

Report of Complaint Handling Reviews in relation to Fife Constabulary

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

Summary and Key Findings

The applicant asked the Commissioner to review a number of complaints arising from his interaction with Fife Constabulary during 2008.

This report deals with seven complaints over two complaint handling reviews. Of those seven complaints, the Commissioner considered that six were not dealt with in a reasonable manner. The Commissioner made a number of recommendations and identified two learning points.

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.

Preamble

The Commissioner's office initially began reviewing the applicant's case under reference PCCS/00126/09/PF-FC. Whilst these complaints were being reviewed it became apparent that the applicant also expected the Commissioner to review the handling of a further complaint which had been dealt with separately by Fife Constabulary. This complaint has therefore been included in this report under the reference PCCS/00329/10/PF-FC.

Case Reference PCCS/00126/09/PF-FC

Background

The applicant had frequent contact with Fife Constabulary during 2008 which led to him making a number of complaints. As these complaints did not arise from a single incident, the background to each is set out under the associated complaint headings below.

Complaints 1-4

During 2008, Fife Constabulary received numerous reports of the applicant sending threatening and offensive text/voicemail messages. A number of these reports were made by a former partner of the applicant's, Ms A, and another individual, Mr B. Both Ms A and Mr B also alleged the applicant had damaged their vehicles. The applicant made several counter-allegations about being threatened and abused by Mr B.

Due to the volume of the text messages received, Constable C compiled a report which was submitted to the Procurator Fiscal for direction. On 18 June 2008 a warrant was granted to search the applicant's home for any material relative to offences under the Communications Act 2003. On the same date, Constables C, D, E and F attended at the applicant's home with Detective Constable G to carry out the search. No one was at the property and it was established that the applicant was en route to travel abroad. A key was found at the rear of the house which was used to allow the officers access to the premises to perform the search. A number of mobile telephones and other items were seized. A sum of money was also taken although not as part of the enquiry: according to Fife Constabulary it was removed for safekeeping. Detective Constable G spoke to the applicant by telephone both before and during the search.

Complaint 5

Some time prior to 8 January 2008, possibly in November or December 2007, the applicant was interviewed by Detective Constable H regarding intelligence he wished to provide to Fife Constabulary in respect of alleged drugs offences committed by a former partner. Enquiries were made but no further action was taken by the police.

Complaint 6

The applicant alleged that on an unspecified date in August or September 2008, Detective Constable G passed him in a car and made hand gestures towards him. The officer recollected seeing the applicant but claimed not to have acknowledged him in any way.

The Complaints

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

- (1) that the applicant has been treated unfairly by the police in relation to allegations made by his ex-partner;
- (2) that the applicant was not advised of the outcome of investigations into threats that he reported to the police;
- (3) that items seized during a search were not returned to the applicant;
- (4) that the applicant's home and garage were left in an untidy condition following this search;
- (5) that information the applicant passed to Fife Constabulary was not dealt with in a professional manner; and
- (6) that the applicant has been subject to unfair attention by Detective Constable G.

The Commissioner's Review

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

Complaint 1: Unfair treatment by Fife Constabulary

The applicant's former partner, Ms A, has reported a number of alleged offences committed by the applicant who feels that he has been unfairly treated by Fife Constabulary in this connection. According to the applicant he is "easy meat" for the police when something "goes wrong" with his former partner.

Internal Handling

The applicant raised this complaint in his statement of 2 September 2008 (erroneously dated 2009). The complaint was noted by Inspector J and recorded on a Complaints About the Police (CAP) form. Inspector J was appointed as the investigating officer.

Inspector J forwarded a report dealing with these complaints to Superintendent K on 8 September 2008. This report detailed the background, key events, evidence and conclusions in respect of the complaints raised by the applicant. In relation to complaint 1, Inspector J stated:

"It was pointed out to [the applicant], at the point the complaint was lodged, that the police have a duty to investigate each and every crime reported to us. It was also highlighted that should a complaint be received that has a named suspect, then this person requires to be interviewed. This would then provide direction to any investigation. [The applicant] appreciated this stance but felt that no matter what was said by his ex-partner, he would be subject to police scrutiny."

On 12 March 2009 the Deputy Chief Constable issued a final response to the applicant's complaints. In relation to complaint 1, the Deputy Chief Constable's response was as follows:

"There is no evidence to suggest that you have been treated unfairly at any time."

Consideration

As noted above, Inspector J explained the obligations upon Fife Constabulary regarding the investigation of alleged criminal offences. It is clear from Inspector J's report, and the incident reports contained within the complaints file, that between November 2007 and June 2008, Ms A made numerous criminal allegations against the applicant, all of which resulted in some form of enquiry by Fife Constabulary. Many of these allegations resulted in the applicant being reported to the Procurator Fiscal. Based on the contents of the incident reports, there is nothing to indicate that the applicant has been treated unfairly in connection with Ms A's allegations. In these circumstances, the Commissioner considers that the Deputy Chief Constable's response to this complaint to be correct.

Nevertheless, the Deputy Chief Constable's response fell well short of the standard the Commissioner would expect in the circumstances. In essence, the response amounts to a brief assertion of fact with no attempt to convey to the applicant the basis for the decision. Reference could, for example, have been made to Inspector J's examination of the various incident reports which detail a reasonable and proportionate level of enquiry in respect of each of the allegations.

At the time of the applicant's complaint, Fife Constabulary's guidance on the handling of complaints stated the following:

"At the conclusion of the enquiry the final letter sent to the complainer must address the issues complained about, should be written in a style that is free from jargon, easily understood and crucially, contains the rationale and justification for the decision reached."

In the Commissioner's view, the Deputy Chief Constable's response did not meet this standard. In these circumstances, the Commissioner does not consider that this complaint was dealt with in a reasonable manner. However, given that the basis of the Deputy Chief Constable's response is described above, the Commissioner does not consider it necessary to recommend any further action in this connection.

Complaint 2: Failure to update on outcome of investigations

In his statement of complaint the applicant claims to have received a number of threatening phone calls from Mr B. He states:

"I have reported these to the police on 6 separate occasions. On 17th June 2008 I heard that he was questioned. I have never been told what happened."

Internal Handling

The CAP form records this complaint in the following terms:

"[The applicant] has reported on 6 separate occasions being verbally abused/threatened by another and the police have not responded."

As part of the investigation into this complaint, the incident recording system was interrogated and details of all reports made by the applicant were obtained. Inspector J noted in his report:

"[The applicant] claimed that he has reported to the police, on 6 separate occasions, that he was the subject of verbal abuse/threats and that the police have not responded to these complaints. A search of STORM has been carried out and since November 2007 there were in fact 4 calls received by the police as above. On the first occasion, [Mr B] was warned at the request of [the applicant]. On the second occasion, [Mr B] was interviewed but denied being there. On occasions 3 and 4, the investigations overlapped and [Mr B] was recorded on Crimefile as a suspect. The Crimefile was reviewed by the Crime Registrar, who marked it 'no crime' as no Breach of the Peace occurred."

Inspector J concluded that the police had responded to all the reports made by the applicant and that appropriate action had been taken on each occasion.

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

"Officers have fully investigated all incidents reported by you and responded appropriately. All information has been recorded and all parties have been interviewed to obtain available evidence in each case."

Consideration

This complaint has not been accurately identified by Fife Constabulary, as is illustrated by the disparity between the applicant's statement and the complaint recorded on the CAP form. As such, the response provided by Fife Constabulary does not address the complaint raised. In the Commissioner's view, the Deputy Chief Constable's response was also somewhat misleading as it indicated that all parties were interviewed in each case, whereas Inspector J's report suggests that in respect of two of the alleged incidents no enquiries were undertaken.

For these reasons, the Commissioner does not consider that this complaint was dealt with in a reasonable manner. The Commissioner recommends that Fife Constabulary now responds to the applicant's actual complaint, namely that he has not been informed of the outcome of the allegations he made against Mr B.

Complaint 3: Unreturned items

The applicant has made a number of criminal allegations relating to the theft of money and other items during the search of his home. It is not within the Commissioner's remit to consider complaints of a criminal nature. However, the applicant also made a non-criminal complaint that items seized during the search were not returned to him, and the Commissioner has therefore included this in the present review.

In his statement, the applicant claims that property taken from his home during the search has not been returned. In particular, he makes reference to boxed mobile telephones, a sum of money and a passport.

Internal Handling

Inspector J stated in his report that following his meeting with the applicant on 2 September 2008 he spoke with officers from Crime Management regarding the unreturned items. His report contains the following passage:

"I immediately spoke with officers from Crime Management who informed me that the majority of items taken possession of were productions and as such could not be returned to him at this time. Two items were possible to return to him, which included the sum of £42, previously intimated to his solicitor. He was informed that these items would be available for him to collect on Wednesday 3rd September 2008 ... He failed to attend on 3rd September 2008. He did attend on Sunday 6th September 2008 and spoke with Sergeant [L]. He did not collect the items believing that there was more he should have had returned. He did not state what these were and left."

Inspector J did not reach a conclusion in respect of this complaint as it was deemed to be criminal in nature.

The Deputy Chief Constable's response does not address the non-criminal aspect of this complaint.

Consideration

Fife Constabulary appears not to have separated the non-criminal aspect of this complaint from his allegations of theft. The complaints investigated focussed solely on the latter.

The production list for items seized during the search details a boxed mobile telephone and other related items. It is acknowledged that at the time Inspector J's report was submitted, the applicant's property was part of an ongoing investigation and could not be returned to him. However, Sergeant M's report regarding the criminal allegations, dated 2 March 2009, stated that interrogation of the items seized during the search found insufficient evidence to support criminal proceedings against the applicant.

At the time the response was issued by the Deputy Chief Constable, Fife Constabulary was in a position to advise the applicant about the return of seized property. As neither the investigation nor final response addressed the non-criminal aspect of the applicant's concerns, the Commissioner does not consider that this was dealt with in a reasonable manner. However, as Fife Constabulary has since returned all the items seized during the search, no further action is recommended in this connection.

Complaint 4: Property left in untidy condition

In his statement of 2 September 2008 the applicant claimed that during the search a jewellery box had been tipped upside down and its contents left in a heap, as had a toolbox in his garage. In a further statement dated 27 October 2008, provided in relation to his criminal complaints, the applicant stated that a number of watches had been removed from their individual boxes and that some had been scratched.

Internal Handling

In connection with this complaint, Inspector J's report stated:

"I have obtained statements from officers conducting the search who strongly deny causing any unnecessary untidiness to [the applicant's] House. They also stated that there is no garage connected to [the applicant's] home and that they were unaware of the location of a garage."

The Deputy Chief Constable responded to the complaint as follows:

"There is no evidence to suggest that officers left your home in an untidy condition."

Consideration

The Commissioner notes that whilst Constable C's statement is silent on this issue, the other officers involved in the search stated that the property was left in a tidy condition and that no garage had been searched. According to Detective Constable G he assured the applicant that the search would be conducted professionally and that no damage would be caused.

In the Commissioner's view, Inspector J's investigation of this complaint was sufficient to allow a reasonable response to be given. However, as with complaint 1 the Commissioner does not consider that the Deputy Chief Constable's response meets this standard. Again, no attempt was made to provide any rationale or justification for the finding, despite the fact that the enquiries conducted by Inspector J provided a sound basis for this.

Accordingly, the Commissioner does not consider that this complaint was dealt with in a reasonable manner. However, as the basis for the Deputy Chief Constable's response is provided above, the Commissioner does not consider it necessary to recommend further action in this connection.

Complaint 5: Information dealt with unprofessionally

In his statement of complaint the applicant claims that confidential information which he passed on to Detective Constable H regarding Ms A was not dealt with professionally. He states:

"I have heard that when police dealt with the person I spoke to [Detective Constable H] about, the police then questioned them about me."

Internal Handling

A statement was obtained from Detective Constable H in relation to this complaint. According to the statement, Detective Constable H and Detective Sergeant N interviewed the applicant about the information he claimed to have. On the same date, Detective Constable H created an intelligence entry regarding the information the applicant had provided. Some time later, Detective

Constable H and Detective Constable O carried out enquiries to establish the validity of the information but formed the view that this had been given by the applicant maliciously.

Inspector J noted in his report that the information supplied by the applicant had been properly recorded and that enquiries were carried out to establish its validity. Inspector J concluded that there was no evidence to suggest that the officers had acted improperly.

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

“Officers have dealt with all confidential information supplied by you in a professional manner in line with procedures.”

Consideration

In the Commissioner’s view, Fife Constabulary has failed to identify and respond to the applicant’s complaint in full. As noted above, the applicant complained that the information he provided was not dealt with professionally and specifically that when officers spoke to his former partner in this connection they began questioning her about the applicant. Although Fife Constabulary has addressed the general issue of whether the information was dealt with professionally, it has not addressed the applicant’s concern that the officers ended up questioning his former partner about him. Detective Constable H did not deal with this issue in his statement and no statement has been given by Detective Constable N, the other officer present during enquiries.

Accordingly the Commissioner does not consider that this complaint was dealt with in a reasonable manner. The Commissioner recommends that Fife Constabulary investigates the complaint fully and provides the applicant with an appropriate written response.

Complaint 6: Unfair attention from Detective Constable G

The applicant states the following in his statement:

“I feel that [Detective Constable G] has it in for me. I passed him when he was in the car the other day (date not known) and he made gestures to me with his hands.”

Internal Handling

A statement addressing this complaint was obtained from Detective Constable G as part of the investigation. Inspector J noted in his report:

“[The applicant] is of the opinion that he is a target for [Detective Constable G]. This is the result of an incident shortly before this complaint was noted. He stated that as [Detective Constable G] drove passed him, [the applicant] claims that [Detective Constable G] made a gesture with his hands towards him. [Detective Constable G] has provided a statement that indicates that they did in fact pass each other whilst [Detective Constable G] was driving on [location], (date unknown). At this time [Detective Constable G] was accompanied by [Detective Sergeant P]. At no time was any gesture made.”

Inspector J concluded as follows:

“... I have spoken to [Detective Constable G] who vehemently denies any irregularity in his dealings with [the applicant]. I have previously spoken to [Detective Sergeant P] in relation to this matter and he too claimed that no gestures were made to [the applicant].”

In the final response to this complaint, the Deputy Chief Constable advised:

“There is no evidence that [Detective Constable G] has made any rude gesture to you at any time.”

Consideration

Despite being listed as a witness in Inspector J's report and apparently having been spoken to in respect of the complaint, no statement has been provided by Detective Sergeant P. 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, unrecorded discussions with a witness.

For this reason, the Commissioner does not consider that this complaint was dealt with in a reasonable manner. The Commissioner recommends that Fife Constabulary obtains a statement from Detective Sergeant P and issues a further response to this complaint.

Conclusions, Recommendations and Learning

Complaint 1: Unfair treatment by Fife Constabulary

In the Commissioner's view, the manner in which this complaint was dealt with was not reasonable. However, for the reason given, the Commissioner makes no recommendation in this connection.

Complaint 2: Failure to update on outcome of investigations

In the Commissioner's view, the manner in which this complaint was dealt with was not reasonable. The Commissioner recommends that Fife Constabulary now responds to the applicant's actual complaint, namely that he has not been informed of the outcome of the allegations he made against Mr B.

Complaint 3: Unreturned items

In the Commissioner's view, this complaint was not dealt with in a reasonable manner. However, the Commissioner makes no recommendation in this connection.

Complaint 4: Property left in untidy condition

In the Commissioner's view, the manner in which this complaint was dealt with was not reasonable. However, for the reason given, the Commissioner makes no recommendation in this connection.

Complaint 5: Information dealt with unprofessionally

The Commissioner does not consider the manner in which this complaint was dealt with to be reasonable. The Commissioner recommends that Fife Constabulary investigates the complaint fully and provides the applicant with an appropriate written response.

Complaint 6: Unfair attention from Detective Constable G

In the Commissioner's view, the manner in which this complaint was dealt with was not reasonable. The Commissioner recommends that Fife Constabulary obtains a statement from Detective Sergeant P and issues a further response to this complaint.

Learning Points

- (1) The Commissioner would remind Fife Constabulary of the need to maintain auditable records of all enquiries undertaken into complaints and the evidence on which its conclusions are based.
- (2) Letters of response must provide complainers with sufficient information to inform them as to how key conclusions were reached.

Case Reference PCCS/00329/10/PF-FC

Background

The applicant had an access arrangement, established through a court, whereby he collected his child from Ms A, at a local police office. On arrival there on 2 November 2008, the applicant joined Ms A and their child in the public area of the police office. A disagreement took place between Ms A and the applicant. Their child was upset and began to cry.

Ms A then rang the bell at the front desk and Ms I (civilian police staff) came out of the office to deal with this. During the ensuing conversation, Detective Constable G put his head through the connecting doorway between the office and front desk and asked Ms I if everything was alright. Ms I confirmed that everything was okay and Detective Constable G returned to the office. A short time later Detective Constable G returned to the front desk to advise Ms I that there was a potential problem with a computer terminal in the office.

As the child was very upset, the applicant was unable to proceed with the arranged access and Ms A took the child away. The applicant advised Ms I that he wanted to speak to the on-duty inspector. Ms I contacted Inspector J to advise that the applicant wanted to speak with him.

The Complaint

Based on the information obtained from the applicant and Fife Constabulary, the Commissioner has identified a single complaint, namely that a police officer became involved unnecessarily in the incident at the police office on 2 November 2008.

The Commissioner's Review

This section sets out the Commissioner's views on the manner in which the above complaint was handled by Fife Constabulary.

Unnecessary involvement of police officer

In his statement of 6 November 2008, the applicant stated:

"My complaint is that there should not have been any police involvement in this case and [Detective Constable G] should not have got involved. I think there is some involvement with [Detective Constable G] and [Ms A] and that is the reason he has an issue with me. I know this through inside information. I think he is seeing her on the side."

Internal Handling

The applicant appears to have advised Inspector J that he was unhappy with Detective Constable G during their conversation on 2 November 2008 as Ms I provided a statement on 3 November 2008. Inspector J subsequently noted a statement of complaint from the applicant on 6 November 2008 and a CAP form was completed. A statement was obtained from Ms A on 6 November 2008 and at some stage Detective Constable G provided an operational statement regarding his involvement in the incident.

Inspector J compiled a report dated 10 November 2008 detailing the nature of the complaint and examining the available evidence. It was concluded that there was no evidence to support the applicant's position in relation to this complaint. Superintendent K provided a final response to the applicant on 12 November 2008, stating:

“An office staff member attended in answer to [Ms A] pressing the buzzer. She reports that you were both ‘having words’ with each other and that your child was visibly upset. At this point, [Detective Constable G], who had noticed the developing friction on a CCTV monitor, ventured to assist my other member of staff. Given that this was a public area in a Police Station and you had both chosen to enter the building, I think his actions were entirely appropriate. To avoid a similar situation in future, you may care to consider meeting at your Solicitors office.

Additionally, [Detective Constable G] categorically denies ever having a relationship with [Ms A]. He states he is not aware of ever having met your partner previously.”

Consideration

In his statement, the applicant gave the following account of Detective Constable G’s involvement in the incident:

“[Ms A] pressed the buzzer and a woman [Ms I] came to the window. [Ms A] spoke to her and said [the child] wasn’t going with her dad and was frightened to go with her dad. [Detective Constable G] put his head through the door at the back of the window area and asked what the problem was. The girl said that it was okay and he went away. A short time later he put his head through the door again and said something about a computer.”

The applicant asserted that the relationship between Detective Constable G and Ms A had caused the officer to take issue with him. Detective Constable G’s statement supported the chronology of events but refuted the applicant’s claim that he was involved in a personal relationship with Ms A. Indeed, according to Detective Constable G he was not aware of having met Ms A prior the incident. Detective Constable G’s position on the matter is fully supported by the terms of Ms A’s statement.

In the Commissioner’s view, Inspector J’s enquiries into this complaint were thorough and the conclusion reached was entirely reasonable. In the circumstances, there was nothing objectionable in Detective Constable G’s limited involvement in the incident and no evidence to support the applicant’s claim that he is involved in a personal relationship with Ms A. The applicant was advised of the outcome of the complaint investigation in a clear, concise manner by Superintendent K and offered guidance on avoiding a similar situation in future.

In the Commissioner’s view, this complaint was dealt with in a reasonable manner. Accordingly no further action is required in this connection.

Conclusions, Recommendations and Learning

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

John McNeill
Police Complaints Commissioner for Scotland

Hamilton House
Caird Park
Hamilton
ML3 0QA