 October 2007:

"... Prior to your client being interviewed by a Police Officer and a Social Worker approximately 1 hour was spent in an ice breaker meeting with your client, her mother and a second Social Worker who remained in the family home throughout. At no time did your client indicate she required additional support. The appropriate adult criteria was not met in this [sic] circumstances."

Consideration

Although Chief Inspector W advised that the applicant did not satisfy the criteria for the appointment of an appropriate adult, he did not explain why this was the case. Additionally, no explanation is given as to why the applicant's mother was not allowed to sit in on the interview.

In relation to the provision of an appropriate adult, at the time of the police enquiry the applicant was 13 years old. In Scotland the appropriate adult scheme does not make provision for children under the age of 16. However, the interview was conducted at the applicant's home and, although not present at the interview, Mrs C was within the home during this time. This approach was in accordance with Scottish Executive guidance on interviewing child witnesses, in effect at that time. The guidance reads:

"... If a supporter is present, it is best that they are there only for the rapport phase until the child is settled. They should always sit out of the line of the child's vision but can move to physically comfort the child if the need arises. One possibility, if the child is willing, is to have the adult sit in an adjacent room. This can often placate the worries of both the child and the adult, whilst ensuring the interview remains private and unhindered. The child is informed that the adult is next door and on hand should they be needed."

In any event, the following incident log entry confirms that Mrs C was already aware of the reason why she could not sit in on her daughter's interview.:

"... Arrangements for joint enquiry prolonged due to [Mrs C] insisting on being present for interview. It was explained to her that she was a witness in this case and that she would

not be able to be present. This was fully explained by [Detective Sergeant H]. Due to her insistence this was further explained by [Mrs E]. [Mrs C] spoke to [Solicitor Y] ... He consequently spoke to [Detective Sergeant H] and after discussion raised no objection to planned course of action."

For the reasons given, the Commissioner does not consider that this complaint was dealt with in a reasonable manner. However, given the terms of the above guidance and the fact that Mrs C had already been informed that she could not sit in on the interview, the Commissioner makes no recommendation in this connection.

Complaint 1(f): That the interview was not recorded

In her letter of 26 March 2007 Solicitor V asked why the applicant's interview on 2 October 2003 was not video or tape recorded.

Internal Handling

Chief Inspector W responded as follows in his letter of 29 October 2007:

"... Northern Constabulary do not have video recording facilities for interviews. Tape recording of interviews of witnesses/victims is not carried out as a matter of routine and would only be considered in exceptional circumstances which, at that time, had not been identified."

Solicitor V replied as follows in her letter of 11 August 2008:

"... We note that you have stated that interviews of witnesses/victims would only be considered in exceptional circumstances. We are somewhat concerned that a child who has been raped would not be seen as a serious or exceptional case. Please provide us with evidence of the policy and procedures that are in place for assessing what would be an exceptional case."

Chief Inspector W's response of 20 April 2009 stated:

"... At the time your client refused to attend at the Victim Support suite at [Area Z] and that was why the interview took place at her home. It is normal procedure and practice for a joint interview to take place in these circumstances."

Consideration

Chief Inspector W has responded to this complaint by explaining that only in exceptional circumstances would the applicant's interview have been recorded. In response, Solicitor V asked for clarification on the policies and procedures which were in place governing the tape recording of interviews. The subsequent response from Chief Inspector W does not answer this question.

Because of this the Commissioner does not consider this complaint to have been handled reasonably. The Commissioner recommends that Northern Constabulary provides the applicant with a further response addressing the point raised by Solicitor V in her letter of 11 August 2008.

Complaint 1(g): Alleged leading questions

In her letter of 26 March 2007 Solicitor V complained that Constable F had used leading questions during the applicant's interview of 2 October 2003. Solicitor V explained that the applicant had refused to answer these questions and asked why such questions were put to her.

Internal Handling

Chief Inspector W responded as follows in his letter of 29 October 2007:

“... I have read your client’s statement and I do not consider that the statement reflects ‘leading questions’. However, you may wish to discuss with your client what her understanding of ‘leading questions’ is.”

Solicitor V replied as follows in her letter of 11 August 2008:

“... It is our assertion that the interviewing tactics were wrong and focused on our client’s friend [Mr A] rather than the main incident. The notes do not accurately reflect questions posed and are disjointed. There appears to be questions overhead by our client’s mother ‘what a big girl you are for 13’ are not included within the notes and therefore this leads to concerns that many other comments made are not accurately recorded. Our client has stated that none of the records reflects what happened to her.”

Chief Inspector W’s response of 20 April 2009 stated:

“... I refer to my letter of 29 October, 2007, and conclude the interview was conducted properly. Your client also signed the statement.”

Consideration

The complaint initially raised by Solicitor V is that the applicant was asked leading questions during interview. When asked to clarify what these questions were the complaint changed to one alleging that the applicant’s statement was not accurately recorded. However, the applicant signed her statement and, in doing so, accepted it as a true account of what she had said. Moreover, the statement of Mrs C corroborates much of the applicant’s statement and, in particular, the alleged incidents involving Mr A and Mr B.

For these reasons, the Commissioner considers that this complaint was handled reasonably by Northern Constabulary.

Complaint 1(h): Signing of paperwork

Solicitor V complained that, during the applicant’s interview with Detective Constable L, the applicant was asked to sign bits of paper “which contained text messages”, and that she was not given the opportunity to read the entire page or provided with an explanation as to why she had to sign the pages. Solicitor V asked the following question:

“Why was our client asked to sign paperwork during her second interview which was not read out to her and explained in full especially bearing in mind she was only 13 years old.”

Internal Handling

Chief Inspector W responded as follows in his letter of 29 October 2007:

“... The statement noted from your client was read to her in the presence of a social worker and signed by her as an accurate account of what she said. You may wish to consult with your client and ascertain exactly what she considers was not explained to her.”

Solicitor V replied as follows in her letter of 11 August 2008:

“... This statement was not read to our client. She was simply asked to sign the front page.”

Chief Inspector W stated the following in his response of 20 April 2009:

“... I refer to my letter of 29 October 2007, which states your client’s statement was read over to her in the presence of a social worker and your client signed it as an accurate account of what she had said.”

Consideration

Based on the content of Solicitor V’s correspondence, this complaint concerns the interview of the applicant conducted by Detective Constable L on 19 November 2003.

The Commissioner notes that, having been asked for a statement, Detective Constable L provided the following response:

“... At 1030 hours on 20-11-2008 I attended a meeting with Inspector [R] from the Professional [sic] Standards Department of Northern Constabulary ... During that meeting I was asked to look at 20 points on a solicitors letter in relation to an enquiry I was involved with whilst stationed in [area].

The complainer in this case was a girl by the name of [the applicant], none of the points raised in the letter relate to any part of the enquiry I was directly involved in therefore it would be inappropriate for me to make any comment.”

Consequently, there is no information to confirm what paperwork the applicant was or was not asked to sign during the second interview. Indeed, it would appear that the response provided by Chief Inspector W relates to the interview conducted by Constable F.

In light of this, the Commissioner does not consider that this complaint was dealt with in a reasonable manner. The Commissioner’s recommendation in this connection is contained within the conclusions, recommendations and learning section of this report.

Complaint 1(i): Alleged lack of explanation

Solicitor V’s letter of 26 March 2007 stated that, following the conclusion of the interview on 19 November 2003, the applicant was informed that due to a lack of evidence no further police action would be taken. Solicitor V complained that the reasons for this decision were never fully explained to the applicant, and asked why no charges were brought.

Internal Handling

Chief Inspector W provided the following response in his letter of 29 October 2007:

“... The Investigating Officers carried out their enquiries to the best of their ability in very difficult circumstances and the Procurator Fiscal at [area] appraised of all developments. The Procurator Fiscal is wholly independent of the Police and they decide if and when a prosecution will be instigated.”

Consideration

Detective Constable L’s report to the Procurator Fiscal contained the following information.

“...Prior to [the applicant] and [Mrs C] leaving [police station], I informed them that the investigation into their allegations would be left in the hands of the Procurator Fiscal but at present there was nothing to corroborate the allegations made and that it would be down to the credibility of the witnesses and potential suspects.”

Given that the applicant's complaint is that she was not told why there was considered to be a lack of evidence in relation to her allegations, it is necessary to examine Detective Constable L's comments in this connection.

The Commissioner has had regard to the accounts provided to the police by the applicant and the subsequent investigations carried out. It is clear from this that no corroborative evidence, including the accounts from witnesses named by the applicant, has been found in respect of the allegations. Indeed, the information uncovered during the police investigation casts significant doubt upon the applicant's claims.

It seems clear that this is the reason why no charges were brought against any individual. In any event, the circumstances were reported to the Procurator Fiscal who could have instructed further investigation if these were considered necessary.

Accordingly, the Commissioner believes that the approach adopted by Detective Constable L was reasonable under the circumstances. However, the explanation provided by Chief Inspector W provides only a basic outline of the role of the Procurator Fiscal and does not make reference to the rationale behind Detective Constable L's actions.

In light of this, the Commissioner does not consider that this complaint was dealt with in a reasonable manner. However, the Commissioner believes that the information above is sufficient to provide the applicant with a reasonable response to the complaint and therefore makes no recommendation in this connection.

Complaint 2: Access to Sexual Assault Centre

In her letter of 15 September 2006 the applicant sought an explanation as to why it took over a year for Northern Constabulary to arrange a medical examination. In her letter of 26 March 2007 Solicitor V complained that at no time was the applicant offered access to the "sexual assault centre" in the local area and asked why this was the case.

Internal Handling

Chief Inspector W's letter of 13 November 2006 provided the following response.

"... A medical examination was arranged for you as soon as reasonably practicable after you had reported the incident. As you were under sixteen years of age in the eyes of the law you were a child and as such decisions were made on your behalf by a parent. Your mother refused to allow the medical examination to go ahead. I therefore refute your suggestion that Northern Constabulary failed in meeting any medical deadlines."

In response to the Solicitor V's letter of 26 March 2007, Chief Inspector W stated the following in his letter of 29 October 2007:

"...Your client, through her mother, refused to be medically examined by any person in Scotland..."

Solicitor V gave the following the reply in her letter of 11 August 2008:

"...This is denied. Our client's mother offered to take our client to [the sexual assault centre] the same night that she was interviewed however she was informed that she could not be taken there as it had to be done in [area]. After the police officers left that night our client's mother received a telephone call at approximately 9.00pm/9.30pm stating that there was a doctor in [area] who had some experience in these types of things and to take our client there for 9.00am the following morning for a hymen examination. Our client felt

extremely drained from the interviews and did not want to go but was willing to go to [the sexual assault centre] where there is a rape suite set up properly to deal with these matters and not a doctor 'that has some experience in these types of things'. Our client was extremely scared as she had been threatened by her assailant and therefore our client's mother offered the opportunity for our client to be examined in [the sexual assault centre] on the way down to their home in Scotland. [Detective Sergeant H] told our client's mother that if she did not want to go the following day then not to worry and he believed that he would be able to arrange it wherever our client was. However he was then unable to do so as he was sent away on a training course. Subsequently our clients mother tried to organise the medical but was unable to do so as the police would not commission the report."

Chief Inspector W's response of 20 April 2009 stated:

"... I refer to my previous answer. Your client was treated sympathetically and with care at all times. Your client's mother said she was taking her to [England] to be examined and did not offer for her to be examined at [the sexual assault centre]. At no time did the Investigating officer state that an examination would have to take place at [area]. [the sexual assault centre] would have been the most appropriate place for an examination to take place but this was refused by your client's mother."

Consideration

The applicant's original complaint was that Northern Constabulary would not arrange a medical examination for her. Chief Inspector W's response to this complaint is supported by entries made to the incident history log on 3 October 2003. The first entry reads:

"... Attempts were made to arrange a medical exam for [the applicant] but [Mrs C] stated that she was taking her to [England] to be examined. It was explained to [Mrs C] that this will not assist the enquiry and that it would be better for the exam to take place in Scotland. This is to be discussed further with [Mrs C] 9 am 3/10/3 when she has spoken to [applicant] who is currently sleeping."

A further entry records a conversation with Doctor K during which the doctor's availability to conduct a medical examination was discussed. A third entry then reads:

"[Mrs C] spoken to by [Inspector J] and she stated neither she nor [applicant] wished the medical examination to go ahead. [The applicant] was hostile and would not agree to any more contact with [applicant] by police or social work. She stated the family were leaving this afternoon to go to [England]."

An subsequent entry in the log records that Doctor K was informed a medical examination would not now take place.

In addition, Solicitor V's letter of 26 March 2007 states the following:

"... An appointment was arranged for a medical examination at a local GP, however due to the stress of the situation our client felt unable to stay in the Wick area and moved to her Aunt's house in [England] to help her recover from this incident."

Accordingly, there does not appear to be any doubt that a medical examination was arranged for the applicant by Northern Constabulary but was cancelled following Mrs C informing the police of her intention to move to England.

In these circumstances, the Commissioner considers that this complaint was dealt with in a reasonable manner.

Complaint 3: Access to family liaison officer

In her letter of 26 March 2007 Solicitor V complained that at no time was the applicant offered access to a family liaison officer.

Internal Handling

Chief Inspector W responded as follows in his letter of 29 October 2007:

“... A Family Liaison Officer was not appropriate in this instance given the content of the statement made by your client.”

Consideration

Chief Inspector W's response states simply that a family liaison officer was not deemed appropriate given the content of the applicant's statement. Whilst he provides no specific reason why this was the case, it appears to be because the applicant's first statement did not allege that she had been raped. In such circumstances, this position is reasonable.

However, the applicant's second statement of 19 November 2003 clearly highlights that she did not consent to intercourse with Mr B. Chief Inspector W's response makes no reference to the applicant's second statement. Accordingly, the Commissioner does not consider this element of the complaint to have been handled reasonably.

Given the content of the applicant's second statement, the Commissioner is of the view that Northern Constabulary writes to the applicant explaining fully the reasons why it was considered inappropriate to appoint a Family Liaison Officer.

Complaint 4: Medical Examination whilst in England

Solicitor V stated in her letter of 26 March 2007 that Detective Sergeant H offered to arrange for a medical examination to be carried out whilst the applicant was in England. Solicitor V complained that, despite repeated letters and telephone calls, this did not happen.

Internal Handling

Chief Inspector W responded as follows in his letter of 29 October 2007:

“... A medical examination of your client was arranged at the time of the allegation being made. Your client did not co-operate and her mother arranged a medical examination in [England]. This examination would have provided nothing forensically, given the passage of time, and the examination would have centred on whether she was virgo intacto or not. I understand that the examination was to take place on 9 October 2003. The answer as to why this examination did not take place lies with your client.”

Solicitor V's letter of 11 August 2008 provided the following response:

“... We would refer you to [complaint 2]. In addition we are informed that the examination was not arranged by our client's mother but by Northern Constabulary.”

Chief Inspector W's response of 20 April 2009 stated:

“... At no time did the Investigating officer say he could arrange a medical wherever your client was, in fact he states he made it clear that going to [England] would make it difficult for him to make arrangements.”

Consideration

It is the applicant's position that Northern Constabulary agreed to arrange a medical examination for her whilst she resided in England. Detective Sergeant H denies that this occurred and claims that he in fact pointed out that moving to England would make it extremely difficult for him to arrange a medical examination. Detective Sergeant H's account is supported by the contemporaneous entry made by him on the incident log.

In light of this, the Commissioner considers that this complaint was dealt with in a reasonable manner by Northern Constabulary.

Complaint 5: Provision of "forensic surgeon"

As noted above, on 24 September 2004 the applicant was examined by Doctor T at a victim support suite in the local area. Solicitor V stated the following in her letter of 26 March 2007:

"Can you confirm the position in respect of medical evidence obtained. Is it true that for medical evidence to be presented to the Court a forensic surgeon should be present? If so, why was one not present during our client's eventual examination? And if not, why was our client told that she needed one at a previously arranged examination?"

Internal Handling

Chief Inspector W responded as follows in his letter of 29 October 2007:

"... When a medical examination is deemed necessary all examinations will be facilitated via the Consultant Paediatrician and the services of a Police Surgeon will be obtained. Such examinations will be carried out where possible at a Victim Support Suite, Doctor's Surgery or a Hospital.

When medical evidence is to be presented in a Court it is not necessary for a Forensic Surgeon to be present. When a forensic examination is carried out, that evidence may be presented in a Court without the need for the person to be present if a Minute of Agreement has been signed by the prosecution and the defence. I am unaware in what context your client was advised of the necessity and would suggest you consult with your client as to the circumstances.

When your client eventually agreed to a medical examination, which took place on 24 September 2004 at the Victim Support Suite, [Area Z], the examination was carried out by a Police Surgeon using a colposcopy with video recording, with the consent of your client. The examination was carried out in the presence of a trained Child Protection Officer. The examination took place a year after the alleged incident took place and the results of the examination would be limited. Such examination in the circumstances would be acceptable."

Solicitor V stated the following in her letter of 11 August 2008:

"This appears to be in contradiction as to what was offered to our client"

In his response of 20 April 2009 Chief Inspector W referred Solicitor V to his letter of 29 October 2007.

Consideration

The applicant's position is that, during her medical examination, a "forensic surgeon" was not present. She appears to believe that, because of this, the admissibility of any incriminating evidence found during the investigation was affected. The Commissioner has assumed that the reference to a "forensic surgeon" in fact means a "police surgeon".

Chief Inspector W's response to this complaint confirmed that the medical examination had, in fact, been carried out by a police surgeon (Doctor T).

The relevant passages of Northern Constabulary's procedures regarding this issue are as follows:

"The [medical] examinations will be carried out by a Paediatrician and a Police Surgeon ... In all instances medical examinations will be facilitated via the Consultant paediatrician ... The services of a police surgeon will be obtained via MEDACS ...

... Where possible the Paediatrician should have corroboration present during the examination i.e another Paediatrician or Police Surgeon."

Chief Inspector W's response stated that "all examinations will be facilitated via the Consultant Paediatrician and the services of a Police Surgeon will be obtained." In the Commissioner's view, the above guidance is ambiguous as to whether such examinations must be carried out by both a paediatrician and a police surgeon. On the one hand, the guidance states that examinations "will be" carried out by a paediatrician and police surgeon; on the other, the guidance states that "where possible" the paediatrician "should" have corroboration by eg a police surgeon. However, the guidance is clear that such examinations must be undertaken by a paediatrician. Accordingly Chief Inspector W's response does not appear to be consistent with the guidance. Consequently, it is the Commissioner's view that this complaint has not been handled in a reasonable manner.

Given the length of time which has elapsed from the applicant's examination, the Commissioner does not believe there is value in recommending any further work in relation to the specifics of this complaint. However, the Commissioner recommends that Northern Constabulary now looks at its guidance with a view to removing the ambiguity highlighted above.

Complaint 6: Information not taken seriously

In her letter of 26 March 2007 Solicitor V stated that, in September 2004, the applicant had "volunteered" further information to Mrs C including the disclosure of a letter which she had allegedly received from Mr A in which he claimed to have been sexually abused by Mr B. Solicitor V claimed that Northern Constabulary failed to take this information seriously.

Internal Handling

Chief Inspector W's response of 29 October 2007 stated the following:

"... On 5 August 2004, your client attended at [police station] and a statement was noted from her. Her statement differed in as much as she now alleged she had been raped. She produced a photocopy of a letter, allegedly written by a suspect in this case, which suggested he, too, had suffered the same fate. The original letter was never produced. Enquiries relative to the letter were carried out and the officers were satisfied with the outcome. On 1 September 2004, your client was interviewed on tape. She made other disclosures regarding two males. These males were interviewed by the enquiry officers."

Solicitor V replied as follows in her letter of 11 August 2008:

“... We note that you have stated that our client disclosed a letter written by a suspect in this case. We understand this letter was written by her friend [Mr A]. Our client states that at no time did she ever make allegations against [Mr A]. We note that you state that it was only on the 5th August 2004 that she alleged that she had been raped. We are instructed that our client has always asserted that she was raped. Our client confirmed that she was raped the night she was interviewed.”

Chief Inspector W's response of 20 April 2009 stated:

“...I refer to my answer in my letter of 29 October 2007. Initially your client did make an allegation, not of rape, against an individual. This was investigated and there was no evidence regarding the allegation.”

Consideration

In relation to the complaint that Northern Constabulary did not take seriously the alleged letter by Mr A, the Commissioner notes that a statement was subsequently obtained from Mr A in which he denied having been sexually abused by Mr B. Handwriting samples were also obtained from Mr A which bore no resemblance to the letter produced by the applicant.

Given the above, it is clear that the information provided by the applicant was taken seriously by Northern Constabulary. However, Chief Inspector W's response simply informed the applicant that enquiries had been carried out and that the officers were satisfied with the outcome. Whilst strictly correct, the response should have provided more detail of the nature of the enquiries which had been carried out.

In light of this, the Commissioner does not consider that this complaint was dealt with in a reasonable manner. However, as the above information is sufficient to provide the applicant with a reasonable response to the complaint, the Commissioner makes no recommendation in this connection.

Chief Inspector W stated that the applicant did not allege that she was raped until August 2004. However, it is clear from the applicant's statement of 19 November 2003 that she believed she had not consented to intercourse with Mr B. Accordingly, Chief Inspector W's remark in this connection was mistaken.

Complaint 7: Alleged oppressive behaviour towards the applicant

In her letter of 26 March 2007 Solicitor V stated that in September 2004 the applicant received a copy of the first statement she had provided to the police. According to Solicitor V, the applicant queried the content of this statement and her complaint to a police officer in this connection was not taken seriously. Solicitor V alleged and that officers were “oppressive and threatening” towards the applicant when she told them her statement had been changed.

Internal Handling

This complaint was not considered by Northern Constabulary during its complaint investigation.

Consideration

Solicitor V is unspecific as to the identity of the officers concerned and does not provide any information as to where or when the applicant made her complaint to the police. Notwithstanding this, the Commissioner would have expected Northern Constabulary to have explored this further with the applicant. Accordingly this complaint has not been handled reasonably. The Commissioner recommends that Northern Constabulary now record and investigate the complaint that officers were allegedly oppressive and threatening towards the applicant.

Complaint 8: Information provision to Mrs C

According to Solicitor V's letter of 26 March 2007 Northern Constabulary has consistently maintained that the applicant requested certain information should not be disclosed to Mrs C. Solicitor V states that the applicant denies having requested this.

Internal Handling

This complaint was not considered by Northern Constabulary during its complaint investigation.

Consideration

Again, Solicitor V is unspecific as to the types of information which the police claim the applicant did not want her mother to know about. However, given that this area of concern was not addressed by Northern Constabulary, the Commissioner does not consider that this complaint was dealt with in a reasonable manner.

The Commissioner notes that the applicant's statement of 19 November 2003, concludes with the words "... I don't want the Police to tell my mum what is in this statement." The applicant signed the statement on each page.

In the Commissioner's view, this wholly undermines the applicant's complaint. In light of this the Commissioner does not recommend any further action in this connection.

Complaint 9: Northern Constabulary's alleged claims about Mrs C

According to Solicitor V's letter of 26 March 2007, Northern Constabulary has alleged that Mrs C "forced" the applicant into making the allegation of rape against Mr B.

Internal Handling

This complaint was not considered by Northern Constabulary during its complaint investigation.

Consideration

Again, the applicant's solicitor is unspecific as to who within Northern Constabulary claimed that Mrs C forced the applicant to allege that she was raped. Notwithstanding this, the Commissioner would have expected Northern Constabulary to have explored this further with the applicant.

In light of this, the Commissioner does not consider that this complaint was dealt with in a reasonable manner. The Commissioner recommends that Northern Constabulary now record and investigate this complaint.

Complaint 10: The standard of the investigation

Solicitor V's letter of 26 March 2007 raised the following question:

"Why were no charges ever brought? You have stated insufficient evidence, is this because the investigation was poorly conducted?"

Internal Handling

Chief Inspector W responded as follows in his letter of 29 October 2007:

“The investigation was not poorly conducted as suggested by you. The Investigating Officers carried out their enquiries to the best of their ability in very difficult circumstances and the Procurator Fiscal at [area] appraised of all developments. The Procurator Fiscal is wholly independent of the Police and they decide if and when a prosecution will be instigated.”

Solicitor V replied as follows in her letter of 11 August 2008:

“We are instructed that our client has concerns about the investigation on the basis that when our client produced evidence such as the [phone company] SIM cards they were not checked directly with [phone company] just your own computer equipment (this has been raised recently and it would appear that no enquiries have still been undertaken in respect of this), her jeans were ripped but no DNA testing took place and the location of the rape was changed so any forensic evidence would not be found. Further our client reported that she had been bitten by her assailant but this information was not recorded. Information was offered to the Police by her mother when the bruising was seen but no evidence of this was collected.”

Chief Inspector W responded as follows in his letter of 20 April 2009:

“In my letter to you dated 06 February 2008, I advised you that enquiries were carried out with a mobile phone supplier and the relevant information obtained. The SIM card was examined as was your client’s jeans.”

Consideration

In terms of the information supplied to the Commissioner all known potential witnesses, including those highlighted by the applicant, were interviewed by police. In addition phone records, scene investigations and handwriting analysis was undertaken. The evidence gathered as a result of these enquiries significantly undermines the allegations made by the applicant in her second police interview. A number of reports detailing these findings were sent to Procurators Fiscal who determined that no action should be taken against Mr A or Mr B.

In light of this, the Commissioner considers that the position adopted by Chief Inspector W in his letter of 29 October 2007 was entirely reasonable.

Conclusions, Recommendations and Learning

Complaints 1(a), (b), (c) (d) and (h)

Given that these complaints concern the way in which the applicant was allegedly treated during police interviews, a basic element of the complaints investigation should have been to ask all those present for their accounts. It is a cause of concern that this did not happen. It is also of concern that some of Chief Inspector W’s responses suggest that such enquiries had in fact been undertaken.

Whilst the Commissioner is aware that a significant period of time has elapsed from the incidents in question, it is his view that a proper, evidence-based response to these complaints cannot be provided without obtaining the accounts of those present at the interviews. Accordingly, he recommends that Northern Constabulary now make attempts to obtain these accounts and provide a further response to the applicant in light of these.

Complaints 1(f), 3, 5, 7 and 9

In the Commissioner's view, the manner in which these complaints were dealt with by Northern Constabulary was not reasonable and for the reasons given recommends the further work specified under each complaint heading.

Complaints 1(e), (i), 6 and 8

In the Commissioner's view, the manner in which these complaints were dealt with by Northern Constabulary was not reasonable. However, for the reasons given, no further action is required in this connection.

Complaints 1(g), 2, 4 and 10

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

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